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Chapter 11 Trustee*

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA**

In re  SHOOT THE MOON, LLC,  Debtor.	Case No. 15-60979-11
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**MOTION FOR APPROVAL OF SALE OF SUBSTANTIALLY ALL OF  
DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS,  
ENCUMBRANCES, AND INTERESTS**

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Pursuant to 11 U.S.C. §§ 105, 363(b), 363(f), and 363(m), Jeremiah Foster, the Chapter 11 Trustee ( "Trustee") of the bankruptcy estate of Shoot the Moon, LLC, debtor in the above-captioned Chapter 11 case ("Debtor"), by and through counsel, files this motion ("Sale Motion") requesting the entry of an order (a) approving the sale ( "Sale") of substantially all of the Debtor's Assets pursuant to the terms of an asset purchase agreement; (b) approving the sale of the Assets

free and clear of all liens, claims, rights, encumbrances, and other interests; (c) providing for distribution of Sale proceeds and creation of reserves; and (d) granting related relief. This Motion is supported by: (a) the following Memorandum of Points and Authorities; and (b) the entire record before the Court in this Chapter 11 case.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. BACKGROUND.**

1. The Debtor filed a voluntary petition for relief herein on October 21, 2015 (“Petition Date”), under Chapter 11 of Title 11, United States Code (“Bankruptcy Code”).

2. In a stipulation filed October 26, 2015, Debtor, the United States Trustee and five creditors agreed that “the spirit and intent of 11 U.S.C. § 1104(a)(2) w[ould] be served if the Court order[ed] the appointment of a Chapter 11 Trustee.”

3. The Court conditionally approved the appointment of Jeremiah Foster as Trustee on October 28, 2015, and thereafter appointed Jeremiah Foster as Trustee without condition on November 5, 2015.

4. Prior to the Petition Date, the Debtor, through approximately nineteen (19) separate entities operated eleven (11) Chili’s restaurants, three (3) On the

Border restaurants, and two (2) Moonshine Grill restaurants in the states of Idaho, Montana, and Washington.

5. Prior to the Petition Date the Debtor entities closed the three On the Border restaurants (located in Meridian and Boise, Idaho, and Great Falls, Montana), and the two Moonshine Grill restaurants (located in Helena and Great Falls, Montana).

6. Prior to the Petition Date, on October 20, 2015, Articles of Merger were filed with the states of Washington and Montana and Statements of Merger were filed with the State of Idaho, which merged the eighteen (18) entities listed in Exhibit A and transferred all assets into Debtor as the surviving entity.

7. The Debtor, through Trustee, continues to operate the eleven (11) Chili's franchised restaurants in the following locations, each of which is the subject of the Sale:

- Broadway, Boise, Idaho;
- Franklin, Boise, Idaho;
- Couer D'Alene, Idaho;
- Idaho Falls, Idaho;
- Meridian, Idaho;
- Pocatello, Idaho;
- Twin Falls, Idaho;

- Helena, Montana;
- Great Falls, Montana;
- Downtown, Spokane, Washington; and
- Northtown, Spokane, Washington.

8. Brinker International, Inc. (“Brinker”) is the franchisor under the franchise agreements pursuant to which the Debtor operates its Chili’s restaurants.

9. The Debtor operates the following eight (8) Chili’s at premises leased pursuant to one or more leases or subleases (collectively, the “Leases” and “Leased Restaurants”):

- Broadway, Boise, Idaho;
- Franklin, Boise, Idaho;
- Couer D’Alene, Idaho;
- Idaho Falls, Idaho;
- Meridian, Idaho;
- Twin Falls, Idaho;
- Downtown, Spokane, Washington; and
- Northtown, Spokane, Washington.

10. The Debtor operates the following three (3) Chili’s at premises owned by the Debtor and subject to the Sale (collectively, the “Owned Restaurants”):



- Pocatello, Idaho;
- Great Falls, Montana; and
- Helena, Montana.

11. Debtor's real property in Helena, Montana, includes the former location of a Moonshine Grill that Debtor leased to Tom Lee, Inc., which operates a Japanese restaurant known as Nagoya on the premises, a shared banquet facility between the two restaurant facilities, and all associated improvements, furniture, fixtures and equipment.

12. Debtor's real property in Great Falls, Montana, includes the operating Chili's, a closed restaurant facility formerly occupied by Moonshine Grill, a shared banquet facility between the two restaurant facilities and the former corporate offices of Debtor, and all associated improvements, furniture, fixtures and equipment.<sup>1</sup>

13. Debtor also owns eight (8) liquor licenses, six (6) of which are used at the Chili's restaurants that are subject to the Sale.<sup>2</sup>

14. Debtor's operates the Great Falls and Helena, Montana Chili's with liquor licenses owned by third parties, Hatz, LLC and Hatz II, LLC pursuant to

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<sup>1</sup> Debtor also owns a second parcel of real property in Great Falls, Montana where the now closed On The Border restaurant is located, which is not subject to the Sale or Sale Motion.

<sup>2</sup> Debtor owns one Montana liquor license used at the now shuttered On the Border restaurant in Great Falls, Montana which is not the subject to the Sale. Debtor owns an Idaho liquor license used at the now shuttered On the Border restaurant in Boise, Idaho which is not the subject to the Sale, but is subject to sale pursuant a previously filed 363 Motion (Doc. 364).

concession agreement and leases with those entities approved by the Montana Department of Revenue.

15. The Trustee, with the help of business broker Rob Hunziker of Advanced Restaurant Sales, Mark Macek of Macek Companies, Inc. and Clay Anderson of Colliers Paragon, LLC, professionals hired by Trustee pursuant to the Court's approval (Doc. 162, 173, 175, 258), identified Paradigm Restaurants, L.C., a Utah limited liability company, as the best potential purchaser of the Debtor's assets through a robust marketing and bidding process.

16. Debtor and Paradigm Restaurants, L.C., a Utah limited liability company ("Buyer") have executed the Asset Purchase Agreement and three Commercial Buy-Sell Agreements dated July 26, 2016 (collectively the "Sale Agreement"), a copy of which is attached hereto as **Exhibit A**. Subject to Court approval, the Sale Agreement provides for the Sale of the Assets to Buyer under the terms and conditions stated therein.

17. The Assets subject to the Sale include, among other things, the furniture, fixtures and equipment at the Leased Restaurants and Owned Restaurants, the Owned Restaurants and the real property, improvements, furniture, fixtures and equipment associated with the Owned Restaurants, as further described in Section 1.1(a) of the Sale Agreement.

18. Certain assets are excluded from the Sale, including without limitation, Debtor's cash, accounts receivable, On the Border assets, avoidance actions and other claims and causes of action, as further described in Section 1.1(b) of the Sale Agreement.

19. The Trustee will file a separate motion pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure seeking Court approval of a compromise with the third parties that own the Montana Liquor Licenses utilized at the Great Falls and Helena, Montana to allow those licenses to be included in the Sale.

20. The Trustee also intends to file a separate motion for authority to assume and assign to the Buyer as of the closing date the Leases, franchise agreements and certain executory contracts for the Chili's restaurants.

## **II. JURISDICTION AND VENUE.**

21. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

22. Venue of this proceeding is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

23. The statutory predicates for the relief sought herein are sections 105 and 363 of the Bankruptcy Code, and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

### **III. THE DEBTOR' BUSINESS OPERATIONS AND DEBT OBLIGATIONS.**

24. Prior to the Petition Date, the Debtor had committed to a rapid expansion and was in the process of acquiring and building a number of stores in 2009 when the economic downturn resulted in a significant downturn in revenues. The Debtor (including affiliates merged into the Debtor) borrowed substantial funds from a number of lenders. Ultimately, the operations of the restaurants did not generate sufficient cash to service the debt and the Debtor defaulted on obligations and began closing stores, leading to this Chapter 11 case.

25. The Debtor's primary secured creditors which claim security interests in the Assets subject to the Sale include: First Interstate Bank ("FIB") with loans under certain loan agreements and associated documents (collectively, the "FIB Loan") with an aggregate balance of approximately \$10.5 million; and Western Alliance Bank ("WAB") with loans under certain loan agreements and associated documents (collectively, the "WAB Pre-Petition Loan") with an aggregate balance of approximately \$7 million.

26. Other creditors which claim security interests in the Assets subject to the Sale are listed in attached **Exhibit B**, which includes a summary of creditors with first or second priority liens on Assets subject to sale at the various

Restaurants, and backup therefore with references to UCC filings and collateral descriptions.

27. The Trustee continues to review liens and claims asserted by the various alleged secured creditors and has analyzed the security interests and priorities of lien holders in the Assets subject to the Sale as set forth in attached **Exhibit B**. Trustee anticipates that the Sale proceeds will fund agreed-upon amounts to the secured creditors with first priority liens on the Debtor's assets subject to the Sale.

28. The Debtor entered into one or more pre-petition leases and financing contracts to obtain furniture, fixtures and equipment to be used in the various Chili's restaurants. Certain equipment lessors/ creditors may hold security interests in the Debtor's equipment or other personal property subject to the Sale. The Trustee continues to investigate such claims and to the extent that the Sale includes leased or financed furniture, fixtures and equipment. The Trustee anticipates paying the claims of the applicable lenders or lessors to the extent allowed, an agreed amount from the proceeds of the Sale or having those obligations assumed by the Buyer so that the Debtor's obligations are satisfied with respect to those claims.

29. The Debtor's Estate is subject to administrative claims, including pending and approved professional fees, as set forth in attached **Exhibit C**. The

Trustee anticipates paying allowed administrative claims in the ordinary course of business or from the proceeds of the sale or otherwise fully resolving the claims as to the Debtor's estate at closing.

30. Various taxing authorities have asserted claims or may assert claims relating to unpaid pre-petition taxes, including sales taxes, personal property taxes and real property taxes as set forth in attached **Exhibit D**. The Trustee continues to evaluate these claims. To the extent the taxing authorities assert valid claims or interests in the Assets subject to the Sale, Trustee anticipates that the Sale proceeds will fund agreed-upon amounts to these taxing authorities.

31. The Debtor also owes pre-petition amounts to certain landlords and Brinker as a sublessor of the Leased Restaurants and to Brinker on account of the franchise agreements as set forth in attached **Exhibit E**. To the extent that such unexpired leases and executory contracts are assumed and assigned in the Sale process, the Trustee intends to make appropriate cure payments to the applicable parties from the proceeds of the Sale.

32. Debtor's Estate is obligated to WAB on post-petition financing as approved by Court through its Order entered on June 27, 2016, granting Trustee's Motion for Final Order (I) Authorizing Longer-Term Secured Post-Petition Financing on a Super Priority Basis Pursuant to 11 U.S.C. §§ 363, 364, and 507(b); (II) Granting Relief From the Automatic Stay Pursuant to 11 U.S.C. §§ 362; and

(III) Granting Related Relief (Doc. 644) (the “Second Financing Order”). As of July 27, 2016, the Trustee has drawn approximately One Million Forty-two Thousand and Four Dollars (\$1,042,004) on the post-petition financing. As provided in the Second Financing Order, the post-petition financing owing to WAB is secured by first priority liens on Assets subject to the Sale. Trustee anticipates payment of the post-petition financing from the proceeds of the Sale.

33. The Trustee continues to work with various creditors on issues relating to the allocation of the Sale proceeds, including issues relating to payment of secured claims, cure amounts, closing costs and administrative claims. Currently, neither FIB, nor WAB has consented to the Sale, and each has reserved all rights thereto. No less than three (3) business days before the hearing on this Motion, the Trustee will file a report regarding the agreements reached with secured creditors and other parties regarding payments from Sale proceeds and related matters.

#### **IV. THE SALE OF THE DEBTOR’S ASSETS.**

34. By this Motion, the Trustee seeks approval of the Sale of Assets to the Buyer pursuant to the Sale Agreement attached hereto as **Exhibit A**. The proposed Sale Agreement contemplates that the Assets will be sold free and clear of liens, claims, encumbrances, rights, and other interests, other than those liens and interests expressly permitted under the Sale Agreement. All liens, claims,

encumbrances, rights, and other interests will attach to the proceeds of the Sale, with proceeds to be distributed or reserved at closing as ordered by the Court.

35. Since his appointment, the Trustee has marketed the Assets in an effort to maximize recovery for all creditors and other interested parties. In order to maximize the value of the Debtor's estate for creditors, and to preserve jobs, the Trustee and other parties in interest, including Brinker, FIB and WAB, determined that a sale process for the sale of the Debtor's restaurant business as a going concern would best meet those goals. The Trustee believes that a more viable alternative to the Sale of the Assets does not exist.

36. Trustee, with the help of business broker Rob Hunziker of Advanced Restaurant Sales, assembled a secure online data room containing the information available regarding the Chili's businesses and related assets and began a nationwide marketing and bidding process in February of 2016. Approximately 30,000 individuals, private equity firms, multi-unit restaurant operators, in the region and throughout the United States and internationally, were notified asked to participate in the bidding process. Additionally, Brinker was notified and their current franchisees and potential franchisees were invited to bid. Thirty four (34) potential buyers registered, executed confidentiality agreements and reviewed the available materials. Three (3) of the registered buyers were presented by Brinker as current franchisees within its system that had shown an interest in the Debtor's



assets. Prospective bidders who signed the confidentiality agreements were required to show operational and financial capability to own and operate the 11 Chili's restaurants before they were allowed access to the files. Trustee established a "call for offers date" of March 31st, 2016, which was later extended a week to accommodate a couple of late entrants to the process. Upon the call for offers deadline, Trustee had received four (4) bids, two (2) from Brinker franchisees and two (2) from outside the Brinker system. Three (3) of the bidders presented offers for both the Chili's business enterprise and real estate. On April 15, 2016 Trustee requested each of the bidders submit their best and final proposal for consideration. From that it was determined that the offer of Buyer was clearly the highest and best offer. Buyer further increased his offer after subsequent negotiations with Trustee. In the months that followed, Brinker performed a rigorous review of the Buyer's financial and operation capacity and ultimately approved the Buyer.

37. The proposed Sale Agreement requires the Trustee to obtain, *inter alia*, an order of the Court authorizing and approving the sale of the Assets to the Buyer pursuant to the terms of the Sale Agreement, free and clear of all liens, claims, encumbrances, and other interests. Accordingly, the Debtor hereby seeks an order approving a sale of the Assets to the Buyer under the terms set forth in the Sale Agreement.

38. The Trustee submits that a sale of the Assets to the Buyer at this time will maximize the value of the Debtor's Assets and, therefore, is in the best interests of the Debtor's estate.

## **V. THE ASSETS AND THE SALE AGREEMENT.**

39. Under the Sale Agreement, the cash purchase price for the Assets consists of Five Million Two Hundred Fifty Thousand Dollars (\$5,250,000) in cash for the Debtor's business enterprise, Seven Million One Hundred Thirty-five Thousand Dollars (\$7,135,000) in cash for the real property and improvements owned by the Debtor, and an additional Sixty-three Thousand Dollars (\$63,000) for certain personal property owned by the Debtor and associated with the former Moonshine Grill, shared banquet facilities and former corporate office located on the premises subject to the Sale. The Sale Agreement also provides for the assumption of certain liabilities which will relieve the Debtor's estate of those substantial obligations.

40. The physical Assets consist primarily of the Debtor's real property and improvements associated with the Owned Restaurants, and the Debtor's furniture, fixtures, equipment and inventory at each of the Owned Restaurants and Leased Restaurants necessary to operate those restaurants as a going concern. The Sale Agreement also provides for the assumption and assignment to the Buyer,

subject to approval of this Court, of the Leases and the Chili's franchise agreements.

## **VI. LEGAL ARGUMENT.**

41. The Trustee requests that this Court, inter alia, (a) authorize the Sale of the Assets to the Buyer pursuant to the Sale Agreement, (b) authorize such sale of the Assets to be free and clear of all liens, claims, rights, encumbrances, or other interests pursuant to sections 105, 363(b), 363(f), and 363(m) of the Bankruptcy Code, with such liens, claims, rights, encumbrances and interests (collectively, the "Liens, Claims, and Encumbrances") attaching to the sale proceeds of the Assets (the "Sale Proceeds") with the same validity, priority and perfection as existed immediately prior to such sale; and (c) grant such other relief as may be necessary or appropriate.

### **A. Need for Immediate Sale.**

42. Section 363 of the Bankruptcy Code vests the Court with authority to approve the sale contemplated by the Sale Agreement. See Stephens Industries, Inc. v. McClung, 789 F.2d 386, 390 (6th Cir. 1986) ("[A] bankruptcy court can authorize a sale of all a Chapter 11 debtor's assets under § 363(b)(1) when a sound business purpose dictates such action"). Section 363(b)(1) of the Bankruptcy Code provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. §

363(b)(1). See also Fed. R. Bankr. P. 6004(f)(1) (“All sales not in the ordinary course of business may be by private sale or by public auction.”). This section generally permits a trustee to sell property of the estate outside of the ordinary course of its business where the proposed sale is a sound exercise of business judgment and when such sale is proposed in good faith. See In re Lionel Corp., 722 F.2d 1063, 1070 (2d Cir. 1983); In re 240 North Brand Partners, Ltd., 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); In re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143 (3d Cir. 1986); In re Martin, 91 F.3d 389, 395 (3d Cir. 1996). A bankruptcy trustee’s decision to sell assets outside the ordinary course is accorded deference by a bankruptcy court where it is supported by the trustee’s reasonable business judgment, and an articulated business justification for the transaction. In re Lahijani, 325 B.R. 282, 289 (B.A.P. 9th Cir. 2005); In re Chateaugay Corp., 973 F.2d 141, 143 (2d Cir. 1992).

43. The “sound business judgment” test requires a trustee to establish four elements in order to justify the sale or lease of property outside the ordinary course of business: (a) that a “sound business purpose” justifies the sale of assets outside the ordinary course of business, (b) that adequate and reasonable notice has been provided to interested persons, (c) that the seller has obtained a fair and reasonable price, and (d) good faith. Abbotts Dairies, 788 F.2d 143; In re Titusville Country Club, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991).

44. In this case, the Trustee submits that the decision to proceed with the sale of the Assets is based upon his sound business judgment and should be approved. A showing of a sound business purpose need not be unduly exhaustive but, rather, a debtor is “simply required to justify the proposed disposition with sound business reasons.” In re Baldwin United Co., 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984). The proposed sale of the Assets pursuant to the Sale Agreement constitutes a sound exercise of the Trustee’s business judgment and has been proposed in good faith.

45. The proposed Sale is appropriate for several reasons. First, the Debtor risks running out of liquidity or having its Leases or franchises terminated in the near future, and in the absence of such a sale, the value of the Debtor’s assets may deteriorate rapidly. Second, an expedited sale of the Debtor’s assets will aid in minimizing administrative expenses of the estate, resulting in a greater distribution to creditors. Third, an expedited sale will increase the probability that the jobs of the Debtor’s many employees will be preserved and that service to the Debtor’s customers will not be disrupted. Finally, the Sale Agreement brings the greatest consideration to the Debtor’s creditors and allows for the continued operation of the business subsequent to the consummation of the transaction. For the foregoing reasons, the Sale of the Assets, pursuant to the terms of the Sale

Agreement, furthers the diverse interests of the Debtor's estate, the creditors, and other parties in interest. See In re Lionel Corp., 722 F.2d at 1071.

46. The Trustee submits that the factors described above, which require a sale of the Assets to preserve value for the estate, are consistent with the traditional rationale for authorizing a sale outside of a Chapter 11 plan. See Lionel, 722 F.2d at 1070; In re Work Recovery, Inc., 202 B.R. 301, 304 (Bankr. D. Ariz. 1996) (authorizing a Section 363 sale outside of a Chapter 11 plan where the sale was fair and arm's-length and in the best interest of the estate).

**B. Sale Free and Clear of All Liens, Claims, Encumbrances, and Interests.**

47. Section 363(f) of the Bankruptcy Code authorizes a trustee to sell property of the estate outside of the ordinary course of business, free and clear of any interest in such property if: (i) such a sale is permitted under applicable non-bankruptcy law; (ii) the party asserting such a lien, claim, or interest consents to such sale; (iii) the interest is a lien and the purchase price for the property is greater than the aggregate amount of all liens on the property; (iv) the interest is the subject of a bona fide dispute; or (v) the party asserting the lien, claim or interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. 11 U.S.C. § 363(f).

48. The Sale Agreement provides for a sale of the Assets free and clear of all liens, claims, encumbrances, and other interests. Any such liens, claims, encumbrances, and other interests would attach to the net sale proceeds (the “Sale Proceeds”) with the same validity, priority, force, and effect that such liens, claims, encumbrances, and other interests had on the Assets prior to the closing of the transaction.

49. Section 363(f) is written in the disjunctive. Thus, satisfaction of any of the requirements enumerated therein will suffice to warrant the sale of the Assets free and clear of all of the applicable Liens, Claims and Encumbrances, except with respect to any Liens, Claims and Encumbrances permitted under the Sale Agreement. See Citicorp Homeowners Services, Inc. v. Elliot, 94 B.R. 343, 345 (E.D. Pa. 1988). The Trustee submits that each Lien, Claim, and Encumbrance that is not an assumed liability satisfies at least one of the five conditions of section 363(f) of the Bankruptcy Code, and that any such Lien, Claim, or Encumbrance will be adequately protected by either being paid in full at the time of closing, or by having it attach to the Sale Proceeds, subject to any claims and defenses that may be asserted thereto. The Trustee accordingly requests authority to convey the Assets to the Buyer, free and clear of all Liens, Claims, and Encumbrances except for the Liens, Claims, and Encumbrances expressly permitted under the terms of the Sale Agreement, with such Liens,

Claims, and Encumbrances to attach to the Sale Proceeds, with the same validity, priority, and perfection as existed immediately prior to the Sale, subject to the terms of the Sale Agreement and the order of this Court.

50. The Trustee has conducted a UCC search and other lien searches of purported lienholders in conjunction with the proposed sale of the Assets. The Trustee will serve such purported lienholders with notice of this Sale Motion. To the extent there are any secured creditors that do not consent to the Sale, (a) applicable nonbankruptcy law permits sale of the Assets free and clear of such creditors' claims, (b) their interests are disputed, or (c) such creditors could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of their claims.

51. Because the Trustee expects to satisfy the second and fifth elements of Section 363(f), if not others as well, approving the sale of the Assets free and clear of all adverse interests is warranted. Furthermore, courts have held that they have the equitable power to authorize sales free and clear of interests that are not specifically covered by section 363(f). See, e.g., In re Trans World Airlines, Inc., 2001 WL 1820325 at \*3, 6 (Bankr. D. Del. March 27, 2001); In re White Motor Credit Corp., 75 B.R. 944, 948 (Bankr. E.D. Ohio 1987). The Trustee submits that the proposed sale of the Assets free and clear of interests is justified in this case, and that such sale is in the best interest of the Debtor's estate and its creditors.



**C. The Purchase Agreement Was Negotiated in Good Faith.**

52. Section 363(m) of the Bankruptcy Code provides:

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

11 U.S.C. § 363(m). Section 363(n) of the Bankruptcy Code, among other things, provides, in turn, that a trustee may avoid a sale under such section if the sale price was controlled by an agreement among potential bidders as the sale. *See* 11 U.S.C. § 363(n). Although the Bankruptcy Code does not define “good faith,” the Third Circuit in In re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143 (3d Cir. 1986), held that “[t]he requirement that a Buyer act in good faith . . . speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a Buyer’s good faith status at a judicial sale involves fraud, collusion between the Buyer and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.” 788 F.2d at 147 (citations omitted).

53. The terms of the Purchase Agreement were negotiated at arm’s length, without collusion, and in good faith. Accordingly, the Trustee requests that the Court find the Buyer to be acting in good faith so that the Sale and the Buyer receive the fullest protections available to a good-faith purchaser under Section

363(m) of the Bankruptcy Code. See In re Filtercorp, Inc., 163 F.3d 570, 576-77 (9th Cir. 1998).

**D. Personally Identifiable Information.**

54. The Trustee does not believe that the Sale will include the transfer to the Buyer of “personally identifiable information” as that term is defined in section 101(41A) of the Bankruptcy Code. The Debtor do not collect or store any personally identifiable information from their customers. Accordingly, the Trustee submits that no consumer privacy ombudsman needs to be appointed in these cases.

**E. Assumption and Assignment of Certain Executory Contracts.**

55. Pursuant to the Sale Agreement and Section 365 of the Bankruptcy Code, the Buyer may be assigned certain of the Debtor’ unexpired leases and executory contracts. Under a separately filed motion, the Trustee will request authority to assume and assign the Leases and other executory contracts to the Buyer. The Trustee will identify the contracts and leases to be assumed and assigned in such motion and notice all parties appropriately.

**F. Elimination of Automatic Fourteen-Day Stay.**

56. 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.” Similarly, 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 Trustee requests that the Sale Order be effective immediately and that the fourteen (14)-day stays under Federal Rules of Bankruptcy Procedure 6004(h) and 6006(d) be waived.

WHEREFORE, the Trustee respectfully requests an Order:

(i) authorizing a sale of the Assets to Buyer in good faith, free and clear of liens, claims, encumbrances, and other interests, pursuant to the Sale Agreement as the highest and best offer for the Assets, with all liens, claims, encumbrances, and other interests to attach to the proceeds of the Sale;

(ii) authorizing the closing agent to distribute proceeds from the Sale at closing to Trustee, who in turn will distribute proceeds from the Sale consistent with the agreements of the parties as incorporated into an order issued by this Court, and to otherwise establish appropriate reserves; and

(iii) granting such other and further relief as the Court deems just and proper under the circumstances of these cases.

DATED this 29<sup>th</sup> day of July, 2016.

DATSOPOULOS, MACDONALD & LIND, P.C.

/s/ David B. Cotner

David B. Cotner

*Attorneys for Trustee*

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**NOTICE OF OPPORTUNITY TO RESPOND  
AND REQUEST A HEARING**

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**If you object to the motion, you must file a written responsive pleading and request a hearing within fourteen (14) days of the date of the motion. The responding party shall schedule the hearing on the motion at least twenty-one (21) days after the date of the response and request for hearing and shall include in the caption of the responsive pleading in bold and conspicuous print the date, time and location of the hearing by inserting in the caption the following:**

**NOTICE OF HEARING**

**Date:** \_\_\_\_\_

**Time:** \_\_\_\_\_

**Location:** \_\_\_\_\_

**If no objections are timely filed, the Court may grant the relief requested as a failure to respond by any entity shall be deemed an admission that the relief requested should be granted.**

DATED this 29<sup>th</sup> day of July, 2016.

DATSOPOULOS, MACDONALD & LIND, P.C.

/s/ David B. Cotner

David B. Cotner

*Attorneys for Trustee*

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that on the 29<sup>th</sup> day of July, 2016 a copy of the foregoing Motion for Approval of Sale of Substantially All of Debtor's Assets Free and Clear of Liens, Claims, Encumbrances, and Interests was served (i) by electronic means, pursuant to LBR 7005-1, 9013-1(c) and 9036-1 on the parties noted in the Court's ECF transmission facilities and/or (ii) will be served by mail on the parties identified below and within the Mailing Matrix maintained by the Court on August 1, 2016.

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Counsel for Buyer

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Counsel for Lessor Meldco, Inc.

/s/ David B. Cotner

# **EXHIBIT A**

## **Signed Asset Purchase Agreement, Real Estate Buy-Sells, Addenda and Schedules**

**ASSET PURCHASE AGREEMENT**

by and among

Jeremiah Foster, in his capacity as Chapter 11 Trustee of  
Shoot The Moon, LLC, a Montana Limited Liability Company,  
as Seller

and

Paradigm Restaurants, L.C., a Utah limited liability company,  
as Purchaser

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### Article 2: Closing

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## **ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement (this "APA") between Shoot The Moon, LLC, a Montana Limited Liability Company, and Jeremiah Foster, in his capacity as Chapter 11 Trustee of Shoot The Moon, LLC (collectively referred to as "Seller"), and Paradigm Restaurants, L.C., a Utah limited liability company ("Purchaser") to be effective as of the latest date set forth next to the signatures below (the "Effective Date").

WHEREAS, Seller owns and operates 11 "Chili's Grill and Bar" restaurants described on Exhibit A hereto (such restaurants being collectively referred to herein as the "Purchased Restaurants"); and

WHEREAS, Purchaser desires to purchase certain assets and assume certain liabilities related to the Purchased Restaurants and the Business, and Seller desires to sell such assets and assign such liabilities to Purchaser, each upon the terms and conditions set forth herein;

NOW THEREFORE, with the intent of being legally bound hereby, in consideration of the mutual covenants and promises hereinafter set forth, and other good and valuable consideration, which the parties acknowledge is sufficient to create a legally binding agreement, the parties agree as set forth in this APA.

### **Article I**

#### **PURCHASE AND SALE OF ASSETS.**

##### **1.1 Purchased Assets and Excluded Assets.**

- a. At Closing (defined below) and subject to the terms and conditions of this APA, Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all right, title and interest in and to the following assets, which are owned by Seller, free and clear of all Liens, Claims and encumbrances (collectively the "Purchased Assets"):
  - i. All tangible personal property located at the Purchased Restaurants, including furniture and equipment, which is listed on Schedule 1.1(a)(i) (as such schedule may be revised before the Due Diligence Deadline);
  - ii. All inventory of non-expired food, non-alcoholic beverages, alcoholic beverages (to the extent transferable), raw materials, packaging supplies, paper products, uniforms, tableware, glassware, small wares, menus, tents and similar items necessary for the operation of the Business (a) held at the Purchased Restaurants or in transit thereto, or (b) held at Seller's authorized suppliers and distributors (including, without limitation, proprietary and non-proprietary items) in connection with Seller's normal ordering cycles during Seller's normal course of business for the Purchased Restaurants ("Distributor Inventory");

- iii. Subject to required consents and this APA, all of Seller's rights in and under all written contracts and agreements relating to the Business and the Purchased Assets, including all Franchise Agreements pertaining to all Purchased Restaurants, set forth on Schedule 1.1(a)(iii) (the "Assumed Contracts"), which Schedule of Assumed Contracts shall be finalized before the Due Diligence Deadline as Purchaser elects to assume or reject certain Contracts;
- iv. One (1) set of Seller's records and files to the extent they relate to the Business and the Purchased Restaurants, including, without limitation, store sale reports for each Purchased Restaurant based on the point of sale data for such Purchased Restaurant (the "Store Sales Reports"), contractor, vendor and supplier lists and records, employment files or other books, records or files the sale, assignment, transfer or disclosure of which are not prohibited by Law or agreement;
- v. Seller's interest in website domain names, phone numbers and listings for the Purchased Restaurants;
- vi. To the extent transferable, all licenses and permits granted by Governmental Authorities used in or required or necessary for the lawful ownership and operation of the Business and the Purchased Restaurants (the "Transferable Permits" as shown on Schedule 1.1(a)(vi)). With respect to any such Transferable Permits, Purchaser shall, at its sole cost, effect the transfer of such Permits from Seller to Purchaser at Closing, and Seller hereby agrees to reasonably cooperate with Purchaser to effect such transfer; provided Seller shall not be obligated to incur any costs or expenses in connection therewith. Notwithstanding the foregoing, such Transferable Permits shall include, without limitation, all Liquor Licenses relating to the Purchased Restaurants that are the subject of this Agreement, and Seller shall take all actions reasonably requested by Purchaser to assist in the transfer all Liquor Licenses to Purchaser. If any Liquor Licenses must be purchased from any third parties, Affiliates or otherwise, Seller shall pay the purchase price for such Liquor Licenses or such price shall be paid directly by the Title Company through Seller's funds at Closing
- vii. To the extent transferable at no cost or expense to Seller, warranties provided by third parties with respect to the buildings, fixtures, plant, equipment and improvements described in Section 1.1(a)(i) above (the "Transferable Warranties" as shown on Schedule 1.1(a)(vii)). With respect to any such Transferable Warranties, Purchaser may, at its sole cost, effect the transfer of such Warranties from Seller to Purchaser at Closing, and Seller hereby agrees to reasonably cooperate with Purchaser to effect such transfer; provided Seller shall not be obligated to incur any costs or expenses.
- viii. All goodwill and other intangible assets associated with the Purchased Assets, and the going concern value, if any;

- ix. All point-of-sale and back office computer hardware, software and peripheral devices such as printers, scanners, etc. used or necessary for the operation of the Business; and
  - x. Seller's leasehold interest in the real property identified on Exhibit A or Schedule 1.1(a)(i) as being leased pursuant to the Assigned Leases, in each case together with Seller's interest in all buildings, fixtures, plant, equipment and improvements thereon or attached thereto (individually, a "Leased Property", and collectively, the "Leased Real Estate").
- b. Notwithstanding the foregoing, the Purchased Assets shall not include the following assets of Seller and such assets shall remain the property of Seller after Closing (the "Excluded Assets"):
- i. Cash and cash equivalents, other than petty cash on hand as of Closing at each of the Purchased Restaurants (which petty cash shall be subject to the proration described in Section 1.4(c) below);
  - ii. All Permits that are not transferable by the terms thereof or by operation of Law (the "Excluded Permits"); provided, however, the Excluded Permits shall not include the Liquor Licenses, the Franchise Agreements or any other Permits necessary or required to operate the Business and the Purchased Restaurants;
  - iii. All accounts and notes receivable, including without limitation, credit card receivables, arising from the operation of the Purchased Restaurants prior to Closing;
  - iv. All Seller's properties, assets, capital stock, rights, claims, Contracts, records and goodwill relating to all businesses conducted by Seller other than the Business and the Purchased Restaurants;
  - v. Seller's rights under this APA and the other agreements, certificates and instruments to be executed by Seller in connection with or pursuant to this APA not comprising part of the Purchased Assets;
  - vi. All refunds of income taxes filed or to be filed by Seller or its affiliates;
  - vii. All assets used by Seller in the operation of the On the Border restaurants (the "On the Border Assets");
  - viii. All rights of the Seller in connection with the assets or liabilities of the Seller's Employee Benefit Plans;
  - ix. All insurance policies and rights thereunder and all insurance benefits, including rights, claims and proceeds arising from or relating to the Purchased Assets and the Assumed Liabilities prior to the Closing Date; provided, however, that Seller shall

provide Purchaser written disclosure of all actual or potential claims before the Due Diligence Deadline (as defined below);

- x. All other assets, real property, leasehold interests, personal property, intellectual property, inventory, business records, files, documents, contracts, warranties, buildings, furniture, fixtures, equipment, rights, claims, goodwill, and any other item that is expressly excluded from the Purchased Assets and not necessary for the operation of the Business or the Purchased Assets.
- xi. All claims, including claims, deposits, prepayments, warranties, guarantees, refunds, reimbursements, causes of action, rights of recovery, rights of set-off and right of recoupment of every kind and nature (whether or not known or unknown or contingent or non-contingent) that are related to any activity that occurred prior to Closing, other than to the extent such claims relate to customer disputes, customer complaints and returns or are included in the Purchased Assets;
- xii. Seller's interest in all third party claims; provided, however, such claims shall not affect Purchaser's rights in the Purchased Assets or Seller's obligations hereunder with respect to the Purchased Assets;
- xiii. All Avoidance Actions pursuant to Chapter 5, Title 11, U.S.C.; and
- xiv. All of Seller's rights to be indemnified, except to the extent an indemnification right pertains to the Purchased Assets.

1.2 Assumption of Liabilities. At Closing, Purchaser shall assume the following categories of Liabilities (collectively the "Assumed Liabilities"):

- a. To the extent relating to periods on and after the Closing Date, all Liabilities under the Assumed Contracts;
- b. To the extent relating to periods on and after the Closing Date, all Liabilities under the Transferable Permits;
- c. All Liabilities to Purchaser Hired Employees that arise on or after the Closing Date, except such Liabilities retained by Seller under Section 5.4, if any;
- d. All Liabilities related to the Purchased Assets arising out of periods, or incurred by Purchaser, on or after Closing Date; and
- e. All Liabilities relating to gift certificates and gift cards issued to customers prior to the Closing Date who present the same for redemption at any Purchased Restaurant on or after the Closing Date (the "Gift Certificates").
- f. All accrued and unpaid vacation pay as of Closing regarding Purchaser Hired Employees as outlined in Schedule 1.2(f).

Purchaser shall not assume any Liability that is not expressly included in the definition of Assumed Liabilities and all other Liabilities shall be retained by Seller, its Affiliates and successors.

1.3. Purchase Price.

The consideration to be paid by Purchaser at Closing for the Purchased Assets ("Purchase Price") shall be Five Million Two Hundred Fifty Thousand Dollars (\$5,250,000.00) payable as follows:

- a \$200,000 deposit, which was delivered to Clear Title Agency of Arizona, receipt of which is hereby acknowledged (the "Earnest Money Deposit"); and
- the balance of the Purchase Price shall be paid by Purchaser to Seller and third parties as required on the Closing Date in immediately available funds, subject to adjustment for the matters set forth in Sections 1.4, 1.5 and 1.7 hereto.

1.4 Prorations. The Purchase Price shall be subject to proration as set forth in this Section 1.4.

- a. Except as elsewhere set forth herein, all items of income and expense arising from the operation of the Business and Purchased Restaurants on or before the opening of business on the Closing Date shall be for the account of Seller and thereafter shall be for the account of Purchaser. Proration of the items described below between Seller and Purchaser shall be effective as of 12:01 a.m., local time, on the Closing Date and shall occur as follows with respect to the Purchased Assets and the Assumed Liabilities:
  - i. Liability for state and local real estate and personal property taxes, sales, use or liquor taxes relating to the operation of the Business, water and sewer use charges, and special assessments and tax abatements assessed on the Purchased Assets payable with respect to any period prior to the Closing Date shall be prorated as between Seller and Purchaser on the basis of the number of days of the tax year or period elapsed prior to the Closing Date (regardless of lien date and/or regardless of when such taxes or charges are assessed or attached, or deemed to have been assessed or attached).
  - ii. Prepaid items, credits and accruals such as rent and CAM charges, utilities, other service charges, prepaid inventory rebates, rental and other payments or advances under any Assumed Contracts (including, without limitation, prepaid billboard and other advertising contracts) and bonuses (if any) accrued for managerial Purchaser Hired Employees shall be prorated between Seller and Purchaser on the basis of the period of time to which such Liabilities, prepaid items and accruals apply.

- iii. Purchaser shall reimburse Seller for all security, utility and other deposits made by Seller as Trustee with respect to the operation of the Purchased Restaurants and the Purchased Assets identified on Schedule 1.4(a)(iii) and shall succeed to all of Seller's rights to recovery or refund of such deposits pursuant to an assignment to be executed and delivered by Seller at the Closing.
- b. Except as provided in Section 1.2 above, normal trade accounts payable of the Purchased Restaurants are not Assumed Liabilities (other than with respect to inventory) and will not be prorated.
- c. All petty cash on hand at the Purchased Restaurants as of the opening of business on Closing Date shall be for the account of Seller. The amount of any petty cash turned over to Purchaser at Closing pursuant to Section 1.1(b)(i) above shall be added to the Purchase Price.
- d. To the extent practicable, all prorations shall be made prior to Closing Date with any additional prorations and true-up to be made within 30 days thereafter.

1.5. Inventory Adjustment. The Purchase Price shall be increased by the dollar amount of inventory located at the Purchased Restaurants (excluding Distributor Inventory) on the Closing Date (the "Inventory Adjustment"). For purposes of determining inventory, (i) on or before Closing, Seller will furnish an inventory report for the Purchased Restaurants to Purchaser, and (ii) as of the close of business immediately preceding Closing (unless otherwise agreed by the parties), the restaurant managers of the Purchased Restaurants and representatives of the Purchaser shall conduct a physical inventory of the Purchased Restaurants, and the dollar amount of such inventory (based on Seller's current costs) shall be computed in accordance with generally accepted accounting principles consistently applied in accordance with Seller's prior practice. For this purpose, at the time of the taking of such physical inventory, Seller shall provide to Purchaser such costing data regarding inventory as is reasonably practicable under Seller's current accounting systems. Representatives of Seller and Purchaser may observe such physical inventory and may conduct reasonable spot audits of such physical inventory. Inventory shall not include any obsolete, used, unusable, out of date or non-current items, and shall include only unused, unopened cases or bottles. The parties shall cooperate in good faith to agree on the Inventory Adjustment within five (5) days after the Closing Date, and Purchaser shall satisfy payment of same within ten (10) days after the Closing Date.

1.6. Allocation of Purchase Price. The Purchase Price shall be allocated among the Purchased Assets and Assumed Liabilities in accordance with Section 1060 of the Internal Revenue Code of 1986, as amended, and such allocation shall be set forth on Schedule 1.6 (which schedule shall be mutually agreed upon by Seller and Purchaser before the Due Diligence Deadline). Seller and Purchaser each agree to report the federal, state and local income and other tax consequences of the transactions contemplated herein in a manner consistent with such allocation.

## **ARTICLE II**

### **CLOSING.**



2.1 Closing Date. The closing (the “Closing”) to effectuate the purchase and sale of the Purchased Assets shall be held at Clear Title Agency of Arizona, whose address is 2910 2910 Camelback Rd., Suite 100, Phoenix, AZ 85016, attention Carol Rieger (480) 278-8425 (the “Title Company”) or another location mutually-acceptable to the parties, and shall occur on the earlier of September 30, 2016, or within five (5) business days after the satisfaction of all conditions set forth in Articles VI, VII and X (the “Closing Date”).

2.2 Closing Documentation. At Closing, Purchaser shall pay the Purchase Price to Seller and the parties shall execute such limited warranty deeds, lease assignments, bills of sale, assignment and assumption agreements (including assignment and assumption agreements for Distributor Inventory), and other instruments as are necessary to convey title to the Purchased Assets, effectuate an assignment and assumption of the Assumed Liabilities, and to otherwise effectuate the transaction contemplated by this APA (the “Transaction Documents”). Such Transaction Documents shall include the following:

- a. The Lease Assignment for each Leased Property, executed by Seller and the landlord under each Assigned Lease, in a form mutually acceptable to the parties and Purchaser’s Lender (each, a “Lease Assignment”);
- b. Bill of Sale for all tangible personal property in a form mutually acceptable to the parties and Purchaser’s Lender (the “Bill of Sale”);
- c. Assignment of Seller’s rights under the Assumed Contracts in a form mutually acceptable to the parties and Purchaser’s Lender (the “Assumed Contracts Assignment”);
- d. The Chili’s Grill and Bar Assignment and Assumption Agreement executed by Seller and Brinker International, Inc. (the “Franchisor”) in a form mutually acceptable to the parties and Purchaser’s Lender (each, a “Franchise Assignment and Assumption”);
- e. Landlord Agreements, Security Agreements, or other documents or instruments Purchaser’s Lender (as defined below) shall require Purchaser, landlords of the Purchased Restaurants, or other third-parties to execute in connection with the transactions contemplated by this APA (the “Lender Documents”);
- f. Assignment of the Transferable Permits, including the Liquor Licenses, executed by Seller and all appropriate Governmental Authorities or third parties;
- g. Assignment of Warranties executed by Seller;
- h. Evidence reasonably satisfactory to Purchaser and Purchaser’s Lender that all security interests which encumber any of the Purchased Assets, which do not constitute Permitted Exceptions (as defined below), shall be released; and

- i. Such other documents, information, certificates and materials as may be reasonably required Seller, Purchaser, Purchaser's Lender, Title Company or required by this APA.

All actions taken at Closing shall be deemed to have been taken simultaneously at the time the last of any such actions is taken or completed.

2.3 Third Party Approvals. Purchaser and Seller acknowledge the transactions contemplated by this APA are subject to the approval of the Bankruptcy Court and third parties including Governmental Authorities, liquor licensing authorities, landlords, lessors, mortgagees, and other parties with approval rights or whose approval is necessary for consummation of the transactions contemplated herein (the "Third Party Approvals").

2.4 Deemed Consents. Seller shall request that by providing notice of its intent to assume and assign any Assumed Contract or Assigned Lease, that the Bankruptcy Court deem the non-debtor party to such Assumed Contract or Assigned Lease to have consented to the sale if, and to the extent that, pursuant to the Sale Order or other Order of the Bankruptcy Court, Seller is authorized to assume and assign to Purchaser and Purchaser is authorized to accept such Assigned Leases and contracts pursuant to Section 365 of the Bankruptcy Code. Notwithstanding the foregoing, Seller shall have the obligation to assist Purchaser in securing any written Third Party Approvals required by Purchaser, Purchaser's Lender, Purchaser's insurers, or other third parties facilitating Purchaser's performance under this APA and the Transaction Documents.

2.5 Obligations in Respect of Assigned Leases and Contracts. To the extent that any Assigned Lease or contract is subject to a cure pursuant to Section 365 of the Bankruptcy Code or is otherwise in default, which relates to any time period on or before the Closing Date, Seller shall be responsible for such cure and shall pay any amounts related to such cure obligations at or before the Closing.

2.6 Post-Closing Assignment of Leases or Contracts. With respect to any written lease or written contract, which was disclosed to Purchaser and is not set forth on Schedule 2.6 and provided such written lease or written contract has not been rejected by Seller pursuant to Section 365 of the Bankruptcy Code, upon written notice(s) from Purchaser, as soon as practicable, Seller shall take all actions reasonably necessary to assume and assign to Purchaser pursuant to Section 365 of the Bankruptcy Code any written lease or written contract(s) set forth in Purchaser's notice(s), and any applicable cure and other costs incurred subsequent to the Closing Date shall be borne by Purchaser. The covenant set forth in this Section shall survive the Closing. Notwithstanding anything in this APA to the contrary, on the date any such written lease or written contract is assumed and assigned to Purchaser pursuant to this Section, such written lease or contract shall be deemed an assigned Lease or Assumed Contract for all purposes under this APA. Seller agrees to provide not less than 20 business days' notice to the Purchaser of Seller's intent to reject any such written lease or contract. All Assigned Leases shall be listed on Schedule 2.6, and all Assumed Contracts shall be listed on Schedule 1.1(a)(iii). In no event shall the written leases or contracts subject to Seller's rejection pursuant to Section

365 include any of the Assigned Leases or Assumed Contracts unless Purchaser has agreed in writing to Seller's rejection.

### ARTICLE III

#### **REPRESENTATIONS AND WARRANTIES OF SELLER.**

Seller hereby represents and warrants to Purchaser as set forth in this Section 3.

3.1. Statements of Material Fact. To the best of the Seller's Knowledge, no statement by the Seller contained in this APA and the attached Exhibits and Schedules contain any untrue statement of a material fact or omits to state a material fact necessary to make the statements herein or therein not misleading. Seller represents and warrants to Purchaser to the best of Seller's Knowledge that the statements contained in this APA, except as expressly set forth in the Schedules relating to this APA (the "Schedules" or "Disclosure Schedules"), are correct and complete as of the Effective Date and the Closing Date. The information disclosed in any numbered part of the Disclosure Schedules shall be deemed to relate to and to qualify only the particular representation or warranty set forth in the corresponding numbered section in this APA and shall not be deemed to relate to or to qualify any other representation or warranty unless the applicability of such disclosure to such other representation or warranty is reasonably apparent on its face. The mere listing (or inclusion of a copy) of a document or other item shall not be deemed adequate to disclose an exception to a representation or warranty made herein (unless the representation or warranty has to do with the existence of the document or other item itself).

3.2. Validity of Agreement. Subject to any necessary authorization from the Bankruptcy Court, which Seller shall obtain prior to the Closing, Seller has full power and authority to execute and deliver this APA and the Transaction Documents to which it is a party, and to consummate the transactions contemplated hereby and thereby. All Transaction Documents to which Seller is a party have been duly executed and delivered by Seller, except such Transaction Documents as are required by the terms hereof to be executed and delivered by Seller after the date hereof, in which case such Transaction Documents will be duly executed and delivered by Seller at or prior to the Closing, and, subject to any necessary authorization from the Bankruptcy Court, which shall be obtained prior to the Closing, all Transaction Documents constitute, or will constitute, as the case may be, the valid and binding agreements of Seller, enforceable against Seller in accordance with their terms.

3.3. Organization, Standing and Power. To the best of Seller's Knowledge and information, Seller has all requisite power and authority as Trustee to operate the Business and the Purchased Restaurants, and to carry on the Business as now being conducted. Prior to the Closing, Seller shall obtain approval from the Bankruptcy Court for the transactions contemplated by this APA, and, to execute and deliver the Transaction Documents to which it is a party, and to consummate the transactions contemplated by the Transaction Documents.

3.4 No Conflicts. Subject to the approval of the Bankruptcy Court, including pursuant to the entry of an Order approving the sale free and clear of all Liens, Claims and encumbrances, that is satisfactory in form to both Seller and Purchaser (the "Sale Order"), none of the execution,

delivery or performance of this APA and the Transaction Documents by Seller will (a) result in the creation or imposition of any Lien upon any of the Purchased Assets of Seller or (b) result in a violation or breach of any term or provision of any Law or Order applicable to Seller, other than such violations or breaches which would not materially and adversely affect the validity or enforceability of this APA or the Transaction Documents, or would not create any Lien on the Purchased Assets.

3.5 No Consents. No consent, approval or action of, filing with or notice to any Governmental Authority is required to be obtained by Seller in connection with the execution, delivery and performance of this APA or any of the Transaction Documents, or the consummation of the transactions contemplated hereby or thereby, except (a) the Sale Order and other consents, approvals or actions of and filings with or notice to the Bankruptcy Court (b) approval of all Governmental Authorities for the transfer of the Liquor Licenses to Purchaser or the issuance of new Liquor Licenses to Purchaser for a nominal application and licensing fee; and (c) where the failure to obtain any such consent, approval or action, to make any such filing or to give any such notice would not materially and adversely affect the ability of Seller to consummate the transactions contemplated by this APA or any of the Transaction Documents or to perform its obligations hereunder or thereunder or have a Material Adverse Effect on the condition of the Business or the Purchased Assets.

3.6 Legal Proceedings. There are no Claims that will attach to the Purchased Assets by virtue of entry of the Sale Order, to the best of Seller's Knowledge and information. Other than the Chapter 11 Case, there are no proceedings pending or, to the best of Seller's Knowledge, threatened against, relating to, or affecting Seller with respect to the Business or any of the Purchased Assets which would (i) result in the issuance of an Order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this APA or any of the Transaction Documents, or (ii) have a Material Adverse Effect on the Business, the Purchased Assets, or the transactions contemplated by this APA and the Transaction Documents.

3.7 Title to Property. To the best of Seller's Knowledge and information, subject to receipt of the approval of the Bankruptcy Court pursuant to the Sale Order, Seller has, or at the Closing will have, the right to deliver to Purchaser good and marketable title to, or a valid leasehold interest in, all of the Purchased Assets free and clear of all Liens, Claims and other interests and encumbrances (other than liens or encumbrances expressly approved by Purchaser before the Due Diligence Deadline (the "Permitted Liens")).

3.8 Brokers. To the best of Seller's Knowledge and information, except as set forth on Schedule 3.8, Seller has not incurred any Liability to any broker, finder or agent with respect to the payment of any commission regarding the consummation of the transactions contemplated hereby.

3.9 Limitations. Except as expressly provided herein, in any other Transaction Document or in the Sale Order approving this APA, the Purchaser agrees and acknowledges that all transfers of the Purchased Assets are "as is" and "where is", and acknowledges and agrees that Seller makes no representation of any kind whatsoever with respect to the Purchased Assets or otherwise,

express or implied, including but not limited to any representation or warranty regarding the title or condition of the Purchased Assets, or the fitness, desirability, or the merchantability thereof or suitability thereof for any particular purpose, the future tax liability, future assessment or valuation of any of the Purchased Assets, the compliance of any of the Purchased Assets in their future state with applicable laws or the projected income or operating expense of the business or Purchased Assets after the Closing. Purchaser further acknowledges and represents that it has reviewed and inspected, or will review and inspect, the Purchased Assets, has had the opportunity to inspect the books and records of Seller and the public filing records, or will have such opportunity prior to the Closing, and enters into this APA after independent investigation of the facts and circumstances relating to the Purchased Assets, the operations of the Business and the transactions described herein.

3.10 Leases and Contracts. Seller has made available to Purchaser, or will make available to Purchaser within five (5) days after the Effective Date, a correct and complete copy of each Assigned Lease on Schedule 2.6, and each Assumed Contract on Schedule 1.1(a)(iii).

3.11 Labor Matters. There are no labor disputes of a material nature pending between Seller and any of its employees engaged in the operation of the Business and the Purchased Restaurants, and there are no known organizational efforts presently being made involving any of such employees. To the best of Seller's Knowledge, in connection with the operation of the Business and the Purchased Restaurants, Seller has complied in all material respects with all Laws relating to the employment of labor, including any provisions thereof relating to wages, hours, collective bargaining and the payment of social security and other taxes, and is not liable for any material arrearages of wages or any taxes or penalties for failure to comply with any of the foregoing. Purchaser is not assuming any employment contracts with any of Seller's employees as part of this transaction. The Purchased Assets do not include, and the transactions contemplated by this APA and the other Transaction Documents expressly exclude, Purchaser's acquisition of any plans of Seller in effect for pension, profit sharing, deferred compensation, severance pay, bonuses, stock options, stock purchases, or any other form of retirement or deferred benefit, or for any health, accident or other welfare plan for Seller's employees involved in the Business. There are no plans of Seller in effect for pension, profit sharing, deferred compensation, severance pay, bonuses, stock options, stock purchases, or any other form of retirement or deferred benefit, or for any health, accident or other welfare plan, as to which Purchaser will become liable as a result of the transaction.

3.12 Purchased Assets. Except for assets disposed of in the Ordinary Course of Business, the Purchased Assets and the Purchased Restaurants consist of all assets necessary for the efficient operation of the Business. All Purchased Assets shall be in good working condition and fully-operational on the Closing Date. None of the On the Border Assets are used in the operation of the Business or the Purchased Restaurants.

3.13 Contracts. Except for the Assumed Contracts, Seller is not a party to or bound by any lease, agreement, contract or other commitment, which involves the payment or receipt of more than \$5,000 per year or is not cancelable by Seller on less than sixty (60) days' notice. Each Assumed Contract is a valid and binding obligation of Seller and is in full force and effect. Seller has performed all material obligations required to be performed by it to date under the

Assumed Contracts. All Assumed Contracts will be effectively transferred to Purchaser at the time of the Closing, with Seller obtaining any required consents.

3.14 Disclosure. Seller has not failed to disclose to Purchaser any material information known to Seller affecting or in any way relating to the Purchased Assets, the Purchased Restaurants or the Business.

3.15 Compliance with Laws. Seller is not, to the best of Seller's Knowledge, in violation with respect to its use of the Purchased Assets or the Purchased Restaurants to operate the Business and the Purchased Restaurants of any Law, Order, ordinance, rule or regulation of any Governmental Authority, including, without limitation, the Americans with Disabilities Act. There have been no private or governmental claims, citations, complaints, notices of violation or letters made, issued to or threatened against Seller by any Governmental Authority or private or other party for the impairment or diminution of, or damage, injury or other adverse effects to, the environment or public health resulting, in whole or in part, from the use or operation of any Purchased Restaurant. In addition to the foregoing, Seller has duly complied with, and, to the best of Seller's Knowledge, each Purchased Restaurant is in compliance with, the provisions of all federal, state and local environmental, health and safety, and building laws, codes and ordinances and all rules and regulations promulgated thereunder.

3.16 Hazardous Materials. Seller has no actual knowledge of the presence or existence of any Hazardous Materials (as defined below) or petroleum underground storage tanks at the Purchased Restaurants. From and after the date of this APA, Seller shall not cause or permit the presence, use, generation, release, discharge, storage, disposal, or transportation of any Hazardous Materials on, under, to or from any Purchased Restaurant. As used in this APA, the term "Hazardous Materials" shall mean any hazardous or toxic waste, substance or material as presently defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C.A. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C.A. Section 6901, et seq.; the Toxic Substances Control Act, 15 U.S.C.A. Section 2601, et seq.; the Federal Water Pollution Control Act, 33 U.S.C.A. Section 1251, et seq.; and any state environmental laws.

3.17 Taxes and Assessments. There are no impositions of real estate taxes or special assessments which currently encumber any Purchased Restaurant or any portion thereof or any interest therein, other than impositions not yet due or payable. Seller has not received notice of, and has no other knowledge or information of, any proposed change in the valuation of any Purchased Restaurant for real estate taxes from that assessed for the current assessment period, nor does Seller have any other knowledge or information of any action or proceeding designed to levy any special assessment against any Purchased Restaurant except to the extent of valuations for real estate taxes payable in the year 2016. Seller has not received notice of, and has no other knowledge or information of, any possible future improvements by a Governmental Authority, any part of the cost of which would or might be assessed against any Purchased Restaurant, or of any contemplated future assessments of any kind.

3.18 Store Sales Reports. Seller has delivered, or will deliver within five (5) days after the Effective Date, a copy of Seller's Store Sales Reports outlining store sales for each Purchased



Restaurant from and after the date of Seller commenced operating the Business. To the best of Seller's Knowledge, the Store Sales Reports are true, correct and complete, and present fairly the financial position and the results of operations of Seller's Business as of the dates and for the periods indicated. Prior to Due Diligence Deadline and again before the Closing, Seller shall deliver to Purchaser Stores Sales Reports for all monthly periods from and after the date of Seller's operation of the Business for which sales data is available.

3.19 Financial Statements. Seller has delivered, or will deliver within five (5) days after the Effective Date, true, correct and complete copies of point of sales information for each Purchased Restaurant. Since the ending date of the Store Sales Reports, the Business has been operated in the ordinary course and there has not been any material adverse change in the financial condition or results of operations of the Business, or the value or condition of the Purchased Assets, the Purchased Restaurants or the Business.

3.20 Taxes. To the best of Seller's Knowledge, there are no taxes on or measured by income or gross receipts or franchise, real and personal property, employment, excise, sales and use or other taxes of any kind properly attributable to periods up to and including the Closing for which Purchaser could be held liable which have not been or will not be paid by Seller.

3.21 Assigned Leases. Except as set forth in Schedule 3.21, to the best of Seller's Knowledge, Seller is current in all obligations under each Assigned Lease. At the Closing, Seller shall be current in all obligations under each Assigned Lease, and each Assigned Lease shall be in full force and effect. Each Assigned Lease is enforceable against the landlord thereunder in accordance with its terms. Seller shall not enter into any modification of an Assigned Lease prior to the Closing without Purchaser's prior written consent, which shall not be unreasonably withheld for modifications pertaining to matters in the Ordinary Course of Business.

3.22 Transaction with Affiliates. Upon the occurrence of the Closing, neither Seller, nor any Affiliate of Seller will have any material interest in or will own any material property or material right used principally in the conduct of the Business. For purposes of this provision, "Affiliate" shall mean Seller, any officer or director of Seller, any member of the immediate family of the foregoing persons or any corporation, partnership, trust or other entity in which Seller, the officer and directors of Seller or any of such family member of such persons has a substantial interest or is a director, officer, partner or trustee.

## **ARTICLE IV**

### **REPRESENTATIONS AND WARRANTIES OF PURCHASER.**

Purchaser hereby represents and warrants to Seller as set forth in this Section 4.

4.1. Organization and Good Standing. Purchaser is, or will be at the Closing Date, an entity duly organized, validly existing and in good standing under the laws of the State of Utah, and qualified to do business in the states in which the Purchased Restaurants are located.

4.2. Corporate Power and Authority. The execution, delivery and performance by Purchaser of this APA and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action on the part of Purchaser and do not and will not violate any provisions of its organizational documents, any applicable Law or any agreement or instrument by which it is bound or Order binding upon it. This APA constitutes a valid and binding agreement of Purchaser, enforceable against Purchaser in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium and other Laws affecting creditors' rights generally from time to time in effect, and to general equitable principles.

4.3. Binding Effect. This APA has been duly authorized, executed and delivered by Purchaser and is the legal, valid and binding obligation of it, enforceable in accordance with its terms except that (i) enforceability may be limited by bankruptcy, insolvency, or other similar Laws affecting creditors' rights and (ii) the availability of equitable remedies may be limited by equitable principles of general applicability.

4.4. Conflicts, Consents, and Approvals. The execution and delivery by Purchaser of this APA, and the consummation by it of the transactions contemplated hereby, will not violate, breach, be in conflict with, or constitute a default under, or permit the termination or the acceleration of maturity of, or result in the imposition of any lien, claim, or encumbrance upon any property or asset of Purchaser pursuant to (i) Purchaser's certificate of organization, operating agreement, or other organizational documents or (ii) any note, bond, indenture, mortgage, deed of trust, evidence of indebtedness, loan or lease agreement, or other agreement or instrument which is material to Purchaser's ability to consummate the transactions contemplated hereby.

- a. Except for Purchaser's License Consents (defined in Section 5.1 below), or approval of relevant Governmental Authorities for the assignment of the Liquor Licenses, Purchaser is not required to submit any notice, declaration, report or other filing or registration with any Governmental Authority in connection with the execution and delivery of this APA or the consummation of the transactions contemplated hereby.
- b. Except for (i) Purchaser's License Consents (defined in Section 5.1 below), (ii) consents relating to the Assigned Leases or Assumed Contracts, (iii) the approval of Purchaser's Lender, and (iv) Franchisor's approval of Purchaser as a franchisee for the Purchased Restaurants, no waiver, consent, approval or authorization of any Governmental Authority or any other Person is required to be obtained or made by Purchaser in connection with the execution and delivery of this APA or the consummation of the transactions contemplated hereby.

4.5. Brokers and Finders. To the extent Purchaser has engaged any Person to act or render services as an investment banker, financial advisor, broker, finder or similar capacity in connection with the transactions contemplated herein and to the extent any Person has, as a result of any agreement or action by Purchaser, any right or claim against Seller or any of Seller's affiliates for any commission, fee or other compensation in such capacity in connection with the transactions contemplated herein, then Purchaser shall be solely responsible for payment of all such commissions, fees and other compensation.



4.6. Litigation and Governmental Claims. To the best of Purchaser's Knowledge, there is no pending suit, action or litigation, or administrative, arbitration or other proceeding or governmental investigation or inquiry, to which Purchaser or an Affiliate of Purchaser is a party which would, if decided against Purchaser or its Affiliate, have a material adverse effect on the ability of Purchaser or any of its Affiliates to consummate the transactions contemplated herein or perform their respective obligations in connection with this APA or the Assumed Liabilities. To Purchaser's Knowledge, there are no such proceedings threatened which would, if decided against Purchaser or its Affiliates, have any such material adverse effect.

4.7. Compliance with Laws. To the best Purchaser's Knowledge, Purchaser and its Affiliates are in compliance with all material Laws, statutes, governmental regulations and all judicial or administrative tribunal orders, judgments, writs, injunctions, decrees or similar commands applicable to Purchaser, its business or its assets, the violation of which would have a material adverse effect on the ability of Purchaser or any of its Affiliates to consummate the transactions contemplated herein or perform their respective obligations in connection with this APA or the Assumed Liabilities.

4.8 Investigation by Purchaser. Purchaser has conducted (or will conduct) its own independent investigation, review, and analysis of the Business, operations, Purchased Assets, Assumed Liabilities, results of operations, and financial condition of the Purchased Assets. In connection with Purchaser's investigation of the Business, Purchaser has received or will receive certain information regarding the Purchased Assets from Seller. Purchaser is taking full responsibility for making its own evaluation of the adequacy and accuracy of such information (including the reasonableness of the assumptions underlying such information). Except for Seller's representations and warranties under this APA (including the Disclosure Schedules) or the other Transaction Documents to which Seller is a party, Purchaser represents it has relied (and will rely) solely upon its own investigation, review, and analysis of the Business, operations, Purchased Assets, Assumed Liabilities, results of operations, and financial condition of the Purchased Assets in entering into this APA and Closing the transactions contemplated by this APA.

4.9. Condition of Purchased Assets and Disclaimer.

EXCEPT FOR SELLER'S REPRESENTATIONS AND WARRANTIES UNDER SECTION 3, IN THE DISCLOSURE SCHEDULES, AND IN THE OTHER TRANSACTION DOCUMENTS TO WHICH SELLER IS A PARTY, PURCHASER AGREES IT IS PURCHASING THE PURCHASED ASSETS "AS IS" AND "WHERE IS," AND "WITH ALL FAULTS". EXCEPT AS EXPRESSLY SET FORTH HEREIN, SELLER IS MAKING NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, WITH RESPECT TO THE QUALITY, PHYSICAL CONDITION OR VALUE OF THE PURCHASED ASSETS, THE INCOME OR EXPENSES RELATED TO THE PURCHASED ASSETS, OR THE COMPLIANCE OF THE PURCHASED ASSETS WITH APPLICABLE BUILDING CODES, FIRE CODES, LAWS, OR

OTHER RULES, ORDERS OR REGULATIONS INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL LAWS. WITHOUT LIMITING THE FOREGOING, PURCHASER AGREES THAT SELLER MAKES NO WARRANTY OF THE HABITABILITY, SUITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PURCHASED ASSETS. ACCORDINGLY, EXCEPT FOR THE PROVISIONS REGARDING SELLER'S REPRESENTATIONS AND WARRANTIES CONTAINED ELSEWHERE HEREIN, AND IN THE OTHER TRANSACTION DOCUMENTS, PURCHASER IS DEEMED TO BE RELYING ON ITS OWN DILIGENCE AND INVESTIGATIONS WITH RESPECT TO THE PURCHASED ASSETS AND IRREVOCABLY WAIVES ALL CLAIMS AGAINST SELLER WITH RESPECT TO THE PURCHASED ASSETS, OTHER THAN CLAIMS FOR BREACH OF THE REPRESENTATIONS AND WARRANTIES SPECIFICALLY SET FORTH IN THIS APA OR IN ANY OTHER TRANSACTION DOCUMENT TO WHICH SELLER IS A PARTY.

4.10 Purchaser's Financing. Within ten (10) business days of the Effective Date of this APA, Purchaser shall deliver to Seller (a) a written term sheet or similar contractual commitment from Purchaser's financing source (the "Purchaser's Lender") evidencing Purchaser's ability to pay the Purchase Price at Closing and otherwise consummate the transactions contemplated by this APA (a "Financing Commitment") and (b) written evidence of Purchaser's internal sources of funds evidencing Purchaser's ability to satisfy the terms of the Financing Commitment and to otherwise consummate the transactions contemplated by this APA. At Closing, Purchaser will be sufficiently capitalized and will have sufficient funds available on hand and under existing, committed financing facilities to (a) consummate the transactions contemplated by this APA, (b) fund the working capital requirements of the Purchaser and the Purchased Restaurants at the Closing, and (c) timely perform, discharge and otherwise satisfy when due any and all Assumed Liabilities. Prior to the Closing, Purchaser shall keep Seller reasonably informed as to the status of the financing it expects to obtain for the purposes of funding the Purchase Price to be paid hereunder.

4.11 Employee Retention. Purchaser will, upon Closing, retain a substantial majority of the employees presently employed by Seller. It is understood that Seller shall terminate all employees at the close of business on the date proceeding Closing and that Purchaser shall employ each Purchaser Hired Employee the next business day.

## **ARTICLE V**

### **COVENANTS, CONSENTS, AND APPROVALS.**

#### **5.1. Consents and Approvals.**

- a. Purchaser and Seller shall use commercially reasonable efforts to obtain any approvals, authorizations, and consents necessary to consummate the transactions contemplated by this APA including, without limitation, the Lease Assignments,

Franchise Assignment and Assumption, the Lender Documents, Landlord Consents (as defined below) for the Assigned Leases, non-governmental and Third Party Approvals referenced in Section 2.3 and other similar approvals, including obtaining the Sale Order. Purchaser and Seller take such reasonable actions as the other party may reasonably request to consummate the transactions contemplated by this APA and shall diligently attempt to satisfy, to the extent within its control, all conditions precedent to its obligations to close the transaction contemplated by this APA.

- b. The Liquor Licenses are a material asset to the transaction. Seller agrees to take all action reasonably required by Purchaser or any Governmental Authority to enable Purchaser to obtain an assignment of the Liquor Licenses or the issuance of new liquor licenses at a nominal cost. If any of the Liquor Licenses cannot be assigned by Law, and Purchaser is required to expend monies in excess of nominal licensing and application fees, then the Purchase Price shall be adjusted by an amount to be agreed upon by the parties prior to the Due Diligence Deadline. If Purchaser can operate any of the Purchased Restaurants under one or more of the Liquor Licenses until new liquor licenses are issued in the name of Purchaser, and there is no question that new liquor licenses will be issued to Purchaser after waiting the customary time period, Purchaser shall have the option to complete the Closing and operate under Seller's Liquor Licenses until Purchaser's liquor licenses are issued. Purchaser shall be responsible for securing, at its sole cost, business licenses, certificates of occupancy, health permits, operational permits, and similar permits and licenses which may be required for Purchaser's operation of the Purchased Restaurants including, without limitation, approval and/or consent from any governmental agencies, which may be required in connection therewith and are not included in the Transferable Permits (collectively, "Purchaser's License Consents"). Purchaser shall use reasonable efforts to secure Purchaser's License Consents as promptly as possible after the Due Diligence Deadline. Notwithstanding the foregoing, at the Closing Seller shall effectuate the transfer from Seller to Purchaser of all Transferable Permits and Transferable Warranties.
- c. Purchaser and Seller shall use reasonable efforts to obtain the consent of the landlord(s) of the Leased Real Estate and/or Bankruptcy Court approval for the assignment and assumption of the Assigned Leases to Purchaser, as referenced on Schedule 2.6, and any Lender Documents (the "Landlord Consents")
  - i. Purchaser and Seller desire to secure the Landlord Consents or Bankruptcy Court approval as quickly as possible. To that end, Purchaser and Seller desire to send the request for Landlord Consents or seek Bankruptcy Court approval within ten (10) days after the Effective Date in accordance with the following process.
  - ii. Prior to the Effective Date, Seller shall deliver to Purchaser a cover letter and related Landlord Consents -- in the general form referenced in paragraph 2.2a -- for each landlord referenced in Schedule 2.6.

- iii. Within five (5) days after the Effective Date, Purchaser shall deliver to Seller (i) fully-signed original counterparts of each cover letter and related consent document(s) and (ii) Purchaser's proforma financial and marketing information referenced in that cover letter.
- iv. Within five (5) days after receiving the documents from Purchaser in compliance with subsection (iii) above, Seller shall deliver the cover letters, related consent documents, and Purchaser's proforma financial and marketing information to each landlord referenced in Schedule 2.6.
- v. Within five (5) days after receiving the documents from Purchaser in compliance with subsection (iii) above, Seller shall file with the Bankruptcy Court a motion seeking a Sale Order that finds: Purchaser is a good faith purchaser under Section 363(m) of the Bankruptcy Code and the Purchased Assets are being purchased free and clear of any Liens, Claims and other encumbrances.
- d. Nothing in this Section 5.1 shall require a party to expend any monies to obtain any approval or consent required hereunder, except for customary attorneys' fees and filing fees incident to the transactions contemplated hereby or as otherwise specifically required under this APA. Purchaser and Seller shall take such reasonable actions as the other party or Purchaser's Lender may reasonably request to obtain the consents and approvals required to consummate the transactions contemplated by this APA.

5.2. Access to Information and Purchased Restaurants.

- a. After the Effective Date the Purchased Restaurants will be notified by Seller of this pending transaction, and Seller will provide to Purchaser reasonable access to the Purchased Restaurants (during normal business hours) and Seller will also provide such financial, technical and operating data pertaining to the Purchased Assets as Seller maintains in the Ordinary Course of Business. Purchaser shall coordinate its investigation, inspections and other activities with the representatives of Seller so as not to interrupt or interfere unreasonably in the operation of the Purchased Restaurants. Seller shall not be obligated to disclose any attorney-client privileged material or information, unless the failure to disclose such information would make any of the representations or warranties of Seller under this APA or the other Transaction Documents false or misleading.
- b. Between the Effective Date of this APA and Closing Date, Seller will provide to Purchaser copies of the Store Sales Reports for the Purchased Restaurants for periods subsequent to the Effective Date, as promptly as practicable after the preparation thereof for internal use.
- c. Purchaser, its Affiliates and their respective representatives shall maintain the confidentiality of all information (other than information which is generally available to the public concerning the Purchased Restaurants and Seller) acquired pursuant to

the transactions contemplated in the event the Closing does not occur; provided, however, that Purchaser may share all confidential information with its attorneys, accounts, financial advisors, lenders and other third-party professionals working on the transactions contemplated by this APA. All files, records, documents, information, data and similar items relating to the confidential information of Seller shall remain the exclusive property of Seller (until the Closing, and then shall become the property of Purchaser only to the extent such items comprise a part of the Purchased Assets) and shall be promptly delivered to Seller upon any termination of this APA.

### 5.3. Conduct of Business and Maintenance of the Purchased Assets.

- a. Between the Effective Date and Closing, except where the prior consent of Purchaser has been obtained, Seller will refrain from doing any of the following in respect of the Purchased Assets in any material way that would be binding upon Purchaser after Closing: (i) entering into any transaction other than in the Ordinary Course of Business, (ii) permitting any lien, encumbrance, mortgage or pledge on any Purchased Asset, (iii) disposing of any material Purchased Asset except for the sale of inventory in the Ordinary Course of Business, (iv) amending or modifying any of the Assumed Contracts without notifying Purchaser, (v) amending any Assigned Lease without Purchaser's prior written consent, (vi) reducing (other than for seasonal adjustments consistent with past practice) the level of advertising expenses for the Business, (vi) making any change in the compensation payable or to become payable to Purchaser Hired Employees, other than anniversary increases or promotions consistent with past practice, or (vii) entering into any agreement, commitment or arrangement with respect to the foregoing.
- b. Seller will further keep Purchaser reasonably informed as to all material developments involving the Purchased Restaurants prior to Closing Date. Notwithstanding anything to the contrary in this Section 5.3, Seller may, at any time prior to Closing, and with prior written notice to Purchaser, take any action and enter into any transactions or agreements required for compliance with all applicable Laws, statutes, governmental regulations and judicial or administrative tribunal orders, judgments, writs, injunctions, decrees or similar requirements applicable to Seller or the Purchased Restaurants, provided, that such actions do not cause a Material Adverse Change in the Business, or materially alter the terms of the transactions completed by this APA.

### 5.4. Employees and Employee Benefits.

- a. As of Closing, Seller intends to terminate the employment of all employees of the Purchased Restaurants. Purchaser will not for a period of 60 days after Closing undertake any "plant closing" or "mass layoff" (as such terms are defined in the Worker Adjustment and Retraining Notification Act ("WARN")) or undertake any other actions that would have required Seller to have undertaken a notification pursuant to WARN. Purchaser shall offer employment to at least a sufficient number

of Seller's employees located at each Purchased Restaurant so as to eliminate the need for notice or pay in lieu of notice pursuant to WARN.

- b. Subject to subsection (a) above, Purchaser may offer employment to such of the employees of the Purchased Restaurants as it may choose in its discretion, including those employees on vacation, leave of absence, disability or layoff. The employment of any employees of the Purchased Restaurants who accept employment with Purchaser after Closing Date (the "Purchaser Hired Employees") shall be at will, unless Purchaser otherwise enters into other commitments to one or more of such Purchaser Hired Employees. Effective immediately prior to Closing, Seller shall terminate the employment of all Purchaser Hired Employees and Seller shall be liable for any severance payments or other amounts (which may have accrued prior to the Closing Date) to which any employees of the Purchased Restaurants (who are not Purchaser Hired Employees) may be entitled.
- c. Seller shall retain the following Liabilities to the employees of the Purchased Restaurants: (i) all claims for compensation for periods prior to Closing Date, which shall be paid through a prorated adjustment to the Purchase Price, except accrued and unpaid vacation and sick pay as of Closing Date for Purchaser Hired Employees, which is set forth in Schedule 1.2(f); (ii) claims under all Employee Plans through and after Closing Date except accrued and unpaid vacation and sick pay as of Closing Date for Purchaser Hired Employees; (iii) all Liabilities for any failure to provide health continuation coverage (within the meaning of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, ("COBRA"), if any, as is required pursuant to COBRA with respect to the consummation of the transactions contemplated by this APA in respect of any employees who do not accept, or are not offered, employment with Purchaser; or (iv) any severance pay which may be due to any employee of Seller as a result of such employee's termination of employment in connection with the consummation of the transactions contemplated by this APA.

#### 5.5 No Shopping.

From the Effective Date through and until the earlier of termination of this APA or Closing (the "No Shop Period"), Seller shall not solicit any inquiries, proposals or offers from any third party relating to an acquisition of the Purchased Assets. In the event Seller receives an unsolicited inquiry, proposal, or offer from a third party during the No Shop Period, Seller shall not (i) participate in any discussions or negotiations with such third party, (ii) furnish any information about the Purchased Assets to such third party, or (iii) otherwise facilitate or encourage any such effort by such third party.

#### 5.6 Disclosure Schedules – Initial Delivery and Amendment(s).

- a. Initial Delivery of Schedules. Within ten (10) days after the Effective Date, Seller shall deliver to Purchaser copies of the Schedules shown on the "List of Disclosure Schedules" above.



- b. Amendment to Schedules. After the initial delivery of Schedules referenced above, Seller will deliver to Purchaser written notice of any fact, event or development known to or discovered by Seller that would (i) render any statement, representation or warranty of Seller in this APA inaccurate or incomplete in any material respect or (ii) constitute or result in a breach by Seller of, or a failure by Seller to comply with, any agreement or covenant in this APA applicable to it. Such written notice shall be clearly marked as an amendment to the Disclosure Schedules. Any subsequently delivered amendment to the Disclosure Schedules and any disclosure made by Seller pursuant to this paragraph shall be deemed to amend and supplement Seller's representations and warranties hereunder. Purchaser shall have ten (10) days after receipt of such amendment or disclosure to deliver a Supplemental Objection Notice pursuant to Section 7.5. Notwithstanding the foregoing, Purchaser shall have the right prior to the Due Diligence Deadline to object to any information contained in the initial Disclosure Schedules (whether attached to this APA at execution or delivered thereafter), which objection shall be treated as Objection Notice (as defined below).

#### 5.7. Reserved.

#### 5.8 Purchaser Financing.

In addition to Purchaser's obligations under Section 4.10, Purchaser shall keep Seller reasonably informed as to the nature of the financing it expects to obtain for the purposes of funding the Purchase Price to be paid hereunder including notice to Seller of any material changes, modifications, and/or updates to Schedule 4.10.

#### 5.9 Bankruptcy Actions.

- a. Within ten (10) days after the Effective Date, Seller shall file with the Bankruptcy Court a motion, in form and substance satisfactory to the Purchaser, seeking to approve, free and clear of all Liens, Claims and other encumbrances, the sale of the Purchased Assets contemplated herein and in the Related Purchase Agreements (the "Sale Motion"), which motion shall seek the Bankruptcy Court's approval of this APA, Seller's performance under this APA and the assumption and the assignment of the Assigned Leases and Assumed Contracts, and Seller's performance under the Related Purchase Agreements, pursuant to Section 365 of the Bankruptcy Code. Purchaser shall take such actions as are reasonably requested by Seller to assist Seller in obtaining a finding by the Bankruptcy Court, that will be set forth in the Sale Order, that the Purchaser is deemed to have purchased the Purchased Assets in good faith pursuant to Section 363(m) of the Bankruptcy Code and that it has the necessary qualifications to show adequate assurance of future performance with respect to the Assigned Leases, Assumed Contracts and Owned Real Estate as required by Section 365 of the Bankruptcy Code.
- b. A list of the Assigned Leases (as set forth on Schedule 2. 6) and Assumed Contracts (as set forth on Schedule 1.1(a)(iii)) shall be filed as an exhibit to the Sale Motion if

required by the Bankruptcy Court and otherwise shall be described in sufficient detail to provide adequate notice to the non-debtor party to such contracts. Upon revision of Schedule 2.6 by Purchaser pursuant to Section 2.6, Seller shall add any additional proposed Assumed Contracts to the exhibit or remove Assigned Leases and Assumed Contracts from the exhibit, as applicable. Such exhibit shall set forth the amounts necessary to cure defaults under each of such Assigned Lease or Assumed Contract as determined by Seller based on Seller's books and records. In cases in which Seller is unable to establish that a default exists, the relevant cure amount shall be set at \$0.00. Seller shall cure all defaults at its sole cost and expense prior to the Closing.

- c. Prior to the hearing on the Sale Motion, Seller will provide Purchaser with a reasonable opportunity to review and comment upon the proposed form of the Sale Order, which shall be in form and substance satisfactory to Purchaser. The Sale Motion and Sale Order shall be consistent in all respects with the terms of this APA, the Transaction Documents and the Related Purchase Agreements. Seller shall be responsible for all costs and fees associated with obtaining the Sale Order. For the sake of clarity, the Sale Order shall include approval for the Related Purchase Agreements and Seller's consummation of the sale of the Owned Real Estate.

#### 5.10 Exclusivity: Solicitation.

- a. Purchaser and Seller acknowledge that under the Bankruptcy Code the sale of the Purchased Assets and Owned Real Estate is subject to approval of the Bankruptcy Court. Purchaser and Seller acknowledge that to obtain such approval, Seller must demonstrate that it has taken reasonable steps to obtain the highest or best price possible for the Purchased Assets and the Owned Real Estate, including giving notice of the transactions contemplated by this APA and the Related Purchase Agreements to creditors and other interested parties as ordered by the Bankruptcy Court, providing information about the Purchased Assets and Owned Real Estate as may be requested by interested parties and if presented, entertaining higher or better offers. If Seller accepts a higher or better offer, it will pay Purchaser all of its actual out-of-pocket costs and expenses, including but limited to attorneys' fees, incurred in connection with this transaction.
- b. Seller represents that this APA and the Related Purchase Agreements reflect the only transaction which would result in the ongoing operation of the Business in some form by a third party purchaser and no other alternative transaction is contemplated. Seller further represents that it has discussed the transactions contemplated by this APA and the Related Purchase Agreements with other potential purchasers, and Seller does not need to further market the Business or the Owned Real Estate in order to satisfy its obligations to the Bankruptcy Court set forth in Section 5.10(a).

#### 5.11 Taxes.

- a. On or prior to the Closing (or after the Closing when due and payable, to the extent such Taxes are due and payable after the Closing), Seller shall pay all sales taxes, use



taxes, payroll taxes, and real and personal property Taxes which will be owed by Seller and attributable to periods prior to the Closing, except as otherwise agreed in writing by Seller and Purchaser. Seller's obligations under this subsection shall survive the Closing.

- b. Any sales, use, purchase, transfer, franchise, deed, fixed asset, stamp, documentary stamp, use or other Taxes and recording charges due and which may be payable by reason of the sale of the Purchased Assets or the assumption of the Assumed Liabilities under this APA or the transactions contemplated herein shall be borne and timely paid by Seller, and Seller shall prepare and timely file all tax returns required to be filed in connection with such payments, except as otherwise agreed in writing by Seller and Purchaser. Seller's obligations under this subsection shall survive the Closing.

5.12 Payments. Seller will be permitted to make payments in the Ordinary Course of Business or as authorized by the Bankruptcy Court up to the Closing and Purchaser will have no right of recourse against such payments; provided, however, that such payments shall not affect Seller's obligations or representations or warranties set forth in this APA or the other Transaction Documents.

## **ARTICLE VI**

### **CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLER.**

Except as may be waived by Seller, the obligations of Seller to consummate the transactions contemplated by this APA shall be subject to the satisfaction of each of the following conditions on or before the Due Diligence Deadline or the Closing Date (as specifically set forth below).

6.1. Compliance. Purchaser shall have, or shall have caused to be, satisfied or complied with and performed in all material respects, all terms, covenants and conditions of this APA to be complied with or performed by it on or before Closing Date; provided, however, that Purchaser shall have no obligation to incur expense in connection with the performance of such terms, covenants and conditions unless otherwise expressly set forth herein.

6.2. Representations and Warranties. All of the representations and warranties made by Purchaser in this APA, the exhibits attached hereto and in all certificates and other documents delivered by Purchaser to Seller pursuant hereto, shall have been true and correct in all material respects as of the Effective Date, and shall be true and correct in all material respects at Closing Date with the same force and effect as if such representations and warranties had been made at and as of Closing Date, except for changes permitted or contemplated by this APA.

6.3. Franchise Agreements. Franchisor and Purchaser shall have executed or accepted assignment of all Franchise Agreements for each of the Purchased Restaurants as evidenced by the Franchise Assignment and Assumption for each Purchased Restaurant.

6.4 Consents. Purchaser and Seller shall have received the following: (a) fully-executed Lease Assignment, Landlord Consent, and all other consents and approvals required for each Leased Property, (b) the Purchaser's License Consents, and (c) all other consents and approvals required to effectuate the transactions contemplated hereby, except where the failure to obtain same would not reasonably be expected to have a Material Adverse Effect.

6.5 [Reserved].

6.6 Bankruptcy Court Approval. The Bankruptcy Court shall have entered the Sale Order.

6.7 Purchaser's Financing Commitment. Within ten (10) business days after the Effective Date, Seller shall have received from Purchaser a copy of Purchaser's Financing Commitment.

## **ARTICLE VII**

### **CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER.**

Except as may be waived by Purchaser, the obligations of Purchaser to consummate the transactions contemplated by this APA shall be subject to the satisfaction of each of the following conditions on or before the Due Diligence Deadline or the Closing Date (as specifically set forth below).

7.1. Compliance. Seller shall have, or shall have caused to be, satisfied or complied with and performed in all material respects all terms, covenants, and conditions of this APA to be complied with or performed by Seller on or before Closing Date; provided, however, that Seller shall have no obligation to incur expense in connection with the performance of such terms, covenants and conditions unless otherwise expressly set forth herein.

7.2. Representations and Warranties. All of the representations and warranties made by Seller in this APA, the exhibits attached hereto and in all certificates and other documents delivered by Seller pursuant hereto, shall have been true and correct in all material respects as of the Effective Date, and shall be true and correct in all material respects at Closing Date with the same force and effect as if such representations and warranties had been made at and as of Closing Date, except for changes permitted or contemplated by this APA.

7.3. Consents and Approval. Purchaser shall have received all consents and approvals reasonably required by Purchaser or Purchaser's Lender to effectuate the transactions contemplated hereby and to enable Purchaser to secure ownership of the Business, Purchased Assets and Owned Real Estate at the Closing on the terms contemplated by this Agreement.

7.4. Bankruptcy Conditions.

- a. The Sale Order, in form and substance approved by Purchaser, shall have been entered, and the Sale Order shall, among other things, approve and authorize the assumption and assignment of the Assigned Leases and Assumed Contracts and the Assigned Leases and Assumed Contracts shall have been actually assumed and

assigned to Purchaser such that the Assigned Leases and Assumed Contracts will be in full force and effect from and after the Closing with non-debtor parties being barred and enjoined from asserting against Purchaser, among other things, defaults, breaches or claims (including, without limitation, cure claims under Section 365 of the Bankruptcy Code) existing as of the Closing or by reason of the Closing. The Sale Order also shall approve the transactions contemplated by the Related Purchase Agreements.

#### 7.5. Due Diligence.

- a. Purchaser's due diligence investigation of the Purchased Assets shall not have revealed any item which is unsatisfactory to Purchaser (an "Objectionable Condition"); provided, however, that the condition set forth in this Section 7.5 shall be deemed as satisfied if Purchaser has not notified Seller in writing (the "Objection Notice") of the existence of an Objectionable Condition with reasonable particularity on or before thirty-five (35) days after the Effective Date (the "Due Diligence Deadline"). The Due Diligence Deadline will be extended by an additional fifteen (15) days upon Purchaser's reasonable request.
- b. Except for a one-time extension of the Due Diligence Deadline for 15 days upon Purchaser's reasonable request, the Due Diligence Deadline shall be extended only with respect to (i) any new matters set forth in any supplemental Schedules or disclosures made pursuant to Section 5.6, or (ii) the Bankruptcy Court's modification of the Sale Order, to such date as is ten (10) business days after Purchaser's receipt of such supplemental Schedules or disclosures or the Bankruptcy Court's modification of the Sale Order (the "Extended Due Diligence Deadline").
- c. If Seller receives the Objection Notice on or before the Due Diligence Deadline (or a supplemental objection notice on or before the Extended Due Diligence Deadline only with respect to any new matters as set forth in Section 7.5(b) above (a "Supplemental Objection Notice"), then Seller may, in its sole and absolute discretion, either (a) terminate this APA pursuant to Section 9.1 below without Liability of Seller to Purchaser (unless Purchaser promptly elects to waive the Objectionable Condition), or (b) notify Purchaser in writing within ten (10) calendar days after the date Seller receives the Objection Notice (or Supplemental Objection Notice) that Seller will use reasonable good faith efforts to cure all Objectionable Conditions specified in the Objection Notice (or Supplemental Objection Notice) prior to the Closing Date.
- d. If, despite its exercise of reasonable good faith efforts (which shall not require Seller to incur expense other than normal filing fees and any related legal expenses), Seller is unable to cure all such Objectionable Conditions prior to the Closing Date, then either party may terminate this APA without Liability of any party to the other; provided, however, that Seller's right to terminate this APA shall not be effective if Purchaser promptly waives the Objectionable Condition. In such an event the Title Company promptly shall return the Earnest Money Deposit.

- e. Notwithstanding anything to the contrary herein, all Objectionable Conditions shall be deemed as satisfied and waived by Purchaser at Closing.

7.6 Purchaser Financing. Within ten (10) business after the Effective Date, Purchaser shall have received the Financing Commitment to complete the transactions contemplated hereby upon terms satisfactory to Purchaser (and Purchaser shall promptly deliver a copy of such Financing Commitment to Seller), all conditions to funding pursuant to such Financing Commitment shall be satisfied on or before the Closing Date, and Purchaser's Lender is prepared to fund.

7.7 Owned Real Estate Purchase Agreements. Seller owns (a) the real property, free-standing Chili's Grill and Bar Restaurant, and all other rights, easements, improvements or appurtenances relating to such improved real property located at 2790 North Washington Street, Suite B, Helena, Montana (the "Helena Owned Real Estate"), (b) the real property, free-standing Chili's Grill and Bar Restaurant, and all other rights, easements, improvements or appurtenances relating to such improved real property located at 1420 Marketplace Drive, Suite A, Great Falls, Montana (the "Great Falls Owned Real Estate"), and (c) the real property, free-standing Chili's Grill and Bar Restaurant, and all other rights, easements, improvements or appurtenances relating to such improved real property located at 1599 Yellowstone Avenue, Pocatello, Idaho (the "Pocatello Owned Real Estate" together with the Helena Owned Real Estate and the Great Falls Owned Real Estate, collectively, the "Owned Real Estate"). Concurrent with the execution of this APA, Seller and Purchaser have entered into the Related Purchase Agreements (as defined below), which enable Purchaser to acquire fee simple title to the Owned Real Estate in a closing simultaneous with this Closing. Seller shall have performed and complied with, in all material respects, all covenants and agreements required by the Related Purchase Agreements to be performed or complied with by Seller on or prior to the Closing Date to enable Purchaser to complete the simultaneous purchase of the Owned Real Estate under the Related Purchase Agreements. For purposes of this APA, the following agreements shall be referred to herein as the "Related Purchase Agreements": (1) the Agreement Regarding Sale of Commercial Real Estate between Jeremiah Foster, Trustee of Shoot the Moon Bankruptcy, as Seller, and Purchaser for the Helena Owned Real Estate dated of even date herewith, (2) the Agreement Regarding Sale of Commercial Real Estate between Jeremiah Foster, Trustee of Shoot the Moon Bankruptcy, as Seller, and Purchaser for the Pocatello Owned Real Estate dated of even date herewith, and (3) the Agreement Regarding Sale of Commercial Real Estate between Jeremiah Foster, Trustee of Shoot the Moon Bankruptcy, as Seller, and Purchaser for the Pocatello Owned Real Estate dated of even date herewith, and (4) all other agreements relating to the purchase and sale of the Owned Real Estate.

7.8 Satisfaction of Condition of Owned Real Estate. On or before the Due Diligence Deadline, Purchaser shall have obtained such surveys, title reports, environmental reports, or other documents relating to the Owned Real Estate as Purchaser or its lenders shall reasonably deem necessary (collectively, "Purchaser's Real Estate Documents") and Purchaser (in its reasonable discretion) and its lenders shall be satisfied with Purchaser's Real Estate Documents, and Purchaser and its lenders shall have conducted such on-site inspections and tests and shall be satisfied with the results of such inspections and tests.

7.9 Franchise Agreement Assignment. Seller and Franchisor shall have executed the Franchise Assignment and Assumption for each Purchased Restaurant.

7.10 Seller's Covenants. All obligations of Seller to be performed prior to the Closing Date shall have been performed in all material respects.

7.11 No Material Adverse Effect. During the period from the Effective Date to the Closing Date, there has not occurred, and there does not exist on the Closing Date, any condition or fact which, individually or in the aggregate, has or reasonably may be expected to result in a Material Adverse Effect.

7.12 Seller's Closing Deliveries. Seller shall have executed and delivered all of the documents set forth in Section 2.2, and performed all of the acts required by this APA, the other Transaction Documents and the Related Purchase Agreements.

7.13 Liquor Licenses. Seller and Purchaser shall have obtained approval of all relevant Governmental Authorities for the assignment and transfer of the Liquor Licenses to Purchaser at the Closing. Seller shall have secured the Montana Liquor Licenses and shall be prepared to convey such Montana Liquor Licenses to Purchaser at the Closing free of all Liens, or Seller shall have reduced the Purchase Price by \$250,000.00 for each Montana Liquor License Seller is unable to deliver at the Closing.

7.14 Brinker Concessions. Brinker International, Inc., a Delaware corporation ("Franchisor"), shall have agreed in the Franchise Agreement and Assumptions, or other written instruments satisfactory to Purchaser prior to the Closing, to the following concessions: (1) reduction in monthly rent to (x) \$10,000 per month on the Coeur d'Alene Purchased Restaurant; (y) \$15,000 per month on the Idaho Falls Restaurant; and (z) \$10,000 per month on the Downtown Spokane Restaurant from 1/1/2016 through 12/31/2018; (2) a long-term reduction in rent for the Coeur d'Alene Restaurant, the Idaho Falls Restaurant, and the Downtown Spokane Restaurant satisfactory to Purchaser; (3) reduction in royalties at all Purchased Restaurants of one percent (1%) for the first 12 months after the Closing, and one-half percent (½%) for the second 12 months after the Closing; and (4) modification of reimaging requirements at all Purchased Restaurants to require (a) new combo ovens within first 12 months after the Closing; (b) exterior reimaging complete within second 12 months after the Closing; and (c) interior reimaging complete within third 12 months after Closing.

7.15 Broadway Extension. Seller shall provide Purchaser evidence that the landlord under the Broadway Assigned Lease has agreed to extend the term of such Assigned Lease for ten (10) years commencing on December 26, 2016.

## **ARTICLE VIII.**

### **ADDITIONAL POST-CLOSING COVENANTS**

8.1. Joint Post-Closing Covenants of Purchaser and Seller. Purchaser and Seller jointly covenant and agree that, from and after the Closing Date, Purchaser and Seller will each use commercially reasonable efforts to cooperate with each other in connection with any action, suit, proceeding, investigation or audit of the other relating to (a) the preparation of an audit of any Tax Return of Seller or Purchaser for all periods prior to or including the Closing Date and (b) any audit of Purchaser and/or any audit of Seller with respect to the sales, transfer and similar Taxes imposed by the Laws of any state or political subdivision thereof, relating to the transactions contemplated by this APA. In furtherance hereof, Purchaser and Seller further covenant and agree to promptly respond to all reasonable inquiries related to such matters and to provide, to the extent reasonably possible, substantiation of transactions and to make available and furnish appropriate documents and personnel in connection therewith. All costs and expenses incurred in connection with this Section 8.1 referred to herein shall be borne by the party who is subject to such action.

8.2. Certain Consents. If a Third Party Approval which is required in order to assign any Purchased Asset (or Claim, right or benefit arising thereunder or resulting therefrom) is not obtained prior to the Closing, or if an attempted assignment would be ineffective or would adversely affect the ability of Seller to convey Seller's interest in question to Purchaser, and Purchaser waives in writing its right to receive such Third Party Approval prior to the Closing, Seller shall obtain all such Third Party Approvals within a commercially reasonable period of time after the Closing as have not been obtained prior to the Closing Date.

8.3. Post-Closing Operation of Seller. From and after the Closing, Seller will cease using the Purchased Assets.

8.4. Survival of Representations, Warranties and Covenants. The representations and warranties contained in this APA and the other Transaction Documents shall survive the Closing for a period of three (3) years from the Closing Date and, thereafter, to the extent a claim is made prior to such expiration with respect to any breach of such representation, warranty or agreement, until such claim is finally determined or settled. Each of the covenants and obligations of Seller and Purchaser in this APA and in the other Transaction Documents shall survive for the same period of time.

## **ARTICLE IX**

### **TERMINATION OF APA.**

9.1 Termination of APA. This APA and the transactions contemplated hereby may be terminated at any time on or before Closing Date as set forth below.

- a. By mutual written consent of Seller and Purchaser;
- b. By Purchaser if there has been a material misrepresentation or breach of warranty in the representations and warranties of Seller set forth herein or if there has been any material failure on the part of Seller to comply with its obligations hereunder, and such breach, failure or misrepresentation is not cured to Purchaser's reasonable



satisfaction within ten business days after Purchaser gives Seller written notice identifying such breach, failure or misrepresentation;

- c. By Seller if there has been a material misrepresentation or breach of warranty in the representations and warranties of Purchaser set forth herein or if there has been any material failure on the part of Purchaser to comply with its obligations hereunder, and such breach, failure or misrepresentation is not cured to Seller's reasonable satisfaction within ten business days after Seller gives Purchaser written notice identifying such breach, failure or misrepresentation;
- d. By Seller or Purchaser if the transactions contemplated hereby violate any order, decree, or judgment of any court or governmental body or agency having competent jurisdiction;
- e. By Seller or Purchaser if the Closing has not occurred by the outside Closing Date set forth in Section 2.2;
- f. By Seller if the conditions set forth in Articles VI or X are not satisfied through no fault of Seller by the outside Closing Date; and
- g. By Purchaser if the conditions set forth in Articles VII or X are not satisfied through no fault of Purchaser by the outside Closing Date.

In the event of the termination of this APA pursuant to this Section 9, this APA shall forthwith become null and void and of no further force or effect; provided the parties hereto shall remain liable for any breach of this APA prior to such termination. In the event of termination of this APA pursuant to Section 9(c), the Earnest Money Deposit made hereunder shall be forfeited to Seller. In the event of termination of this APA pursuant to 9(a), 9(b), 9(d), 9(e), 9(f) and 9(g) the Earnest Money Deposit shall be returned to Purchaser and neither party shall have any further obligation to the other except such obligations as expressly set forth in this Agreement which survive termination. In the event of termination of this APA pursuant to 9(b) for any reason other than the Bankruptcy Court's failure to approve the Sale Order, the Earnest Money Deposit shall be returned to Purchaser and Purchaser may file as an administrative expense a claim in the Chapter 11 Case in an amount equal to Purchaser's fees and costs incurred in connection with the transactions contemplated by this APA; provided, however, that if the Bankruptcy Court declines to approve the Sale Order due to Seller's acceptance of a higher and better offer, then Buyer may file such administrative claim.

## **ARTICLE X**

### **CLOSING CONTINGENCIES**

Notwithstanding any other provisions in this APA to the contrary, the Closing of this transaction is contingent upon the following:

- i) Purchaser's simultaneous closing of the purchase of the Owned Real Estate.

- ii) Approval of Purchaser as the franchisee of eleven (11) Franchise Agreements with Franchisor.
- iii) Final Sale Order from U.S. Bankruptcy Court in Case No. 15-60979-11.
- iv) Purchaser's receipt of an assignment of all Liquor Licenses.

## ARTICLE XI

### MISCELLANEOUS.

11.1 Expenses. Each of Purchaser and Seller shall pay its own expenses incurred in connection with this APA and the transactions contemplated hereby. Purchaser shall be responsible for (i) all fees of its financial advisors, capital partners, attorneys, and accountants, (ii) all premiums for title insurance; (iii) title search and examination fees; (iv) survey charges; and (v) any sales taxes, transfer taxes, recording fees and similar charges incurred in connection with the sale of the Purchased Assets. Purchaser shall also pay all costs associated with the Purchaser's License Consents.

11.2 Entire Agreement. This APA and the exhibits and Schedules hereto contain the complete agreement among the parties with respect to the transactions contemplated hereby and supersede all prior agreements and understandings, oral or written, among the parties with respect to such transactions. Section and other headings are for reference purposes only and shall not affect the interpretation or construction of this APA. The parties hereto make no representations or warranties except as expressly set forth in this APA or in any duly executed certificate or schedule delivered pursuant hereto.

11.3 Counterparts. This APA may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original and such counterparts together shall constitute only one original.

11.4 Notices. All notices, demands, requests or other communications that may be or are required to be given, served or sent by any party to any other party pursuant to this APA shall be in writing and shall be transmitted by a reputable overnight courier service or by hand delivery or email transmission, addressed as follows:

*If to Seller:*

Jeremiah Foster  
Chapter 11 Trustee  
7201 E. Camelback Rd., Ste 250  
Scottsdale, AZ 85251

Tel: (480) 647-3248

Email:

[jfoster@resolutecommercial.com](mailto:jfoster@resolutecommercial.com)

*If to Purchaser:*

Paradigm Restaurants, L.C.  
Attention: Dave Harper  
1185 West 3050 South  
Ogden, Utah 844401

Tel: (801) 621-0905

Email: david@mrulc.com



*w/ a copy to:*

David B. Cotner  
Datsopoulos MacDonald & Lind,  
P.C.  
201 W. Main St., Suite, 201  
Missoula, MT 59802  
Tel: (406) 728-0810  
Email: [dcotner@dmll.aw.com](mailto:dcotner@dmll.aw.com)

*w/ a copy to:*

Blake Parrish  
14572 South 790 West, Suite  
A101  
Bluffdale, Utah 84065  
Tel: (801) 572-9705  
Email: [blake@bparrishlaw.com](mailto:blake@bparrishlaw.com)

11.5 Waivers. The failure of a party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a party of any condition or of any breach of any term, covenant, representation or warranty contained in this APA shall be effective unless in writing by Seller in the case of a waiver by Seller, or Purchaser, in the case of any waiver by Purchaser, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach of other instances or a waiver of any other condition or breach of any other term, covenant, representation or warranty.

11.6 SUBMISSION TO JURISDICTION. THE PARTIES HEREBY AGREE THAT ANY AND ALL CLAIMS, ACTIONS, CAUSES OF ACTION, SUITS, AND PROCEEDINGS RELATING TO THIS AGREEMENT OR THE OTHER AGREEMENTS CONTEMPLATED HEREIN SHALL BE FILED AND MAINTAINED ONLY IN THE BANKRUPTCY COURT, AND THE PARTIES HEREBY CONSENT TO THE JURISDICTION OF SUCH COURT.

11.7 Binding Nature: Assignment. Subject to approval of the Sale Order by the Bankruptcy Court, this APA shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this APA nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without prior written consent of the other party (which shall not be unreasonably withheld or delayed); except that (a) Purchaser may assign any of its rights and obligations hereunder to any Affiliate or Subsidiary of Purchaser (whether wholly owned or otherwise) or to its lenders and, following the Closing, in whole or in part to any successor-in-interest to any Person acquiring all or any portion of the Business or the Acquired Assets; and (b) as otherwise provided in this APA. Seller hereby agrees that Purchaser may grant a security interest in its rights and interests hereunder to its lenders, and Seller will sign a consent with respect thereto if so requested by Purchaser or its lenders (upon

approval by the Bankruptcy Court as necessary), and that the terms of this APA shall be binding upon any subsequent trustee appointed under Chapter 11 or Chapter 7 of the Bankruptcy Code.

11.8 Amendments. This APA may be amended, modified, or supplemented only by a written instrument executed by both Purchaser and Seller.

11.9 Severability. If any provision of this APA is held to be illegal, invalid, or unenforceable, such provision shall be fully severable, and this APA shall be construed and enforced as if such illegal, invalid or unenforceable provision were never a part hereof; the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance; and in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this APA, a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable so as to give effect to the intention of the parties. Notwithstanding the foregoing, if the illegal, invalid or unenforceable provision shall materially alter the terms of this APA, then this APA shall terminate at the election of either party.

11.10 Third-Party Beneficiaries. This APA and the rights, obligations, duties and benefits hereunder are intended for the parties hereto, and no other Person or entity shall have any rights, obligations, duties and benefits pursuant hereto.

10.11 Mutual Contribution. The parties to this APA and their counsel have mutually contributed to its drafting. Consequently, no provision of this APA shall be construed against any party on the ground that such party drafted the provision or caused it to be drafted or the provision contains a covenant of such party.

11.12 Business Days. Whenever any obligation hereunder is required to be performed on a day which is not a "business day," the time required for such performance shall be extended to the next succeeding calendar day which is a business day. As used herein, the term "business day" shall mean any day other than (i) a Saturday, (ii) a Sunday or (iii) a day on which commercial banks are authorized or required to close.

11.13. Public Announcement. Except as required by this APA, Law or in connection with the Chapter 11 Case, neither Seller nor Purchaser shall issue any press release or public announcement concerning this APA or the transactions contemplated hereby without obtaining the prior written approval of the other party hereto relating to the contents and manner of presentation and publication thereof, which approval will not be unreasonably withheld, delayed or conditioned; provided, however, that nothing contained herein shall prohibit Purchaser from marketing and or advertising the Purchased Assets and operation thereof. Prior to making any public disclosure required by applicable Law, Seller shall give Purchaser a copy of the proposed disclosure and reasonable opportunity to comment on the same and shall use its best efforts to include Purchaser's comments in such public disclosure. For purposes of clarity, the reference to "applicable Law" in the preceding sentence does not include filings in the Chapter 11 Case.

11.14. Risk of Loss. The risk of loss will be upon Seller until the Closing. In the event of any material loss, damage or change to or condemnation of any portion of any Purchased Restaurant, Purchaser may cancel this APA in its sole discretion, as to such Purchased Restaurant, to reflect the material loss, damage, change or condemnation. Seller shall, at Seller's sole cost, take reasonable steps to protect the Purchased Restaurants from damage and deterioration prior to the Closing.

11.15. Attorneys' Fees. In the event of any dispute arising under this APA, the prevailing party shall be entitled to receive reimbursement of its reasonable attorneys' fees and costs from the non-prevailing party.

11.16 Defined Terms. As used herein, the following terms shall have the meaning set forth below:

- "Affiliate" of any Person means any person directly or indirectly controlling, controlled by or under common control with any such Person and any officer, director or controlling person of such Person.
- "Assigned Lease" means the written lease for each Leased Real Property, which shall be assigned by Seller and assumed by Purchaser as part of the transactions contemplated by this APA.
- "Avoidance Actions" means all of Seller's causes of action pursuant to Chapter 5 of the Bankruptcy Code.
- "Bankruptcy Code" means Title 11 of the United States Code.
- "Bankruptcy Court" means the United States Bankruptcy Court for the District of Montana.
- "Business" means the business activities carried on by or on behalf of Seller to operate the Purchased Restaurants in compliance with all Laws, Contracts and the Franchise Agreements.
- "Contract" means any written commitment, instrument, license, agreement, purchase or sale order or other document evidencing or creating any obligation.
- "Chapter 11 Case" means the case No. 15-60979-RBK filed in the Bankruptcy Court.
- "Claim" shall have the meaning set forth in Section 101(5) of the Bankruptcy Code.
- "Employee Benefit Plan" means any employee benefit plan (as defined in Section (3) of ERISA), or any employment contract, employee loan, incentive compensation, profit sharing, retirement, pension, deferred compensation, severance, termination, pay, stock option or purchase plan, guaranteed annual income plan, fund or arrangement, payroll incentive, policy, fund, agreement or arrangement, noncompetition or consulting agreement, hospitalization, disability, life or other insurance plan, or other employee fringe benefit program or plan, or any other plan, payroll practice, policy, fund, agreement of arrangement similar to or in the nature of the foregoing, oral or written, with respect to which Seller or any Affiliate currently is, or has been, the sponsor, a party or obligated to make contributions.
- "Franchise Agreements" shall mean each Franchise Agreement for operation of each Purchased Restaurant as a "Chili's Grill and Bar."
- "Governmental Authority" means any foreign, federal, state, regional or local authority, agency, body, court or instrumentality, regulatory or otherwise, which, in whole or in

part, was formed by or operates under the auspices of any foreign, federal, state, regional or local government.

- “Material Adverse Change” shall mean a material adverse change in the aggregate, financial results of operations of the Purchased Restaurants as a whole.
- “Material Adverse Effect” means any event, matter, condition or circumstance that (1) has or can be reasonably expected to have, a material detrimental effect on the Purchased Assets, Assumed Liabilities, results of operations or financial condition of the Business in each case considered as a whole, (2) has a material detrimental effect on the ability of Seller to perform under this APA, or (3) materially and detrimentally affects the legality, validity, binding effect, or enforceability of this APA.
- “Law” means any common law and any federal, state, regional, local or foreign law, rule, statute, ordinance, rule, order or regulation.
- “Liabilities” means responsibilities, obligations, duties, commitments, claims and liabilities of any and every kind, whether known or unknown, accrued, absolute, contingent or otherwise.
- “Liens” means any lien, charge, covenant, condition, easement, adverse claim, demand, encumbrance, limitation, mortgage, security interest, option, pledge, or any other title defect or restriction, whether recorded or unrecorded, of any kind.
- “Liquor Licenses” means the state, county and city liquor licenses for each Purchased Restaurant.
- “Montana Liquor Licenses” means the liquor licenses for the Helena and Great Falls Purchased Restaurants, which are held by Hatz, LLC and Hatz Bar II, LLC.
- “Order” means any order issued by the Bankruptcy Court or any other Governmental Authority having jurisdiction over the Seller, the Business, Purchased Assets, Owned Real Estate or the transactions contemplated by the APA.
- “Ordinary Course of Business” means the operation of the Business by Seller in the usual and ordinary course in a manner substantially similar to the manner in which Seller operated, consistent with past practice prior to the Effective Date, subject to any obligations as a debtor under the Bankruptcy Code or any order of the Bankruptcy Court.
- “Permits” means licenses and permits granted by Governmental Authorities for the Business and Purchased Restaurants.
- “Person” means any individual, corporation, partnership, limited liability company, association or any other entity or organization.
- “Purchased Restaurants” means the eleven (11) restaurants known as Chili’s Grill & Bar at the following locations: Twin Falls, Idaho; Meridian, Idaho; Boise, Idaho (Franklin location); Boise, Idaho (Broadway location); Idaho Falls, Idaho; Coeur d’ Alene, Idaho; Spokane, Washington (Downtown location); Spokane, Washington (Northtown location); Great Falls, Montana; Helena, Montana; and Pocatello, Idaho, and more particularly described on Exhibit “A” attached hereto.
- “Purchaser’s Knowledge” or words of similar import shall mean the actual knowledge of David Harper or any information that is readily apparent from a review or receipt of any documents or other written information that was in the possession of or presented to Mr. Harper by a third party within or outside the Purchaser’s organization.
- “Seller’s Knowledge” or words of similar import shall mean the actual knowledge of Jeremiah Foster, or any information that is readily apparent from a review or receipt of

any documents or other written information that was in the possession of or presented to Jeremiah Foster by a third party within or outside the Seller's organization.

- "Tax" means any tax, charge or assessment by or Liability to any Governmental Authority, including, but not limited to, any deficiency or penalty.

11.17 Facsimile/Electronic Signature: The parties agree that a facsimile copy of this Agreement which contains the parties' signatures may be used as the original.

11.18 Counterparts: A copy of this document may be executed by each individual/entity separately, and when each has executed a copy thereof, such copies, taken together, shall be deemed to be a full complete contract between the parties.

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IN WITNESS WHEREOF, the parties hereto have executed this APA as of the dates set forth below to be effective as of the latest date set forth below (previously defined as the "Effective Date").

SELLER:

Jeremiah Foster, Chapter 11 Trustee of Shoot The Moon, LLC, a Montana Limited Liability Company

By: \_\_\_\_\_

Name: Jeremiah Foster

Title: Trustee

Date: July 29, 2016

PURCHASER:

Paradigm Restaurants, L.C.,  
a Utah limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have executed this APA as of the dates set forth below to be effective as of the latest date set forth below (previously defined as the "Effective Date").

SELLER:

Jeremiah Foster, Chapter 11 Trustee of Shoot The Moon, LLC, a Montana Limited Liability Company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

PURCHASER:

Paradigm Restaurants, L.C.,  
a Utah limited liability company

By: David Harper

Name: DAVID A. HARPER

Title: Managing Member

Date: July 29, 2016

LIST OF EXHIBITS AND DISCLOSURE SCHEDULES

LIST OF EXHIBITS AND DISCLOSURE SCHEDULES

LIST OF EXHIBITS

Exhibit A: Real Estate Schedule

LIST OF DISCLOSURE SCHEDULES

Schedule 1.1(a)(i): Tangible Personal Property  
Schedule 1.1(a)(iii): Assumed Contracts  
Schedule 1.1(a)(vi): Transferable Permits  
Schedule 1.1(a)(vii): Warranty Log  
Schedule 1.2(f): Accrued and Unpaid Vacation Pay  
Schedule 1.4(iii) Deposits Made  
Schedule 1.6 Allocation of Purchase Price  
Schedule 2.6 Schedule of Assigned Leases  
Schedule 3.8 Seller's Broker(s)



EXHIBIT A

REAL ESTATE SCHEDULE

## **Purchased Assets**

### **Owned Real Estate**

Chili's Helena  
2790 North Washington St., Suite B  
Helena, MT  
Multi-Tenant Building

Chili's Great Falls  
1420 Marketplace Dr., Suite A  
Great Falls, MT  
Multi-Tenant Building

Chili's Pocatello  
1599 Yellowstone Ave  
Pocatello, ID  
Freestanding

### **Leased Real Estate**

Chili's Coeur D'Alene  
482 W Sunset Ave  
Coeur D'Alene, Idaho  
Freestanding

Chili's Idaho Falls  
620 N Utah Ave  
Idaho Falls, Idaho  
Freestanding

Chili's Downtown Spokane  
207 West Spokane Falls Blvd  
Spokane, Washington  
Freestanding

Chili's Meridian  
3078 N Eagle Rd  
Meridian, Idaho  
Freestanding

Chili's Franklin  
7997 Franklin Road  
Boise, Idaho  
Freestanding

Chili's Broadway  
916 Broadway Ave  
Boise, Idaho  
Freestanding

Chili's Northtown Mall  
4750 Division St  
Spokane, Washington  
Mall Unit

Chili's -Twin Falls (Magic Valley Mall)  
1880 Blue Lakes Blvd N  
Twin Falls, Idaho 83301

Schedule 1.1(a)(i)

Tangible Personal Property

**Tangible Personal Property  
STM Asset Valuations**

*\*All cash, food and liquor inventory will be provided at closing*

Asset Categories	Northtown	Downtown	Coeur d'Alene	Franklin	Broadway	Meridian	Twin Falls	Pocatello	Idaho Falls	Helena	Great Falls	Category Total
<b>Furniture</b>	<b>\$4,230</b>	<b>\$4,405</b>	<b>\$4,360</b>	<b>\$4,385</b>	<b>\$4,345</b>	<b>\$5,020</b>	<b>\$80,000</b>	<b>\$4,565</b>	<b>\$80,500</b>	<b>\$4,355</b>	<b>\$3,815</b>	<b>\$199,980</b>
Chairs/barstools	\$750	\$355	\$310	\$595	\$455	\$300	8/15 FOH	\$465	9/15 FOH	\$490	\$410	
Booths	\$1,540	\$2,170	\$2,170	\$1,750	\$1,750	\$2,380	Reimage	\$2,380	Reimage	\$2,065	\$1,225	
Tables	\$1,440	\$1,880	\$1,880	\$2,040	\$1,640	\$1,840	Costs	\$1,720	Costs	\$1,800	\$1,680	
Patio Furniture	\$500				\$500	\$500			\$500		\$500	
<b>Art/Décor</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	
<b>Audio Visual</b>	<b>\$1,750</b>	<b>\$1,750</b>	<b>\$1,750</b>	<b>\$1,450</b>	<b>\$1,750</b>	<b>\$2,050</b>	<b>\$4,450</b>	<b>\$1,450</b>	<b>\$4,450</b>	<b>\$1,450</b>	<b>\$1,450</b>	<b>\$23,750</b>
Televisions	\$1,200	\$1,200	\$1,200	\$900	\$1,200	\$1,500	\$3,900	\$900	\$3,900	\$900	\$900	
Soundsystem	\$550	\$550	\$550	\$550	\$550	\$550	\$550	\$550	\$550	\$550	\$550	
<b>Computers and POS</b>	<b>\$3,120</b>	<b>\$3,120</b>	<b>\$3,120</b>	<b>\$3,120</b>	<b>\$3,120</b>	<b>\$4,170</b>	<b>\$3,120</b>	<b>\$3,370</b>	<b>\$3,120</b>	<b>\$3,620</b>	<b>\$3,620</b>	<b>\$36,620</b>
Back Office Computers/Printer	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	
POS Terminals/KDS monitors	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,700	\$1,500	\$1,700	\$1,500	\$1,900	\$1,900	
Printers/phones/fax	\$600	\$600	\$600	\$600	\$600	\$650	\$600	\$650	\$600	\$700	\$700	
Switches/routers/modems	\$420	\$420	\$420	\$420	\$420	\$420	\$420	\$420	\$420	\$420	\$420	
Cameras/surveillance						\$800						
<b>Kitchen Equipment</b>	<b>\$18,900</b>	<b>\$17,270</b>	<b>\$16,930</b>	<b>\$16,220</b>	<b>\$16,880</b>	<b>\$16,430</b>	<b>\$16,600</b>	<b>\$16,350</b>	<b>\$16,970</b>	<b>\$17,410</b>	<b>\$17,370</b>	<b>\$187,330</b>
Refrigeration	\$3,900	\$3,600	\$3,300	\$2,700	\$3,300	\$3,000	\$3,300	\$3,000	\$3,300	\$3,300	\$3,300	
CTX/Impinger/Combi	\$4,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	
Flattop/Fryer/Smoker/Skillet	\$1,600	\$2,150	\$2,350	\$2,100	\$2,100	\$2,750	\$1,600	\$2,350	\$2,350	\$2,750	\$2,750	
Microwaves	\$280	\$400	\$160	\$400	\$560	\$560	\$480	\$480	\$400	\$240	\$400	
Hot wells/Warmers (chip/chicken)	\$650	\$650	\$650	\$550	\$450	\$650	\$750	\$750	\$750	\$650	\$450	
Cheese Melter/Induction burners	\$230	\$230	\$230	\$230	\$230	\$230	\$230	\$230	\$230	\$230	\$230	
Ice Machine	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	
Walk-in Cooler and Freezer	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	
Shelving	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	
CO2 Tank and gauges	\$240	\$240	\$240	\$240	\$240	\$240	\$240	\$240	\$240	\$240	\$240	
Soda Stations	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$1,000	\$2,000	\$1,000	\$2,000	\$2,000	\$2,000	
<b>Smallwares</b>	<b>\$3,500</b>	<b>\$3,500</b>	<b>\$3,500</b>	<b>\$3,500</b>	<b>\$3,500</b>	<b>\$3,500</b>	<b>\$3,500</b>	<b>\$3,500</b>	<b>\$3,500</b>	<b>\$3,500</b>	<b>\$3,500</b>	<b>\$38,500</b>
Plates, silverware, kitchen utensils, pans, etc.												
<b>Bar Equipment</b>	<b>\$1,760</b>	<b>\$1,760</b>	<b>\$1,930</b>	<b>\$1,760</b>	<b>\$1,790</b>	<b>\$2,660</b>	<b>\$2,020</b>	<b>\$2,860</b>	<b>\$1,760</b>	<b>\$2,860</b>	<b>\$2,890</b>	<b>\$24,050</b>
Refrigeration	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	
Rita Machine/Mixers	\$260	\$260	\$430	\$260	\$290	\$260	\$520	\$460	\$260	\$460	\$490	
Draft Towers/Glycol System	\$300	\$300	\$300	\$300	\$300	\$1,200	\$300	\$1,200	\$300	\$1,200	\$1,200	
<b>Trash Compactor</b>	<b>\$0</b>	<b>\$2,000</b>	<b>\$2,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$2,000</b>	<b>\$6,000</b>
<b>Waste oil storage/filtration</b>	<b>\$800</b>	<b>\$800</b>	<b>\$800</b>	<b>\$600</b>	<b>\$600</b>	<b>\$600</b>	<b>\$600</b>	<b>\$600</b>	<b>\$600</b>	<b>\$800</b>	<b>\$800</b>	<b>\$7,600</b>
Oil Filtration Unit	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	
Waste Oil storage tank	\$200	\$200	\$200							\$200	\$200	
<b>Restaurant Total</b>	<b>\$34,060</b>	<b>\$34,605</b>	<b>\$34,390</b>	<b>\$31,035</b>	<b>\$31,985</b>	<b>\$34,430</b>	<b>\$110,290</b>	<b>\$32,695</b>	<b>\$110,900</b>	<b>\$33,995</b>	<b>\$35,445</b>	<b>\$523,830</b>
<b>Liquor/Beer/Wine</b>	<b>\$4,859</b>	<b>\$3,898</b>	<b>\$3,213</b>	<b>\$1,676</b>	<b>\$3,369</b>	<b>\$3,241</b>	<b>\$3,675</b>	<b>\$2,950</b>	<b>\$2,426</b>	<b>\$3,450</b>	<b>\$3,024</b>	<b>\$35,781</b>
Average end of month inventory												

*\*The following FF&E is not included in the sale and is to be sold separately:*

Great Falls Moonshine

Great Falls Corporate Headquarters

Great Falls Common Area

Helena Common Area

Helena Nagoya

**Northtown**  
**4750 Division St**  
**Spokane, Washington**

<b>Asset Categories</b>	<b>Total Quantity of items/units</b>	<b>Brand Name(s)</b>
<b>Furniture</b>		
Chairs & barstools (\$5)	70	Chili's Spec
Booth seats (\$35)	44	Chili's Spec
Tables and bases (\$40)	36	Chili's Spec
<b>Audio Visual</b>		
Televisions and mounts (\$300)	4	Vizio, Sony
<b>Computers and POS</b>		
Back Office Computer (hardrives)	2	HP, Radiant
Monitor	1	Acer
Back Office Printer	1	HP 4250
POS Terminals	5	Radiance, IBM
Printers (POS)	5	Epson
KDS Monitors	7	Dell, Acer
<b>Kitchen Equipment</b>		
Refrigeration (all Coolers/freezers/drawer units) (\$300)	13	Kariak, Traulsen, Delfield
CTX (\$1000)	1	WOW Oven
Impinger (\$1000)	1	Middleby Marshall
Combi (\$2000)	1	ConvoTherm
Flattop (\$500 lg/\$100 sm)	2	Vulcan, Star Griddle
Fryer (\$1000)	1	Dean 4 bank fryer
Smoker (\$250 giles/\$500 Southern Pride)	0	NA
Skillet (\$250)	0	NA
Microwaves (\$80)	4	Amana
Cheese melter (\$50)	1	Insta Therm
Hot Wells (\$100)	6	Wells
Chicken Holding Unit (\$50)	1	Carter Hoffman
Chip Machine (\$100)	1	Macho Nacho Hatco
Warmer/Holding oven (\$250)	0	NA
Induction warmers (\$80)	2	Spring
Walk in Cooler and Freezer (\$2500)	2	ColdZone
Ice Machine (\$500)	1	Side by side Hoshisaki
<b>Bar Equipment</b>		
Refrigeration (all Coolers/mug chillers) (\$300)	4	Kariak
Rita Machine (\$200)	2	1 not working Taylor
Blender (\$30)	1	Hamilton Beach Commercial
Flash Blender/Mixer (\$30)	1	Hamilton Beach
<b>Trash Compactor</b>		
<b>Waste oil storage/filtration</b>		
Oil Filtration Unit	1	Zeco Eco Oil Filtration Machine, Testo 270 Oil testing unit

**Downtown****207 West Spokane Falls Blvd****Spokane, Washington**

<b>Asset Categories</b>	<b>Total Quantity of items/units</b>	<b>Brand Name(s)</b>
<b>Furniture</b>		
Chairs & barstools (\$5)	71	Chili's Spec
Booth seats (\$35)	62	Chili's Spec
Tables and bases (\$40)	47	Chili's Spec
<b>Audio Visual</b>		
Televisions and mounts (\$300)	4	Vizio
<b>Computers and POS</b>		
Back Office Computer (harddrives)	2	Radiant HP
Monitor	1	HP
Back Office Printer	1	HP
POS Terminals	5	4 IBM 1 Radiant
Printers (POS)	5	4 Epson 1 Radiant
KDS Monitors	7	Sharp Insignia Acer Asus HP 2 Dell
<b>Kitchen Equipment</b>		
Refrigeration (all Coolers/freezers/drawer units) (\$300)	12	3Kairak 3 Hobart 1 Avantco 2 Delfield 1 Randell 2Hussman
CTX (\$1000)	1	WOW Oven
Impinger (\$1000)	1	Middleby Marshall
Combi (\$2000)	0	NA
Flattop (\$500 lg/\$100 sm)	2	Vulcan
Fryer (\$1000)	1	Dean
Smoker (\$250 giles/\$500 Southern Pride)	1	Giles
Skillet (\$250)	1	Cleveland
Microwaves (\$80)	5	Amana
Cheese melter (\$50)	5	Hobart
Hot Wells (\$100)	1	Carter Hoffman
Chicken Holding Unit (\$50)	1	Carter Hoffman
Chip Machine (\$100)	1	Hatco
Warmer/Holding oven (\$250)	0	NA
Induction warmers (\$80)	2	Spring
Walk in Cooler and Freezer (\$2500)	2	ColdZone
Ice Machine (\$500)	1	Side by side Hoshisaki
<b>Bar Equipment</b>		
Refrigeration (all Coolers/mug chillers) (\$300)	4	glasstender
Rita Machine (\$200)	1	Taylor
Blender (\$30)	1	Hamilton Beach
Flash Blender/Mixer (\$30)	1	Hamilton Beach
<b>Trash Compactor</b>	1	Marathon
<b>Waste oil storage/filtration</b>		
Oil Filtration Unit	1	Zeco Eco Oil Filtration Machine, Testo 270 Oil testing unit

**Coeur d'Alene**  
**482 W Sunset Ave**  
**Coeur D'Alene, Idaho**

<b>Asset Categories</b>	<b>Total Quantity of items/units</b>	<b>Brand Name(s)</b>
<b>Furniture</b>		
Chairs & barstools (\$5)	62	Chili's Spec
Booth seats (\$35)	62	Chili's Spec
Tables and bases (\$40)	47	Chili's Spec
<b>Audio Visual</b>		
Televisions and mounts (\$300)	4	Samsung
<b>Computers and POS</b>		
Back Office Computer (harddrives)	2	HP/ Radiant
Monitor	1	HP
Back Office Printer	1	HP
POS Terminals	5	Radiant
Printers (POS)	5	Radiant
KDS Monitors	6	Dell, Acer, Insignia
<b>Kitchen Equipment</b>		
Refrigeration (all Coolers/freezers/drawer units) (\$300)	11	Kairak/ Delfield
CTX (\$1000)	1	WOW Oven
Impinger (\$1000)	1	Middleby Marshall
Combi (\$2000)	0	NA
Flattop (\$500 lg/\$100 sm)	1	Vulcan
Fryer (\$1000)	1	Dean
Smoker (\$250 giles/\$500 Southern Pride)	1	Southern Pride
Skillet (\$250)	1	Cleaveland
Microwaves (\$80)	2	Amana
Cheese melter (\$50)	5	Wells MFG
Hot Wells (\$100)	1	Carter Hoffman
Chicken Holding Unit (\$50)	1	Carter Hoffman
Chip Machine (\$100)	1	Hatco
Warmer/Holding oven (\$250)	0	NA
Induction warmers (\$80)	2	Spring
Walk in Cooler and Freezer (\$2500)	2	ColdZone
Ice Machine (\$500)	1	Side by side Hoshisaki
<b>Bar Equipment</b>		
Refrigeration (all Coolers/mug chillers) (\$300)	4	Glasstender/ kairak
Rita Machine (\$200)	2	Taylor
Blender (\$30)	1	Hamilton Beach
Flash Blender/Mixer (\$30)	0	NA
<b>Trash Compactor</b>	1	
<b>Waste oil storage/filtration</b>		
Oil Filtration Unit	1	Zeco Eco Oil Filtration Machine, Testo 270 Oil testing unit

**Franklin**  
**7997 Franklin Road**  
**Boise, Idaho**

<b>Asset Categories</b>	<b>Total Quantity of items/units</b>	<b>Brand Name(s)</b>
<b>Furniture</b>		
Chairs & barstools (\$5)	110ch/9bars	Chili's Spec
Booth seats (\$35)	50	Chili's Spec
Tables and bases (\$40)	51	Chili's Spec
<b>Audio Visual</b>		
Televisions and mounts (\$300)	3	Vizio
<b>Computers and POS</b>		
Back Office Computer (harddrives)	2	HP
Monitor	1	HannsG
Back Office Printer	1	HP
POS Terminals	5	Radiant
Printers (POS)	5	Epson
KDS Monitors	7	Compaq, Dell, Acer, KDS USA, HP
<b>Kitchen Equipment</b>		
Refrigeration (all Coolers/freezers/drawer units) (\$300)	9	delfield, Traulsen, Kariak
CTX (\$1000)	1	WOW Oven
Impinger (\$1000)	1	Middleby Marshall
Combi (\$2000)	0	NA
Flattop (\$500 lg/\$100 sm)	1	Vulcan
Fryer (\$1000)	1	Dean
Smoker (\$250 giles/\$500 Southern Pride)	1	Giles
Skillet (\$250)	1	not sure
Microwaves (\$80)	5	Amana, Sharp
Cheese melter (\$50)	4	Wells
Hot Wells (\$100)	1	Carter Hoffman
Chicken Holding Unit (\$50)	1	Carter Hoffman
Chip Machine (\$100)	1	Hatco
Warmer/Holding oven (\$250)	0	NA
Induction warmers (\$80)	2	Spring
Walk in Cooler and Freezer (\$2500)	2	ColdZone
Ice Machine (\$500)	1	Follett
<b>Bar Equipment</b>		
Refrigeration (all Coolers/mug chillers) (\$300)	4	Glastender
Rita Machine (\$200)	1	Taylor
Blender (\$30)	1	VitaMix
Flash Blender/Mixer (\$30)	1	Hamilton Beach
<b>Trash Compactor</b>		
<b>Waste oil storage/filtration</b>		
Oil Filtration Unit	1	Zeco Eco Oil Filtration Machine, Testo 270 Oil testing unit



**Broadway**  
**916 Broadway Ave**  
**Boise, Idaho**

<b>Asset Categories</b>	<b>Total Quantity of items/units</b>	<b>Brand Name(s)</b>
<b>Furniture</b>		
Chairs & barstools (\$5)	91	Chili's Spec
Booth seats (\$35)	50	Chili's Spec
Tables and bases (\$40)	41	Chili's Spec
<b>Audio Visual</b>		
Televisions and mounts (\$300)	4	Vizio
<b>Computers and POS</b>		
Back Office Computer (harddrives)	2	??
Monitor	1	Acer
Back Office Printer	2	Canon, HP
POS Terminals	5	3x Radiant Systems, 2x IBM
Printers (POS)	5	Epson
KDS Monitors	7	AOC, 2x Dell, Acer, 2x HP, Samsung
<b>Kitchen Equipment</b>		
Refrigeration (all Coolers/freezers/drawer units) (\$300)	11	2x Traulsen, 7x Kairak, Delfield, GlasTender
CTX (\$1000)	1	WOW Oven
Impinger (\$1000)	1	Middleby Marshall
Combi (\$2000)	0	NA
Flattop (\$500 lg/\$100 sm)	2	Vulcan, Wells (1 is a very small flattop)
Fryer (\$1000)	1	Dean
Smoker (\$250 giles/\$500 Southern Pride)	1	Giles
Skillet (\$250)	1	Cleveland Range LTD
Microwaves (\$80)	7	Amana
Cheese melter (\$50)	3	Wells MFG Co
Hot Wells (\$100)	1	Carter Hoffman
Chicken Holding Unit (\$50)	1	Carter Hoffman
Chip Machine (\$100)	1	Hatco
Warmer/Holding oven (\$250)	0	NA
Induction warmers (\$80)	2	Spring
Walk in Cooler and Freezer (\$2500)	2	ColdZone
Ice Machine (\$500)	1	Follett
<b>Bar Equipment</b>		
Refrigeration (all Coolers/mug chillers) (\$300)	4	GlasTender
Rita Machine (\$200)	1	Taylor
Blender (\$30)	2	Hamilton Beach
Flash Blender/Mixer (\$30)	1	Hamilton Beach
<b>Trash Compactor</b>		
<b>Waste oil storage/filtration</b>		
Oil Filtration Unit	1	Zeco Eco Oil Filtration Machine, Testo 270 Oil testing unit

**Meridian**  
**3078 N Eagle Rd**  
**Meridian, Idaho**

<b>Asset Categories</b>	<b>Total Quantity of items/units</b>	<b>Brand Name(s)</b>
<b>Furniture</b>		
Chairs & barstools (\$5)	60	Chili's Spec
Booth seats (\$35)	68	Chili's Spec
Tables and bases (\$40)	46	Chili's Spec
<b>Audio Visual</b>		
Televisions and mounts (\$300)	5	NEC
<b>Computers and POS</b>		
Back Office Computer (harddrives)	2	custom
Monitor	1	HP
Back Office Printer	1	HP Laserjet 1320
POS Terminals	6	Radiant
Printers (POS)	6	Radiant
KDS Monitors	7	Hanspree
<b>Kitchen Equipment</b>		
Refrigeration (all Coolers/freezers/drawer units) (\$300)	10	Delfield
CTX (\$1000)	1	WOW Oven
Impinger (\$1000)	1	Middleby Marshall
Combi (\$2000)	0	NA
Flattop (\$500 lg/\$100 sm)	2	Vulcan
Fryer (\$1000)	1	Dean
Smoker (\$250 giles/\$500 Southern Pride)	1	Southern Pride
Skillet (\$250)	1	Cleveland Range
Microwaves (\$80)	7	Amana
Cheese melter (\$50)	5	Wells
Hot Wells (\$100)	1	Carter Hoffman
Chicken Holding Unit (\$50)	1	Carter Hoffman
Chip Machine (\$100)	1	Hatco
Warmer/Holding oven (\$250)	0	NA
Induction warmers (\$80)	2	Spring
Walk in Cooler and Freezer (\$2500)	2	ColdZone
Ice Machine (\$500)	1	Follett
<b>Bar Equipment</b>		
Refrigeration (all Coolers/mug chillers) (\$300)	4	Glasslender
Rita Machine (\$200)	1	Taylor
Blender (\$30)	1	Hamilton Beach
Flash Blender/Mixer (\$30)	1	Hamilton Beach
<b>Trash Compactor</b>		
<b>Waste oil storage/filtration</b>		
Oil Filtration Unit	1	Zeco Eco Oil Filtration Machine, Testo 270 Oil testing unit

**Twin Falls**  
**1880 Blue Lakes Blvd N**  
**Twin Falls, Idaho 83301**

<b>Asset Categories</b>	<b>Total Quantity of items/units</b>	<b>Brand Name(s)</b>
<b>Furniture</b>		
Chairs & barstools (\$5)	106	Chili's Spec
Booth seats (\$35)	46	Chili's Spec
Tables and bases (\$40)	46	Chili's Spec
<b>Audio Visual</b>		
Televisions and mounts (\$300)	13	2 Vizio, 11 Insignia
<b>Computers and POS</b>		
Back Office Computer (hardrives)	2	1 Hp Pavillion, 1 Radiant Systems
Monitor	1	Insignia
Back Office Printer	1	HP LaserJet 4200
POS Terminals	5	3 IBM, 2 Radiant Systems
Printers (POS)	5	2 Radiant Systems, 3 Epson
KDS Monitors	7	2 Acer, 1 LG, 2 HP, 2 Dell
<b>Kitchen Equipment</b>		
Refrigeration (all Coolers/freezers/drawer units) (\$300)	11	Kairak
CTX (\$1000)	1	WOW Oven
Impinger (\$1000)	1	Middleby Marshall
Combi (\$2000)	0	NA
Flattop (\$500 lg/\$100 sm)	3	2 Vulcan, 1 Wells
Fryer (\$1000)	1	Dean
Smoker (\$250 giles/\$500 Southern Pride)	1	Giles
Skillet (\$250)	1	Cleveland Range
Microwaves (\$80)	6	1 Sanyo, 4 Panasonic, 1 Amana
Cheese melter (\$50)	6	Wells
Hot Wells (\$100)	1	Carter Hoffman
Chicken Holding Unit (\$50)	1	Carter Hoffman
Chip Machine (\$100)	1	Hatco
Warmer/Holding oven (\$250)	1	Carter Hoffman
Induction warmers (\$80)	2	Spring
Walk in Cooler and Freezer (\$2500)	2	ColdZone
Ice Machine (\$500)	1	Follett
<b>Bar Equipment</b>		
Refrigeration (all Coolers/mug chillers) (\$300)	4	Glasstender
Rita Machine (\$200)	2	Taylor
Blender (\$30)	3	Hamilton Beach
Flash Blender/Mixer (\$30)	1	Hamilton Beach
<b>Trash Compactor</b>		
<b>Waste oil storage/filtration</b>		
Oil Filtration Unit	1	Zeco Eco Oil Filtration Machine, Testo 270 Oil testing unit

**Pocatello**  
**1599 Yellowstone Ave**  
**Pocatello, ID**

<b>Asset Categories</b>	<b>Total Quantity of items/units</b>	<b>Brand Name(s)</b>
<b>Furniture</b>		
Chairs & barstools (\$5)	93	Chili's Spec
Booth seats (\$35)	68	Chili's Spec
Tables and bases (\$40)	43	Chili's Spec
<b>Audio Visual</b>		
Televisions and mounts (\$300)	3	Sony
<b>Computers and POS</b>		
Back Office Computer (hardrives)	2	HP
Monitor	1	Samsung
Back Office Printer	1	HP
POS Terminals	5	Radiant Systems
Printers (POS)	6	Radiant Systems
KDS Monitors	7	Dell, Samsung, Compaq, Acer (2), AOC (2)
<b>Kitchen Equipment</b>		
Refrigeration (all Coolers/freezers/drawer units) (\$300)	11	Kairak, Glass Tender, Delfield, Traulsen
CTX (\$1000)	1	WOW Oven
Impinger (\$1000)	1	Middleby Marshall
Combi (\$2000)	0	NA
Flattop (\$500 lg/\$100 sm)	2	Vulcan, and Champion
Fryer (\$1000)	1	Dean
Smoker (\$250 giles/\$500 Southern Pride)	1	Southern Pride
Skillet (\$250)	1	Cleveland
Microwaves (\$80)	6	Amana
Cheese melter (\$50)	1	Carter Hoffman
Hot Wells (\$100)	6	Wells (built in) Adcraft (portable)
Chicken Holding Unit (\$50)	1	Carter Hoffman
Chip Machine (\$100)	1	Hatco
Warmer/Holding oven (\$250)	0	
Induction warmers (\$80)	2	Spring
Walk in Cooler and Freezer (\$2500)	2	ColdZone
Ice Machine (\$500)	1	Follett
<b>Bar Equipment</b>		
Refrigeration (all Coolers/mug chillers) (\$300)	4	Glastender
Rita Machine (\$200)	2	Taylor
Blender (\$30)	1	Hamilton Beach
Flash Blender/Mixer (\$30)	1	Hamilton Beach
<b>Trash Compactor</b>		
<b>Waste oil storage/filtration</b>		
Oil Filtration Unit	1	Zeco Eco Oil Filtration Machine, Testo 270 Oil testing unit

**Idaho**  
**620 N Utah Ave**  
**Idaho Falls, Idaho**

<b>Asset Categories</b>	<b>Total Quantity of items/units</b>	<b>Brand Name(s)</b>
<b>Furniture</b>		
Chairs & barstools (\$5)	74	Chili's Spec
Booth seats (\$35)	62	Chili's Spec
Tables and bases (\$40)	46	Chili's Spec
<b>Audio Visual</b>		
Televisions and mounts (\$300)	13	Insignia, Panasonic, Vizio
<b>Computers and POS</b>		
Back Office Computer (hardrives)	2	HP
Monitor	1	HP
Back Office Printer	1	HP
POS Terminals	4	Radiant
Printers (POS)	3	Epson
KDS Monitors	7	Compaq, Gateway
<b>Kitchen Equipment</b>		
Refrigeration (all Coolers/freezers/drawer units) (\$300)	10	Silver King, Delfield, Hobart, Vulcan, Kairak, Hussman
CTX (\$1000)	1	WOW Oven
Impinger (\$1000)	1	Middleby Marshall
Combi (\$2000)	0	NA
Flattop (\$500 lg/\$100 sm)	2	Vulcan
Fryer (\$1000)	1	Dean
Smoker (\$250 giles/\$500 Southern Pride)	1	Southern Pride
Skillet (\$250)	1	Cleveland
Microwaves (\$80)	5	Amana
Cheese melter (\$50)	6	Wells
Hot Wells (\$100)	1	Carter Hoffman
Chicken Holding Unit (\$50)	1	Carter Hoffman
Chip Machine (\$100)	1	Hatco
Warmer/Holding oven (\$250)	0	NA
Induction warmers (\$80)	2	Spring
Walk in Cooler and Freezer (\$2500)	2	ColdZone
Ice Machine (\$500)	1	Follett
<b>Bar Equipment</b>		
Refrigeration (all Coolers/mug chillers) (\$300)	4	Glas Tender
Rita Machine (\$200)	1	Taylor
Blender (\$30)	1	Hamilton Beach
Flash Blender/Mixer (\$30)	1	Hamilton Beach
<b>Trash Compactor</b>		
<b>Waste oil storage/filtration</b>		
Oil Filtration Unit	1	Zeco Eco Oil Filtration Machine, Testo 270 Oil testing unit

**Helena**  
**2790 North Washington St., Suite B**  
**Helena, MT**

<b>Asset Categories</b>		<b>Total Quantity of items/units</b>	<b>Brand Name(s)</b>
<b>Furniture</b>			
	Chairs & barstools (\$5)	98	Chili's Spec (24 cushions still need replaced)
	Booth seats (\$35)	59	Chili's Spec
	Tables and bases (\$40)	45	Chili's Spec
<b>Audio Visual</b>			
	Televisions and mounts (\$300)	3	Sony
<b>Computers and POS</b>			
	Back Office Computer (harddrives)	2	Acer
	Monitor	1	HP
	Back Office Printer	1	HP
	POS Terminals	6	Radiant
	Printers (POS)	7	Radiant
	KDS Monitors	7	5 Acer / 1 HP / 1 AOC
<b>Kitchen Equipment</b>			
	Refrigeration (all Coolers/freezers/drawer units) (\$300)	11	8 Kairak / 2 Delfield / 1 Traulsen - (2 Kairak are down)
	CTX (\$1000)	1	WOW Oven
	Impinger (\$1000)	1	Middleby Marshall
	Combi (\$2000)	0	NA
	Flattop (\$500 lg/\$100 sm)	1	Vulcan
	Fryer (\$1000)	1	Dean
	Smoker (\$250 giles/\$500 Southern Pride)	1	Southern Pride
	Skillet (\$250)	1	Cleveland
	Microwaves (\$80)	3	Amana
	Cheese melter (\$50)	5	Wells (1 is down)
	Hot Wells (\$100)	1	Carter Hoffman
	Chicken Holding Unit (\$50)	1	Carter Hoffman
	Chip Machine (\$100)	1	Hatco
	Warmer/Holding oven (\$250)	0	NA
	Induction warmers (\$80)	2	Spring
	Walk in Cooler and Freezer (\$2500)	2	ColdZone
	Ice Machine (\$500)	1	Follett
<b>Bar Equipment</b>			
	Refrigeration (all Coolers/mug chillers) (\$300)	4	Glass Tender
	Rita Machine (\$200)	2	Taylor (1 is down)
	Blender (\$30)	1	Hamilton Beach
	Flash Blender/Mixer (\$30)	1	Hamilton Beach
<b>Trash Compactor</b>			
<b>Waste oil storage/filtration</b>			
	Oil Filtration Unit	1	Zeco Eco Oil Filtration Machine, Testo 270 Oil testing unit

**Great Falls**  
**1420 Marketplace Dr., Suite A**  
**Great Falls, MT**

<b>Asset Categories</b>	<b>Total Quantity of items/units</b>	<b>Brand Name(s)</b>
<b>Furniture</b>		
Chairs & barstools (\$5)	82	Chili's Spec
Booth seats (\$35)	16single,19double	Chili's Spec
Tables and bases (\$40)	18free,24mounted	Chili's Spec
<b>Audio Visual</b>		
Televisions and mounts (\$300)	3	Sony
<b>Computers and POS</b>		
Back Office Computer (hardrives)	2	HP, Custom
Monitor	1	Viewsonic
Back Office Printer	2	HP, Samsung
POS Terminals	7	Radiant Systems
Printers (POS)	8	Radiant Systems
KDS Monitors	7	6 Acer, 1 Hannspree
<b>Kitchen Equipment</b>		
Refrigeration (all Coolers/freezers/drawer units) (\$300)	11	GlasTender,Delfield, Kairak, Traulson
CTX (\$1000)	1	WOW Oven
Impinger (\$1000)	1	Middleby Marshall
Combi (\$2000)	0	NA
Flattop (\$500 lg/\$100 sm)	2	APW Wyatt, Vulcan
Fryer (\$1000)	1	Dean
Smoker (\$250 giles/\$500 Southern Pride)	1	Southern Pride
Skillet (\$250)	1	Cleveland Range
Microwaves (\$80)	5	4 Amana, 1 Radiance
Cheese melter (\$50)	3	1 Classic Cook N Serve, 2 Wells
Hot Wells (\$100)	1	Carter Hoffman
Chicken Holding Unit (\$50)	1	Carter Hoffman
Chip Machine (\$100)	1	Hatco
Warmer/Holding oven (\$250)	2	FWE Co. Inc.
Induction warmers (\$80)	2	Spring
Walk in Cooler and Freezer (\$2500)	2	ColdZone
Ice Machine (\$500)	1	Follett
<b>Bar Equipment</b>		
Refrigeration (all Coolers/mug chillers) (\$300)	4	GlasTender
Rita Machine (\$200)	2	Taylor
Blender (\$30)	2	Hamilton Beach
Flash Blender/Mixer (\$30)	1	Hamilton Beach
<b>Trash Compactor</b>	1	Taylor Mechanical
<b>Waste oil storage/filtration</b>		
Oil Filtration Unit	1	Zeco Eco Oil Filtration Machine, Testo 270 Oil testing unit

Schedule 1.1(a)(iii)

Assumed Contracts



## Assumed Contracts

Type of Contract	Name of Contract	Vendor	Contract Date	Locations	Account No.	Contact Info.	Notes
Utility	Service Agreement	Time Warner Cable Enterprises, LLC	4/8/2016	482 W. Sunset Ave., Coeur D Alene, ID 83815	9448610010068730	Jeffrey Delos Reyes T: (714) 980-2644 F: (704) 945-1091 Jeffrey.delosreyes@twcable.com	
Vendor	Assignment and Assumption Agreement and Bill of Sale  Rental Agreement	Seller: Ziosk Financial Services Purchaser: Ascentium Capital, LLC Renter: Shoot the Moon, LLC	2/24/2015	All locations	Rental Agreement No. 2143818	Bryan S. Wheeter Senior Vice President	<b><i>*Trustee does not acknowledge as a true lease.</i></b> Term: 48 months 36 at \$7,248.32 12 at \$6,312.70
Vendor	Franchise Supply Agreement	Ecolab, Inc.	6/1/2006	Great Falls		Dan Pignato Corporate Account Manager 4301 S. Pine Street, Suite 540 Tacoma, WA T: (800) 352-5326 C: (858) 245-2461 F: (866) 498-6766 E: daniel.pignato@ecolab.com	
Vendor	360 of Protection Ecotemp Rental Agreement	Ecolab, Inc.	4/3/2007	916 Broadway Ave. Boise, ID 83706	19802270	Dan Pignato See above	Term: 2 years
Vendor	361 of Protection Ecotemp Rental Agreement	Ecolab, Inc.	9/28/2007	482 West Sunset Ave. Coeur D' Alene, ID 83815	19802262	Dan Pignato See above	Term: 2 years
Vendor	362 of Protection Ecotemp Rental Agreement	Ecolab, Inc.	4/3/2007	7997 West Franklin Rd. Boise, ID 83790	198002269	Dan Pignato See above	Term: 2 years
Vendor	363 of Protection Ecotemp Rental Agreement	Ecolab, Inc.	1/14/2008	1420 Marketplace Dr. Great Falls, MT 59404	19918412	Dan Pignato See above	Term: 2 years
Vendor	364 of Protection Ecotemp Rental Agreement	Ecolab, Inc.	5/30/2007	620 N. Utah Ave. Idaho Falls, ID 83402	19802268	Dan Pignato See above	Term: 2 years
Vendor	365 of Protection Ecotemp Rental Agreement	Ecolab, Inc.	5/25/2009	3078 North Eagle Rd. Meridian, ID 83646	19990409	Dan Pignato See above	Term: 2 years
Vendor	366 of Protection Ecotemp Rental Agreement	Ecolab, Inc.	Document on file is not signed.	1599 Yellowstone Ave. Pocatello, ID 83201	19990409	Dan Pignato See above	Term: 2 years
Vendor	Music Services Agreement Equipment Purchase	PlayNetwork, Inc.	4/15/2009		SHO140	Craig Hubber 8727 148th Ave. NE Redmond, WA 98052	
Vendor	Service Agreement	SimplexGrinnell	9/1/2012	See below			

Vendor	Service Agreement Amendment to Scope of Work	SimplexGrinnell	9/15/2015	All locations		Simplex Grinnell National Accounts 50 Technology Drive Westminster, MA 01441 T: (978) 731-2500 F: www.simplexgrinnell.com E: Sg.naca@simplexgrinnell.com	
Vendor	Service Agreement	Tabletop Media, LLC <u>dba Ziosk</u>	10/28/2013	All locations	2840061323 Contract #: 95002051	Bhaveeni Parmar Bhaveeni@ziosk.com Tabletop Media, LLC dba Ziosk 12404 Park Central Dr., Suite 350 Dallas, TX 75251 (214) 580-4806	
Vendor	Master Distribution Agreement	U.S. Food Service, Inc.	5/4/2009	All locations	Contract #: 95002051	US Foodservice, Inc. 9399 W. Higgins Rd., Suite 500 Rodemont, IL 60018-6600 Tony Gagliano T: (801) 917-3300 F: (801) 917-3320	
Vendor	Master Distribution Agreement/Contract Addendum	U.S. Food Service, Inc.	Effective: 7/1/12 Expiration: 7/1/17	All locations	Contract #: 95002051	US Foodservice, Inc. 9399 W. Higgins Rd., Suite 500 Rodemont, IL 60018-6600 Tony Gagliano T: (801) 917-3300 F: (801) 917-3320	
Franchise	Franchise Agreement	Brinker International	5/4/2006	916 Broadway Boise, ID 83706		Brinker International, Inc. 6820 LBJ Freeway Dallas, TX 75240 Attn: Chilis Franchise Division	
Franchise	Franchise Agreement	Brinker International	5/4/2006	482 West Sunset Ave. Coeur D' Alene, ID 83815	N/A	Brinker International, Inc.	
Franchise	Franchise Agreement	Brinker International	5/4/2006	207 W. Spokane Falls Blvd. Spokane, WA 99201	N/A	Brinker International, Inc.	
Franchise	Franchise Agreement	Brinker International	5/4/2006	7997 Franklin Rd. Boise ID 83709	N/A	Brinker International, Inc.	
Franchise	Franchise Agreement	Brinker International	10/15/2007	1420 Marketplace Dr. Great Fall, MT 59404	N/A	Brinker International, Inc.	
Franchise	Franchise Agreement	Brinker International	6/4/2007	2790 North Washington St. Helena, MT 59602	N/A	Brinker International, Inc.	

Franchise	Franchise Agreement	Brinker International	5/4/2006	620 N. Utah Ave. Idaho Falls, ID 83402	N/A	Brinker International, Inc.	
Franchise	Franchise Agreement	Brinker International	8/12/2009	63078 Eagle Rd. North Meridian, ID 83646	N/A	Brinker International, Inc.	
Franchise	Franchise Agreement	Brinker International	5/4/2006	4750 N. Division St., #1120 Spokane, WA 99207	N/A	Brinker International, Inc.	
Franchise	Franchise Agreement	Brinker International	2/15/2007	1599 South Yellowstone Pocatello, ID 83202	N/A	Brinker International, Inc.	
Franchise	Franchise Agreement	Brinker International	5/4/2006	1880 Blue Lakes Blvd. N. Twin Falls, ID 83301	N/A	Brinker International, Inc.	
Property Management	Commercial Property Management Agreement	Macek Property Management, Inc.	5/1/2016	2790 North Washington St. Helena, MT 59602	N/A	Mark Macek Macek Companies, Inc. mark@macekco.com (406) 727-5505	30-day cancellation
Property Management	Commercial Property Management Agreement	Macek Property Management, Inc.	6/1/2016	1420 Marketplace Dr. Great Fall, MT 59404	N/A	Mark Macek	30-day cancellation
Property Management	Commercial Property Management Agreement	Macek Property Management, Inc.	7/1/2016	1400 Marketplace Dr. Great Falls, MT 59404	N/A	Mark Macek	30-day cancellation
Liquor License	Liquor License Lease Agreement	Lessor: David Harvey Lessee: Franklin Restaurant Corporation	10/11/1994	1880 Blue Lakes Blvd. N. Twin Falls, ID 83301		David Harvey PO Box 2664 Twin Falls, ID 83303-2664	License Number 2307
Liquor License	Assignment and Assumption of Liquor License Agreement	Lessor: David Harvey Assignor: Franklin Restaurant Corp. Assignee: Syndran Food Services, III, LP	12/26/1996	1880 Blue Lakes Blvd. N. Twin Falls, ID 83301	N/A	David Harvey	
Liquor License	Lessor's Consent	Lessor: David Harvey Lessee: Brinker Restaurant Corp. Assignee: Shoot the Moon, LLC	4/25/06 Exp: 3/31/15	1880 Blue Lakes Blvd. N. Twin Falls, ID 83301	N/A	David Harvey	4 options to extend
Liquor License	Assignment Agreement	Assignor: David Harvey Assignee: Meldco, Inc.	8/25/2011	1881 Blue Lakes Blvd. N. Twin Falls, ID 83301	N/A	Meldco, Inc.	

Schedule 1.1(a)(vi)

Transferable Permits

## Transferable Permits

	Broadway	Coeur d'Alene	Downtown Spokane	Franklin	Great Falls	Helena	Idaho Falls	Northtown	Meridian	Pocatello	Twin Falls
<b>State Liquor</b>											
Permit #	3932	3907	UBI 602 608 122 12	3936	Hatz Bar	Hatz Bar II license 02-401-1093-001	3931	UBI 602 608 122 0002	6360	1923	2918
Expiration	4/30/2017	2/28/2017	4/30/2017	4/30/2017	N/A	Hatz Bar II license	9/30/2016	4/30/2017	4/30/2017	10/31/2016	6/30/2017
<b>County Liquor</b>											
Permit #	2016600	2016-373	N/A	2016467	N/A	Hatz Bar II license	61	N/A	2016358	50	2016-68
Expiration	4/30/2017	3/1/2017	N/A	4/30/2017	N/A	Hatz Bar II license	9/30/2016	N/A	4/30/2017	11/1/2016	7/1/2017
<b>City Liquor</b>											
Permit #	LIP06-00117	40696	UBI 602 608 122 12	LIP06-00118	N/A	16 000 10738	4026	UBI 602 608 122 0002	ALC-2015-0067	15-00000148	16-1012
Expiration	12/31/2016	2/28/2017	4/30/2017	12/31/2017	7/31/2016	6/30/2016	12/31/2016	4/30/2017	4/30/2017	11/1/2016	6/30/2017
<b>Health/Food Permit</b>											
Permit #	32442	15-841	PR0001298	00328	Health - 17671 Food - 44185 Safety - 62656	Health B-0081 Food - FL-44095	B-0081	15-3025	37766	32460	Health - '000296 605-111
Expiration	12/31/2016	12/31/16	5/31/2017	12/31/2016	06/30/2016 12/31/2016 12/31/2016	12/31/2015 12/31/2016	12/31/2016	5/31/2017	12/31/2016	12/1/2016	12/31/2016
<b>Assembly/Fire Permit/Safety</b>											
Permit #	Not provided	Not provided	F14014990PBA Alarm - 7887 5/3/2015	17801	Hatz Bar - 82656	Not provided	Not provided	F15014991PBA	Not provided	Not provided	Not provided
Expiration	Not provided	Not provided	Waiting for renewal permit to be issued. Alarm - 4/26/17	2/11/2017	12/31/2016	Not provided	Not provided	5/3/2015 Waiting for renewal permit to be issued.	Not provided	Not provided	Not provided
<b>Business License</b>											
Permit #	N/A	N/A	602-608-122	N/A	N/A	16-000-10736	N/A	608-608-122	N/A	N/A	N/A
Expiration	N/A	N/A	4/30/2017	N/A	N/A	12/31/2016	N/A	4/30/2017	N/A	N/A	N/A
<b>Legal Entity Registration</b>											
Permit #	N/A	N/A	602-608-629	N/A	N/A	N/A	N/A	602-608-122	N/A	N/A	N/A
Expiration	N/A	N/A	4/30/2017	N/A	N/A	N/A	N/A	4/30/2017	4/30/2016	N/A	N/A
<b>Amusement Devise</b>											
Permit #	N/A	N/A	T16002403AMU	N/A	N/A	N/A	N/A	T16002403AMU	N/A	N/A	N/A
Expiration	N/A	N/A	12/31/2016	N/A	N/A	N/A	N/A	12/31/2016	N/A	N/A	N/A
<b>Backflow Permit</b>											
Permit #	17801	Not provided	Just Tested	17801	Not provided	Not provided	Not provided	Not provided	Not provided	Not provided	Not provided
Expiration	1/7/2017	Not provided	Waiting for permit	2/11/2017	Not provided	Not provided	Not provided	Not provided	Not provided	Not provided	10/31/2016
<b>Complex Permit</b>											
Permit #	N/A	N/A	15-3088	N/A	N/A	N/A	N/A	15-3025	N/A	N/A	N/A
Expiration	N/A	N/A	5/30/2017	N/A	N/A	N/A	N/A	5/31/2017	N/A	N/A	N/A
<b>Boiler Operating Permit</b>											
Permit #	N/A	N/A	BLRP1984	N/A	N/A	N/A	N/A	BLRP1885	N/A	N/A	N/A
Expiration	N/A	N/A	Issued 8/30/2015	N/A	N/A	N/A	N/A		N/A	N/A	N/A
<b>WA or ID State Tax Registration</b>											
			Cancelled					Cancelled			
Permit #	1A-478 003068246	20-4764591-S 003702881	602-608-8122 82430	003068246	N/A	N/A	003704771	602-608-122	003485615-S	003068246	003068246
Expiration	4/30/2016		4/30/2017		N/A	N/A		12/31/2017	No Exp.		
<b>Occupancy Permit</b>											
Permit #	Not provided	Not provided	F15014990PBA	Not provided	Not provided	Not provided	Not provided	B9910102/B9909273	Not provided	Not provided	Not provided
Expiration	Not provided	Not provided		Not provided	Not provided	Not provided	Not provided	Issued: 4/4/00	Not provided	Not provided	Not provided

Schedule 1.1(a)(vii)

Warranty Log

## Warranty Log

Equipment Name	Manufacturer	Location	Model #	Serial #	Warranty Start	Warranty Type
Microwave	Sharp	Broadway	R-CD1200M	04873	Unknown	3yr Parts and Labor
Hot Well	Wasserstrom	Broadway	Unknown	815011602084	Unknown	
Neon Sign	Yesco	Broadway	Unknown	Unknown	Feb-16	1 yr
Glass Froster	GlasTender	CDA	MF48-B2	Unknown	Feb-16	3yr Parts and Labor/ 5 yr Compressor
Mega Top Prep Refrigerator	Turbo Air	Downtown	MST-28-12	Unknown	Mar-16	3yr Parts and Labor
Water Heater	Dillion Plumbing	Franklin	Unknown	1537M000447	Unknown	
Water Softener	Kinec	Franklin	Unknown	2632594	Unknown	10yr Part / 2 year service
Reach-in Cooler	Turbo Air	Great Falls	MST-28-12	MM2TA04057	Feb-16	3yr Parts and Labor
Cheese Melter	Carter Hoffman	Great Falls	CGM24	32016595990	May-16	2yr Parts and Labor
Water Heater	Rinnai	Great Falls	RUC98i(REU-KBD3237FFUD-US)	GJ. BA-057998	Mar-16	3yr Parts 1yr Labor
Water Heater	Rinnai	Great Falls	RUC98i(REU-KBD3237FFUD-US)	GK. BA-061027	Apr-16	3yr Parts 1yr Labor
Microwave	Sharp	Great Falls	R-CD1200M	05100	Sep-15	3yr Parts and Labor
Microwave	Sharp	Great Falls	R-CD1200M	04148	Jul-15	3yr Parts and Labor
Microwave	Sharp	Great Falls	R-CD1200M	04319	Aug-15	3yr Parts and Labor
Fire Suppression Water Main	Central Plumbing and Heating	Great Falls	Unknown	Unknown	May-16	1yr Parts and Labor
Mega Top Prep Refrigerator	Turbo Air	Helena	MST-28-12	MM2TA121615	Mar-16	3yr Parts and Labor
Microwave	Sharp	Helena	R-CD1200M	06179	Apr-16	3yr Parts and Labor
Microwave	Sharp	Helena	R-CD1200M	04055	May-16	3yr Parts and Labor
Coffee/Tea Machine	Bunn	Helena	ITCB-DV25.75TRK/W/TRAY/QTEA	ITCB113954	Unknown	3yr Parts and Labor
Mixer	Robot Coupe	Helena	Mp 350 V.V TURBO	65001372031-08	Apr-16	1yr Parts and Labor
Bun Toaster	APW WYOTT	Helena	Unknown	800131603053	Apr-16	1yr Parts and Labor
Cheese Melter	InstaTherm	Helena	CGM-24 N1	032016595989	May-16	2yr Parts and Labor
Coolers	RSD	Idaho Falls	COPE KANB-005E-IAA-800	15I61635R	Jun-16	5 year compressor warranty
Coolers	RSD	Idaho Falls	COPE ARE51C4E-CAA-901	16D10153E	Jun-16	5 year compressor warranty
Sandwich / Salad Prep Refrigerator	Continental Refrigerator	Meridian	SW48-12M-FB-D	Unknown	Mar-16	3yr Parts and Labor/ 5 yr Compressor
Sandwich / Salad Prep Refrigerator	Everest Refrigeration	Meridian	EPBNR1-D2	Unknown	Apr-16	3yr Parts and Labor/ 5 yr Compressor
CHL Station	Delfield	Meridian	DCHF5N27DRW	Unknown	May-16	3yr Parts and Labor/ 5 yr Compressor
Glass Froster	GlasTender	Northtown	MF48-B2	Unknown	Feb-16	3yr Parts and Labor/ 5 yr Compressor
Crisper	Salad King	Northtown	SK2SBC1	Unknown	May-16	1yr Parts and Labor/ 5 yr Compressor
Sandwich Unit	Delfield	Northtown	4460N18M	Unknown	May-16	3yr Parts and Labor/ 5 yr Compressor
Coffee/Tea Machine	Bunn	Pocatello	Unknown	ITCB113955	Unknown	3yr Parts and Labor
Cold Table	Delfield	Pocatello	Unknown	1602150001880	May-16	3yr Parts and Labor/ 5 yr Compressor
Microwave	Sharp	Pocatello	R-CD1200M	04103	Unknown	3yr Parts and Labor
Salad Top	Delfield	Pocatello	DCH-RB-45-40MBR	Unknown	May-16	3yr Parts and Labor/ 5 yr Compressor
Microwave	Sharp	Twin Falls	R-CD1200M	04536	Unknown	3yr Parts and Labor
Microwave	Sharp	Twin Falls	R-CD1200M	04707	Unknown	3yr Parts and Labor
Microwave	Sharp	Twin Falls	R-CD1200M	04722	Unknown	3yr Parts and Labor
Microwave	Sharp	Twin Falls	R-CD1200M	06330	Unknown	3yr Parts and Labor

Schedule 1.2(f)

Accrued and Unpaid Vacation Pay



**SHOOT THE MOON ESTATE EMPLOYEE PTO BALANCES**

Period Control: 201607081, 201607221 AND PTO Plan: Vacation

**Company: Shoot The Moon 22 LLC (DOWNTOWN)****Period Control: 201607081**

Level 1 C	PTO Plan	Employee Name (Last Suffix, First MI)	Employment Status	Termination Date	Job Code	Pay Group Code	Org Level 1	Pay Rate	Earned Through	Hours Earned	Hours Taken	Available Balance	PTO Liability
0937	Vacation	Denton, Wyatt E.	Active		GM	SMLLCS	Chili's Downtown Spokane	26.9231	07/13/2016	111.6000	16.0000	95.6000	2,573.85
	Vacation	Hendershott, Michael	Active		DISH	SMLLCH	Chili's Downtown Spokane	10.0000	06/26/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Jolley, Marisa	Active		HOST	SMLLCH	Chili's Downtown Spokane	9.4700	06/21/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Parrish, Ken	Active		AM	SMLLCS	Chili's Downtown Spokane	19.2308	07/13/2016	33.8800	0.0000	33.8800	651.54
	Vacation	Silvers, Kelmer O.	Active		MANAGER	SMLLCS	Chili's Downtown Spokane	19.6999	07/13/2016	111.6000	0.0000	111.6000	2,198.51
<b>0937</b>								<b>14.9705</b>		<b>257.0800</b>	<b>16.0000</b>	<b>241.0800</b>	<b>\$5,423.90</b>

201607081

**14.9705** **257.0800** **16.0000** **241.0800**

Shoot The Moon 22 LLC

**14.9705** **257.0800** **16.0000** **241.0800**

**Company: Shoot The Moon 4 LLC (IDAHO FALLS)****Period Control: 201607081**

Level 1 C	PTO Plan	Employee Name (Last Suffix, First MI)	Employment Status	Termination Date	Job Code	Pay Group Code	Org Level 1	Pay Rate	Earned Through	Hours Earned	Hours Taken	Available Balance	PTO Liability
0936	Vacation	Aleman, Jose	Active		COOK	SMLLCH	Chili's Idaho Falls	13.0000	07/13/2016	36.9230	0.0000	36.9230	480.00
	Vacation	Andrus, Heaven	Terminated	06/29/2016	SERVER	SMLLCH	Chili's Idaho Falls	3.3500	06/19/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Barnes, James	Active		GM	SMLLCS	Chili's Idaho Falls	25.9615	07/13/2016	46.2000	32.0000	14.2000	368.65
	Vacation	Bartholomae, Leigha	Active		HOST	SMLLCH	Chili's Idaho Falls	8.0000	06/28/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Collette, Cody	Active		QUAL	SMLLCH	Chili's Idaho Falls	8.0000	06/26/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Davis, Kourtnee	Terminated	06/29/2016	HOST	SMLLCH	Chili's Idaho Falls	8.0000	06/24/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Fontes, Dustin	Active		SERVER	SMLLCH	Chili's Idaho Falls	3.3500	06/26/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Grover, Austin T.	Active		COOK	SMLLCH	Chili's Idaho Falls	13.0000	06/25/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Hamlin, Eric	Active		MANAGER	SMLLCS	Chili's Idaho Falls	21.1538	07/13/2016	55.4100	0.0000	55.4100	1,172.13
	Vacation	Ide, Jennifer	Active		MANAGER	SMLLCS	Chili's Idaho Falls	21.1538	07/13/2016	6.1600	0.0000	6.1600	130.31
	Vacation	Trejo-Moreno, Fausto	Active		DISH	SMLLCH	Chili's Idaho Falls	9.0000	06/15/2016	0.0000	0.0000	0.0000	0.00
<b>0936</b>								<b>12.3053</b>		<b>144.6930</b>	<b>32.0000</b>	<b>112.6930</b>	<b>\$2,151.09</b>

201607081

**12.3053** **144.6930** **32.0000** **112.6930**

**Company: Shoot The Moon 5 LLC (COEUR D' ALENE)****Period Control: 201607081**

Level 1 C	PTO Plan	Employee Name (Last Suffix, First MI)	Employment Status	Termination Date	Job Code	Pay Group Code	Org Level 1	Pay Rate	Earned Through	Hours Earned	Hours Taken	Available Balance	PTO Liability
0927	Vacation	Betts, Hanna R.	Active		HOST	SMLLCH	Chili's Coeur d'Alene	8.5000	06/28/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Blaski, Destiny	Active		COOK	SMLLCH	Chili's Coeur d'Alene	9.7500	06/18/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Cooper, Charleen	Active		SERVER	SMLLCH	Chili's Coeur d'Alene	3.3500	06/18/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Cornwell, Rachelle	Active		MANAGER	SMLLCS	Chili's Coeur d'Alene	21.1538	07/13/2016	43.1200	0.0000	43.1200	912.15
	Vacation	Hossfeld, Lisa	Active		PREP	SMLLCH	Chili's Coeur d'Alene	9.7500	06/25/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Krigbaum, William T.	Active		COOK	SMLLCH	Chili's Coeur d'Alene	9.5000	07/25/2016	0.0000	0.0000	0.0000	0.00
	Vacation	McCandless, Chris	Active		GM	SMLLCS	Chili's Coeur d'Alene	26.4423	07/13/2016	82.8000	80.0000	2.8000	74.04
	Vacation	Phay, Justin	Active		MANAGER	SMLLCS	Chili's Coeur d'Alene	21.6346	07/13/2016	55.4100	40.0000	15.4100	333.39
	Vacation	Reed, Aaron	Active		COOK	SMLLCH	Chili's Coeur d'Alene	13.5000	07/13/2016	24.6153	40.0000	-15.3847	-207.69
	Vacation	Vineyard, Trae	Active		SERVER	SMLLCH	Chili's Coeur d'Alene	3.3500	06/28/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Ward, Hailey A.	Active		HOST	SMLLCH	Chili's Coeur d'Alene	8.5000	06/18/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Washington, McKynzie L.	Active		HOST	SMLLCH	Chili's Coeur d'Alene	8.5000	06/18/2016	0.0000	0.0000	0.0000	0.00
<b>0927</b>								<b>10.7378</b>		<b>205.9453</b>	<b>160.0000</b>	<b>45.9453</b>	<b>\$1,111.89</b>

201607081

**10.7378** **205.9453** **160.0000** **45.9453**

Shoot The Moon 5 LLC

**10.7378** **205.9453** **160.0000** **45.9453**

**Company: Shoot The Moon Enterprises LLC (IT POSITION)****Period Control: 201607081**

Level 1 C	PTO Plan	Employee Name (Last Suffix, First MI)	Employment Status	Termination Date	Job Code	Pay Group Code	Org Level 1	Pay Rate	Earned Through	Hours Earned	Hours Taken	Available Balance	PTO Liability
9999	Vacation	Hatzenbeller, Mitch M.	Active		CORPMGT	SMLLCS	Corporate	21.1537	07/13/2016	82.8000	0.0000	82.8000	<b>\$1,751.53</b>
<b>9999</b>								<b>21.1537</b>		<b>82.8000</b>	<b>0.0000</b>	<b>82.8000</b>	
201607081								<b>21.1537</b>		<b>82.8000</b>	<b>0.0000</b>	<b>82.8000</b>	
Shoot The Moon Enterprises LLC								<b>21.1537</b>		<b>82.8000</b>	<b>0.0000</b>	<b>82.8000</b>	

**Company: Shoot the Moon III LLC (MERIDIAN)****Period Control: 201607081**

Level 1 C	PTO Plan	Employee Name (Last Suffix, First MI)	Employment Status	Termination Date	Job Code	Pay Group Code	Org Level 1	Pay Rate	Earned Through	Hours Earned	Hours Taken	Available Balance	PTO Liability
0004	Vacation	Bishop, Matthew	Active		COOK	SMLLCH	Chili's Meridian	10.2500	06/28/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Cervantes, Kaden K.	Active		DISH	SMLLCH	Chili's Meridian	9.0000	06/02/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Dusenbery, Leeland	Active		SERVER	SMLLCH	Chili's Meridian	3.3500	05/19/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Hanssen, Garth	Active		MANAGER	SMLLCS	Chili's Meridian	19.2490	07/13/2016	82.8000	0.0000	82.8000	1,593.82
	Vacation	Kennedy, Ken P.	Active		GM	SMLLCS	Chili's Meridian	28.3173	07/13/2016	111.6000	40.0000	71.6000	2,027.52
	Vacation	Pritchett Harriss, Billie	Active		MANAGER	SMLLCS	Chili's Meridian	21.6346	07/13/2016	46.2000	0.0000	46.2000	999.52
	Vacation	Rodin, Julia A.	Active		HOST	SMLLCH	Chili's Meridian	8.0000	06/07/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Wieland, Anthony	Active		DISH	SMLLCH	Chili's Meridian	10.0000	06/06/2016	0.0000	0.0000	0.0000	0.00
<b>0004</b>								<b>12.5274</b>		<b>240.6000</b>	<b>40.0000</b>	<b>200.6000</b>	<b>\$4,620.86</b>
201607081								<b>12.5274</b>		<b>240.6000</b>	<b>40.0000</b>	<b>200.6000</b>	
Shoot the Moon III LLC								<b>12.5274</b>		<b>240.6000</b>	<b>40.0000</b>	<b>200.6000</b>	

**Company: Shoot The Moon of Idaho LLC****Period Control: 201607081****Restaurant: POCATELLO**

Level 1 C	PTO Plan	Employee Name (Last Suffix, First MI)	Employment Status	Termination Date	Job Code	Pay Group Code	Org Level 1	Pay Rate	Earned Through	Hours Earned	Hours Taken	Available Balance	PTO Liability
0001	Vacation	Andrus, Heaven	Active		SERVER	SMLLCH	Chili's Pocatello	3.3500	06/19/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Browning, Stephanie	Active		MANAGER	SMLLCS	Chili's Pocatello	22.1154	07/13/2016	46.2000	16.0000	30.2000	667.89
	Vacation	Docekaj, Jeralyn	Active		MANAGER	SMLLCS	Chili's Pocatello	18.7500	07/13/2016	55.4100	0.0000	55.4100	1,038.94
	Vacation	Fundum, Michaela	Active		HOST	SMLLCH	Chili's Pocatello	7.2500	06/02/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Gibson, Jeremiah	Active		PREP	SMLLCH	Chili's Pocatello	11.5000	06/29/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Leach, Jared	Active		DISH	SMLLCH	Chili's Pocatello	9.0000	06/10/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Myrick, Tyler	Active		DISH	SMLLCH	Chili's Pocatello	9.2500	06/30/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Nelson, Matthew	Active		SERVER	SMLLCH	Chili's Pocatello	3.3500	06/02/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Reuwer, Patrick	Active		DISH	SMLLCH	Chili's Pocatello	9.0000	06/16/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Schaafs, Ryan	Active		GM	SMLLCS	Chili's Pocatello	25.4808	07/13/2016	55.4100	32.0000	23.4100	596.51
	Vacation	Utka, Jon	Active		COOK	SMLLCH	Chili's Pocatello	10.7500	07/13/2016	27.6922	0.0000	27.6922	297.69
<b>0001</b>								<b>11.5664</b>		<b>184.7122</b>	<b>48.0000</b>	<b>136.7122</b>	<b>\$2,601.02</b>

**Restaurant: FRANKLIN**

Level 1 C	PTO Plan	Employee Name (Last Suffix, First MI)	Employment Status	Termination Date	Job Code	Pay Group Code	Org Level 1	Pay Rate	Earned Through	Hours Earned	Hours Taken	Available Balance	PTO Liability
0901	Vacation	Bishop, Matthew	Terminated	06/29/2016	COOK	SMLLCH	Chili's Franklin	10.2500	06/28/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Daniel, Peter F.	Active		SERVER	SMLLCH	Chili's Franklin	3.3500	06/08/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Davis, Laura	Active		COOK	SMLLCH	Chili's Franklin	10.0000	06/16/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Harriss, Roger	Active		MANAGER	SMLLCS	Chili's Franklin	20.6731	07/13/2016	21.5600	0.0000	21.5600	445.71
	Vacation	Hawker, Kaige B.	Active		HOST	SMLLCH	Chili's Franklin	7.5000	06/10/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Krakow, Sara	Active		SERVER	SMLLCH	Chili's Franklin	3.3500	06/09/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Maki, Amelia M.	Active		SERVER	SMLLCH	Chili's Franklin	3.3500	06/16/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Perkins, Alan	Active		COOK	SMLLCH	Chili's Franklin	10.0000	06/20/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Sanford, Amy	Active		MANAGER	SMLLCS	Chili's Franklin	19.3125	07/13/2016	55.4100	8.0000	47.4100	915.61
	Vacation	Schlekeyway, Michelle P.	Active		BAR	SMLLCH	Chili's Franklin	6.5000	07/13/2016	30.7691	0.0000	30.7691	200.00
	Vacation	Scrivner, Kendra B.	Active		SERVER	SMLLCH	Chili's Franklin	3.3500	06/15/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Via, Isaiah	Active		GM	SMLLCS	Chili's Franklin	25.0000	07/13/2016	55.4100	0.0000	55.4100	1,385.25
	Vacation	Wilkinson, Sandra D.	Active		SERVER	SMLLCH	Chili's Franklin	3.3500	06/16/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Wilkinson, Steve	Active		COOK	SMLLCH	Chili's Franklin	11.2500	07/13/2016	13.8461	0.0000	13.8461	155.77
<b>0901</b>								<b>9.8025</b>		<b>176.9953</b>	<b>8.0000</b>	<b>168.9953</b>	<b>\$3,102.34</b>

**Restaurant: BROADWAY**

Level 1 C	PTO Plan	Employee Name (Last Suffix, First MI)	Employment Status	Termination Date	Job Code	Pay Group Code	Org Level 1	Pay Rate	Earned Through	Hours Earned	Hours Taken	Available Balance	PTO Liability
0903	Vacation	Baez, Omar	Active		COOK	SMLLCH	Chili's Broadway	14.0000	06/29/2016	18.4615	0.0000	18.4615	258.46
	Vacation	Brown, Kenneth	Active		MANAGER	SMLLCS	Chili's Broadway	19.2308	07/13/2016	55.4100	32.0000	23.4100	450.19
	Vacation	Ercanbrack, Forrest	Active		GM	SMLLCS	Chili's Broadway	26.4423	07/13/2016	82.8000	72.0000	10.8000	285.58
	Vacation	King, Justin D.	Active		MANAGER	SMLLCS	Chili's Broadway	20.6731	07/13/2016	55.4100	0.0000	55.4100	1,145.50
	Vacation	Lickley, Austin	Active		SERVER	SMLLCH	Chili's Broadway	3.3500	06/06/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Ramirez, Jorge	Active		COOK	SMLLCH	Chili's Broadway	11.0000	06/29/2016	18.4615	0.0000	18.4615	203.08
	Vacation	Robone, Chris	Active		SERVER	SMLLCH	Chili's Broadway	3.3500	06/06/2016	0.0000	0.0000	0.0000	0.00
<b>0903</b>								<b>14.0066</b>		<b>230.5430</b>	<b>104.0000</b>	<b>126.5430</b>	<b>\$2,342.80</b>

**Restaurant: TWIN FALLS**

Level 1 C	PTO Plan	Employee Name (Last Suffix, First MI)	Employment Status	Termination Date	Job Code	Pay Group Code	Org Level 1	Pay Rate	Earned Through	Hours Earned	Hours Taken	Available Balance	PTO Liability
0918	Vacation	Birdsong, Angela M.	Active		SERVER	SMLLCH	Chili's Twin Falls	3.3500	06/09/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Garcia, Antonio M.	Active		COOK	SMLLCH	Chili's Twin Falls	16.0000	07/13/2016	27.6922	0.0000	27.6922	443.08
	Vacation	Hawkes, Cynthia	Active		SERVER	SMLLCH	Chili's Twin Falls	9.0000	06/04/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Parker, Tyler	Active		MANAGER	SMLLCS	Chili's Twin Falls	22.1154	07/13/2016	82.8000	40.0000	42.8000	946.54
	Vacation	Patterson, William	Active		DISH	SMLLCH	Chili's Twin Falls	9.5000	06/29/2016	18.4615	0.0000	18.4615	175.38
	Vacation	Perez, Mariana	Active		COOK	SMLLCH	Chili's Twin Falls	13.2500	07/13/2016	19.9999	0.0000	19.9999	265.00
	Vacation	Petersen, Julia	Active		HOST	SMLLCH	Chili's Twin Falls	8.0000	06/28/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Quevedo, Michelle K.	Active		SERVER	SMLLCH	Chili's Twin Falls	3.3500	06/27/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Rice, Andrew	Active		GM	SMLLCS	Chili's Twin Falls	26.4423	07/13/2016	82.8000	40.0000	42.8000	1,131.73
	Vacation	Rowden, Skyler J.	Active		COOK	SMLLCH	Chili's Twin Falls	9.5000	06/28/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Torres, Esteban	Active		MANAGER	SMLLCS	Chili's Twin Falls	20.6731	07/13/2016	55.4400	40.0000	15.4400	319.19
	Vacation	Wright, Sara K.	Active		HOST	SMLLCH	Chili's Twin Falls	7.2500	05/31/2016	0.0000	0.0000	0.0000	0.00
<b>0918</b>								<b>12.3692</b>		<b>287.1937</b>	<b>120.0000</b>	<b>167.1937</b>	<b>\$3,280.92</b>

**POSITION: AREA DIRECTOR**

Level 1 C	PTO Plan	Employee Name (Last Suffix, First MI)	Employment Status	Termination Date	Job Code	Pay Group Code	Org Level 1	Pay Rate	Earned Through	Hours Earned	Hours Taken	Available Balance	PTO Liability
9999	Vacation	Anderson, Bryan	Active		MANAGER	SMLLCS	Corporate	45.6731	07/13/2016	111.6000	76.0000	35.6000	<b>\$1,625.96</b>
<b>9999</b>								<b>45.6731</b>		<b>111.6000</b>	<b>76.0000</b>	<b>35.6000</b>	
201607081								<b>12.3518</b>		<b>991.0442</b>	<b>356.0000</b>	<b>635.0442</b>	
Shoot The Moon of Idaho LLC								<b>12.3518</b>		<b>991.0442</b>	<b>356.0000</b>	<b>635.0442</b>	

**Company: Shoot The Moon of Montana LLC****Period Control: 201607081****Restaurant: GREAT FALLS**

Level 1 C	PTO Plan	Employee Name (Last Suffix, First MI)	Employment Status	Termination Date	Job Code	Pay Group Code	Org Level 1	Pay Rate	Earned Through	Hours Earned	Hours Taken	Available Balance	PTO Liability
0002	Vacation	Adams, Sequoia E.	Active		SERVER	SMLLCH	Chili's Great Falls	8.0500	06/11/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Cabrales, Eulalio	Active		MANAGER	SMLLCS	Chili's Great Falls	21.1538	07/13/2016	54.9200	40.0000	14.9200	315.61
	Vacation	Claycomb, Dylan	Active		COOK	SMLLCH	Chili's Great Falls	11.0000	06/14/2016	0.0000	0.0000	0.0000	0.00
	Vacation	DeLong, Dakota J.	Terminated	07/04/2016	COOK	SMLLCH	Chili's Great Falls	11.0000	06/23/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Elam, Joseph M.	Active		PREP	SMLLCH	Chili's Great Falls	10.0000	06/25/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Fischer, William	Active		COOK	SMLLCH	Chili's Great Falls	13.0000	07/13/2016	16.9231	0.0000	16.9231	220.00
	Vacation	French, Cody	Active		GM	SMLLCS	Chili's Great Falls	25.4808	07/13/2016	55.4100	16.0000	39.4100	1,004.20
	Vacation	Hernandez, Lisa	Active		MANAGER	SMLLCS	Chili's Great Falls	19.2308	07/13/2016	43.1200	0.0000	43.1200	829.23
	Vacation	Holian, Garion	Active		SERVER	SMLLCH	Chili's Great Falls	8.0500	06/03/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Jergesen, Amanda M.	Terminated	06/29/2016	SERVER	SMLLCH	Chili's Great Falls	8.0500	06/04/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Price, Daniel	Active		MANAGER	SMLLCS	Chili's Great Falls	19.2308	07/13/2016	30.8000	0.0000	30.8000	592.31
	Vacation	Robinson, Cody B.	Active		COOK	SMLLCH	Chili's Great Falls	13.0000	07/13/2016	24.6154	0.0000	24.6154	320.00
<b>0002</b>								<b>13.3904</b>		<b>225.7884</b>	<b>56.0000</b>	<b>169.7884</b>	<b>\$3,281.35</b>

**Restaurant: HELENA**

Level 1 C	PTO Plan	Employee Name (Last Suffix, First MI)	Employment Status	Termination Date	Job Code	Pay Group Code	Org Level 1	Pay Rate	Earned Through	Hours Earned	Hours Taken	Available Balance	PTO Liability
0003	Vacation	Clark, Elizabeth R.	Active		HOST	SMLLCH	Chili's Helena	8.0500	06/22/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Forsman, Elaine	Active		SERVER	SMLLCH	Chili's Helena	8.0500	07/13/2016	19.9999	0.0000	19.9999	161.00
	Vacation	Hofweber, John J.	Active		PREP	SMLLCH	Chili's Helena	10.0000	06/28/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Hottman Jr., Michael E.	Active		GM	SMLLCS	Chili's Helena	26.4423	07/13/2016	24.6400	0.0000	24.6400	651.54
	Vacation	Kerker, Kelsey	Active		QUAL	SMLLCH	Chili's Helena	9.0000	06/22/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Nelson, Daniel	Active		COOK	SMLLCH	Chili's Helena	11.0000	06/30/2016	0.0000	0.0000	0.0000	0.00
	Vacation	Nelson, Jaime	Active		MANAGER	SMLLCS	Chili's Helena	19.2308	07/13/2016	36.9600	0.0000	36.9600	710.77
	Vacation	O' Halloran, Adam	Active		DISH	SMLLCH	Chili's Helena	9.7500	06/29/2016	4.6153	0.0000	4.6153	45.00
	Vacation	Rogers, Jamie	Active		SERVER	SMLLCH	Chili's Helena	8.0500	06/21/2016	0.0000	0.0000	0.0000	0.00
<b>0003</b>								<b>10.8982</b>		<b>86.2152</b>	<b>0.0000</b>	<b>86.2152</b>	<b>\$1,568.31</b>

201607081

**12.1845** **312.0036** **56.0000** **256.0036**

Shoot The Moon of Montana LLC

**12.1845** **312.0036** **56.0000** **256.0036****Company: Shoot The Moon of Washington LLC (NORTHTOWN)****Period Control: 201607081**

Level 1 C	PTO Plan	Employee Name (Last Suffix, First MI)	Employment Status	Termination Date	Job Code	Pay Group Code	Org Level 1	Pay Rate	Earned Through	Hours Earned	Hours Taken	Available Balance	PTO Liability
0935	Vacation	Ackerman, Bonnie L.	Active		MANAGER	SMLLCS	Chili's Northtown	20.9135	07/13/2016	111.6000	0.0000	111.6000	2,333.95
	Vacation	Atkinson, Carl M.	Active		GM	SMLLCS	Chili's Northtown	27.4038	07/13/2016	82.8000	64.0000	18.8000	515.19
	Vacation	Bannister, Eric	Active		COOK	SMLLCH	Chili's Northtown	11.7500	07/13/2016	19.9999	0.0000	19.9999	235.00
	Vacation	Chavez, Ramiro	Active		PREP	SMLLCH	Chili's Northtown	11.5000	07/13/2016	52.3076	0.0000	52.3076	601.54
	Vacation	Daniels, Paul T.	Active		COOK	SMLLCH	Chili's Northtown	14.0000	06/29/2016	15.3846	0.0000	15.3846	215.38
	Vacation	Marple, Derik	Active		AM	SMLLCS	Chili's Northtown	19.2308	07/13/2016	32.3400	0.0000	32.3400	621.92
	Vacation	Martell, Gabriel	Active		COOK	SMLLCH	Chili's Northtown	11.5000	07/13/2016	19.9999	0.0000	19.9999	230.00
	Vacation	Stanley, Bridget	Active		MANAGER	SMLLCS	Chili's Northtown	19.2308	07/13/2016	55.4100	0.0000	55.4100	1,065.58
	Vacation	Villanueva, Juan C.	Active		COOK	SMLLCH	Chili's Northtown	11.0000	06/23/2016	0.0000	0.0000	0.0000	0.00
<b>0935</b>								<b>14.7342</b>		<b>389.8420</b>	<b>64.0000</b>	<b>325.8420</b>	<b>\$5,818.56</b>

201607081

**14.7342** **389.8420** **64.0000** **325.8420****SHOOT THE MOON ESTATE - PTO LIABILITY****\$38,680.52**

Schedule 1.4(iii)

Deposits Made

## DETAILED TRIAL BALANCE BY Month FOR 2015

Shoot the Moon Enterprises LLC

User: nmanos

Deposits Made

General Ledger

Natural Accounts: 19700 19700  
to

10/1/2015 to 12/31/2015

Period: 10 to 12

Year: 2015

Sort By: Natural, No Subtotal

Dates:

<b>Account:</b>		<b>Description:</b> Security Deposits			<b>Beginning Balance:</b>		\$0.00
<b>Trx Date</b>	<b>Orig. Audit Trail Distribution Reference</b>	<b>Org. Mst. Date</b>	<b>Orig. Master Number</b>	<b>Orig. Master Name</b>	<b>Debit</b>	<b>Credit</b>	
11/30/2015	PMTRX00000181 Purchases	11/3/2015	2221856558	Idaho Power (2221856558)	\$3,700.00		
11/30/2015	PMTRX00000189 Deposit - Meridian	11/13/2015	62622266138 1115	Intermountain Gas Company	\$1,775.00		
				<b>Net Change</b>	<b>Ending Balance</b>		
<b>Account STM03-0000 Totals</b>				<b>\$5,475.00</b>	<b>\$5,475.00</b>	<b>\$5,475.00</b>	<b>\$0.00</b>

<b>Account:</b>		<b>Description:</b> Security Deposits			<b>Beginning Balance:</b>		\$0.00
<b>Trx Date</b>	<b>Orig. Audit Trail Distribution Reference</b>	<b>Org. Mst. Date</b>	<b>Orig. Master Number</b>	<b>Orig. Master Name</b>	<b>Debit</b>	<b>Credit</b>	
12/30/2015	PMTRX00000106 Purchases	12/17/2015	4185762789 1215 DEP	Avista (4185762789)	\$8,772.00		
				<b>Net Change</b>	<b>Ending Balance</b>		
<b>Account STM05-0000 Totals</b>				<b>\$8,772.00</b>	<b>\$8,772.00</b>	<b>\$8,772.00</b>	<b>\$0.00</b>

<b>Account:</b>		<b>Description:</b> Security Deposits			<b>Beginning Balance:</b>		\$0.00
<b>Trx Date</b>	<b>Orig. Audit Trail Distribution Reference</b>	<b>Org. Mst. Date</b>	<b>Orig. Master Number</b>	<b>Orig. Master Name</b>	<b>Debit</b>	<b>Credit</b>	
11/30/2015	PMTRX00000105 Purchases	11/25/2015	1796890937 1115 DEP	Avista	\$9,206.00		
				<b>Net Change</b>	<b>Ending Balance</b>		
<b>Account STM22-0000 Totals</b>				<b>\$9,206.00</b>	<b>\$9,206.00</b>	<b>\$9,206.00</b>	<b>\$0.00</b>

<b>Account:</b>		<b>Description:</b> Security Deposits			<b>Beginning Balance:</b>		\$0.00
<b>Trx Date</b>	<b>Orig. Audit Trail Distribution Reference</b>	<b>Org. Mst. Date</b>	<b>Orig. Master Number</b>	<b>Orig. Master Name</b>	<b>Debit</b>	<b>Credit</b>	
10/31/2015	PMTRX00000167 Deposit for Moonshine	10/13/2015	210543922 1015 DEP	Energy West (210543922)	\$2,254.00		
11/30/2015	PMTRX00000125 OTB Great Falls Deposit	11/2/2015	210579092 DEPOSIT	Energy West - Montana	\$1,758.00		
11/30/2015	PMTRX00000162 Deposit OTB Great Falls	11/10/2015	3258073-0 1115	Northwestern Energy (3258073-0)	\$8,050.00		
				<b>Net Change</b>	<b>Ending Balance</b>		
<b>Account STMEN-0000 Totals</b>				<b>\$12,062.00</b>	<b>\$12,062.00</b>	<b>\$12,062.00</b>	<b>\$0.00</b>

<b>Account:</b>		<b>Description:</b> Security Deposits			<b>Beginning Balance:</b>		\$0.00
<b>Trx Date</b>	<b>Orig. Audit Trail Distribution Reference</b>	<b>Org. Mst. Date</b>	<b>Orig. Master Number</b>	<b>Orig. Master Name</b>	<b>Debit</b>	<b>Credit</b>	
11/12/2015	PMTRX00000186 Purchases	11/12/2015	2221856574	Idaho Power (2221856574)	\$3,793.00		
11/30/2015	PMTRX00000012 #903 Intermountain Gas Co Depo	11/19/2015	21085610869 1115 DEP	Intermountain Gas Company	\$1,395.00		
11/30/2015	PMTRX00000012 #918 Intermountain Gas Co Depo	11/16/2015	23155047154 1115 DEP	Intermountain Gas Company	\$2,187.00		
11/30/2015	PMTRX00000144 Purchases	11/12/2015	53108900936 1115	Intermountain Gas Company	\$1,731.00		
11/30/2015	PMTRX00000181 Purchases	11/16/2015	221856533	Idaho Power (2221856533)	\$3,757.00		
11/30/2015	PMTRX00000193 Purchases	11/29/2015	2221854546	Idaho Power (2221854546)	\$3,776.00		
11/30/2015	PMTRX00000196 Deposit - Pocatello	11/10/2015	52268743383 1115	Intermountain Gas Company	\$2,555.00		
				<b>Net Change</b>	<b>Ending Balance</b>		
<b>Account STMID-0000 Totals</b>				<b>\$19,194.00</b>	<b>\$19,194.00</b>	<b>\$19,194.00</b>	<b>\$0.00</b>

Account:		Description: Security Deposits			Beginning Balance:		\$0.00
Trx Date	Orig. Audit Trail Distribution Reference	Org. Mst. Date	Orig. Master Number	Orig. Master Name	Debit	Credit	
11/30/2015	PMTRX00000042 Purchases	11/23/2015	3258063-1 1115	NorthWestern Energy	\$505.00		
11/30/2015	PMTRX00000068 Northwestern Deposit-Helena	11/23/2015	32579096 1115	NorthWestern Energy (3257909-6)	\$9,830.00		
11/30/2015	PMTRX00000145 Purchases	11/9/2015	32580649 1115	Northwestern Energy (3258064-9)	\$7,390.00		
11/30/2015	PMTRX00000145 Purchases	11/9/2015	32580680 1115	Northwestern Energy (3258068-0)	\$1,910.00		
11/30/2015	PMTRX00000145 Purchases	11/9/2015	32580722 1115	Northwestern Energy (3258072-2)	\$5,385.00		
				Net Change	Ending Balance		
Account STMMT-0000 Totals				\$25,020.00	\$25,020.00	\$25,020.00	\$0.00

Account:		Description: Security Deposits			Beginning Balance:		\$0.00
Trx Date	Orig. Audit Trail Distribution Reference	Org. Mst. Date	Orig. Master Number	Orig. Master Name		Debit	Credit
11/30/2015	PMTRX00000105 Purchases	11/25/2015	9413942919 1115 DEP	Avista		\$8,680.00	
				Net Change	Ending Balance		
Account STMWA-0000 Totals				\$8,680.00	\$8,680.00	\$8,680.00	\$0.00

													<u>Accounts</u>	<u>Beginning Balance</u>	<u>Net Change</u>	<u>Ending Balance</u>	<u>Debit</u>	<u>Credit</u>
<b>Grand Totals:</b>													<b>7</b>	<b>\$0.00</b>	<b>\$88,409.00</b>	<b>\$88,409.00</b>	<b>\$88,409.00</b>	<b>\$0.00</b>
Stores: 0000	0001	0002	0003	0004	0901	0903	0918	0927	0935	0936	0937	9999						

Date: 6/10/2016 1:15:21 PM

**DETAILED TRIAL BALANCE BY Month FOR 2016**

1 of 1

**Shoot the Moon Enterprises LLC**

User: nmanos

**Deposits Made****General Ledger****Natural Accounts: 19700 19700****1/1/2016 to 5/31/2016****Period: 1 to 5****Year: 2016****Sort By: Natural, No Subtotal****to Dates:**

<b>Account:</b>		<b>Description:</b> Security Deposits			<b>Beginning Balance:</b>	
<b>Trx Date</b>	<b>Orig. Audit Trail Distribution Reference</b>	<b>Org. Mst. Date</b>	<b>Orig. Master Number</b>	<b>Orig. Master Name</b>	<b>Debit</b>	<b>Credit</b>
				<b>Net Change</b>	<b>Ending Balance</b>	
Account STM03-0000 Totals				\$0.00	\$5,475.00	\$0.00

<b>Account:</b>		<b>Description:</b> Security Deposits			<b>Beginning Balance:</b>	
<b>Trx Date</b>	<b>Orig. Audit Trail Distribution Reference</b>	<b>Org. Mst. Date</b>	<b>Orig. Master Number</b>	<b>Orig. Master Name</b>	<b>Debit</b>	<b>Credit</b>
				<b>Net Change</b>	<b>Ending Balance</b>	
Account STM05-0000 Totals				\$0.00	\$8,772.00	\$0.00

<b>Account:</b>		<b>Description:</b> Security Deposits			<b>Beginning Balance:</b>	
<b>Trx Date</b>	<b>Orig. Audit Trail Distribution Reference</b>	<b>Org. Mst. Date</b>	<b>Orig. Master Number</b>	<b>Orig. Master Name</b>	<b>Debit</b>	<b>Credit</b>
				<b>Net Change</b>	<b>Ending Balance</b>	
Account STM22-0000 Totals				\$0.00	\$9,206.00	\$0.00

<b>Account:</b>		<b>Description:</b> Security Deposits			<b>Beginning Balance:</b>	
<b>Trx Date</b>	<b>Orig. Audit Trail Distribution Reference</b>	<b>Org. Mst. Date</b>	<b>Orig. Master Number</b>	<b>Orig. Master Name</b>	<b>Debit</b>	<b>Credit</b>
1/20/2016	PMTRX00000228 OTB Great Falls Deposit	1/20/2016	464370-001 OTB DEP	Great Falls, City (464370-001)	\$1,170.00	
3/29/2016	PMTRX00000499 OTB Great Falls Gas	3/1/2016	200028555 03SECURITY	Energy West- Montana #200028555		\$18.50
4/1/2016	PMVPY00000114 Purchases		200028555 03SECURITY	Energy West- Montana #200028555	\$18.50	
				<b>Net Change</b>	<b>Ending Balance</b>	
Account STMEN-0000 Totals				\$1,170.00	\$13,232.00	\$1,188.50

<b>Account:</b>		<b>Description:</b> Security Deposits			<b>Beginning Balance:</b>	
<b>Trx Date</b>	<b>Orig. Audit Trail Distribution Reference</b>	<b>Org. Mst. Date</b>	<b>Orig. Master Number</b>	<b>Orig. Master Name</b>	<b>Debit</b>	<b>Credit</b>
				<b>Net Change</b>	<b>Ending Balance</b>	
Account STMID-0000 Totals				\$0.00	\$19,194.00	\$0.00

<b>Account:</b>		<b>Description:</b> Security Deposits			<b>Beginning Balance:</b>	
<b>Trx Date</b>	<b>Orig. Audit Trail Distribution Reference</b>	<b>Org. Mst. Date</b>	<b>Orig. Master Number</b>	<b>Orig. Master Name</b>	<b>Debit</b>	<b>Credit</b>
1/20/2016	PMTRX00000228 City of Great Falls Deposit	1/20/2016	464390-001 DEPOSIT	Great Falls, City (464390-001)	\$3,250.00	
				<b>Net Change</b>	<b>Ending Balance</b>	
Account STMMT-0000 Totals				\$3,250.00	\$28,270.00	\$3,250.00

<b>Account:</b>		<b>Description:</b> Security Deposits			<b>Beginning Balance:</b>	
<b>Trx Date</b>	<b>Orig. Audit Trail Distribution Reference</b>	<b>Org. Mst. Date</b>	<b>Orig. Master Number</b>	<b>Orig. Master Name</b>	<b>Debit</b>	<b>Credit</b>
				<b>Net Change</b>	<b>Ending Balance</b>	
Account STMWA-0000 Totals				\$0.00	\$8,680.00	\$0.00



Stores: 0000 0001 0002 0003 0004 0901 0903 0918 0927 0935 0936 0937 9999

Schedule 1.6

Allocation of Purchase Price

TO BE PREPARED

Schedule 2. 6

Schedule of Leases

## **Schedule of Assigned Leases**

### **Broadway**

- Lease between US Restaurant Properties Operating LP and Sydran Food Services III dated 12/26/96.
- First Amendment to Lease Agreement between Net Lease Funding 2005, LP and Brinker Restaurant Corporation, success-in-interest to Sydran Food Services dated 7/1/05.
- Memorandum of Assignment of Lease between Brinker Restaurant Corporation and Shoot the Moon, LLC dated 5/4/06.
- Assignment Agreement between Brinker Restaurant Corporation and Shoot the Moon, LLC.

### **Coeur D' Alene**

- Lease between Sydran Holdings VII, LLC and Sydran Food Services III, LP dated 12/17/99.
- Amendment to Lease between Sydran Holdings, VII, LLC and Sydran Food Services III, LP dated 6/29/00.
- Second Amendment to Lease between Sydran Holdings VII, LLC and Brinker Restaurant Corporation dated 11/15/01.
- Sublease Agreement between Brinker Restaurant Corporation and Shoot the Moon, LLC.
- Second Amendment to Sublease Agreement and Franchise Agreement between BII, BRC, and BIPC and STM I, STM II, STM Enterprises and Ken Hatzenbeller dated 10/1/11.
- Amendment to Sublease Agreement and Franchise Agreement between BII, BRC, and BIPC and STM I, STM II, STM Enterprises and Ken Hatzenbeller dated 10/1/10.
- Third Amendment to Sublease Agreement and Franchise Agreement between BII, BRC and BIPC and STM I, STM II, STM Enterprises and Ken Hatzenbeller dated 10/1/12.
- Fourth Amendment to Sublease Agreement between BII, BRC, and BIPC and STM I, STM II, STM Enterprises and Ken Hatzenbeller dated 10/1/13.
- Fifth Amendment to Sublease Agreement between BII, BRC, and BIPC and STM I, STM II, STM Enterprises and Ken Hatzenbeller dated 10/1/14.

### **Downtown Spokane**

- Ground Lease between Mission Properties, LLC and Sydran Food Services III, LP dated 1/17/00.
- Lease between Sydran Group Holdings II, LLC and Brinker Restaurant Corporation dated 11/15/01.
- First Amendment to Lease between Sydran Group Holdings II, LLC and Brinker Restaurant Corporation dated 11/15/01.
- Sublease Agreement between Brinker Restaurant Corporation and Shoot the Moon, LLC dated 5/6/06.

- Amendment to Sublease Agreement and Franchise Agreement between BII, BRC, and BIPC and STM I, STM II, STM Enterprises and Ken Hatzenbeller dated 10/1/10.
- Second Amendment to Sublease Agreement and Franchise Agreement between BII, BRC and BIPC and STM I, STM II, STM Enterprises and Hatzenbeller.
- Third Amendment to Sublease Agreement and Franchise Agreement between BII, BRC and BIPC and STM I, STM II, STM Enterprises and Ken Hatzenbeller dated 10/1/12.
- Fourth Amendment to Sublease Agreement between BIPC and BRC and STM and Hatzenbeller dated 10/1/13.
- Fifth Amendment to Sublease Agreement between BIPB and BRC and STM I and Ken Hatzenbeller dated 10/1/14.

### **Franklin**

- Lease Agreement between Hawkins-Smith and Snowstate Restaurant Corporation dated 9/6/1989.
- First Amendment to Lease Agreement between Franklin Towne Plaza, LLC and Brinker Restaurant Corporation dated 4/14/05.
- Extension Agreement between Franklin Town Plaza, LLC and Shoot the Moon, LLC, successor-in-interest to Snowstate Restaurant Corporation dated 3/10/15.

### **Idaho Falls**

- Master Lease between Syndran Holdings XI, LLC and Syndran Food Services III, LP dated 6/1/00.
- Sublease Agreement between Brinker Restaurant Corporation and Shoot the Moon, LLC dated 5/4/06.
- Amendment to Sublease Agreement and Franchise Agreement between BII, BRC, BIPC, and STM I, STM II, STM Enterprises, and Hatzenbeller dated 10/1/10.
- First Amendment to Lease between Sydran Holdings XI and Brinker Restaurant Corporation dated 11/15/01.
- Second Amendment to Sublease Agreement and Franchise Agreement between BII, BRC, BIPC and STM I, STM II, STM Enterprises, Hatzenbeller dated 10/1/11.
- Third Amendment to Sublease Agreement between BII, BRC, BIPC and STM I, STM II, STM Enterprises, Hatzenbeller dated 10/1/12.
- Fourth Amendment to Sublease Agreement and Franchise Amendment between BII, BRC, BIPC and STM I, STM II, STM Enterprises, Hatzenbeller dated 10/1/13.
- Fifth Amendment to Sublease Agreement between BIPC, BRC and STM I and Hatzenbeller dated 10/1/13.
- Ground Lease between Dane H. Watkins and Sherry Watkins and the Hope C. Watkins Family Limited Partnership and Sydran Food Services dated 8/27/99.

### **Meridian**

- Shopping Center Lease between Prime A Investment, LLC and Shoot the Moon, LLC dated 4/10/08.
- Addendum to Shopping Center Lease between Prime A Investment, LLC and Shoot the Moon, LLC dated 4/10/08.
- Addendum #2 to Shopping Center Lease between Prime A Investment, LLC and Shoot the Moon, LLC dated 4/10/08.
- Lease Commencement Agreement between Prime A Investment, LLC and Shoot the Moon, LLC dated 9/5/08.

### **Northtown**

- Shopping Center Lease between Price Spokane Limited Partnership and Sydran Food Services III, LP dated 9/17/99.
- First Amendment to Lease Agreement between Price Spokane Limited Partnership and Sydran Food Services III, LP dated 4/21/00.
- Rider to Lease Agreement between Price Spokane Limited Partnership and Sydran Food Services, Inc. dated 9/17/99.

### **Twin Falls**

- Lease Agreement between Meldco, Inc. and Franklin Restaurant Corporation dated 10/12/94.
- Memorandum of Lease dated 10/11/94. *Copy not on file.*
- Assignment and Assumption of Lease between Brinker Restaurant Corporation and Shoot the Moon, LLC dated 12/26/96.
- Assignment and Assumption of Lease dated 11/15/01. *Copy not on file.*
- Assignment Agreement Lease between Brinker Restaurant Corporation and Shoot the Moon, LLC.
- Landlord's Consent to Assignment and Estoppel Certificate dated 4/25/06.
- Renewal and Release Agreement between Meldco, Inc. and Shoot the Moon, LLC dated 8/21/14.

### **Pocatello**

- Commercial Lease Agreement between Shoot the Moon Realty, LLC and Shoot the Moon of Idaho, LLC dated 10/5/12.

Schedule 3.8

Seller's Broker(s)

**Seller's Broker(s)**

Robert N. Hunziker, Sr.  
Advanced Restaurant Sales  
111 Village Parkway, Building 2  
Marietta, GA 30067  
Phone: (678) 229-2384  
Fax: (678) 229-2385  
E-mail: rhunziker@arsales.biz



**ADDENDUM NO. 1 TO  
AGREEMENT REGARDING SALE OF COMMERCIAL REAL ESTATE  
IN HELENA, MONTANA**

THIS ADDENDUM NO. 1 TO AGREEMENT REGARDING SALE OF COMMERCIAL REAL ESTATE (the "Addendum") is hereby entered to be effective as of July 29, 2016 (the "Effective Date") by and between Jeremiah Foster, in his capacity as Chapter 11 Trustee of Shoot The Moon, LLC, a Montana limited liability company ("Seller"), and Paradigm Restaurants, L.C., a Utah limited liability company, or assigns ("Buyer").

**RECITALS**

- A. Seller and Buyer are parties to that certain Agreement Regarding Sale of Commercial Real Estate of even date herewith (the "Agreement").
- B. Seller and Buyer desire to amend the Agreement on the terms outlined herein.
- C. Capitalized terms not defined in this Addendum shall have the meanings given them in the Agreement.

**AMENDMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Description of the Transaction. The purchase of the Property by Buyer is a part of a larger transaction whereby Buyer is purchasing from Seller a total of eleven (11) separate Chili's Grill and Bar franchise restaurants (collectively the "Business"), including the Property, and the Chili's Grill and Bar restaurant buildings and other improvements situated on two (2) other fee simple properties owned by Seller ("Other Fee Simple Properties"). The Property and the Other Fee Simple Properties are sometimes collectively referred to as the "Fee Simple Properties". Eight (8) of the Chili's Grill and Bar restaurants comprising the Business are operated on leased properties (the "Leased Properties") The Fee Simple Properties and the

Leased Properties are collectively referred to as the “Purchased Restaurants.” Seller holds Franchise Agreements with Brinker International, Inc., the franchisor of Chili’s Grill and Bar (“Franchisor”), for each of the Fee Simple Properties and Leased Properties (the “Franchise Agreements”). Concurrent with this Agreement, Buyer has entered into the following agreements relating to the purchase and sale of the Business and the Fee Simple Properties: (a) Agreement Regarding Sale of Commercial Real Estate between Jeremiah Foster, in his capacity as Chapter 11 Trustee of Shoot The Moon, LLC, a Montana limited liability company, as Seller, and Buyer for the Chili’s Grill and Bar restaurant and related improvements located at 1599 Yellowstone Avenue, Pocatello, Idaho, dated of even date herewith; (b) the Agreement Regarding Sale of Commercial Real Estate between Jeremiah Foster, in his capacity as Chapter 11 Trustee of Shoot The Moon, LLC, a Montana limited liability company, as Seller, and Buyer for the Chili’s Grill and Bar restaurant and related improvements located at 1420 Marketplace Drive, Suite A, Great Falls, Montana; and (c) the Asset Purchase Agreement (the “APA”) between Jeremiah Foster, in his capacity as Chapter 11 Trustee of Shoot The Moon, LLC, a Montana limited liability company, as Seller, and Buyer for the Business, which includes all Purchased Assets (as defined in the APA) and all Assumed Liabilities (as defined in the APA) (this Agreement, the two (2) other Agreements Regarding Sale of Commercial Real Estate and the APA being hereafter collectively referred to as the “Related Agreements”) (the “Transaction”).

2. Personal Property: In exchange for an additional payment of Twenty-Six Thousand and 00/100 (\$26,000.00) Buyer shall purchase from Seller the personal property listed on Exhibit “A” (the “Personal Property”). Such additional sum shall be paid at Closing. Seller shall transfer the Personal Property free of all liens, claims and encumbrances as is and without warranty.

3. Buyer's Due Diligence Review. Buyer may elect not to proceed with the Transaction, if the following matters are not completed to Buyer's satisfaction:

a. Commitment for Title Insurance. Within five (5) days after the full execution of this Agreement, Buyer shall obtain from the Title Company (as defined below) a commitment for ALTA owner's standard coverage title insurance policy for the Property ("Commitment"). The Commitment shall be in the amount of the Purchase Price. Buyer shall have until expiration of the Due Diligence Period to review and to object in writing to any easements, liens, encumbrances or other exceptions or requirements in the Commitment (the "Title Objections"). If Buyer fails to object within the time specified, then the condition of title to the Property reflected on the Commitment will be deemed approved. If the Title Objections are made prior to the expiration of the Due Diligence Period, Seller shall attempt to eliminate the matters covered by the Title Objection within fifteen (15) days of receipt of such Title Objections. If Seller is unable or unwilling to satisfy the Title Objections to Buyer's satisfaction, Buyer may terminate the Agreement. Seller shall eliminate at Seller's sole cost and expense any deeds of trust, mortgages, judgment liens, mechanics' liens, materialmen's liens and any other similar liens placed on or against the Property at or prior to the Closing.

b. Permitted Exceptions. All matters affecting title to the Property approved or waived by Buyer in accordance with the provisions of this Section shall be deemed the "Permitted Exceptions."

c. Buyer's Review of Due Diligence Materials. Buyer shall be entitled to review and approve all materials provided by Seller pursuant to this Agreement and the Related Agreements, or obtained by Buyer, including but not limited to all documents and studies relating to the Business, Fee Simple Properties, and Leased Properties in the control or possession of Seller. Seller shall deliver such materials to Buyer within five (5) days after the Effective Date. If Buyer does not consummate the Transaction, Buyer shall return to Seller all of

the materials provided by Seller hereunder.

d. Site Visits. During the Due Diligence Period, the parties shall work together to establish dates and times on which representatives of Seller and Buyer can visit each Purchased Restaurant for the purposes of determining any imaging or maintenance issues. Buyer's obligation to proceed with the Transaction is subject to Buyer's on-site inspection of each Purchased Restaurant prior to the expiration of the Due Diligence Period.

e. Buyer's Due Diligence Review. Buyer shall have thirty-five (35) days after full execution of this Agreement to conduct its due diligence review of the Purchased Restaurants (the "Due Diligence Period"). The Due Diligence Period will be extended by an additional fifteen (15) days upon Purchaser's reasonable request. In addition to the on-site visits referenced above, Buyer shall have the right, but not the obligation to conduct surveys, professional inspections, or such other types of investigations deemed necessary by Buyer in its sole discretion, provided, that Buyer shall inform Seller of any tests or inspections, and shall schedule such tests or inspections at times approved by Seller, and Buyer shall indemnify and hold Seller harmless in connection with any claims arising from due diligence review by Buyer or Buyer's officers, employees, agents or representatives. To the extent that Buyer conducts any of the foregoing tests, Buyer will reasonably restore each Purchased Restaurant to the state at which it existed prior to the testing. Buyer may terminate this Agreement at any time and for any reason during the Due Diligence Period and receive a return of the Earnest Money, by notifying Seller in writing before the end of the Due Diligence Period. Buyer shall have no obligation to provide to Seller copies of any due diligence material obtained by Buyer, if this Agreement is terminated, unless Seller compensates Buyer for his costs of obtaining the due diligence material.

f. Independent Investigation. Buyer enters into this Agreement with the understanding that at Closing Buyer will be relying fully upon Buyer's independent investigation

and judgment and Buyer will purchase said Property “as is” without warranties, express or implied except as specifically provided herein. Buyer acknowledges that during the Due Diligence Period Buyer will have examined the Property and all improvements and Buyer enters into this Agreement in full reliance upon Buyer’s own independent investigation and judgment. Any prior verbal representations made by the Seller and Seller’s representatives do not modify or effect this Agreement. By signing this Agreement Buyer acknowledges having read and understood this entire Agreement, including its purchase of the Property “as is” without warranties, except as expressly set forth herein.

4. Representations and Warranties of Seller. Seller represents and warrants to, and agrees with, Buyer as of the date of this Agreement and the Closing Date as follows:

a. Binding Obligation. Subject to approval of the Sale Order (as defined in the APA) of the Bankruptcy Court in Bankruptcy Case No. 15-60979-RBK (the “Bankruptcy Case”), Seller has all requisite power and authority to enter into and perform its obligations under this Agreement and to carry out the Transaction. Subject to the approval of the Sale Order, the execution, delivery and performance by Seller of this Agreement does not and will not conflict with, or result in any violation of or default under, any ordinance, rule, regulation, judgment, order, decree, agreement, instrument or license applicable to Seller or to the Property or any of the Purchased Assets. Except as set forth herein, no consent, approval, order or authorization of, or registration, declaration or filing with, any court, administrative agency or commission or other governmental authority or instrumentality is required by or with respect to Seller in connection with its execution, delivery or performance of this Agreement.

b. Title. Subject to Bankruptcy Court approval of the Sale Order, Seller shall deliver the same to Buyer free of all liens and encumbrances, except for the Permitted Exceptions.

c. Litigation. Except for the Bankruptcy Case, to Seller’s knowledge, there are no lawsuits, claims, proceedings or investigations pending or, to the best knowledge of

Seller, threatened by or against or affecting Seller or the Property which could adversely way affect the Transaction contemplated by this Agreement or Buyer's right to use the Property.

d. Disclosure. To Seller's knowledge Seller has not withheld any material information adversely affecting or in any way relating to the Property.

e. Compliance with Laws. Seller is not, to its knowledge, in violation with respect to its use of the Property of any law, order, ordinance, rule or regulation of any governmental authority, including, without limitation, the Americans with Disabilities Act. To Seller's knowledge, there have been no private or governmental claims, citations, complaints, notices of violation or letters made, issued to or threatened against Seller by any governmental entity or private or other party for the impairment or diminution of, or damage, injury or other adverse effects to, the environment or public health resulting, in whole or in part, from the use or operation of the Property. In addition to the foregoing, Seller has duly complied with, and, to the best of Seller's knowledge, the Property is in compliance with, the provisions of all federal, state and local environmental, health and safety, and building laws, codes and ordinances and all rules and regulations promulgated thereunder.

f. Hazardous Materials. Seller has no actual knowledge of the presence or existence of any Hazardous Materials (as defined below) or petroleum underground storage tanks on the Property. From and after the date of this Agreement, Seller shall not cause or permit the presence, use, generation, release, discharge, storage, disposal, or transportation of any Hazardous Materials on, under, to or from the Property. As used in this Agreement, the term "Hazardous Materials" shall mean any hazardous or toxic waste, substance or material as presently defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. Section 9601, et. seq.; the Hazardous Materials Transportation Act, 49 U.S.C.A. Section 1801, et. seq.; the Resource Conversation and Recovery Act, 42 U.S.C.A. Section 6901, et. seq.; the Toxic Substances Control Act, 15 U.S.C.A. Section 2601, et. seq.; the

Federal Water Pollution Control Act, 33 U.S.C.A. Section 1251, et. seq.; and any state environmental laws.

g. Taxes and Assessments. There are impositions of real estate taxes or special assessments which currently encumber the Property as disclosed to Buyer in the Commitment. Seller has not received notice of, and has no other knowledge or information of, any proposed change in the valuation of the Property for real estate taxes from that assessed for the current assessment period, nor does Seller have any other knowledge or information of any action or proceeding designed to levy any special assessment against the Property except to the extent of valuations for real estate taxes payable in the year 2016. Seller has not received notice of, and has no other knowledge or information of, any possible future improvements by a governmental authority, any part of the cost of which would or might be assessed against the Property, or of any contemplated future assessments of any kind. There is no proceeding pending or presently being prosecuted for the reduction of the assessed valuation or taxes or other impositions payable in respect of any portion of the Property.

h. Real Estate Purchaser; Simultaneous Sale. In the event Buyer sells the Property and the Other Fee Simple Properties to a third party purchaser at the Closing (the "Real Estate Purchaser"), Seller agrees to instruct the Title Company to issue the Title Policy in the name of the Real Estate Purchaser, if requested by Buyer, and to take such other actions reasonably requested by Buyer in connection with the sale of the Fee Simple Properties to the Real Estate Purchaser. In the alternative, Buyer shall have the right to assign its rights and obligations hereunder with respect to the Fee Simple Properties to the Real Estate Purchaser who shall purchase the Fee Simple Properties in a simultaneous closing. A simultaneous sale of the Property to the Real Estate Purchaser or assignment of the Buyer's rights to the Real Estate Purchaser is not a condition of Closing. However, Buyer's simultaneous closing on the sale of

the Property, the Other Fee Simple Properties, and the Purchased Assets pursuant to the terms of this Agreement and the Related Agreements in a condition to Closing.

i. No Liens or Encumbrances. From and after the Effective Date of this Agreement, Seller agrees to not enter into any material agreements affecting or encumbering in any way the Property, except for the Sale Order, without the prior written consent of Buyer.

For purposes of this Section, the phrase “to Seller’s knowledge” or words of similar import shall mean the actual knowledge of Jeremiah Foster, as Trustee.

5. Closing.

a. Appointment of Escrow Agent. The parties appoint Clear Title Agency of Arizona, whose address is 2910 Camelback Rd., Suite 100, Phoenix, AZ 85016, attention Carol Rieger (480) 278-8425, as the escrow agent (the “Escrow Agent” or “Title Company”) for this Transaction.

b. Closing. The closing of the Transaction (the “Closing”) will take place on or before September 30, 2016 (the “Closing Date”), and shall occur concurrently with the closings under the Related Agreements. The Escrow Agent shall process the Closing.

c. Deliveries by Seller at the Closing. At the Closing, Seller shall deliver, or cause to be delivered, to Buyer (via the Escrow Agent) duly executed instruments of conveyance and transfer effecting the sale, transfer, assignment and conveyance of the Property to Buyer, including the following:

i. Fully-executed and notarized Trustee’s Deed for the Property conveying fee simple title to the Property to Buyer or its designee, as directed by Buyer, subject only to the Permitted Exceptions (the “Deed”);

ii. Evidence satisfactory to Buyer and Buyer’s lender that all liens and security interests which encumber the Property, which do not constitute Permitted Exceptions, shall be released on or before the Closing; and



iii. Such other documents, information, certificates and materials as may be reasonably required Buyer, Buyer's lender, Escrow Agent or required by this Agreement.

d. Deliveries by Buyer at the Closing. At the Closing, Buyer shall deliver, or cause to be delivered, to Seller (via the Escrow Agent) the following:

i. The Purchase Price; and

ii. Such other documents, information, certificates and materials as may be reasonably required by Seller, Escrow Agent or required by this Agreement.

e. Title Insurance. At the Closing, the Title Company shall issue to Buyer, or its designee, an ALTA Owner's Standard Coverage title insurance policy for the Property, in the amount of the Purchase Price and subject only to the Permitted Exceptions ("Title Policy"). Seller shall pay the cost of such Title Policy. Buyer may obtain an Extended Coverage policy, by paying the difference cost between the standard coverage title policy and the Extended Coverage policy.

6. Conditions of Obligations of Buyer. The obligations of Buyer to effect the Transaction are subject to the satisfaction of the following conditions on or prior to the Closing Date unless waived by Buyer in writing:

a. All the representations and warranties of Seller contained in this Agreement, and in any agreement, instrument, or document delivered pursuant hereto or in connection herewith on or prior to the Closing Date, shall be true and correct as of the date made and (having been deemed to have been made again on and as of the Closing Date in the same language) shall be true and correct on and as of the Closing Date.

b. Seller shall have performed and complied with, in all material respects, all covenants and agreements required by this Agreement and by the Related Agreements to be performed or complied with by Seller on or prior to the Closing Date.

c. The Sale Order and all requisite consents of any third parties or governmental agencies to the transactions contemplated hereby shall have been obtained.

d. Escrow Agent shall have received the fully-executed documents, the Deed, and other Seller deliverables set forth in Section 4 of this Addendum necessary to complete the Transaction, and Escrow Agent is prepared to issue the Title Policy.

e. All conditions precedent as provided for in this Agreement and in the Related Agreements shall have been satisfied and all covenants as provided for therein shall have been performed such that the Closing under this Agreement and the closings under the Related Agreements can occur simultaneously.

If any of the foregoing conditions precedent for which Seller is responsible (e.g., items (a), (b) and (d)) are not satisfied, Buyer may terminate this Agreement or pursue its remedies outlined herein. If items (c) and (e) are not satisfied through no fault of Buyer, Buyer may terminate this Agreement and the Related Agreements and neither party shall have any further obligations except for those obligations that survive termination.

7. Conditions of Obligation of Seller. The obligations of Seller to effect the Transaction are subject to the satisfaction of the following conditions unless waived by Seller:

a. The representations and warranties of Buyer set forth in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date.

b. Buyer shall have performed all obligations required to be performed by it under this Agreement and the Related Agreements on or prior to the Closing Date.

c. The Sale Order and all requisite consents of any third parties or governmental agencies to the transactions contemplated hereby shall have been obtained.

d. Escrow Agent shall have received the monies, certificates, instruments, documents, and other Buyer deliverables set forth in Section 4 of this Addendum necessary to complete the Transaction, and Escrow Agent is prepared to issue the Title Policy

If any of the foregoing conditions precedent for which Buyer is responsible (e.g., items (a), (b), and (d)) are not satisfied, Seller may terminate this Agreement or pursue its remedies outlined herein. If item (c) is not satisfied through no fault of Seller, Seller may terminate this Agreement and the Related Agreements and neither party shall have any further obligations except for those obligations that survive termination.

8. Notice. Any notice required to be given pursuant to this Agreement shall be in writing and may be given by personal delivery or by certified or overnight mail, postage prepaid, at the following addresses:

If to Seller:

Jeremiah Foster  
Chapter 11 Trustee  
7201 E. Camelback Rd., Ste 250  
Scottsdale, AZ 85251  
Tel: (480) 647-3248  
Email: jfoster@resolutecommercial.com

With a Copy To:

David B. Cotner  
Datsopoulos MacDonald & Lind, P.C.  
201 W. Main St., Suite, 201  
Missoula, MT 59802  
Tel: (406) 728-0810  
Email: dcotner@dmlaw.com

If to Purchaser:

Paradigm Restaurants, L.C.

David Harper  
1185 West 3050 South  
Ogden, UT 84401  
Tel: (801) 621-0905

Email: david@mrulc.com

With a Copy To:

Blake Parrish  
14572 South 790 West, Suite A101  
Bluffdale, UT 84065  
Tel: (801) 572-9705  
Email: blake@bparrishlaw.com

Notice is deemed to have been given on the date on which notice is delivered, if notice is given by personal delivery, on the date of delivery to the overnight courier service, if that service is used, and two days after deposit in the mail, if mailed.

9. Survival of Representations, Warranties and Agreements. All representations, warranties and agreements in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Closing until the expiration of three (3) years from the Closing Date, and, thereafter, to the extent a claim is made prior to such expiration with respect to any breach of such representation, warranty or agreement, until such claim is finally determined or settled.

10. Governing Law; Venue. This Agreement shall be governed in all respects, including validity, interpretation and effect, by the internal laws of the State of Montana, conflicts of laws principles notwithstanding. A federal or state district court located in Lewis and Clark County, Montana shall be the proper forum for any action brought by either party hereunder.

11. Further Cooperation. From time to time after the Closing, Seller at Buyer's request and without further consideration, agrees to execute and deliver or to cause to be executed and delivered such other instruments of transfer as Buyer may reasonably request to transfer to Buyer more effectively the right, title and interest in or to the Purchased Assets or the Fee Simple Properties, and to take or cause to be taken such further or other action as may reasonably be necessary or appropriate in order to effectuate the transactions contemplated by this Agreement.

12. No Waiver. No waiver hereunder shall be binding unless executed in writing by the party making the waiver.

13. Construction. This Agreement is the result of negotiations between the parties, neither of whom has acted under any duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions of this Agreement must be construed in accordance with their usual and customary meanings. Seller and Buyer hereby waive the application of any rule of law, which otherwise would be applicable in connection with the construction of this Agreement, that ambiguous or conflicting terms or provisions should be construed against the party who (or whose attorney) prepared the executed Agreement or any earlier draft of this Agreement.

14. Incorporation of Recitals. The Recitals are incorporated herein and made a part of this Agreement.

15. Assignment. Buyer may freely assign its interest hereunder to (i) one or more entities owned or controlled by one or more of the principals of Buyer or (ii) the Real Estate Purchaser, provided that Buyer shall not be released from its obligations hereunder as the result of any assignment until the Closing.

16. Miscellaneous. To the extent the terms of this Addendum modify or conflict with any provisions of the Agreement, the terms of this Addendum shall control. All other terms of the Agreement, including all prior addenda not modified by this Addendum, shall remain the same.

17. Facsimile/Electronic Signature: The parties agree that a facsimile or electronic copy of this Agreement which contains the parties' signatures may be used as the original.

18. Counterparts: A copy of this document may be executed by each individual/entity separately, and when each has executed a copy thereof, such copies, taken together, shall be deemed to be a full complete contract between the parties.

IN WITNESS WHEREOF, the undersigned have executed this Addendum to the Agreement Regarding Sale of Commercial Real Estate.

**DATED** this 29th day of July, 2016.

**PARADIGM RESTAURANTS, L.C.**

By: David M. Maper  
Its: Managing Member

Date: July 29, 2016

**JEREMIAH FOSTER, TRUSTEE OF  
SHOOT THE MOON BANKRUPTCY**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

IN WITNESS WHEREOF, the undersigned have executed this Addendum to the Agreement Regarding Sale of Commercial Real Estate.

**DATED** this 29th day of July, 2016.

**PARADIGM RESTAURANTS, L.C.**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

**JEREMIAH FOSTER, TRUSTEE OF  
SHOOT THE MOON BANKRUPTCY**

By: \_\_\_\_\_  
Its: Trustee

Date: July 29, 2016

**Nagoya - Helena**  
**2790 N. Washington St., Suite B**  
**Helena, MT 59602**

<b>Asset Description</b>	<b>Total Quantity of items/units</b>	<b>Make/Model</b>
Ice Machine	1	
Vatt Fryer	1	Dean 2
Dessert Station/Glass Tender	1	
In Cooler	1	Kairak Reach
Reach-In Cooler		Kairak Drop-In
Cooler w/ 4 Drawer		Kairak
AP Holding Cabinet		Winston CV
Alto Shaam Units (model SOOS and model 750S)		
Steam Table Well	3	Vollrath
CV AP Warming Drawer		Winston
Cooler/ 3 door (10 slot)	10 slot	Kairak
Cooler/ 2 door (6 slot)	6 slot	Kairak
2 Burner Range		WoH
Deep Fryer (1 vatt)		Vulcan
Broiler 4 foot x 2		Vulcan
4 Drawer (under broiler) w/Baker's Pride Broiler		Deer Field
6 Burner Spider Top Range		
2 SheH Plate Heater	2	
Pizza Oven		
Hot Boxes (1 Single and 1 fits 3 - 1/3 pans or full pan)	2	
(Cheese Melter)		Salamander
BOB Hand Sinks	3	
FOB Hand Sink		
Bar Hand Sink	2	
Hood Vents	20	
Alto Sham FOB Unit (Bread Warmer)		
Soda Bib Rack		
Product Racks	12	
Cages (meat)	2	
Speed Racks	2	
Bev Station Tower		
Cooler	3	Glasstender
Keg Cooler		Glasstender
Long Booth Tables	7	
Regular Booth Tables	10	
2 Top Booth Table		
Small Rounds table	2	
Bar Stools	5	
Table Chairs	136	
4 Top Tables	8	
6 Top Tables	4	
Dining Room Tables	16	
Credenzas	3	
Host Podium		
To Go Counter		
Wait Area Booths	3	
3 Compartment Sink (Bar/Boll)	2	
Ice Bin Soda Gun/Bar	2	
Alcohol SheH (well)		
First Aid Kit		
(Wait Station)		Glasstender
<b>Total Valuation</b>	<b>\$26,000</b>	



**ADDENDUM NO. 1 TO  
AGREEMENT REGARDING SALE OF COMMERCIAL REAL ESTATE  
IN POCA TELLO, IDAHO**

THIS ADDENDUM NO. 1 TO AGREEMENT REGARDING SALE OF COMMERCIAL REAL ESTATE (the “Addendum”) is hereby entered to be effective as of July 29, 2016 (the “Effective Date”) by and between Jeremiah Foster, in his capacity as Chapter 11 Trustee of Shoot The Moon, LLC, a Montana limited liability company (“Seller”), and Paradigm Restaurants, L.C., a Utah limited liability company, or assigns (“Buyer”).

**RECITALS**

- A. Seller and Buyer are parties to that certain Agreement Regarding Sale of Commercial Real Estate of even date herewith (the “Agreement”).
- B. Seller and Buyer desire to amend the Agreement on the terms outlined herein.
- C. Capitalized terms not defined in this Addendum shall have the meanings given them in the Agreement.

**AMENDMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Description of the Transaction. The purchase of the Property by Buyer is a part of a larger transaction whereby Buyer is purchasing from Seller a total of eleven (11) separate Chili’s Grill and Bar franchise restaurants (collectively the “Business”), including the Property, and the Chili’s Grill and Bar restaurant buildings and other improvements situated on two (2) other fee simple properties owned by Seller (“Other Fee Simple Properties”). The Property and the Other Fee Simple Properties are sometimes collectively referred to as the “Fee Simple Properties”. Eight (8) of the Chili’s Grill and Bar restaurants comprising the Business are operated on leased properties (the “Leased Properties”) The Fee Simple Properties and the

Leased Properties are collectively referred to as the “Purchased Restaurants.” Seller holds Franchise Agreements with Brinker International, Inc., the franchisor of Chili’s Grill and Bar (“Franchisor”), for each of the Fee Simple Properties and Leased Properties (the “Franchise Agreements”). Concurrent with this Agreement, Buyer has entered into the following agreements relating to the purchase and sale of the Business and the Fee Simple Properties: (a) Agreement Regarding Sale of Commercial Real Estate between Jeremiah Foster, in his capacity as Chapter 11 Trustee of Shoot The Moon, LLC, a Montana limited liability company, as Seller, and Buyer for the Chili’s Grill and Bar restaurant and related improvements located at 2790 North Washington Street, Suite B, Helena, Montana, dated of even date herewith; (b) the Agreement Regarding Sale of Commercial Real Estate between Jeremiah Foster, in his capacity as Chapter 11 Trustee of Shoot The Moon, LLC, a Montana limited liability company, as Seller, and Buyer for the Chili’s Grill and Bar restaurant and related improvements located at 1420 Marketplace Drive, Suite A, Great Falls, Montana; and (c) the Asset Purchase Agreement (the “APA”) between Jeremiah Foster, in his capacity as Chapter 11 Trustee of Shoot The Moon, LLC, a Montana limited liability company, as Seller, and Buyer for the Business, which includes all Purchased Assets (as defined in the APA) and all Assumed Liabilities (as defined in the APA) (this Agreement, the two (2) other Agreements Regarding Sale of Commercial Real Estate and the APA being hereafter collectively referred to as the “Related Agreements”) (the “Transaction”).

2. Buyer’s Due Diligence Review. Buyer may elect not to proceed with the Transaction, if the following matters are not completed to Buyer’s satisfaction:

a. Commitment for Title Insurance. Within five (5) days after the full execution of this Agreement, Buyer shall obtain from the Title Company (as defined below) a commitment for ALTA owner’s standard coverage title insurance policy for the Property (“Commitment”). The Commitment shall be in the amount of the Purchase Price. Buyer shall

have until expiration of the Due Diligence Period to review and to object in writing to any easements, liens, encumbrances or other exceptions or requirements in the Commitment (the "Title Objections"). If Buyer fails to object within the time specified, then the condition of title to the Property reflected on the Commitment will be deemed approved. If the Title Objections are made prior to the expiration of the Due Diligence Period, Seller shall attempt to eliminate the matters covered by the Title Objection within fifteen (15) days of receipt of such Title Objections. If Seller is unable or unwilling to satisfy the Title Objections to Buyer's satisfaction, Buyer may terminate the Agreement. Seller shall eliminate at Seller's sole cost and expense any deeds of trust, mortgages, judgment liens, mechanics' liens, materialmen's liens and any other similar liens placed on or against the Property at or prior to the Closing.

b. Permitted Exceptions. All matters affecting title to the Property approved or waived by Buyer in accordance with the provisions of this Section shall be deemed the "Permitted Exceptions."

c. Buyer's Review of Due Diligence Materials. Buyer shall be entitled to review and approve all materials provided by Seller pursuant to this Agreement and the Related Agreements, or obtained by Buyer, including but not limited to all documents and studies relating to the Business, Fee Simple Properties, and Leased Properties in the control or possession of Seller. Seller shall deliver such materials to Buyer within five (5) days after the Effective Date. If Buyer does not consummate the Transaction, Buyer shall return to Seller all of the materials provided by Seller hereunder.

d. Site Visits. During the Due Diligence Period, the parties shall work together to establish dates and times on which representatives of Seller and Buyer can visit each Purchased Restaurant for the purposes of determining any imaging or maintenance issues. Buyer's obligation to proceed with the Transaction is subject to Buyer's on-site inspection of each Purchased Restaurant prior to the expiration of the Due Diligence Period.

e. Buyer's Due Diligence Review. Buyer shall have thirty-five (35) days after full execution of this Agreement to conduct its due diligence review of the Purchased Restaurants (the "Due Diligence Period"). The Due Diligence Period will be extended by an additional fifteen (15) days upon Purchaser's reasonable request. In addition to the on-site visits referenced above, Buyer shall have the right, but not the obligation to conduct surveys, professional inspections, or such other types of investigations deemed necessary by Buyer in its sole discretion, provided, that Buyer shall inform Seller of any tests or inspections, and shall schedule such tests or inspections at times approved by Seller, and Buyer shall indemnify and hold Seller harmless in connection with any claims arising from due diligence review by Buyer or Buyer's officers, employees, agents or representatives. To the extent that Buyer conducts any of the foregoing tests, Buyer will reasonably restore each Purchased Restaurant to the state at which it existed prior to the testing. Buyer may terminate this Agreement at any time and for any reason during the Due Diligence Period and receive a return of the Earnest Money, by notifying Seller in writing before the end of the Due Diligence Period. Buyer shall have no obligation to provide to Seller copies of any due diligence material obtained by Buyer, if this Agreement is terminated, unless Seller compensates Buyer for his costs of obtaining the due diligence material..

f. Independent Investigation. Buyer enters into this Agreement with the understanding that at Closing Buyer will be relying fully upon Buyer's independent investigation and judgment and Buyer will purchase said Property "as is" without warranties, express or implied except as specifically provided herein. Buyer acknowledges that during the Due Diligence Period Buyer will have examined the Property and all improvements and Buyer enters into this Agreement in full reliance upon Buyer's own independent investigation and judgment. Any prior verbal representations made by the Seller and Seller's representatives do not modify or effect this Agreement. By signing this Agreement Buyer acknowledges having read and

understood this entire Agreement, including its purchase of the Property “as is” without warranties, except as expressly set forth herein.

3. Representations and Warranties of Seller. Seller represents and warrants to, and agrees with, Buyer as of the date of this Agreement and the Closing Date as follows:

a. Binding Obligation. Subject to approval of the Sale Order (as defined in the APA) of the Bankruptcy Court in Bankruptcy Case No. 15-60979-RBK (the “Bankruptcy Case”), Seller has all requisite power and authority to enter into and perform its obligations under this Agreement and to carry out the Transaction. Subject to the approval of the Sale Order, the execution, delivery and performance by Seller of this Agreement does not and will not conflict with, or result in any violation of or default under, any ordinance, rule, regulation, judgment, order, decree, agreement, instrument or license applicable to Seller or to the Property or any of the Purchased Assets. Except as set forth herein, no consent, approval, order or authorization of, or registration, declaration or filing with, any court, administrative agency or commission or other governmental authority or instrumentality is required by or with respect to Seller in connection with its execution, delivery or performance of this Agreement.

b. Title. Subject to Bankruptcy Court approval of the Sale Order, Seller shall deliver the same to Buyer free of all liens and encumbrances, except for the Permitted Exceptions.

c. Litigation. Except for the Bankruptcy Case, to Seller’s knowledge, there are no lawsuits, claims, proceedings or investigations pending or, to the best knowledge of Seller, threatened by or against or affecting Seller or the Property which could adversely way affect the Transaction contemplated by this Agreement or Buyer’s right to use the Property.

d. Disclosure. To Seller’s knowledge Seller has not withheld any material information adversely affecting or in any way relating to the Property.

e. Compliance with Laws. Seller is not, to its knowledge, in violation with respect to its use of the Property of any law, order, ordinance, rule or regulation of any

governmental authority, including, without limitation, the Americans with Disabilities Act. To Seller's knowledge, there have been no private or governmental claims, citations, complaints, notices of violation or letters made, issued to or threatened against Seller by any governmental entity or private or other party for the impairment or diminution of, or damage, injury or other adverse effects to, the environment or public health resulting, in whole or in part, from the use or operation of the Property. In addition to the foregoing, Seller has duly complied with, and, to the best of Seller's knowledge, the Property is in compliance with, the provisions of all federal, state and local environmental, health and safety, and building laws, codes and ordinances and all rules and regulations promulgated thereunder.

f. Hazardous Materials. Seller has no actual knowledge of the presence or existence of any Hazardous Materials (as defined below) or petroleum underground storage tanks on the Property. From and after the date of this Agreement, Seller shall not cause or permit the presence, use, generation, release, discharge, storage, disposal, or transportation of any Hazardous Materials on, under, to or from the Property. As used in this Agreement, the term "Hazardous Materials" shall mean any hazardous or toxic waste, substance or material as presently defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. Section 9601, et. seq.; the Hazardous Materials Transportation Act, 49 U.S.C.A. Section 1801, et. seq.; the Resource Conservation and Recovery Act, 42 U.S.C.A. Section 6901, et. seq.; the Toxic Substances Control Act, 15 U.S.C.A. Section 2601, et. seq.; the Federal Water Pollution Control Act, 33 U.S.C.A. Section 1251, et. seq.; and any state environmental laws.

g. Taxes and Assessments. There are impositions of real estate taxes or special assessments which currently encumber the Property as disclosed to Buyer in the Commitment. Seller has not received notice of, and has no other knowledge or information of, any proposed change in the valuation of the Property for real estate taxes from that assessed for

the current assessment period, nor does Seller have any other knowledge or information of any action or proceeding designed to levy any special assessment against the Property except to the extent of valuations for real estate taxes payable in the year 2016. Seller has not received notice of, and has no other knowledge or information of, any possible future improvements by a governmental authority, any part of the cost of which would or might be assessed against the Property, or of any contemplated future assessments of any kind. There is no proceeding pending or presently being prosecuted for the reduction of the assessed valuation or taxes or other impositions payable in respect of any portion of the Property.

h. Real Estate Purchaser; Simultaneous Sale. In the event Buyer sells the Property and the Other Fee Simple Properties to a third party purchaser at the Closing (the “Real Estate Purchaser”), Seller agrees to instruct the Title Company to issue the Title Policy in the name of the Real Estate Purchaser, if requested by Buyer, and to take such other actions reasonably requested by Buyer in connection with the sale of the Fee Simple Properties to the Real Estate Purchaser. In the alternative, Buyer shall have the right to assign its rights and obligations hereunder with respect to the Fee Simple Properties to the Real Estate Purchaser who shall purchase the Fee Simple Properties in a simultaneous closing. A simultaneous sale of the Property to the Real Estate Purchaser or assignment of the Buyer’s rights to the Real Estate Purchaser is not a condition of Closing. However, Buyer’s simultaneous closing on the sale of the Property, the Other Fee Simple Properties, and the Purchased Assets pursuant to the terms of this Agreement and the Related Agreements is a condition to Closing.

i. No Liens or Encumbrances. From and after the Effective Date of this Agreement, Seller agrees to not enter into any material agreements affecting or encumbering in any way the Property, except for the Sale Order, without the prior written consent of Buyer.

For purposes of this Section, the phrase “to Seller’s knowledge” or words of similar import shall mean the actual knowledge of Jeremiah Foster, as Trustee.

4. Closing.

a. Appointment of Escrow Agent. The parties appoint Clear Title Agency of Arizona, whose address is 2910 Camelback Rd., Suite 100, Phoenix, AZ 85016, attention Carol Rieger (480) 278-8425, as the escrow agent (the “Escrow Agent” or “Title Company”) for this Transaction.

b. Closing. The closing of the Transaction (the “Closing”) will take place on or before September 30, 2016 (the “Closing Date”), and shall occur concurrently with the closings under the Related Agreements. The Escrow Agent shall process the Closing.

c. Deliveries by Seller at the Closing. At the Closing, Seller shall deliver, or cause to be delivered, to Buyer (via the Escrow Agent) duly executed instruments of conveyance and transfer effecting the sale, transfer, assignment and conveyance of the Property to Buyer, including the following:

i. Fully-executed and notarized Trustee’s Deed for the Property conveying fee simple title to the Property to Buyer or its designee, as directed by Buyer, subject only to the Permitted Exceptions (the “Deed”);

ii. Evidence satisfactory to Buyer and Buyer’s lender that all liens and security interests which encumber the Property, which do not constitute Permitted Exceptions, shall be released on or before the Closing; and

iii. Such other documents, information, certificates and materials as may be reasonably required Buyer, Buyer’s lender, Escrow Agent or required by this Agreement.

d. Deliveries by Buyer at the Closing. At the Closing, Buyer shall deliver, or cause to be delivered, to Seller (via the Escrow Agent) the following:

i. The Purchase Price; and



ii. Such other documents, information, certificates and materials as may be reasonably required by Seller, Escrow Agent or required by this Agreement.

e. Title Insurance. At the Closing, the Title Company shall issue to Buyer, or its designee, an ALTA Owner's Standard Coverage title insurance policy for the Property, in the amount of the Purchase Price and subject only to the Permitted Exceptions ("Title Policy"). Seller shall pay the cost of such Title Policy. Buyer may obtain an Extended Coverage policy, by paying the difference cost between the standard coverage title policy and the Extended Coverage policy.

5. Conditions of Obligations of Buyer. The obligations of Buyer to effect the Transaction are subject to the satisfaction of the following conditions on or prior to the Closing Date unless waived by Buyer in writing:

a. All the representations and warranties of Seller contained in this Agreement, and in any agreement, instrument, or document delivered pursuant hereto or in connection herewith on or prior to the Closing Date, shall be true and correct as of the date made and (having been deemed to have been made again on and as of the Closing Date in the same language) shall be true and correct on and as of the Closing Date.

b. Seller shall have performed and complied with, in all material respects, all covenants and agreements required by this Agreement and by the Related Agreements to be performed or complied with by Seller on or prior to the Closing Date.

c. The Sale Order and all requisite consents of any third parties or governmental agencies to the transactions contemplated hereby shall have been obtained.

d. Escrow Agent shall have received the fully-executed documents, the Deed, and other Seller deliverables set forth in Section 4 of this Addendum necessary to complete the Transaction, and Escrow Agent is prepared to issue the Title Policy.

e. All conditions precedent as provided for in this Agreement and in the Related Agreements shall have been satisfied and all covenants as provided for therein shall have been performed such that the Closing under this Agreement and the closings under the Related Agreements can occur simultaneously.

If any of the foregoing conditions precedent for which Seller is responsible (e.g., items (a), (b) and (d)) are not satisfied, Buyer may terminate this Agreement or pursue its remedies outlined herein. If items (c) and (e) are not satisfied through no fault of Buyer, Buyer may terminate this Agreement and the Related Agreements, and neither party shall have any further obligations except for those obligations that survive termination.

6. Conditions of Obligation of Seller. The obligations of Seller to effect the Transaction are subject to the satisfaction of the following conditions unless waived by Seller:

a. The representations and warranties of Buyer set forth in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date.

b. Buyer shall have performed all obligations required to be performed by it under this Agreement and the Related Agreements on or prior to the Closing Date.

c. The Sale Order and all requisite consents of any third parties or governmental agencies to the transactions contemplated hereby shall have been obtained.

d. Escrow Agent shall have received the monies, certificates, instruments, documents, and other Buyer deliverables set forth in Section 4 of this Addendum necessary to complete the Transaction, and Escrow Agent is prepared to issue the Title Policy

If any of the foregoing conditions precedent for which Buyer is responsible (e.g., items (a), (b), and (d)) are not satisfied, Seller may terminate this Agreement or pursue its remedies outlined herein. If item (c) is not satisfied through no fault of Seller, Seller may

terminate this Agreement and the Related Agreements, and neither party shall have any further obligations except for those obligations that survive termination.

7. Notice. Any notice required to be given pursuant to this Agreement shall be in writing and may be given by personal delivery or by certified or overnight mail, postage prepaid, at the following addresses:

If to Seller:

Jeremiah Foster  
Chapter 11 Trustee  
7201 E. Camelback Rd., Ste 250  
Scottsdale, AZ 85251  
Tel: (480) 647-3248  
Email: jfoster@resolutecommercial.com

With a Copy To:

David B. Cotner  
Datsopoulos MacDonald & Lind, P.C.  
201 W. Main St., Suite, 201  
Missoula, MT 59802  
Tel: (406) 728-0810  
Email: dcotner@dmllaw.com

If to Purchaser:

Paradigm Restaurants, L.C.

David Harper  
1185 West 3050 South  
Ogden, UT 84401  
Tel: (801) 621-0905  
Email: david@mrulc.com

With a Copy To:

Blake Parrish  
14572 South 790 West, Suite A101  
Bluffdale, UT 84065  
Tel: (801) 572-9705  
Email: blake@bparrishlaw.com

Notice is deemed to have been given on the date on which notice is delivered, if notice is given by personal delivery, on the date of delivery to the overnight courier service, if that service is used, and two days after deposit in the mail, if mailed.

8. Survival of Representations, Warranties and Agreements. All representations, warranties and agreements in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Closing until the expiration of three (3) years from the Closing Date, and, thereafter, to the extent a claim is made prior to such expiration with respect to any breach of such representation, warranty or agreement, until such claim is finally determined or settled.

9. Governing Law; Venue. This Agreement shall be governed in all respects, including validity, interpretation and effect, by the internal laws of the State of Idaho, conflicts of laws principles notwithstanding. A federal or state district court located in Bannock County, Idaho shall be the proper forum for any action brought by either party hereunder.

10. Further Cooperation. From time to time after the Closing, Seller at Buyer's request and without further consideration, agrees to execute and deliver or to cause to be executed and delivered such other instruments of transfer as Buyer may reasonably request to transfer to Buyer more effectively the right, title and interest in or to the Purchased Assets or the Fee Simple Properties, and to take or cause to be taken such further or other action as may reasonably be necessary or appropriate in order to effectuate the transactions contemplated by this Agreement.

11. No Waiver. No waiver hereunder shall be binding unless executed in writing by the party making the waiver.

12. Construction. This Agreement is the result of negotiations between the parties, neither of whom has acted under any duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions of this Agreement must be construed in accordance with their usual and customary meanings. Seller and Buyer hereby waive the application of any rule of

law, which otherwise would be applicable in connection with the construction of this Agreement, that ambiguous or conflicting terms or provisions should be construed against the party who (or whose attorney) prepared the executed Agreement or any earlier draft of this Agreement.

13. Incorporation of Recitals. The Recitals are incorporated herein and made a part of this Agreement.

14. Assignment. Buyer may freely assign its interest hereunder to (i) one or more entities owned or controlled by one or more of the principals of Buyer or (ii) the Real Estate Purchaser, provided that Buyer shall not be released from its obligations hereunder as the result of any assignment until the Closing.

15. Miscellaneous. To the extent the terms of this Addendum modify or conflict with any provisions of the Agreement, the terms of this Addendum shall control. All other terms of the Agreement, including all prior addenda not modified by this Addendum, shall remain the same.

16. Facsimile/Electronic Signature: The parties agree that a facsimile or electronic copy of this Agreement which contains the parties' signatures may be used as the original.

17. Counterparts: A copy of this document may be executed by each individual/entity separately, and when each has executed a copy thereof, such copies, taken together, shall be deemed to be a full complete contract between the parties.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have executed this Addendum to the Agreement Regarding Sale of Commercial Real Estate.

**DATED** this 29th day of July, 2016.

**PARADIGM RESTAURANTS, L.C.**

By: David M. Yaper  
Its: Managing Member

Date: July 29, 2016

**JEREMIAH FOSTER, TRUSTEE OF  
SHOOT THE MOON BANKRUPTCY**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

IN WITNESS WHEREOF, the undersigned have executed this Addendum to the Agreement Regarding Sale of Commercial Real Estate.

**DATED** this 29th day of July, 2016.

**PARADIGM RESTAURANTS, L.C.**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

**JEREMIAH FOSTER, TRUSTEE OF  
SHOOT THE MOON BANKRUPTCY**

By: \_\_\_\_\_  
Its: Trustee \_\_\_\_\_

Date: July 29, 2016 \_\_\_\_\_

**ADDENDUM NO. 1 TO  
AGREEMENT REGARDING SALE OF COMMERCIAL REAL ESTATE  
IN GREAT FALLS, MONTANA**

THIS ADDENDUM NO. 1 TO AGREEMENT REGARDING SALE OF COMMERCIAL REAL ESTATE (the "Addendum") is hereby entered to be effective as of July 29, 2016 (the "Effective Date") by and between Jeremiah Foster, in his capacity as Chapter 11 Trustee of Shoot The Moon, LLC, a Montana limited liability company ("Seller"), and Paradigm Restaurants, L.C., a Utah limited liability company, or assigns ("Buyer").

**RECITALS**

- A. Seller and Buyer are parties to that certain Agreement Regarding Sale of Commercial Real Estate of even date herewith (the "Agreement").
- B. Seller and Buyer desire to amend the Agreement on the terms outlined herein.
- C. Capitalized terms not defined in this Addendum shall have the meanings given them in the Agreement.

**AMENDMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Description of the Transaction. The purchase of the Property by Buyer is a part of a larger transaction whereby Buyer is purchasing from Seller a total of eleven (11) separate Chili's Grill and Bar franchise restaurants (collectively the "Business"), including the Property, and the Chili's Grill and Bar restaurant buildings and other improvements situated on two (2) other fee simple properties owned by Seller ("Other Fee Simple Properties"). The Property and the Other Fee Simple Properties are sometimes collectively referred to as the "Fee Simple Properties". Eight (8) of the Chili's Grill and Bar restaurants comprising the Business are operated on leased properties (the "Leased Properties") The Fee Simple Properties and the



Leased Properties are collectively referred to as the “Purchased Restaurants.” Seller holds Franchise Agreements with Brinker International, Inc., the franchisor of Chili’s Grill and Bar (“Franchisor”), for each of the Fee Simple Properties and Leased Properties (the “Franchise Agreements”). Concurrent with this Agreement, Buyer has entered into the following agreements relating to the purchase and sale of the Business and the Fee Simple Properties: (a) Agreement Regarding Sale of Commercial Real Estate between Jeremiah Foster, in his capacity as Chapter 11 Trustee of Shoot The Moon, LLC, a Montana limited liability company, as Seller, and Buyer for the Chili’s Grill and Bar restaurant and related improvements located at 2790 North Washington Street, Suite B, Helena, Montana, dated of even date herewith; (b) the Agreement Regarding Sale of Commercial Real Estate between Jeremiah Foster, in his capacity as Chapter 11 Trustee of Shoot The Moon, LLC, a Montana limited liability company, as Seller, and Buyer for the Chili’s Grill and Bar restaurant and related improvements located at 1599 Yellowstone Avenue, Pocatello, Idaho; and (c) the Asset Purchase Agreement (the “APA”) between Jeremiah Foster, in his capacity as Chapter 11 Trustee of Shoot The Moon, LLC, a Montana limited liability company, as Seller, and Buyer for the Business, which includes all Purchased Assets (as defined in the APA) and all Assumed Liabilities (as defined in the APA) (this Agreement, the two (2) other Agreements Regarding Sale of Commercial Real Estate and the APA being hereafter collectively referred to as the “Related Agreements”) (the “Transaction”).

2. Personal Property: In exchange for an additional payment of Thirty Seven Thousand and 00/100 (\$37,000.00) Buyer shall purchase from Seller the personal property listed on Exhibit “A” (the “Personal Property”). Such additional sum shall be paid at Closing. Seller shall transfer the Personal Property free of all liens, claims and encumbrances, as is and without warranty.

3. Buyer's Due Diligence Review. Buyer may elect not to proceed with the Transaction, if the following matters are not completed to Buyer's satisfaction:

a. Commitment for Title Insurance. Within five (5) days after the full execution of this Agreement, Buyer shall obtain from the Title Company (as defined below) a commitment for ALTA owner's standard coverage title insurance policy for the Property ("Commitment"). The Commitment shall be in the amount of the Purchase Price. Buyer shall have until expiration of the Due Diligence Period to review and to object in writing to any easements, liens, encumbrances or other exceptions or requirements in the Commitment (the "Title Objections"). If Buyer fails to object within the time specified, then the condition of title to the Property reflected on the Commitment will be deemed approved. If the Title Objections are made prior to the expiration of the Due Diligence Period, Seller shall attempt to eliminate the matters covered by the Title Objection within fifteen (15) days of receipt of such Title Objections. If Seller is unable or unwilling to satisfy the Title Objections to Buyer's satisfaction, Buyer may terminate the Agreement. Seller shall eliminate at Seller's sole cost and expense any deeds of trust, mortgages, judgment liens, mechanics' liens, materialmen's liens and any other similar liens placed on or against the Property at or prior to the Closing.

b. Permitted Exceptions. All matters affecting title to the Property approved or waived by Buyer in accordance with the provisions of this Section shall be deemed the "Permitted Exceptions."

c. Buyer's Review of Due Diligence Materials. Buyer shall be entitled to review and approve all materials provided by Seller pursuant to this Agreement and the Related Agreements, or obtained by Buyer, including but not limited to all documents and studies relating to the Business, Fee Simple Properties, and Leased Properties in the control or possession of Seller. Seller shall deliver such materials to Buyer within five (5) days after the Effective Date. If Buyer does not consummate the Transaction, Buyer shall return to Seller all of

the materials provided by Seller hereunder.

d. Site Visits. During the Due Diligence Period, the parties shall work together to establish dates and times on which representatives of Seller and Buyer can visit each Purchased Restaurant for the purposes of determining any imaging or maintenance issues. Buyer's obligation to proceed with the Transaction is subject to Buyer's on-site inspection of each Purchased Restaurant prior to the expiration of the Due Diligence Period.

e. Buyer's Due Diligence Review. Buyer shall have thirty-five (35) days after full execution of this Agreement to conduct its due diligence review of the Purchased Restaurants (the "Due Diligence Period"). The Due Diligence Period will be extended by an additional fifteen (15) days upon Purchaser's reasonable request. In addition to the on-site visits referenced above, Buyer shall have the right, but not the obligation to conduct surveys, professional inspections, or such other types of investigations deemed necessary by Buyer in its sole discretion, provided, that Buyer shall inform Seller of any tests or inspections, and shall schedule such tests or inspections at times approved by Seller, and Buyer shall indemnify and hold Seller harmless in connection with any claims arising from due diligence review by Buyer or Buyer's officers, employees, agents or representatives. To the extent that Buyer conducts any of the foregoing tests, Buyer will reasonably restore each Purchased Restaurant to the state at which it existed prior to the testing. Buyer may terminate this Agreement at any time and for any reason during the Due Diligence Period and receive a return of the Earnest Money, by notifying Seller in writing before the end of the Due Diligence Period. Buyer shall have no obligation to provide to Seller copies of any due diligence material obtained by Buyer, if this Agreement is terminated, unless Seller compensates Buyer for his costs of obtaining the due diligence material.

f. Independent Investigation. Buyer enters into this Agreement with the understanding that at Closing Buyer will be relying fully upon Buyer's independent investigation

and judgment and Buyer will purchase said Property “as is” without warranties, express or implied except as specifically provided herein. Buyer acknowledges that during the Due Diligence Period Buyer will have examined the Property and all improvements and Buyer enters into this Agreement in full reliance upon Buyer’s own independent investigation and judgment. Any prior verbal representations made by the Seller and Seller’s representatives do not modify or effect this Agreement. By signing this Agreement Buyer acknowledges having read and understood this entire Agreement, including its purchase of the Property “as is” without warranties, except as expressly set forth herein.

4. Representations and Warranties of Seller. Seller represents and warrants to, and agrees with, Buyer as of the date of this Agreement and the Closing Date as follows:

a. Binding Obligation. Subject to approval of the Sale Order (as defined in the APA) of the Bankruptcy Court in Bankruptcy Case No. 15-60979-RBK (the “Bankruptcy Case”), Seller has all requisite power and authority to enter into and perform its obligations under this Agreement and to carry out the Transaction. Subject to the approval of the Sale Order, the execution, delivery and performance by Seller of this Agreement does not and will not conflict with, or result in any violation of or default under, any ordinance, rule, regulation, judgment, order, decree, agreement, instrument or license applicable to Seller or to the Property or any of the Purchased Assets. Except as set forth herein, no consent, approval, order or authorization of, or registration, declaration or filing with, any court, administrative agency or commission or other governmental authority or instrumentality is required by or with respect to Seller in connection with its execution, delivery or performance of this Agreement.

b. Title. Subject to Bankruptcy Court approval of the Sale Order, Seller shall deliver the same to Buyer free of all liens and encumbrances, except for the Permitted Exceptions.

c. Litigation. Except for the Bankruptcy Case, to Seller’s knowledge, there are no lawsuits, claims, proceedings or investigations pending or, to the best knowledge of

Seller, threatened by or against or affecting Seller or the Property which could adversely way affect the Transaction contemplated by this Agreement or Buyer's right to use the Property.

d. Disclosure. To Seller's knowledge Seller has not withheld any material information adversely affecting or in any way relating to the Property.

e. Compliance with Laws. Seller is not, to its knowledge, in violation with respect to its use of the Property of any law, order, ordinance, rule or regulation of any governmental authority, including, without limitation, the Americans with Disabilities Act. To Seller's knowledge, there have been no private or governmental claims, citations, complaints, notices of violation or letters made, issued to or threatened against Seller by any governmental entity or private or other party for the impairment or diminution of, or damage, injury or other adverse effects to, the environment or public health resulting, in whole or in part, from the use or operation of the Property. In addition to the foregoing, Seller has duly complied with, and, to the best of Seller's knowledge, the Property is in compliance with, the provisions of all federal, state and local environmental, health and safety, and building laws, codes and ordinances and all rules and regulations promulgated thereunder.

f. Hazardous Materials. Seller has no actual knowledge of the presence or existence of any Hazardous Materials (as defined below) or petroleum underground storage tanks on the Property. From and after the date of this Agreement, Seller shall not cause or permit the presence, use, generation, release, discharge, storage, disposal, or transportation of any Hazardous Materials on, under, to or from the Property. As used in this Agreement, the term "Hazardous Materials" shall mean any hazardous or toxic waste, substance or material as presently defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. Section 9601, et. seq.; the Hazardous Materials Transportation Act, 49 U.S.C.A. Section 1801, et. seq.; the Resource Conservation and Recovery Act, 42 U.S.C.A. Section 6901, et. seq.; the Toxic Substances Control Act, 15 U.S.C.A. Section 2601, et. seq.; the

Federal Water Pollution Control Act, 33 U.S.C.A. Section 1251, et. seq.; and any state environmental laws.

g. Taxes and Assessments. There are impositions of real estate taxes or special assessments which currently encumber the Property as disclosed to Buyer in the Commitment. Seller has not received notice of, and has no other knowledge or information of, any proposed change in the valuation of the Property for real estate taxes from that assessed for the current assessment period, nor does Seller have any other knowledge or information of any action or proceeding designed to levy any special assessment against the Property except to the extent of valuations for real estate taxes payable in the year 2016. Seller has not received notice of, and has no other knowledge or information of, any possible future improvements by a governmental authority, any part of the cost of which would or might be assessed against the Property, or of any contemplated future assessments of any kind. There is no proceeding pending or presently being prosecuted for the reduction of the assessed valuation or taxes or other impositions payable in respect of any portion of the Property.

h. Real Estate Purchaser; Simultaneous Sale. In the event Buyer sells the Property and the Other Fee Simple Properties to a third party purchaser at the Closing (the "Real Estate Purchaser"), Seller agrees to instruct the Title Company to issue the Title Policy in the name of the Real Estate Purchaser, if requested by Buyer, and to take such other actions reasonably requested by Buyer in connection with the sale of the Fee Simple Properties to the Real Estate Purchaser. In the alternative, Buyer shall have the right to assign its rights and obligations hereunder with respect to the Fee Simple Properties to the Real Estate Purchaser who shall purchase the Fee Simple Properties in a simultaneous closing. A simultaneous sale of the Property to the Real Estate Purchaser or assignment of the Buyer's rights to the Real Estate Purchaser is not a condition of Closing. However, Buyer's simultaneous closing on the sale of

the Property, the Other Fee Simple Properties, and the Purchased Assets pursuant to the terms of this Agreement and the Related Agreements is a condition to Closing.

i. No Liens or Encumbrances. From and after the Effective Date of this Agreement, Seller agrees to not enter into any material agreements affecting or encumbering in any way the Property, except for the Sale Order, without the prior written consent of Buyer.

For purposes of this Section, the phrase “to Seller’s knowledge” or words of similar import shall mean the actual knowledge of Jeremiah Foster, as Trustee.

5. Closing.

a. Appointment of Escrow Agent. The parties appoint Clear Title Agency of Arizona, whose address is 2910 Camelback Rd., Suite 100, Phoenix, AZ 85016, attention Carol Rieger (480) 278-8425, as the escrow agent (the “Escrow Agent” or “Title Company”) for this Transaction.

b. Closing. The closing of the Transaction (the “Closing”) will take place on or before September 30, 2016 (the “Closing Date”), and shall occur concurrently with the closings under the Related Agreements. The Escrow Agent shall process the Closing.

c. Deliveries by Seller at the Closing. At the Closing, Seller shall deliver, or cause to be delivered, to Buyer (via the Escrow Agent) duly executed instruments of conveyance and transfer effecting the sale, transfer, assignment and conveyance of the Property to Buyer, including the following:

i. Fully-executed and notarized Trustee’s Deed for the Property conveying fee simple title to the Property to Buyer or its designee, as directed by Buyer, subject only to the Permitted Exceptions (the “Deed”);

ii. Evidence satisfactory to Buyer and Buyer’s lender that all liens and security interests which encumber the Property, which do not constitute Permitted Exceptions, shall be released on or before the Closing; and

iii. Such other documents, information, certificates and materials as may be reasonably required Buyer, Buyer's lender, Escrow Agent or required by this Agreement.

d. Deliveries by Buyer at the Closing. At the Closing, Buyer shall deliver, or cause to be delivered, to Seller (via the Escrow Agent) the following:

i. The Purchase Price; and

ii. Such other documents, information, certificates and materials as may be reasonably required by Seller, Escrow Agent or required by this Agreement.

e. Title Insurance. At the Closing, the Title Company shall issue to Buyer, or its designee, an ALTA Owner's Standard Coverage title insurance policy for the Property, in the amount of the Purchase Price and subject only to the Permitted Exceptions ("Title Policy"). Seller shall pay the cost of such Title Policy. Buyer may obtain an Extended Coverage policy, by paying the difference cost between the standard coverage title policy and the Extended Coverage policy.

6. Conditions of Obligations of Buyer. The obligations of Buyer to effect the Transaction are subject to the satisfaction of the following conditions on or prior to the Closing Date unless waived by Buyer in writing:

a. All the representations and warranties of Seller contained in this Agreement, and in any agreement, instrument, or document delivered pursuant hereto or in connection herewith on or prior to the Closing Date, shall be true and correct as of the date made and (having been deemed to have been made again on and as of the Closing Date in the same language) shall be true and correct on and as of the Closing Date.

b. Seller shall have performed and complied with, in all material respects, all covenants and agreements required by this Agreement and by the Related Agreements to be performed or complied with by Seller on or prior to the Closing Date.



c. The Sale Order and all requisite consents of any third parties or governmental agencies to the transactions contemplated hereby shall have been obtained.

d. Escrow Agent shall have received the fully-executed documents, the Deed, and other Seller deliverables set forth in Section 4 of this Addendum necessary to complete the Transaction, and Escrow Agent is prepared to issue the Title Policy.

e. All conditions precedent as provided for in this Agreement and in the Related Agreements shall have been satisfied and all covenants as provided for therein shall have been performed such that the Closing under this Agreement and the closings under the Related Agreements can occur simultaneously.

If any of the foregoing conditions precedent for which Seller is responsible (e.g., items (a), (b) and (d)) are not satisfied, Buyer may terminate this Agreement or pursue its remedies outlined herein. If items (c) and (e) are not satisfied through no fault of Buyer, Buyer may terminate this Agreement and the Related Agreements, and neither party shall have any further obligations except for those obligations that survive termination.

7. Conditions of Obligation of Seller. The obligations of Seller to effect the Transaction are subject to the satisfaction of the following conditions unless waived by Seller:

a. The representations and warranties of Buyer set forth in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date.

b. Buyer shall have performed all obligations required to be performed by it under this Agreement and the Related Agreements on or prior to the Closing Date.

c. The Sale Order and all requisite consents of any third parties or governmental agencies to the transactions contemplated hereby shall have been obtained.

d. Escrow Agent shall have received the monies, certificates, instruments, documents, and other Buyer deliverables set forth in Section 4 of this Addendum necessary to complete the Transaction, and Escrow Agent is prepared to issue the Title Policy

If any of the foregoing conditions precedent for which Buyer is responsible (e.g., items (a), (b), and (d)) are not satisfied, Seller may terminate this Agreement or pursue its remedies outlined herein. If item (c) is not satisfied through no fault of Seller, Seller may terminate this Agreement and the Related Agreements, and neither party shall have any further obligations except for those obligations that survive termination.

8. Notice. Any notice required to be given pursuant to this Agreement shall be in writing and may be given by personal delivery or by certified or overnight mail, postage prepaid, at the following addresses:

If to Seller:

Jeremiah Foster  
Chapter 11 Trustee  
7201 E. Camelback Rd., Ste 250  
Scottsdale, AZ 85251  
Tel: (480) 647-3248  
Email: jfoster@resolutecommercial.com

With a Copy To:

David B. Cotner  
Datsopoulos MacDonald & Lind, P.C.  
201 W. Main St., Suite, 201  
Missoula, MT 59802  
Tel: (406) 728-0810  
Email: dcotner@dmllaw.com

If to Purchaser:

Paradigm Restaurants, L.C.

David Harper  
1185 West 3050 South  
Ogden, UT 84401  
Tel: (801) 621-0905

Email: david@mrulc.com

With a Copy To:

Blake Parrish  
14572 South 790 West, Suite A101  
Bluffdale, UT 84065  
Tel: (801) 572-9705  
Email: blake@bparrishlaw.com

Notice is deemed to have been given on the date on which notice is delivered, if notice is given by personal delivery, on the date of delivery to the overnight courier service, if that service is used, and two days after deposit in the mail, if mailed.

9. Survival of Representations, Warranties and Agreements. All representations, warranties and agreements in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Closing until the expiration of three (3) years from the Closing Date, and, thereafter, to the extent a claim is made prior to such expiration with respect to any breach of such representation, warranty or agreement, until such claim is finally determined or settled.

10. Governing Law; Venue. This Agreement shall be governed in all respects, including validity, interpretation and effect, by the internal laws of the State of Montana, conflicts of laws principles notwithstanding. A federal or state district court located in Cascade County, Montana shall be the proper forum for any action brought by either party hereunder.

11. Further Cooperation. From time to time after the Closing, Seller at Buyer's request and without further consideration, agrees to execute and deliver or to cause to be executed and delivered such other instruments of transfer as Buyer may reasonably request to transfer to Buyer more effectively the right, title and interest in or to the Purchased Assets or the Fee Simple Properties, and to take or cause to be taken such further or other action as may reasonably be necessary or appropriate in order to effectuate the transactions contemplated by this Agreement.

12. No Waiver. No waiver hereunder shall be binding unless executed in writing by the party making the waiver.

13. Construction. This Agreement is the result of negotiations between the parties, neither of whom has acted under any duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions of this Agreement must be construed in accordance with their usual and customary meanings. Seller and Buyer hereby waive the application of any rule of law, which otherwise would be applicable in connection with the construction of this Agreement, that ambiguous or conflicting terms or provisions should be construed against the party who (or whose attorney) prepared the executed Agreement or any earlier draft of this Agreement.

14. Incorporation of Recitals. The Recitals are incorporated herein and made a part of this Agreement.

15. Assignment. Buyer may freely assign its interest hereunder to (i) one or more entities owned or controlled by one or more of the principals of Buyer or (ii) the Real Estate Purchaser, provided that Buyer shall not be released from its obligations hereunder as the result of any assignment until the Closing.

16. Miscellaneous. To the extent the terms of this Addendum modify or conflict with any provisions of the Agreement, the terms of this Addendum shall control. All other terms of the Agreement, including all prior addenda not modified by this Addendum, shall remain the same.

17. Facsimile/Electronic Signature: The parties agree that a facsimile or electronic copy of this Agreement which contains the parties' signatures may be used as the original.

18. Counterparts: A copy of this document may be executed by each individual/entity separately, and when each has executed a copy thereof, such copies, taken together, shall be deemed to be a full complete contract between the parties.

IN WITNESS WHEREOF, the undersigned have executed this Addendum to the Agreement Regarding Sale of Commercial Real Estate.

**DATED** this 29th day of July, 2016.

**PARADIGM RESTAURANTS, L.C.**

By: David M. Yaper  
Its: Managing Member

Date: July 29, 2016

**JEREMIAH FOSTER, TRUSTEE OF  
SHOOT THE MOON BANKRUPTCY**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

IN WITNESS WHEREOF, the undersigned have executed this Addendum to the Agreement Regarding Sale of Commercial Real Estate.

**DATED** this 29th day of July, 2016.

**PARADIGM RESTAURANTS, L.C.**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

**JEREMIAH FOSTER, TRUSTEE OF  
SHOOT THE MOON BANKRUPTCY**

By: \_\_\_\_\_  
Its: Trustee

Date: July 29, 2016

**Moonshine Great Falls**  
**1420 Marketplace Dr., Suite C**  
**Great Falls, MT 59404**

Asset Description	Total Quantity of items/units	Make/Model
Buffalo Trace Distilleries Barrels	4	
Jack Daniels Barrels	2	
L Shaped To-Go Prep Stand/Counter	1	
Portable Hostess Stand	1	
Buffalo Trace Menu Stands	2	
Large Chalkboard with Wood Frame	1	
Small Chalkboard with Wood Frame	1	
Wooden/Tile Bar	1	
50" TV with Wall mount	1	Sony Bravia Flat screen
60" TV with Wall Mount	1	Visio Flat screen
50" TV with Wall Mount	1	Visio Flat screen
Single Tub Utility Sinks	2	
Three Tub Utility Sinks	1	
Drain Treatment System	2	Ecolab Pathways
Glass Window Refrigerators	3	
Bar Back Refrigerators	3	
HD Dual Turnover DVR's	2	Motorola
Small Wooden Shelves	2	
Various Shelving Behind Bar		
Wine Glasses	about 30	
Mason Jars	about 30	
Martini Glasses	3	
Whiskey Glasses/Tumblers	about 35	
Condenser Units	2	
Ice Container	1	
Alcohol Bottle Separator	1	
Soda Guns	2	
Black and White Photograph/Art	1	
Wooden/Tile Top Island	3	
Wine Glasses	about 40	
Red Napkins	about 100	
Water Jars	about 130	
Water Glasses	about 260	
Large Black and White Photographs/Art	5	
Small Black and White Photographs/Art	3	
Point of Sale System	1	Radiant Systems
Receipt Printer	1	Epson
Buffalo Trace Distilleries Barrels	4	
Large Gas Fire Place	1	
Buffalo Statue	1	
High Top Chairs	21	
Rolling Chairs	1	
Low Top Chairs	132	
Single Sided Booth Benches	14	
Extended Single Sided Booth Benches	2	
Double Sided Booth Benches	6	
Extended Double Sided Booth Benches	7	
Square Tables	32	
High Top Circle Tables	5	
Booth Tables	9	
Extended Booth Tables	12	
Small Salad Bowl	50	
Round Squared Bowl	20	
Painted Round Plate	10	
Kids Rectangle Plate	2	
Short Rectangle Plate	12	
Prime Plates	30	
Kids Circle Plate	20	
White Oval	45	

Small Side	24	
Painted Oval Plate	20	
Large Side	12	
Large Oval Bowl	22	
Small Square Bowl	6	
Steak Knives	100	
Server Tray	7	
Server Tray Holder	7	
Kids High Chair	2	
Four Door Standing Hutch	1	
Four Door Bottom Cabinets	1	
Three Door Top Cabinets	1	
Mugs	about 40	
Glasses	about 60	
Soda Fountain Dispenser	1	
Ice Container	1	
Stainless Steel Shelves	2	
Plastic Cup Holder Shelves	2	
Other Various Misc. Supplies		
Dish & Silverware Cleaning & Drying Area	1	
Geo Center Geo System	1	Ecolab
Plastic Crates	11	
Ice Machine Generator	2	Manitowoc
Ice Dispenser/Maker	1	Follett
Area Utility Sink	1	Glas Tender
Stainless Steel Flat Top Food Prep Table	6	
Two tub Utility Sink on Food Prep Table	1	
Three Faucet Four Tub Large Utility Sink	1	
Food Warming Equipment	3	FEW Moisture Temp
Large Dressing/Condiment Cooler	1	Kariak
Ovens (Combi)	4	Blodgett
Stainless Steel Portable Tray Holder	1	
Margarita/Drink Mixing Machine	1	Taylor
4.4 Water Booster Shelf	2	Space Saver
Water Pressure Units	2	Pro Con Standix
Freezer/Cooler	3	Kariak
Heating Station	1	Alto Sham Inc.
Two Tub Fryer	1	Dean
Dish Well Heater	1	Serve Well
Pizza Oven	1	Woodstone
Heating Unit	1	Alto Sham Inc.
Soup Warmer	1	Classic Cook & Serve
Microwave Oven	1	Radiance
Food Cooker	1	Winston C-Vap
Two Burner Cooking Unit	1	Star Max
Grill Top	1	Bakers Pride
Four Drawer Steak & Seafood Cooler	1	
Grill Top	1	Vulcan
Eight Burner Unit	1	Wolf
Heater/Warmer	1	Vulcan
Three Door Prep Cooler	2	
Top and Bottom Food Warmers	2	Hatco
14" Monitor	1	Acer
Food Vent	5	Halton
Long Sanitation Station	1	
Fountain Drink Pump System	1	
Various Silverware		
Bulk CO2 System	1	Mizer 450



Oil Care Unit	1	Frontline International Inc.
Fryer Unit	1	Vulcan
Various Other Misc. Supplies		
Desktop Computer	1	HP Pavilion
Desktop Computer	1	Intel Pentium 4
12" Monitor	1	Hanns G
Keyboard & Mouse	1	Logitech
Cord Phone	1	REC
Safe	1	Amsec
Walkie Talkies	9	Motorola
Printer	1	HP LaserJet 4250
Sound System	1	Playnetwork Crown
Cisco Router	2	
Multimedia Terminal Adaptor	1	Arris TM804
Security Appliance	1	Check Point 1000NW
Various Misc. Office Supplies		
Total Valuation	\$32,500	

**Corporate Office & Common Areas**  
**1420 Marketplace Dr., Suite B**  
**Great Falls, MT 59404**

Asset Categories	Total Quantity of items/units	Brand Name(s)
<b>Furniture</b>		
Art work (Pictures)- Medium	7	
Art work (Pictures)- Large	14	
Chairs	46	
Table	1	
Conference Pictures	11	
Couch	1	
Pictures	45	
Bench	1	
Pictures	43	
Desk	1	
Tables	3	
Light up signs	2	
Signs/Pictures	15	
<b>Audio Visual</b>		
Phone	10	Nortel
Speakers	1	HP
Speakers	4	
Speakers	1	Logitech
Projector	1	Optima
Sound	1	Sony
<b>Computers/POS/Office Equipment</b>		
Check out machines	7	B/2200153
Printers	4	HP LaserJet
Flat Screen	1	Vizio
Flat Screen	1	Element
Flat Screen TV	3	Sony
Keyboard/ Mouse	8	Logitech/Microsoft
Computer	1	HP
Routers	25	Assorted
Router	1	Pace
Computer	6	Lenovo
Monitor	3	HP
Keyboard	1	Lenovo
Mouse	1	Lenovo
Scanner	1	Neat
Printer	2	Brother
Monitor	1	Acer
Computer	15	Assorted
Keyboard	8	Dell
Mouse	2	Dell
Laptop	2	HP
APC	1	Black UPS
Router	1	Pac
Copy Machine	1	Bizhub
Monitor	3	Samsung
Monitor	2	Acer
Monitor	3	Assorted
Phone	1	Nortel
Printer	2	Brother
Computer	3	Dell
TV	2	Slyvanna
Checkout Machine	1	
Monitor	1	Dell
Shredder	2	

Keyboard	1	HP
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**Kitchen Equipment**

Fridge	1	GE
Microwave	1	LG
Cappuccino Maker	4	
Soda Machine	1	
Microwave	3	Various
Meat Slicer	1	
Ice Cream Machine	1	
Fryer	1	
Quick Oven	2	

**Bar Equipment**

Water glasses	60
Wine glasses	30
Glasses	40

**Trash Compactor**

**Waste oil storage/filtration**

**Miscellaneous**

Macaroni Grill Opening Picture	1	
Shredder	1	Office Max
Misc. Wires/Parts	A lot x 3	
Jack Daniels	7	
Tanqueray	8	
Crown Royal	6	
Nikolai Gin	3	
Fireball	4	
Evan Williams	5	
Gran Gala	8	
Southern Comfort	2	
Nikolai Vodka	1	
Grey Goose	4	
Blue Curacao	7	
Holiday Decorations	1	
Water Fixture	1	
14 Gallon Shock Vac	2	Ridgid

Total Valuation	\$4,500
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## **AGREEMENT REGARDING SALE OF COMMERCIAL REAL ESTATE**

**This Agreement relating to the sale of real estate (“Agreement”) is made and entered into the 29th day of July, 2016 by and between the following parties: advice.**

**Buyer:**

Paradigm Restaurants, L.C., or assigns  
David Harper  
1185 West 3050 South  
Ogden, UT 84401

**Seller:**

Jeremiah Foster, Trustee of Shoot the Moon  
Bankruptcy  
Resolute Commercial  
7201 E Camelback Road, Suite 250  
Scottsdale, AZ 85251

Buyer agrees to purchase, and the Seller agrees to sell the following described real property (hereinafter referred to as “Property”) commonly known as The Chili’s Great Falls, Montana location in the City of Great Falls, County of Cascade Montana legally described as:

LOT 4A, OF THE AMENDED PLAT OF LOTS 4, 5, AND 6, BLOCK 2, OF THE  
AMENDED PLAT OF THE AMENDED PLAT OF LOTS 1 & 4, BLOCK 2,  
GREAT FALLS MARKET PLACE SUBDIVISION, AN ADDITION TO THE  
CITY OF GREAT FALLS, CASCADE COUNTY, MONTANA, ACCORDING  
TO THE PLAT NO. P-2004-0000010, FILED APRIL 28, 2004

TOGETHER with all interest of Seller in vacated streets and alleys adjacent thereto, all easements and other appurtenances thereto, and all improvements thereon. All existing permanently installed fixtures and equipment that are attached property are include in the purchase price, included but not limited to electrical, plumbing and heating fixtures.

**PURCHASE PRICE AND TERMS:**

Total purchase price is Two Million Eight Hundred Thousand U.S. Dollars (\$2,800,000.00) payable at Closing.

**CLOSING DATE:** The date of closing (the “Closing”) shall be on or before the earlier of September 30, 2016 (the “Closing Date”) and five (5) days after the Order of the United States Bankruptcy Court approving this sale is entered (the “Sale Order”) and other contingencies are satisfied; provided, however, that the Closing shall not occur prior to the expiration of the Due Diligence Period (as defined in Addendum No. 1) without the prior written consent of Buyer. The parties may, by mutual agreement, close the transaction anticipated by this Agreement at any time prior to the date specified. Buyer and Seller will deposit with the Title Company (as defined

below) all instruments and funds necessary to complete the purchase in accordance with this Agreement.

**POSSESSION:** Seller shall deliver to Buyer possession of the Property and allow occupancy on the date the deed is recorded.

Seller shall provide keys and/or means to operate locks, mailboxes, security systems, alarms if applicable.

**BUYER'S REPRESENTATION OF FUNDS:** Buyer represents that within ten (10) business days of the full execution of this Agreement Buyer shall provide evidence that Buyer can perform its obligations under this Agreement.

**PROPERTY INSPECTIONS:** Buyer is aware that Seller is not making any representations or warranties except as expressly provided in this Agreement.

**CONTINGENCIES:** There are no contingencies to this Agreement, except as expressly set forth below:

**FINANCING CONTINGENCY:**

This Agreement is contingent upon Buyer obtaining the financing specified in the section of this Agreement entitled "PURCHASE PRICE AND TERMS". Such Financing Contingency must be satisfied in ten (10) business days of the full execution of this Agreement.

**APPRAISAL CONTINGENCY:** There is no appraisal contingency.

**TITLE CONTINGENCY:** A copy of a preliminary title commitment for the Property is attached hereto as Exhibit A (the "Commitment"). Buyer will review and approve or disapprove of the condition of title pursuant to the process set forth in Addendum No. 1 to this Agreement.

**INSURANCE CONTINGENCY:** This Agreement is not contingent upon Buyer's ability to acquire, at a rate acceptable to the Buyer, hazard insurance on the Property.

**This Agreement is contingent upon the following**

- (1) Simultaneous closing of the purchase of the business assets of Chili's pursuant to the terms of an Asset Purchase Agreement dated of even date herewith.**
- (2) Buyer's or Buyer's assignee's simultaneous closing of the purchase of two separate parcels of real estate from Seller, described as the Chili's location in Helena, Montana and the Chili's location in Pocatello, Idaho;**

- (3) Approval of Buyer as the Franchisee of eleven (11) Chili's Grill and Bar Restaurants pursuant to Franchise Agreements with Brinker International, Inc. for such restaurants;
- (4) Sale of Property free and clear of liens;; and
- (5) Bankruptcy Court Approval from the U.S. Bankruptcy Court in case number 15-60979-11 pursuant to the Sale Order, which Sale Order shall be reviewed and approved by Buyer.

**CONVEYANCE:** The Seller shall convey the Property by Grant deed, free of all liens and encumbrances except those described in the Commitment, as approved by Buyer.

**CLOSING AGENTS FEES:** Title Company's closing and escrow fee will be paid by both parties equally.

**TITLE INSURANCE:** Seller, at Seller's expense, shall furnish Buyer with ALTA Standard Coverage Owners Title Insurance Policy (as evidenced by a standard form American Land Title Association title insurance commitment) in an amount equal to the purchase price based on the Commitment, as approved by Buyer. Buyer may purchase additional owner's title insurance coverage in the form of "Extended Coverage" or "Enhanced Coverage" for an additional cost to Buyer.

**CONDITION OF TITLE:** All mortgages, judgments and liens shall be paid or satisfied by the Seller at or prior to closing unless otherwise provided herein. Seller agrees that no additional encumbrances, restrictions, easements or other adverse title conditions will be placed against the title to the Property subsequent to the effective date of the Commitment approved by the Buyer.

**SPECIAL IMPROVEMENT DISTRICTS:** Special Improvement Districts (including rural SIDs), including those that have been noticed to Seller by City/County but not yet spread or currently assessed, if any, will be prorated as of the Closing Date.

**ASSOCIATION SPECIAL ASSESSMENTS:** Seller and Buyer agree to prorate taxes, Special Improvement District assessments for the current tax year, as well as pre-paid rents, water and sewer system charges, and/or common area maintenance fees, if any, as of the Closing Date unless otherwise agreed.

**CONDITION OF PROPERTY:** Seller agrees that the Property shall be in the same condition, normal wear and tear excepted, from the date of the execution of this Agreement up to the time Buyer takes possession of the Property. Seller agrees to leave the Property in broom clean or better condition and allow Buyer a walk-through inspection of said Property prior to Closing to insure that all appurtenances and appliances included in the sale remain on the Property.

**MEGAN'S LAW DISCLOSURE:** Pursuant to the provisions of Title 46, Chapter 23, Part 5 of the Montana Code Annotated, certain individuals are required to register their address with the local law enforcement agencies as part of Montana's Sexual and Violent Offender Registration Act. In some communities, law enforcement offices will make the information concerning registered offenders available to the public. If you desire further information, please contact the local County Sheriff's office, the Montana Department of Justice in Helena, Montana, and the probation officers assigned to the area.

**RADON DISCLOSURE STATEMENT:** The following disclosure is given pursuant to the Montana Radon Control Act, Montana Code Annotated Section 75-3-606. RADON GAS: RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN MONTANA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY OR STATE PUBLIC HEALTH UNIT. If the Property has been tested for radon, the Seller will provide a copy of the test results concurrent with an executed copy of this Agreement. If the Property as received radon mitigation treatment, the Seller will provide the evidence of the mitigation treatment concurrent with an executed copy of this Agreement.

**BUYER'S REMEDIES:**

If the Seller accepts the offer contained in this Agreement, but refuses or neglects to consummate the transaction within the time period provide in this Agreement, unless such failure results from failure to obtain the approval of the US Bankruptcy Court in Case No.15-60979-11, the Buyer may file as an administrative expense a claim in Case No. 15-60979-11 in an amount equal to Buyer's fees and costs incurred which are associated with this transaction; provided, however, that if the Bankruptcy Court declines to approve the Sale Order due to Seller's acceptance of a higher and better offer, then Buyer may file such administrative claim.

**SELLER'S REMEDIES:**

If the Seller accepts the offer contained in this Agreement and Buyer refuses or neglects to consummate the transaction within the time period provided in this Agreement, the Seller may recover from Buyer any earnest money which has been forfeited to Buyer by a third party under a separate Agreement with a third party relating to the Property.

The parties agree that neither party shall be entitled to an award of consequential damages and expressly waive any entitlement to such claims.

**BUYER'S/SELLER'S CERTIFICATION:** By entering into this Agreement, each person or persons executing this Agreement as Buyer or Seller represents that he/she is eighteen (18) years of age or older, of sound mind, and legally competent to own or transfer real property in the State

of Montana; and, if acting on behalf of a corporation; partnership, or other non-human entity, that he/she is duly authorized to enter into this Agreement on behalf of such entity.

**CONSENT TO DISCLOSE INFORMATION:** Buyer and Seller hereby consent to the procurement and disclosure by Buyer, Seller and Salespersons and their attorneys, representatives, and other parties having interests essential to this Agreement, of any and all information reasonably necessary to consummate the transaction described in this agreement specifically including access to escrows for review of contracts, deeds, trust indentures, or similar documents concerning this property or underlying obligations pertaining thereto.

**RISK OF LOSS:** All loss or damage to any of the above-described real property or personal property to any cause is assumed by Seller through the time of closing unless otherwise specified.

**TIME IS OF THE ESSENCE:** Time is of the essence as to the terms and provisions of this Agreement.

**ATTORNEY FEES:** In any action brought by the Buyer or the Seller to enforce any of the terms of this Agreement, the prevailing party in such action shall be entitled to such reasonable attorney fees as the court or arbitrator shall determine just.

**COMMISSION:** The Seller's commitment to pay a commission in connection with this transaction is an integral part of this Agreement. Buyer shall have no obligation to pay any commission in connection with this Agreement.

**FACSIMILE/ELECTRONIC SIGNATURE:** The parties agree that a facsimile or electronic copy of this Agreement which contains the parties' signatures may be used as the original.

**COUNTERPARTS:** A copy of this document may be executed by each individual/entity separately, and when each has executed a copy thereof, such copies, taken together, shall be deemed to be a full complete contract between the parties.

**ENTIRE AGREEMENT:** This Agreement, together with an Asset Purchase Agreement and two additional Agreements Regarding the Sale of Commercial Real Estate (one each for locations in Helena, MT and Pocatello, ID) together with any attached exhibits and any addenda or amendments signed by the parties, shall constitute the entire Agreement between Seller and Buyer, and supersedes any other written or oral agreements between Seller and Buyer. This Agreement can be modified only in writing, signed by the Seller and Buyer.

**BUYER'S ACKNOWLEDGMENT:** Buyer acknowledges that he/she has examined the real property, that Buyer enters into this Agreement in full reliance upon his/her independent investigation and judgment, that prior verbal representations by the Seller or Seller's agent or



representatives do not modify or affect this Agreement, and that by signing this Agreement., Buyer acknowledges having read and understand this entire Agreement.

The parties hereto, all agree that the transaction contemplated by this document may be conducted by electronic means.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

DATED this 29th day of July, 2016.

PARADIGM RESTAURANTS, L.C.

By: David Myer  
Its: MANAGING MEMBER

Date: 7/29/16

JEREMIAH FOSTER, TRUSTEE OF  
SHOOT THE MOON BANKRUPTCY

By: [Signature]  
Its: Trustee

Date: July 29, 2016



***First American Title Company***

110 2nd Street South, Great Falls, MT 59401

Phone (406)761-8796 - Fax (406)453-1070

Title Officer: Fileece Scott - fscott@gofirstam.com

## COMMITMENT FOR TITLE INSURANCE

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To: **Clear Title Agency of Arizona Carol Rieger**  
**2910 Camelback Rd. , Suite 100**  
**Phoenix, AZ 85016**

Order No.: **576863-GF**

Attention: **Carol Rieger**

Your Reference:

Re: Property Address: **1400 Market Place Drive, Great Falls , MT 59404**

**First American Title**

# Commitment

## Title Insurance Commitment

BY

**First American Title Insurance Company**

### INFORMATION

The Title Insurance Commitment is a legal contract between you and the Company. It is issued to show the basis on which we will issue a Title Insurance Policy to you. The Policy will insure you against certain risks to the land title, subject to the limitations shown in the Policy.

The Company will give you a sample of the Policy form, if you ask.

This Policy contains an arbitration clause. All arbitrable matters when the Matter of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or you as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <http://www.alta.org/>.

The Commitment is based on the land title as of the Commitment Date. Any changes in the land title or the transaction may affect the Commitment and the Policy.

The Commitment is subject to its Requirements, Exceptions and Conditions.

**THIS INFORMATION IS NOT PART OF THE TITLE INSURANCE COMMITMENT. YOU SHOULD READ THE COMMITMENT VERY CAREFULLY.**

If you have any questions about the Commitment, contact:  
FIRST AMERICAN TITLE INSURANCE COMPANY  
1 First American Way; Santa Ana, CA 92707.

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AGREEMENT TO ISSUE POLICY	1
CONDITIONS	2
SCHEDULE A	Insert
1. Commitment Date	
2. Policies to be Issued, Amounts and Proposed Insureds	
3. Interest in the Land and Owner	
4. Description of the Land	
SCHEDULE B-I – REQUIREMENTS	Insert
SCHEDULE B-II – EXCEPTIONS	Insert

### AGREEMENT TO ISSUE POLICY

We agree to issue policy to you according to the terms of the Commitment. When we show the policy amount and your name as the proposed insured in Schedule A, this Commitment becomes effective as of the Commitment Date shown in Schedule A.

If the Requirements shown in this Commitment have not been met within six months after the Commitment Date, our obligation under this Commitment will end. Also, our obligation under this Commitment will end when the Policy is issued and then our obligation to you will be under the Policy.

Our obligation under this Commitment is limited by the following:

- The Provisions in Schedule A.
- The Requirements in Schedule B-I.
- The Exceptions in Schedule B-II.
- The Conditions on Page 2.

This Commitment is not valid without SCHEDULE A and Sections I and II of SCHEDULE B.

**First American Title Insurance Company**

Dennis J. Gilmore  
President

Jeffrey S. Robinson  
Secretary

(This Commitment is valid only when Schedules A and B are attached) **This jacket was created electronically and constitutes an original document**

## CONDITIONS

### 1. DEFINITIONS

(a) "Mortgage" means mortgage, deed of trust or other security instrument. (b) "Public Records" means title records that give constructive notice of matters affecting your title according to the state statutes where your land is located.

### 2. LATER DEFECTS

The Exceptions in Schedule B - Section II may be amended to show any defects, liens or encumbrances that appear for the first time in the public records or are created or attached between the Commitment Date and the date on which all of the Requirements (a) and (c) of Schedule B - Section I are met. We shall have no liability to you because of this amendment.

### 3. EXISTING DEFECTS

If any defects, liens or encumbrances existing at Commitment Date are not shown in Schedule B, we may amend Schedule B to show them. If we do amend Schedule B to show these defects, liens or encumbrances, we shall be liable to you according to Paragraph 4 below unless you knew of this information and did not tell us about it in writing.

### 4. LIMITATION OF OUR LIABILITY

Our only obligation is to issue to you the Policy referred to in this Commitment, when you have met its Requirements. If we have any liability to you for any loss you incur because of an error in this Commitment, our liability will be limited to your actual loss caused by your relying on this Commitment when you acted in good faith to:

Comply with the Requirements shown in Schedule B – Section I

or

Eliminate with our written consent any Exceptions shown in Schedule B – Section II.

We shall not be liable for more than the Policy Amount shown in Schedule A of this Commitment and our liability is subject to the terms of the Policy form to be issued to you.

### 5. CLAIMS MUST BE BASED ON THIS COMMITMENT

Any claim, whether or not based on negligence, which you may have against us concerning the title to the land must be based on this Commitment and is subject to its terms.

:


**First American Title**

# Schedule A

Title Insurance Commitment

BY

**First American Title Insurance Company**

## FIRST COMMITMENT

File No.: 576863-GF

 1. Commitment Date : **January 26, 2016** at **7:30 A.M.**

2. Policy or Policies to be issued:

	Policy Amount	Premium Amount
--	---------------	----------------

- X ALTA **Standard** Owner's Policy of Title Insurance (6-17-06)  
ALTA Homeowner's Policy of Title Insurance (rev.1-1-08)

(Premium amount reflects \$no available credit)

\$ To Be Determined and Agreed upon by the Company	\$ TBD
--	--------

Proposed Insured:

**To Be Determined and Agreed upon by the Company**

- X ALTA Extended Loan Policy of Title Insurance (6-17-06)  
ALTA Expanded Coverage Residential Loan Policy (rev. 1-1-08)

(Premium amount reflects \$no available credit)

\$ To Be Determined and Agreed upon by the Company	\$ TBD
--	--------

Proposed Insured:

**To Be Determined and Agreed upon by the Company**

 Endorsements: **To Be Determined and Agreed upon by the Company** \$ TBD

3. A fee simple interest in the land described in this Commitment is owned, at the Commitment Date, by:

**Shoot The Moon II Realty, LLC subject to proceedings pending in the United States Bankruptcy Court, U.S. Bankruptcy Court, District of Montana.**

4. The land referred to in this Commitment is described as follows:

**LOT 4A, OF THE AMENDED PLAT OF LOTS 4, 5, AND 6, BLOCK 2, OF THE AMENDED PLAT OF THE AMENDED PLAT OF LOTS 1 & 4, BLOCK 2, GREAT FALLS MARKET PLACE SUBDIVISION, AN ADDITION TO THE CITY OF GREAT FALLS, CASCADE COUNTY, MONTANA, ACCORDING TO THE PLAT NO. P-2004-0000010, FILED APRIL 28, 2004**

Commonly known as: 1400 Market Place Drive, Great Falls , MT 59404

A handwritten signature in black ink, appearing to be "T. H. [unclear]".

By:

Authorized Countersignature

(This Schedule A valid only when Schedule B is attached.)



*First American Title*

## Schedule BI

Title Insurance Commitment

BY

**First American Title Insurance Company**

File No.: 576863-GF

### REQUIREMENTS

File No.: 576863-GF

The following requirements must be met:

- (a) Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
- (b) Pay us the premiums, fees and charges for the policy.
- (c) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
- (d) You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.
- (e) Release(s) or Reconveyance(s) of items(s) **as required by purchaser/lender**.
- (f) If any document in the completion of this transaction is to be executed by an attorney-in-fact, the Power of Attorney must be submitted for review prior to closing.
- (g) You must give us the following information:
  - 1. Any off record leases, surveys, etc.
  - 2. Statement(s) of identity, all parties.
  - 3. Other.
- (h) We require a copy of the articles of organization, operating agreement and resolutions, and any amendments showing the power and authority of the party or parties who plan to execute the forthcoming conveyance or mortgage on behalf of said Limited Liability Company.
- (i) We will require a urban 2011 ALTA/ACSM Land Title Survey with optional items 1, 2, 6a, 6b, 7a, 8, 9, 10, 11, 16, 17, and 20 listed in "Table A Optional Survey Responsibilities and Specifications".
- (j) The policy liability contemplated by this transaction exceeds our local limit. Underwriter approval must be obtained from the Home Office or Regional Office prior to closing. Please contact the title officer in advance of the closing date to discuss the specifics of the proposed transaction, including identity of proposed insureds, endorsement requirements, and exceptions which are to be eliminated.



- (k) We require a certified copy of an Order Approving Sale containing a finding that proper notice was given and that a hearing was held or there was adequate opportunity for a hearing.
- (l) We require a certified copy of the Order Confirming Plan and a copy of the plan.



*First American Title*

## Schedule BII

Title Insurance Commitment

BY

**First American Title Insurance Company**

### EXCEPTIONS

File No.: 576863-GF

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction.

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title including discrepancies, conflicts in boundary lines, shortage in area, or any other facts that would be disclosed by an accurate and complete land survey of the land, and that are not shown in the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.
6. Any liens, or rights to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.
7. Any right, title or interest in any minerals, mineral rights or related matters, including but not limited to oil, gas, coal and other hydrocarbons, sand, gravel or other common variety materials, whether or not shown by the public records.
8. County road rights-of-way not recorded and indexed as a conveyance of record in the office of the Clerk and Recorder pursuant to Title 70, Chapter 21, M.C.A., including, but not limited to any right of the Public and the County of Cascade to use and occupy those certain roads and trails as depicted on County Surveyor's maps on file in the office of the County Surveyor of Cascade County.
9. Right-of-way granted to Montana Power Company, recorded October 24, 1965 in Reel 39 Document No. 7524.
10. Right-of-way granted to Mountain States Telephone and Telegraph Company, recorded as Reel 267 Document No. 512.

11. Terms, conditions and restrictions contained in Annexation and Improvements Agreement for Great Falls Market Place Subdivision by and between Macerich Management Company, and the City of Great Falls, Montana, recorded June 5, 1997, on Reel 293, under Document No. 1483, records of Cascade County, Montana.
12. Construction, Operation and Reciprocal Easement Agreement upon the terms, conditions and provisions contained therein:  
Parties: Macerich Management Company and Home Depot U.S.A, Inc.  
Recorded: March 31, 2000, Reel 332 Document No. 1126
13. Construction and Operation Agreement upon the terms, conditions and provisions contained therein:  
Parties: Macerich Management Company and Routson Investments, Inc.  
Recorded: June 26, 2001, R0008241
14. Construction and Operation Agreement upon the terms, conditions and provisions contained therein:  
Parties: Macerich Management Company and Purdy-Hatzenbeller Investments, L.L.C.  
Recorded: June 9, 2004, Instrument No. R0084326
15. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by Record of Survey recorded April 24, 1995 and corrected June 27, 1996 , C/S #3096 and corrected C/S #2362, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).
16. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by the recorded plat of said subdivision, May 28, 1997 and amended April 26, 2004 Plat #1697 and amended plat P-2004-000010 but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).
17. Covenants, Conditions and Restrictions recorded as Instrument No. R0038223 and amended on Instrument No R0055264, but omitting any covenant, condition or restriction based on race, color, religion, sex, handicap, familial status, or national origin to the extent that such covenants, conditions or restrictions violate 42 USC 3604(c).
18. Construction Deed of Trust dated October 8, 2004, to secure an original indebtedness of \$1,875,000.00, and any other amounts and/or obligations secured thereby  
Recorded: October 18, 2004, as Instrument No. R0092712  
Grantor: Purdy Hatzenbeller Investments LLC  
Trustee: Mountain Title Services, Inc.  
Beneficiary: First Interstate Bank
19. Deed of Trust dated May 3, 2006, to secure an original indebtedness of \$1,875,000.00, and any other amounts and/or obligations secured thereby  
Recorded: June 1, 2006, as Instrument No. R0127094  
Grantor: Purdy Hatzenbeller Investments LLC  
Trustee: Mountain Title Services, Inc.  
Beneficiary: First Interstate Bank

Modification Agreement recorded February 8, 2013, R0268348.

20. Deed of Trust dated September 29, 2006, to secure an original indebtedness of \$300,000.00, and any other amounts and/or obligations secured thereby  
Recorded: October 25, 2006, as Instrument No. R0136790  
Grantor: Purdy Hatzenballer Investments LLC  
Trustee: Mountain Title Services, Inc.  
Beneficiary: First Interstate Bank

Modification Agreement recorded February 08, 2013, R0268347.

21. Deed of Trust dated July 28, 2014, to secure an original indebtedness of \$250,000.00, and any other amounts and/or obligations secured thereby  
Recorded: August 18, 2014, as Instrument No. R0294499  
Grantor: Shoot the Moon II Realty, LLC  
Trustee: Chicago Title Insurance Company  
Beneficiary: Rocky Mountain Bank
22. Construction lien.  
Claimant: Tri-County Mechanical & Electric, Inc.  
Amount: \$ 1,735.27  
For: Service and materials to perform requested repairs  
Recorded: October 14, 2015, as Instrument No. F0010447.
23. Financing Statement covering  
Recorded: January 15, 2016 , U111936  
Debtor: Shoot the Moon 4, LLC  
Secured Party: Axis Capital, Inc and assigned to Alliance Funding Group.
24. Unrecorded leaseholds; rights of parties in possession, rights of secured parties, vendors and vendees under conditional sales contracts of personal property installed on the premises herein, and rights of tenants to remove trade fixtures.
25. Utility lien.  
Claimant: City of Great Falls  
Amount: \$ 243.00  
For: unpaid utilities  
Recorded: amount good through February 29, 2016, as Instrument No. N/A.
26. Subject to proceedings pending in the Bankruptcy Court.  
District: Montana  
Debtor: Shoot the Moon, LLC  
Date of filing: October 21, 2015  
Case No.: 15-60979
27. Sewer and sanitation charges assessed by the City of Great Falls are not covered hereunder.
28. 2016 taxes are an accruing lien, not yet payable.
29. 2015 taxes and special assessments are a lien; amounts are determined and payable. The first one-half becomes delinquent after November 30th of the current year, the second one-half becomes delinquent after May 31st of the following year.

General taxes as set forth below. Any amounts not paid when due will accrue penalties and interest in addition to the amount stated herein:

Year	1st Half	2nd Half	Parcel Number
2015	\$11,748.11-DELINQUENT	\$11,748.09-NOT PAID	0000898130

30. Taxes for all of 2014 and the first one-half of 2015 are delinquent, plus penalties and accruing interest. Tax Parcel No. 0000898130 .
31. The 2014 taxes have been assigned to Woods Cove IV LLC, 11470 Euclid Ave #613, Cleveland, OH 44106. To obtain a payoff contact the County Treasurer.

County Treasurer's Certificate of Tax Sale recorded September 15, 2015 as Instrument No. F0010404.

<b>INFORMATIONAL NOTES</b>
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*First American*

## Privacy Information

### We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our subsidiaries we have adopted this Privacy Policy to govern the use and handling of your personal information.

### Applicability

This Privacy Policy governs our use of the information that you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values.

### Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

### Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

### Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

### Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's Fair Information Values. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

### Information Obtained Through Our Web Site

First American Financial Corporation is sensitive to privacy issues on the Internet. We believe it is important you know how we treat the information about you we receive on the Internet. In general, you can visit First American or its affiliates Web sites on the World Wide Web without telling us who you are or revealing any information about yourself. Our Web servers collect the domain names, not the e-mail addresses, of visitors. This information is aggregated to measure the number of visits, average time spent on the site, pages viewed and similar information. First American uses this information to measure the use of our site and to develop ideas to improve the content of our site.

There are times, however, when we may need information from you, such as your name and email address. When information is needed, we will use our best efforts to let you know at the time of collection how we will use the personal information. Usually, the personal information we collect is used only by us to respond to your inquiry, process an order or allow you to access specific account/profile information. If you choose to share any personal information with us, we will only use it in accordance with the policies outlined above.

### Business Relationships

First American Financial Corporation's site and its affiliates' sites may contain links to other Web sites. While we try to link only to sites that share our high standards and respect for privacy, we are not responsible for the content or the privacy practices employed by other sites.

### Cookies

Some of First American's Web sites may make use of "cookie" technology to measure site activity and to customize information to your personal tastes. A cookie is an element of data that a Web site can send to your browser, which may then store the cookie on your hard drive.

[FirstAm.com](http://FirstAm.com) uses stored cookies. The goal of this technology is to better serve you when visiting our site, save you time when you are here and to provide you with a more meaningful and productive Web site experience.

### Fair Information Values

**Fairness** We consider consumer expectations about their privacy in all our businesses. We only offer products and services that assure a favorable balance between consumer benefits and consumer privacy.

**Public Record** We believe that an open public record creates significant value for society, enhances consumer choice and creates consumer opportunity. We actively support an open public record and emphasize its importance and contribution to our economy.

**Use** We believe we should behave responsibly when we use information about a consumer in our business. We will obey the laws governing the collection, use and dissemination of data.

**Accuracy** We will take reasonable steps to help assure the accuracy of the data we collect, use and disseminate. Where possible, we will take reasonable steps to correct inaccurate information. When, as with the public record, we cannot correct inaccurate information, we will take all reasonable steps to assist consumers in identifying the source of the erroneous data so that the consumer can secure the required corrections.

**Education** We endeavor to educate the users of our products and services, our employees and others in our industry about the importance of consumer privacy. We will instruct our employees on our fair information values and on the responsible collection and use of data. We will encourage others in our industry to collect and use information in a responsible manner.

**Security** We will maintain appropriate facilities and systems to protect against unauthorized access to and corruption of the data we maintain.

## **AGREEMENT REGARDING SALE OF COMMERCIAL REAL ESTATE**

**This Agreement relating to the sale of real estate (“Agreement”) is made and entered into the 29th day of July, 2016 by and between the following parties:**

**Buyer:**

Paradigm Restaurants, L.C., or assigns  
David Harper  
1185 West 3050 South  
Ogden, UT 84401

**Seller:**

Jeremiah Foster, Trustee of Shoot the Moon  
Bankruptcy  
Resolute Commercial  
7201 E Camelback Road, Suite 250  
Scottsdale, AZ 85251

Buyer agrees to purchase, and the Seller agrees to sell the following described real property (hereinafter referred to as “Property”) commonly known as The Chili’s Helena, Montana location in the City of Helena, County of Lewis and Clark Montana legally described as:

LOT 2A OF THE AMENDED SKYWAY REGIONAL SHOPPING CENTER PLAT  
AMENDING LOTS 1, 2, 4 AND 5 OF THE SKYWAY REGIONAL SHOPPING  
CENTER MINOR SUBDIVISION, LOCATED IN THE WEST HALF OF THE  
NORTHEAST QUARTER OF SECTION 20, TOWNSHIP 10 NORTH, RANGE 3  
WEST, P.M.M., LEWIS AND CLARK COUNTY, MONTANA, FILED UNDER  
DOCUMENT NUMBER 3140492.

TOGETHER with all interest of Seller in vacated streets and alleys adjacent thereto, all easements and other appurtenances thereto, and all improvements thereon. All existing permanently installed fixtures and equipment that are attached property are include in the purchase price, included but not limited to electrical, plumbing and heating fixtures.

**PURCHASE PRICE AND TERMS:**

Total purchase price is Two Million Seven Hundred Thirty-Five Thousand U.S. Dollars (\$2,735,000.00) payable at Closing.

**CLOSING DATE:** The date of closing (the “Closing”) shall be on or before the earlier of September 30, 2016 (the “Closing Date”) and five (5) days after the Order of the United States Bankruptcy Court approving this sale is entered (the “Sale Order”) and other contingencies are satisfied; provided, however, that the Closing shall not occur prior to the expiration of the Due Diligence Period (as defined in Addendum No. 1) without the prior written consent of Buyer. The parties may, by mutual agreement, close the transaction anticipated by this Agreement at any time prior to the date specified. Buyer and Seller will deposit with the Title Company (as defined



below) all instruments and funds necessary to complete the purchase in accordance with this Agreement.

**POSSESSION:** Seller shall deliver to Buyer possession of the Property and allow occupancy on the date the deed is recorded.

Seller shall provide keys and/or means to operate locks, mailboxes, security systems, alarms if applicable.

**BUYER'S REPRESENTATION OF FUNDS:** Buyer represents that within ten (10) business days of the full execution of this Agreement Buyer shall provide evidence that Buyer can perform its obligations under this Agreement.

**PROPERTY INSPECTIONS:** Buyer is aware that Seller is not making any representations or warranties except as expressly provided in this Agreement.

**CONTINGENCIES:** There are no contingencies to this Agreement, except as expressly set forth below:

**FINANCING CONTINGENCY:**

This Agreement is contingent upon Buyer obtaining the financing specified in the section of this Agreement entitled "PURCHASE PRICE AND TERMS". Such Financing Contingency must be satisfied in ten (10) business days of the full execution of this Agreement.

**APPRAISAL CONTINGENCY:** There is no appraisal contingency.

**TITLE CONTINGENCY:** A copy of a preliminary title commitment for the Property is attached hereto as Exhibit A (the "Commitment"). Buyer will review and approve or disapprove of the condition of title pursuant to the process set forth in Addendum No. 1 to this Agreement.

**INSURANCE CONTINGENCY:** This Agreement is not contingent upon Buyer's ability to acquire, at a rate acceptable to the Buyer, hazard insurance on the Property.

**This Agreement is contingent upon the following:**

- (1) Simultaneous closing of the purchase of the business assets of Chili's pursuant to the terms of an Asset Purchase Agreement dated of even date herewith.
- (2) Buyer's or Buyer's assignee's simultaneous closing of the purchase of two separate parcels of real estate from Seller, described as the Chili's location in Great Falls, Montana and the Chili's location in Pocatello, Idaho;

- (3) Approval of Buyer as the Franchisee of eleven (11) Chili's Grill and Bar Restaurants pursuant to Franchise Agreements with Brinker International, Inc. for such restaurants;
- (4) Sale of Property free and clear of liens;; and
- (5) Bankruptcy Court Approval from the U.S. Bankruptcy Court in case number 15-60979-11 pursuant to the Sale Order, which Sale Order shall be reviewed and approved by Buyer.

**CONVEYANCE:** The Seller shall convey the Property by Grant deed, free of all liens and encumbrances except those described in the Commitment, as approved by Buyer.

**CLOSING AGENTS FEES:** Title Company's closing and escrow fee will be paid by both parties equally.

**TITLE INSURANCE:** Seller, at Seller's expense, shall furnish Buyer with ALTA Standard Coverage Owners Title Insurance Policy (as evidenced by a standard form American Land Title Association title insurance commitment) in an amount equal to the purchase price based on the Commitment, as approved by Buyer. Buyer may purchase additional owner's title insurance coverage in the form of "Extended Coverage" or "Enhanced Coverage" for an additional cost to Buyer.

**CONDITION OF TITLE:** All mortgages, judgments and liens shall be paid or satisfied by the Seller at or prior to closing unless otherwise provided herein. Seller agrees that no additional encumbrances, restrictions, easements or other adverse title conditions will be placed against the title to the Property subsequent to the effective date of the Commitment approved by the Buyer.

**SPECIAL IMPROVEMENT DISTRICTS:** Special Improvement Districts (including rural SIDs), including those that have been noticed to Seller by City/County but not yet spread or currently assessed, if any, will be prorated as of the Closing Date.

**ASSOCIATION SPECIAL ASSESSMENTS:** Seller and Buyer agree to prorate taxes, Special Improvement District assessments for the current tax year, as well as pre-paid rents, water and sewer system charges, and/or common area maintenance fees, if any, as of the Closing Date unless otherwise agreed.

**CONDITION OF PROPERTY:** Seller agrees that the Property shall be in the same condition, normal wear and tear excepted, from the date of the execution of this Agreement up to the time Buyer takes possession of the Property. Seller agrees to leave the Property in broom clean or better condition and allow Buyer a walk-through inspection of said Property prior to Closing to insure that all appurtenances and appliances included in the sale remain on the Property.

**MEGAN'S LAW DISCLOSURE:** Pursuant to the provisions of Title 46, Chapter 23, Part 5 of the Montana Code Annotated, certain individuals are required to register their address with the local law enforcement agencies as part of Montana's Sexual and Violent Offender Registration Act. In some communities, law enforcement offices will make the information concerning registered offenders available to the public. If you desire further information, please contact the local County Sheriff's office, the Montana Department of Justice in Helena, Montana, and the probation officers assigned to the area.

**RADON DISCLOSURE STATEMENT:** The following disclosure is given pursuant to the Montana Radon Control Act, Montana Code Annotated Section 75-3-606. RADON GAS: RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN MONTANA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY OR STATE PUBLIC HEALTH UNIT. If the Property has been tested for radon, the Seller will provide a copy of the test results concurrent with an executed copy of this Agreement. If the Property as received radon mitigation treatment, the Seller will provide the evidence of the mitigation treatment concurrent with an executed copy of this Agreement.

**BUYER'S REMEDIES:**

If the Seller accepts the offer contained in this Agreement, but refuses or neglects to consummate the transaction within the time period provide in this Agreement, unless such failure results from failure to obtain the approval of the US Bankruptcy Court in Case No.15-60979-11, the Buyer may file as an administrative expense a claim in Case No. 15-60979-11 in an amount equal to

Buyer's fees and costs incurred which are associated with this transaction; provided, however, that if the Bankruptcy Court declines to approve the Sale Order due to Seller's acceptance of a higher and better offer, then Buyer may file such administrative claim.

**SELLER'S REMEDIES:**

If the Seller accepts the offer contained in this Agreement and Buyer refuses or neglects to consummate the transaction within the time period provided in this Agreement, the Seller may recover from Buyer any earnest money which has been forfeited to Buyer by a third party under a separate Agreement with a third party relating to the Property.

The parties agree that neither party shall be entitled to an award of consequential damages and expressly waive any entitlement to such claims.

**BUYER'S/SELLER'S CERTIFICATION:** By entering into this Agreement, each person or persons executing this Agreement as Buyer or Seller represents that he/she is eighteen (18) years of age or older, of sound mind, and legally competent to own or transfer real property in the State

of Montana; and, if acting on behalf of a corporation; partnership, or other non-human entity, that he/she is duly authorized to enter into this Agreement on behalf of such entity.

**CONSENT TO DISCLOSE INFORMATION:** Buyer and Seller hereby consent to the procurement and disclosure by Buyer, Seller and Salespersons and their attorneys, representatives, and other parties having interests essential to this Agreement, of any and all information reasonably necessary to consummate the transaction described in this agreement specifically including access to escrows for review of contracts, deeds, trust indentures, or similar documents concerning this property or underlying obligations pertaining thereto.

**RISK OF LOSS:** All loss or damage to any of the above-described real property or personal property to any cause is assumed by Seller through the time of closing unless otherwise specified.

**TIME IS OF THE ESSENCE:** Time is of the essence as to the terms and provisions of this Agreement.

**ATTORNEY FEES:** In any action brought by the Buyer or the Seller to enforce any of the terms of this Agreement, the prevailing party in such action shall be entitled to such reasonable attorney fees as the court or arbitrator shall determine just.

**COMMISSION:** The Seller's commitment to pay a commission in connection with this transaction is an integral part of this Agreement. Buyer shall have no obligation to pay any commission in connection with this Agreement.

**FACSIMILE/ELECTRONIC SIGNATURE:** The parties agree that a facsimile or electronic copy of this Agreement which contains the parties' signatures may be used as the original.

**COUNTERPARTS:** A copy of this document may be executed by each individual/entity separately, and when each has executed a copy thereof, such copies, taken together, shall be deemed to be a full complete contract between the parties.

**ENTIRE AGREEMENT:** This Agreement, together with an Asset Purchase Agreement and two additional Agreements Regarding Sale of Commercial Real Estate (one each for locations in Great Falls, MT and Pocatello, ID) together with any attached exhibits and any addenda or amendments signed by the parties, shall constitute the entire Agreement between Seller and Buyer, and supersedes any other written or oral agreements between Seller and Buyer. This Agreement can be modified only in writing, signed by the Seller and Buyer.

**BUYER'S ACKNOWLEDGMENT:** Buyer acknowledges that he/she has examined the real property, that Buyer enters into this Agreement in full reliance upon his/her independent investigation and judgment, that prior verbal representations by the Seller or Seller's agent or

representatives do not modify or affect this Agreement, and that by signing this Agreement., Buyer acknowledges having read and understand this entire Agreement.

The parties hereto, all agree that the transaction contemplated by this document may be conducted by electronic means.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

DATED this 29th day of July, 2016.

PARADIGM RESTAURANTS, L.C.

By: David Myer  
Its: MANAGING MEMBER

Date: 7/29/16

JEREMIAH FOSTER, TRUSTEE OF  
SHOOT THE MOON BANKRUPTCY

By: [Signature]  
Its: Trustee

Date: July 29, 2016

**Remit Payment To:**

First Montana Land Title Company  
400 North Park Avenue  
Helena, MT 59601

**INVOICE**

**Billed To:**

Clear Title Agency of Arizona  
2910 E. Camelback Road Ste. 100  
Phoenix, AZ 85016  
Carol Rieger

**Invoice Date:** January 25, 2016

**Please Pay Before:**

**Our File Number:** L&C101627

**Your Reference Number:**

**Property:**

2790 Washington Street  
Helena, MT 59601  
Lewis and Clark County

**Brief Legal:** Lot 2A of the AMENDED  
SKYWAY REGIONAL  
SHOPPING CENTER

DESCRIPTION	AMOUNT
Policy premium for Owner's	6,307.00
<hr/>	
Invoice Total Amount Due	\$ 6,307.00

**Buyer/Borrower:** TBD

**Seller:** Shoot the Moon of Montana

**Direct Title Commitment inquiries to:** Jonathan

Please put our order number on all remittances and documents. Thank you for your order. Please call us again.  
406-443-4422

ALTA Plain Language Commitment

FileNumber: L&C101627

**SCHEDULE A**

1. Commitment Date: **January 17, 2016 at 05:00 PM**

2. Policy or Policies to be issued:	<u>Amount</u>	<u>Premium</u>
(a) <u>Owner's Policy</u>		
ALTA Own. Policy (06/17/06)	<b>\$ 3,200,000.00</b>	<b>\$ 6,307.00</b>
Proposed Insured:		
<b>TBD</b>		
(b) <u>Loan Policy</u>	<b>\$ 0.00</b>	<b>\$ 0.00</b>
ALTA Loan Policy (06/17/06)		
Proposed Insured:		

(c) Endorsements:

3. A Fee Simple interest in the land described in this Commitment is owned at the Commitment Date by:  
**Shoot the Moon of Montana Realty, LLC, a Montana Limited Liability Company**

4. The land referred to in this Commitment is described as follows:

**Lot 2A of the AMENDED SKYWAY REGIONAL SHOPPING CENTER PLAT AMENDING Lots 1, 2, 4 and 5 of the Skyway Regional Shopping Center Minor Subdivision, located in the West Half of the Northeast Quarter of Section 20, Township 10 North, Range 3 West, P.M.M., Lewis and Clark County, Montana, filed under Document Number 3140492.**

The Lewis and Clark County tax records disclose the above property address as: 2790 Washington Street, Helena, MT 59601

***First American Title Insurance Company***

By: \_\_\_\_\_

**Authorized Officer or Agent**



ALTA Plain Language Commitment

File Number: L&C101627

## **SCHEDULE B - SECTION I**

### **Requirements**

The following requirements must be met:

- a) Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
- b) Pay us the premiums, fees and charges for the policy.
- c) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
- d) You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.
- e) Release(s) or Reconveyance(s) of item(s).
- f) If any document in the completion of this transaction is to be executed by an attorney-in-fact, the Power of Attorney form must be submitted for review prior to closing.
- g) You must give us the following information: (1) any off record leases, surveys, etc; (2) statement(s) of identity, all parties; (3) .
  - 1. We require a copy of the Articles of Incorporation, By-laws, regulations and any amendments evidencing the power and authority of the party or parties who plan to execute the forthcoming conveyance or mortgage on behalf of Shoot the Moon of Montana Realty, LLC, a Montana Limited Liability Company.
  - 2. The policy liability contemplated by this transaction exceeds our local limit. Underwriter approval must be obtained from the Home Office or Regional Office prior to closing. Please contact the title officer in advance of the closing date to discuss the specifics of the proposed transaction, including identity of proposed insured, endorsement requirements, and exceptions which are to be eliminated.
  - 3. We require the attached Seller/Borrower Affidavit be completed prior to recording.

ALTA Plain Language Commitment

File Number: L&C101627

## **SCHEDULE B - SECTION II**

### **Exceptions**

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction.

#### **PART I**

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title including discrepancies, conflicts in boundary lines, shortage in area, or any other facts that would be disclosed by an accurate and complete land survey of the land, and that are not shown in the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water; whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
7. Any right, title or interest in any minerals, including but not limited to mineral rights, or related matters, oil, gas, coal, and other hydrocarbons.

The foregoing numbered exceptions (1-7) may be eliminated in an ALTA Extended Coverage Policy.

8. Reservations or exceptions in patents or in Acts authorizing the issuance thereof; all claims to water and water rights.
9. Any right title or interest in any minerals, mineral rights or related matters including but not limited to oil, gas, coal and other hydrocarbons, sand, gravel or other common variety materials, whether or not shown by the public records.
10. Any Special Improvement District, any Rural Improvement District, special liens and levies of which no search is made.
11. General and Special Taxes for the year 2016 and subsequent years, a lien which is not yet due and payable.
12. No liability is assumed for errors, omissions or changes in assessed evaluations or amount of taxes assessed by any state, county, city or federal taxing or assessing authority.
13. County road rights-of-way the existence of which is dependent in whole or in part upon writings which have not been recorded and indexed as conveyances in the office of the Clerk and Recorder pursuant to Title 70, Chapter 21 MCA.

ALTA Plain Language Commitment

File Number: L&C101627

## SCHEDULE B - SECTION II

### Exceptions (Continued)

14. 2015 taxes and special assessments are a lien; amounts are determined and payable. The first one-half becomes delinquent after November 30th of the current year, the second one-half becomes delinquent after May 31st for the following year. General taxes as set forth below. Any amounts not paid when due will accrue penalties and interest in addition to the amount stated herein:

General County Taxes for the year 2015,  
First Half: \$21,820.02, delinquent  
Second Half: \$21,819.99, not yet due and payable  
Total for year: \$43,640.01  
Geo Code No.: 05-1888-20-1-02-03-0000  
Property Tax ID: 38795

15. 2015 taxes and special assessments are a lien; amounts are determined and payable. The first one-half becomes delinquent after November 30th of the current year, the second one-half becomes delinquent after May 31st for the following year. General taxes as set forth below. Any amounts not paid when due will accrue penalties and interest in addition to the amount stated herein:

General County Taxes for the year 2015,

\$565.70, now due and payable  
Property Tax ID: 72628

16. 2015 taxes and special assessments are a lien; amounts are determined and payable. The first one-half becomes delinquent after November 30th of the current year, the second one-half becomes delinquent after May 31st for the following year. General taxes as set forth below. Any amounts not paid when due will accrue penalties and interest in addition to the amount stated herein:

General County Taxes for the year 2015,

\$619.32, now due and payable  
Property Tax ID: 72628

17. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by Certificate of Survey filed under Document Number 283050 and 306900, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 40 USC 3604(c).
18. Right of way granted to the Montana Power Company recorded in Book 266 of Deeds, Page 236, records of Lewis and Clark County, Montana, for the right to construct, maintain, operate and remove an electric power line and communication system as staked and located over, along and across N1/2NE1/4 of Section 20, T. 10 N., R. 3 W., together with the right of access to said right of way over and along existing roads and trails and the right to clear and remove all timber and brush from the right of way 15 feet on each side of said transmission line and to cut and remove such trees outside of such right of way which may endanger said line.
19. Airport Influence Area for the Helena Airport, recorded January 4, 1982 in M Book 2, Page 5379, records of Lewis and Clark County, Montana.

(L&C101627.PFD/L&C101627/2)



ALTA Plain Language Commitment

File Number: L&C101627

## **SCHEDULE B - SECTION II**

### **Exceptions (Continued)**

20. Airport Influence Area for the Helena Airport, recorded February 5, 1982 in M Book 2, Page 5898, records of Lewis and Clark County, Montana.
21. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by Certificate of Survey filed September 12, 2003 under Document Number 3050013, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 40 USC 3604(c).
22. Water Line Easement executed by HOME DEPOT U.S.A., INC., a Delaware corporation, to the CITY OF HELENA, MONTANA, a municipal corporation, recorded July 28, 2003 in M Book 29, Page 39, records of Lewis and Clark County, Montana.
23. Sanitary Sewer Easement executed by HOME DEPOT U.S.A., INC., a Delaware corporation, to the CITY OF HELENA, MONTANA, a municipal corporation, recorded July 28, 2003 in M Book 29, Page 40, records of Lewis and Clark County, Montana.
24. Easement Agreement executed by HOME DEPOT U.S.A., INC., a Delaware corporation to QWEST CORPORATION, a Colorado corporation, recorded August 21, 2003 in M Book 29, Page 1825, records of Lewis and Clark County, Montana.
25. Declaration of Covenants, Conditions and Restrictions, recorded January 23, 2004 in M Book 30, Page 1095, records of Lewis and Clark County, Montana.
26. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by the plat of said subdivision filed April 18, 2005 under Document Number 3082596, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).
27. Comprehensive Reciprocal Easement Agreement with Covenants, Conditions and Restrictions recorded May 13, 2005 in M Book 32, Page 5273, records of Lewis and Clark County, Montana.
28. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by the plat of said subdivision filed under Document Number 3140492, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).
29. Easement Emergency Vehicle Access Easement dated November 19, 2007 by Skyway Regional Shopping Center, LLC a Montana limited liability company to the City of Helena, Montana, a municipal corporation recorded December 13, 2007 in M Book 37, Page 6420, records of Lewis and Clark County, Montana.
30. Emergency Vehicle Access Easement dated November 15, 2007 by the Helena Regional Airport Authority to the City of Helena, Montana, recorded December 13, 2007 in M Book 37, page 6421, records of Lewis and Clark County, Montana.

ALTA Plain Language Commitment

File Number: L&C101627

## **SCHEDULE B - SECTION II**

### **Exceptions (Continued)**

31. First Amendment to Declarations of Covenants, Conditions and Restrictions dated November 21, 2007 by and between Home Depot U.S.A., Inc. a Delaware Corporation to Skyway Regional Shopping Center, LLC a Montana limited liability company recorded December 13, 2007 in M Book 37, Page 6422, records of Lewis and Clark County, Montana.
32. Release of Interest in Utility Easement recorded January 29, 2015 in M Book 49, Page 4606, records of Lewis and Clark County, Montana.
33. DEED OF TRUST dated July 30, 2008 executed by Shoot the Moon Enterprises, LLC, as Grantor to Stewart Title of Great Falls, as Trustee and First Interstate Bank, as Beneficiary, to secure payment of \$5,380,000.00 plus interest, recorded July 30, 2008 in M Book 38, Page 7223, records of Lewis and Clark County, Montana.
34. ASSIGNMENT OF RENTS dated July 30, 2008 between Shoot the Moon Enterprises, LLC and First Interstate Bank, recorded August 1, 2008 in M Book 38, Page 7470, records of Lewis and Clark County, Montana.
35. Financing Statement by and between Shoot the Moon Enterprises, LLC, as Debtor and First Interstate Bank, as Secured Party, recorded 10/25/10 under Document Number 3195141, records of Lewis and Clark County, Montana.
36. Construction Lien against Shoot the Moon of Montana Realty, LLC dba Chili's by Tri-County Mechanical & Electrical, Inc. in the amount of \$926.18, recorded October 14, 2015 under Document Number 3280646, records of Lewis and Clark County, Montana.
37. Unrecorded leaseholds; rights of parties in possession, rights of secured parties vendors and vendees under conditional sales contracts of personal property installed on the premises herein, and rights of tenants to remove trade fixtures.
38. "Any claim that the Title is subject to a trust or lien created under the Perishable Agricultural Commodities Act (7 U.S.C. §§499a, et seq.) or the Poultry and Stockyards Act (7 U.S.C. §§181, et seq.) or under similar state laws."

NOTE: Any Deed Restrictions, Covenant, By-Law, Declaration of Condominium and/or any amendments thereto and/or otherwise as shown herein as an exception which may contain a clause indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c), is hereby deleted as to said reference; no other deletion is hereby intended or implied.

END OF SCHEDULE B

TITLE QUESTIONS CONTACT: Jonathan



After recording, return to:  
City Attorney's Office  
316 North Park Avenue  
Room 203  
Helena, MT 59623  
(406) 457-8595

3268614 B: M49 P: 4606 RELEA  
01/29/2015 04:06 PM Pages: 1 of 2 Fees: 14.00  
Paulette DeHart Clerk & Recorder, Lewis & Clark MT



**RELEASE OF INTEREST IN UTILITY EASEMENT**

This Release is made this 22 day of January, 2015, by the  
CITY OF HELENA, MONTANA, a municipal corporation organized and  
existing under the laws of the State of Montana, 316 North Park  
Avenue, Helena, Montana 59623.

The Helena City Commission, at a scheduled public meeting on  
January 12, 2015, approved a release of the City's interest in a  
twenty-foot (20') wide utility easement across Lot 1-B-1 of the  
Amended Plat of the Amended Skyway Regional Shopping Center Plat as  
shown on Certificate of Survey No. 3224561 and the Amended Skyway  
Regional Shopping Center Plat Phase I as shown on Certificate of  
Survey No. 3140492 in the records of the Clerk and Recorder of  
Lewis and Clark County, Montana.

By this Release, the City relinquishes its interest in the  
utility easement listed above.

3268614 B: M49 P: 4606 RELEA

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01/29/2015 04:06:16 PM Page 2 of 2 Fees: \$14.00

IN WITNESS WHEREOF, the City has executed the foregoing instrument the day and year first above written.

**CITY OF HELENA, MONTANA**



By James E. Smith  
James E. Smith, Mayor

7881  
ANTANA  
Debbie Havens, City Clerk

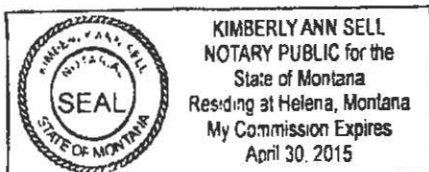
**APPROVED AS TO FORM:**

By Thomas J. Jodoin  
Thomas J. Jodoin, City Attorney


STATE OF MONTANA )  
 ) ss.  
COUNTY OF LEWIS AND CLARK)

On this 22 day <sup>January 15</sup> ~~December~~, 2014, before me, the undersigned, a Notary Public for the State of Montana, personally appeared **James E. Smith and Debbie Havens**, the Mayor and Clerk of the City of Helena, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same in such capacities.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.



I have hereunto set my hand and affixed my  
year first above written.

  
\_\_\_\_\_  
Kimberly Ann Sell  
Notary Public for State of Montana  
Residing at Helena, Montana  
My Commission expires 4/30/2015.

**RECORDATION**

**REQUESTED BY:**  
First Interstate Bank  
Great Falls  
Downtown Branch  
425 First Avenue  
North  
P.O. Box 5010  
Great Falls, MT  
59403-5010

**WHEN RECORDED MAIL**

**TO:**  
First Interstate Bank  
Great Falls  
Downtown Branch  
425 First Avenue  
North  
P.O. Box 5010  
Great Falls, MT  
59403-5010

*HATTO #869213 A*

**SEND TAX NOTICES TO:**

First Interstate Bank  
Great Falls  
Downtown Branch  
425 First Avenue  
North  
P.O. Box 5010  
Great Falls, MT  
59403-5010

**FOR RECORDER'S USE ONLY**



**DEED OF TRUST**

**MAXIMUM LIEN.** The total principal indebtedness that may be outstanding at any given time which is secured by this Deed of Trust is \$5,380,000.00.

**THIS DEED OF TRUST** is dated July 30, 2008, among Shoot the Moon Enterprises, LLC, whose address is 1400 Market Place, Great Falls, MT 59404 ("Grantor"); First Interstate Bank, whose address is Great Falls Downtown Branch, 425 First Avenue North, P.O. Box 5010, Great Falls, MT 59403-5010 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and Stewart Title of Great Falls, whose address is 111 3rd Ave S, Great Falls, MT 59405 (referred to below as "Trustee").

**CONVEYANCE AND GRANT.** For valuable consideration, Grantor conveys to Trustee for the benefit of Lender as Beneficiary all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in Lewis & Clark County, State of Montana:

Lot 2-A in the Amended Skyway Regional Shopping Center Plat-Phase I in the City of Helena, Lewis and Clark County, Montana, as shown on the amended plat filed under Doc. No. 3140492.

The Real Property or its address is commonly known as 2790 N Washington St, Helena, MT 59601.

**CROSS-COLLATERALIZATION.** In addition to the Note, this Deed of Trust secures all obligations, debts and liabilities, plus interest thereon, of either Grantor or Borrower to Lender, or any one or more of them, as well as all claims by Lender against Borrower and Grantor or any one or more of them, whether now existing or hereafter arising, whether related or





**DEED OF TRUST  
(Continued)**

Page 2

unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Borrower or Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

Grantor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

**THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:**

**GRANTOR'S REPRESENTATIONS AND WARRANTIES.** Grantor warrants that: (a) this Deed of Trust is executed at Borrower's request and not at the request of Lender; (b) Grantor has the full power, right, and authority to enter into this Deed of Trust and to hypothecate the Property; (c) the provisions of this Deed of Trust do not conflict with, or result in a default under any agreement or other instrument binding upon Grantor and do not result in a violation of any law, regulation, court decree or order applicable to Grantor; (d) Grantor has established adequate means of obtaining from Borrower on a continuing basis information about Borrower's financial condition; and (e) Lender has made no representation to Grantor about Borrower (including without limitation the creditworthiness of Borrower).

**GRANTOR'S WAIVERS.** Grantor waives all rights or defenses arising by reason of any "one action" or "anti-deficiency" law, or any other law which may prevent Lender from bringing any action against Grantor, including a claim for deficiency to the extent Lender is otherwise entitled to a claim for deficiency, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale.

**PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Deed of Trust, Borrower and Grantor shall pay to Lender all Indebtedness secured by this Deed of Trust as it becomes due, and Borrower and Grantor shall strictly perform all their respective obligations under the Note, this Deed of Trust, and the Related Documents.

**POSSESSION AND MAINTENANCE OF THE PROPERTY.** Borrower and Grantor agree that Borrower's and Grantor's possession and use of the Property shall be governed by the following provisions:

**Possession and Use.** Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property. The following provisions relate to the use of the Property or to other limitations on the Property. The Real Property does not exceed forty (40) acres, and this instrument is a Trust Indenture executed in conformity with the Small Tract Financing Act of Montana.

**Duty to Maintain.** Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

**Compliance With Environmental Laws.** Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without



Lewis & Clark County

NTS

**3152085**

Page: 2 of 13  
07/30/2016 01:08P  
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**DEED OF TRUST  
(Continued)**

**Page 12**

renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Trustee or Lender to enforce Grantor's obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust. Specifically, without limitation, Indebtedness includes all amounts that may be indirectly secured by the Cross-Collateralization provision of this Deed of Trust.

**Lender.** The word "Lender" means First Interstate Bank, its successors and assigns.

**Note.** The word "Note" means the promissory note dated July 30, 2008, in the original principal amount of \$5,380,000.00 from Borrower to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. **NOTICE TO GRANTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.**

**Personal Property.** The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

**Property.** The word "Property" means collectively the Real Property and the Personal Property.

**Real Property.** The words "Real Property" mean the real property, interests and rights, as further described in this Deed of Trust.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

**Rents.** The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

**Trustee.** The word "Trustee" means Stewart Title of Great Falls, whose address is 111 3rd Ave S, Great Falls, MT 59405 and any substitute or successor trustees.

**GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND GRANTOR AGREES TO ITS TERMS.**

**GRANTOR:**

**SHOOT THE MOON ENTERPRISES, LLC**

By   
Kenneth A. Hatzenbuehler, Managing Member of Shoot  
the Moon Enterprises, LLC



DEED OF TRUST  
(Continued)

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LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Montana )  
 ) SS  
COUNTY OF Cascade )

This instrument was acknowledged before me on July 30<sup>th</sup>, 2008  
by Kenneth J Hatzenbeller, Managing Member of Shoot the Moon Enterprises, LLC.



(Seal)

Dorothy Schneibel  
Dorothy Schneibel  
[Type or Print Name]

Notary Public for the State of  
Montana

Residing at Great Falls

My commission expires 11-30-2010

REQUEST FOR FULL RECONVEYANCE

(To be used only when obligations have been paid in full)

To: \_\_\_\_\_, Trustee

The undersigned is the legal owner and holder of all indebtedness secured by this Deed of Trust. All sums secured by this Deed of Trust have been fully paid and satisfied. You are hereby directed, upon payment to you of any sums owing to you under the terms of this Deed of Trust or pursuant to any applicable statute, to cancel the Note secured by this Deed of Trust (which is delivered to you together with this Deed of Trust), and to reconvey, without warranty, to the parties designated by the terms of this Deed of Trust, the estate now held by you under this Deed of Trust. Please mail the reconveyance and Related Documents to:

Date: \_\_\_\_\_ Beneficiary: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

LASER PRO Lending, Ver. 5.41.00.004 Copr. Harland Financial Solutions, Inc. 1997, 2008.  
All Rights Reserved. - MT K:\CF\NLPL\G01.FC TR-39392 PR-199



Lewis & Clark County

HTS

3152085

Page: 13 of 13  
07/29/2008 01:08P

BK-M38 Pg-7223



**RECORDATION**

**REQUESTED BY:**  
First Interstate Bank  
Great Falls  
Downtown Branch  
425 First Avenue  
North  
P.O. Box 5010  
Great Falls, MT  
59403-5010

**WHEN RECORDED MAIL**

**TO:**  
First Interstate Bank  
Great Falls  
Downtown Branch  
425 First Avenue  
North  
P.O. Box 5010  
Great Falls, MT  
59403-5010

**SEND TAX NOTICES TO:**

First Interstate Bank  
Great Falls  
Downtown Branch  
425 First Avenue  
North  
P.O. Box 5010  
Great Falls, MT  
59403-5010

**FOR RECORDER'S USE ONLY**



**ASSIGNMENT OF RENTS**

THIS ASSIGNMENT OF RENTS dated July 30, 2008, is made and executed between Shoot the Moon Enterprises, LLC, whose address is 1400 Market Place, Great Falls, MT 59404 (referred to below as "Grantor") and First Interstate Bank, whose address is 425 First Avenue North, P.O. Box 5010, Great Falls, MT 59403-5010 (referred to below as "Lender").

**ASSIGNMENT.** For valuable consideration, Grantor hereby assigns, grants a continuing security interest in, and conveys to Lender all of Grantor's right, title, and interest in and to the Rents from the following described Property located in Lewis & Clark County, State of Montana:

Lot 2-A in the Amended Skyway Regional Shopping Center Plat-Phase I in the City of Helena, Lewis and Clark County, Montana, as shown on the amended plat filed under Doc. No. 3140492.

The Property or its address is commonly known as 2790 N Washington St, Helena, MT 59601.

**CROSS-COLLATERALIZATION.** In addition to the Note, this Assignment secures all obligations, debts and liabilities, plus interest thereon, of either Grantor or Borrower to Lender, or any one or more of them, as well as all claims by Lender against Borrower and Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Borrower or Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

THIS ASSIGNMENT IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2)



**ASSIGNMENT OF RENTS  
(Continued)**

Page 2

**PERFORMANCE OF ANY AND ALL OBLIGATIONS OF BORROWER AND GRANTOR UNDER THE NOTE, THIS ASSIGNMENT, AND THE RELATED DOCUMENTS. THIS ASSIGNMENT IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:**

**GRANTOR'S WAIVERS.** Grantor waives all rights or defenses arising by reason of any "one action" or "anti-deficiency" law, or any other law which may prevent Lender from bringing any action against Grantor, including a claim for deficiency to the extent Lender is otherwise entitled to a claim for deficiency, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale.

**BORROWER'S WAIVERS AND RESPONSIBILITIES.** Lender need not tell Borrower about any action or inaction Lender takes in connection with this Assignment. Borrower assumes the responsibility for being and keeping informed about the Property. Borrower waives any defenses that may arise because of any action or inaction of Lender, including without limitation any failure of Lender to realize upon the Property, or any delay by Lender in realizing upon the Property. Borrower agrees to remain liable under the Note with Lender no matter what action Lender takes or fails to take under this Assignment.

**PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Assignment or any Related Documents, Grantor shall pay to Lender all amounts secured by this Assignment as they become due, and shall strictly perform all of Grantor's obligations under this Assignment. Unless and until Lender exercises its right to collect the Rents as provided below and so long as there is no default under this Assignment, Grantor may remain in possession and control of and operate and manage the Property and collect the Rents, provided that the granting of the right to collect the Rents shall not constitute Lender's consent to the use of cash collateral in a bankruptcy proceeding.

**GRANTOR'S REPRESENTATIONS AND WARRANTIES.** Grantor warrants that:

**Ownership.** Grantor is entitled to receive the Rents free and clear of all rights, loans, liens, encumbrances, and claims except as disclosed to and accepted by Lender in writing.

**Right to Assign.** Grantor has the full right, power and authority to enter into this Assignment and to assign and convey the Rents to Lender.

**No Prior Assignment.** Grantor has not previously assigned or conveyed the Rents to any other person by any instrument now in force.

**No Further Transfer.** Grantor will not sell, assign, encumber, or otherwise dispose of any of Grantor's rights in the Rents except as provided in this Assignment.

**LENDER'S RIGHT TO RECEIVE AND COLLECT RENTS.** Lender shall have the right at any time, and even though no default shall have occurred under this Assignment, to collect and receive the Rents. For this purpose, Lender is hereby given and granted the following rights, powers and authority:

**Notice to Tenants.** Lender may send notices to any and all tenants of the Property advising them of this Assignment and directing all Rents to be paid directly to Lender or Lender's agent.

**Enter the Property.** Lender may enter upon and take possession of the Property; demand, collect and receive from the tenants or from any other persons liable therefor, all of the Rents; institute and carry on all legal proceedings necessary for the protection of the Property, including such proceedings as may be necessary to recover possession of the Property; collect the Rents and remove any tenant or tenants or other persons from the Property.

**Maintain the Property.** Lender may enter upon the Property to maintain the Property and keep the same in repair; to pay the costs thereof and of all services of all employees, including their equipment, and of all continuing costs and expenses of maintaining the Property in proper repair and condition, and also to pay all taxes, assessments and water utilities, and the premiums on fire and other insurance effected by Lender on the Property.

**Compliance with Laws.** Lender may do any and all things to execute and comply with the laws of the State of Montana and also all other laws, rules, orders, ordinances and requirements of all other governmental agencies affecting the Property.

**Lease the Property.** Lender may rent or lease the whole or any part of the Property for such term or terms and on such conditions as Lender may deem appropriate.

**Employ Agents.** Lender may engage such agent or agents as Lender may deem appropriate, either in Lender's name or in Grantor's name, to rent and manage the Property, including



Lewis & Clark County

ASSGN

**3152336**

Page: 2 of 8  
08/01/2008 04:00P

Bk-M38 Pg-7470

**ASSIGNMENT OF RENTS  
(Continued)**

Page 7

**Guaranty.** The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

**Indebtedness.** The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Lender to enforce Grantor's obligations under this Assignment, together with interest on such amounts as provided in this Assignment. Specifically, without limitation, Indebtedness includes all amounts that may be indirectly secured by the Cross-Collateralization provision of this Assignment.

**Lender.** The word "Lender" means First Interstate Bank, its successors and assigns.

**Note.** The word "Note" means the promissory note dated July 30, 2008, in the original principal amount of \$5,380,000.00 from Borrower to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

**Property.** The word "Property" means all of Grantor's right, title and interest in and to all the Property as described in the "Assignment" section of this Assignment.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

**Rents.** The word "Rents" means all of Grantor's present and future rights, title and interest in, to and under any and all present and future leases, including, without limitation, all rents, revenue, income, issues, royalties, bonuses, accounts receivable, cash or security deposits, advance rentals, profits and proceeds from the Property, and other payments and benefits derived or to be derived from such leases of every kind and nature, whether due now or later, including without limitation Grantor's right to enforce such leases and to receive and collect payment and proceeds thereunder.

**THE UNDERSIGNED ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS ASSIGNMENT, AND NOT PERSONALLY BUT AS AN AUTHORIZED SIGNER, HAS CAUSED THIS ASSIGNMENT TO BE SIGNED AND EXECUTED ON BEHALF OF GRANTOR ON JULY 30, 2008.**

**GRANTOR:**

**SHOOT THE MOON ENTERPRISES, LLC**

By:   
Kenneth J. Hatzenbeller, Managing Member of Shoot  
the Moon Enterprises, LLC



**3152336**  
Page: 7 of 8  
08/01/2008 04:09P  
Bk-130 Pg-7470



ASSIGNMENT OF RENTS  
(Continued)

Page 8

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Montana

I

SS

COUNTY OF Cascade

I

This instrument was acknowledged before me on July 30<sup>th</sup>, 2008  
by Kenneth J Hatzenbeller, Managing Member of Shoot the Moon Enterprises, LLC.



Dorothy Schneibel  
Dorothy Schneibel  
[Type or Print Name]

Notary Public for the State of  
Montana

Residing at Great Falls

My commission expires 11-30-2010

LASER PRO Lending, Ver. 5.41.00.004 Copr. Harland Financial Solutions, Inc. 1997, 2008.  
All Rights Reserved. - MT K:\CF\RLPL\G14.FC TR-39392 PR-199



Lewis & Clark County

ASSON

3152336

Page: 8 of 8  
08/01/2008 04:08P  
Bk-M38 Pg-7470

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional) <b>Dorothy Schneibel</b>	
B. SEND ACKNOWLEDGMENT TO: (Name and Address)  <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <b>First Interstate Bank</b>  <b>PO Box 5010</b>  <b>Great Falls, MT 59403-5010</b> </div>	

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names**

1a. ORGANIZATION'S NAME <b>Shoot the Moon Enterprises, LLC</b>					
OR	1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
1c. MAILING ADDRESS <b>1420 Market Place</b>			CITY <b>Great Falls</b>	STATE <b>MT</b>	POSTAL CODE <b>59404</b>
					COUNTRY <b>USA</b>
1d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION <b>LLC</b>	1f. JURISDICTION OF ORGANIZATION <b>MT</b>	1g. ORGANIZATIONAL ID #, if any <b>C148208</b> <input type="checkbox"/> NONE	

**2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names**

2a. ORGANIZATION'S NAME <b>Shoot The Moon of Montana Realty, LLC</b>					
OR	2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
2c. MAILING ADDRESS <b>1420 Market Place</b>			CITY <b>Great Falls</b>	STATE <b>MT</b>	POSTAL CODE <b>59404</b>
					COUNTRY <b>USA</b>
2d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION <b>LLC</b>	2f. JURISDICTION OF ORGANIZATION <b>MT</b>	2g. ORGANIZATIONAL ID #, if any <b>C191900</b> <input type="checkbox"/> NONE	

**3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)**

3a. ORGANIZATION'S NAME <b>First Interstate Bank</b>					
OR	3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
3c. MAILING ADDRESS <b>2601 10th Ave South, PO Box 5010</b>			CITY <b>Great Falls</b>	STATE <b>MT</b>	POSTAL CODE <b>59403-5010</b>
					COUNTRY <b>USA</b>

**4. This FINANCING STATEMENT covers the following collateral:**

All Inventory, Chattel Paper, Accounts, Equipment, General Intangibles and Fixtures; whether any of the foregoing is owned now or acquired later; all accessions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; all proceeds relating to any of the foregoing (including insurance, general intangibles and other accounts proceeds).

**3195141**Page: 1 of 2  
10/25/2010 02:46P

5. ALTERNATIVE DESIGNATION (if applicable):		LESSEE/LESSOR	CONSIGNEE/CONSIGNOR	BAILEE/BAILOR	SELLER/BUYER	AG. LIEN	NON-UCC FILING
6. <input checked="" type="checkbox"/> This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum		7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (if applicable) [ADDITIONAL FEE] (optional)		All Debtors		Debtor 1	Debtor 2
8. OPTIONAL FILER REFERENCE DATA							



**UCC FINANCING STATEMENT ADDENDUM**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

**9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT**

9a. ORGANIZATION'S NAME <b>Shoot the Moon Enterprises, LLC</b>		
OR	9b. INDIVIDUAL'S LAST NAME	FIRST NAME
		MIDDLE NAME, SUFFIX

**10. MISCELLANEOUS:**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names**

11a. ORGANIZATION'S NAME <b>Shoot the Moon of Montana Realty, LLC</b>				
OR	11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
11c. MAILING ADDRESS <b>1420 Market Place</b>		CITY <b>Great Falls</b>	STATE <b>MT</b>	POSTAL CODE <b>59404</b>
11d. <b>SEE INSTRUCTIONS</b>	ADD'L INFO RE ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION <b>LLC</b>	11f. JURISDICTION OF ORGANIZATION <b>MT</b>	11g. ORGANIZATIONAL ID #, if any <b>C191900</b>

**12. ☐ ADDITIONAL SECURED PARTY'S ☐ or ☐ ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)**

12a. ORGANIZATION'S NAME				
OR	12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
12c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
				COUNTRY

13. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☒ fixture filing.

**14. Description of real estate:**

**Lot 2-A in the Amended Skyway Regional Shopping Center Plat - Phase 1 in the City of Helena, Lewis and Clark County, Montana as shown on the amended plat filed under Document #3140492**

**16. Additional collateral description:**

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

**3195141**Page: 2 of 2  
10/25/2010 02:46P

Lewis &amp; Clark County

UCC

**17. Check only if applicable and check only one box.**Debtor is a ☐ Trust or ☐ Trustee acting with respect to property held in trust or ☐ Decedent's Estate**18. Check only if applicable and check only one box.**

- ☐ Debtor is a TRANSMITTING UTILITY  
☐ Filed in connection with a Manufactured-Home Transaction  
☐ Filed in connection with a Public-Finance Transaction

International Association of Commercial Administrators (IACA)

3280646 LIEN  
10/14/2015 01:18 PM Pages: 1 of 8 Fees: 5.00  
Paulette DeHart Clerk & Recorder, Lewis & Clark MT



## CONSTRUCTION LIEN

I, Tri-County Mechanical & Electrical, Inc  
P.O. Box 5928, Helena, MT. 59604

(insert name and address of person claiming the construction lien),

**claim a construction lien pursuant to Title 71, chapter 3, of the Montana Code Annotated.**

**I claim this lien against SKYWAY REGIONAL SHOPPING CENTER MINOR, S20, T10 N, R03 W, Lot 2-A, COS#3082596**

(give description of the real property against which the lien is claimed sufficient to identify it).

**The contracting owner is Shoot the Moon of Montana Realty LLC  
dba Chili's**

(insert name of the person who owns the real estate and name of the person who entered into the contract to improve it).

**At the request of Manager**

(give name and address of party with whom the person claiming the lien contracted to furnish services or materials),

**I provided the following: Services and materials to perform requested repairs.**

(give description of services or materials provided).

**The amount remaining unpaid is \$926.18**

(insert the amount unpaid; if no amount was fixed by the contract, give your good faith estimate of the amount and identify it as an estimate).

**I first furnished these services or materials on August 27, 2015 (give date)**

**and last furnished services or materials on September 23, 2015 (give date; if the date has not yet arrived, insert an estimate of the date on which the services or materials will be last furnished and identify the date as an estimate).**

**I gave notice of the right to claim a lien as required by 71-3-531 on October 14, 2015(give date) to \_\_\_\_\_ (give name of contracting owner).**

**Commercial Property – contracted with Manager**

(If it is not required to give a notice of the right to claim a lien, state the reason it is not required.)

**I certify that on October 14, 2015(date), as an agent of and on behalf of Tri-County Mechanical & Electrical, Inc. I served a copy of the foregoing mechanic's lien dated October 14, 2015, upon each owner of record named in the lien, by mailing a copy of the lien to the owner's last known addresses**

3280646<sup>207</sup> LIEN

10/14/2015 01:18:27 PM Page 2 of 8 Fees: \$5.00

by certified mail, return receipt requested, pursuant to Section 71-3-534(2), MCA to wit:

Genava Handschke  
Name

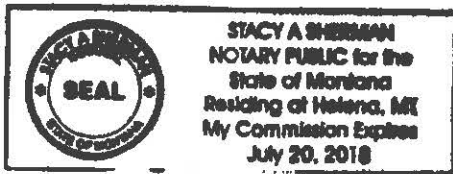
3139 Bozeman Ave  
Street Address

Helena, MT 59604  
City State Zip

Genava Handschke

State of Montana  
County of HeWist+Clark

On this 14<sup>th</sup> day of October, in the year of 2015 before me,  
Stacy A. Sherman personally appeared Genava Handschke,  
known to me to be the person whose name is subscribed to the within instrument, and  
acknowledged to me that he executed the same.



Stacy A. Sherman  
Notary Public for the State of Montana

Residing at Helena, Montana

My Commission Expires 7/20/18





TCMEMT.COM  
MECHANICAL & ELECTRICAL  
3139 Bozeman Avenue  
P.O. Box 5928  
Helena, MT 59604  
406-443-4291

## INVOICE

19691

3280646 LIEN

10/14/2015 01:18:27 PM Page 3 of 8 Fees: \$5.00

BILL TO

Shoot the Moon  
1400 Marketplace Drive  
Great Falls, MT 59404

JOB

Chili's Bar & Grill  
2790 N Washington Street  
Helena, MT 59601

CUSTOMER	PURCHASE ORDER NO.	TERMS	INVOICE DATE	PAGE
SHOOT		Net 30	10/13/2015	1

DESCRIPTION				UNIT PRICE	EXTENDED PRICE
Order: 49780					
Description:					
8/17/15					
Ice Machine not working.					
One side of ice machine working but harvesting ice slow					
One sheet every 20 -25 minutes					
Needs to be cleaned, other side completely dry, no water and trays are moldy					
Needs thorough cleaning					
Found unit was unplugged					
Talked with Alicia and not sure why it is disabled, need to investigate further					
8/18/15					
Checked out unit. Found water probe bracket broken and probe not mounted correctly. Ordering new					
9/18/15					
Installed new mount					
Cleaned unit and found right unit has hot gas valve sticking open,					
Service Tech: Tech 11 SH					
LAB11	1.00	Hrs. Service Labor		88.00	\$88.00*
LAB11	3.00	Hrs. Service Labor		88.00	\$264.00*
NONSTOCK ITEM-H	1	Motor Mount		26.40	\$26.40*
NONSTOCK ITEM-H	1	Freight		10.38	\$10.38*
Service Tech: Tech 31					
OVER-TIMEH	1.00	Hrs. Time and A Half Service Labor		132.00	\$132.00*
* means item is non-taxable				SALE AMOUNT	520.78
ALL WARRANTY WORK PERFORMED M - F 8:00 A.M. - 4:30 P.M. WARRANTY APPLIES TO NEW PARTS ONLY.				TOTAL	\$520.78

**TRI-COUNTY**  
 TCMEMT.COM  
 MECHANICAL & ELECTRICAL  
 3139 Bozeman Avenue  
 P.O. Box 5928  
 Helena, MT 59604  
 406-443-4291

**INVOICE**

19743

3280646 LIEN

10/14/2015 01:18:27 PM Page 4 of 8 Fees: \$5.00

BILL TO

Shoot the Moon  
 1400 Marketplace Drive  
 Great Falls, MT 59404

JOB

Chili's Bar & Grill  
 2790 N Washington Street  
 Helena, MT 59601

CUSTOMER	PURCHASE ORDER NO.	TERMS	INVOICE DATE	PAGE
SHOOT		Net 30	9/30/2015	1

DESCRIPTION				UNIT PRICE	EXTENDED PRICE
Order: 49900 Description: August 27, 2015 Service call to check heat strips Checked and found potentiometers had burnt up and caused fire Need to get new controller and rewire unit  September 18, 2015 Installed switch Tested, working properly Waiting for second to be delivered  September 23, 2015 Installed 2nd switch, tested Found wire that had shorted Cleaned up wiring Tested, working correctly Service Tech: Tech 11 SH					
LAB11	1.00	Hrs. Service Labor		88.00	\$88.00*
LAB11	1.00	Hrs. Service Labor		88.00	\$88.00*
LAB11	1.50	Hrs. Service Labor		88.00	\$132.00*
NONSTOCK ITEM-H	1	Potentiometer		48.70	\$48.70*
NONSTOCK ITEM-H	1	Hatco Infinite Switch Kit 208V		48.70	\$48.70*
* means item is non-taxable				SALE AMOUNT	405.40
ALL WARRANTY WORK PERFORMED M - F 8:00 A.M. - 4:30 P.M. WARRANTY APPLIES TO NEW PARTS ONLY.				TOTAL	\$405.40

3280646 L1207

10/14/2015 01:18:27 PM Page 5 of 8 Fees: \$5.00

PrintPropertyRecordCard

Page 1 of 4

**Property Record Card****Summary****Primary Information****Property Category:** RP**Subcategory:** Real Property**Geocode:** 05-1888-20-1-02-03-0000**Assessment Code:** 0000038795**Primary Owner:****PropertyAddress:** 2790 N WASHINGTON ST

SHOOT THE MOON OF MONTANA REALTY LLC

HELENA, MT 59601

1420 MARKET PLACE DR

**COS Parcel:**

GREAT FALLS, MT 59404-3465

*NOTE: See the Owner tab for all owner information***Certificate of Survey:****Subdivision:** SKYWAY REGIONAL SHOPPING CENTER MINOR**Legal Description:**

SKYWAY REGIONAL SHOPPING CENTER MINOR, S20, T10 N, R03 W, Lot 2-A, COS#3082596

**Last Modified:** 10/7/2015 7:00:27 PM**General Property Information****Neighborhood:** 201**Property Type:** CU - Commercial Urban**Living Units:** 0**Levy District:** 05-048701-0101**Zoning:****Ownership %:** 100**Linked Property:**

No linked properties exist for this property

**Exemptions:**

No exemptions exist for this property

**Condo Ownership:****General:** 0**Limited:** 0**Property Factors****Topography:** 1**Fronting:** 1 - Major Strip or Central Business District**Utilities:** 1**Parking Type:** 3 - On and Off Street**Access:** 1**Parking Quantity:** 2 - Adequate**Location:** 3 - Business Cluster**Parking Proximity:** 3 - On Site**Land Summary**

<u>Land Type</u>	<u>Acres</u>	<u>Value</u>
Grazing	0.000	00.00
Fallow	0.000	00.00
Irrigated	0.000	00.00
Continuous Crop	0.000	00.00
Wild Hay	0.000	00.00
Farmsite	0.000	00.00
ROW	0.000	00.00
NonQual Land	0.000	00.00
Total Ag Land	0.000	00.00
Total Forest Land	0.000	00.00

3280646 LIEN

PrintPropertyRecordCard

10/14/2015 01:18:27 PM Page 6 of 8 Fees: \$5.00  
Page 2 of 4

Total Market Land

1.778

716,905.00

## Deed Information:

Deed Date	Book	Page	Recorded Date	Document Number	Document Type
6/7/2010	M42	607	6/8/2010	3187841	Warranty Deed
7/30/2008	M38	7222	7/30/2008	3152084	Warranty Deed
1/23/2004	M30	1097			

## Owners

## Party #1

Default Information: SHOOT THE MOON OF MONTANA REALTY LLC  
1420 MARKET PLACE DR

Ownership %: 100

Primary Owner: "Yes"

Interest Type: Fee Simple

Last Modified: 7/9/2010 2:58:55 PM

Other Names

Other Addresses

Name

Type

## Appraisals

## Appraisal History

Tax Year	Land Value	Building Value	Total Value	Method
2015	716905	2206195	2923100	INCOME
2014	628974	2356926	2985900	INCOME
2013	628974	2356926	2985900	INCOME

## Market Land

## Market Land Item #1

Method: Acre Type: 1 - Primary Site  
Width: Depth:  
Square Feet: 00 Acres: 1.778  
Valuation  
Class Code: 2207 Value: 716905

## Dwellings

## Existing Dwellings

No dwellings exist for this parcel

## Other Buildings/Improvements

## Outbuilding/Yard Improvement #1

Type: Commercial Description: CRF6 - Fence, brick/masonry (commercial)  
Quantity: 1 Year Built: 2007 Grade: A  
Condition: Functional: 3-Normal Class Code: 3507  
Dimensions



3280646 LIEN

PrintPropertyRecordCard

10/14/2015 01:18:27 PM Page 7 of 8 Fees: \$5.00  
Page 3 of 4

Width/Diameter: Length: 75 Size/Area:  
Height: 6 Bushels: Circumference:

## Outbuilding/Yard Improvement #2

Type: Commercial Description: CPA2 - Paving, concrete, 4"  
Quantity: 1 Year Built: 2007 Grade:  
Condition: Functional: 3-Normal Class Code: 3507  
Dimensions  
Width/Diameter: Length: Size/Area: 3000  
Height: Bushels: Circumference:

## Outbuilding/Yard Improvement #3

Type: Commercial Description: CPA1 - Paving, asphalt  
Quantity: 1 Year Built: 2007 Grade:  
Condition: Functional: 3-Normal Class Code: 3507  
Dimensions  
Width/Diameter: Length: Size/Area: 56000  
Height: Bushels: Circumference:

## Outbuilding/Yard Improvement #4

Type: Commercial Description: CLT5 - Light, mercury vapor, pole & bracket  
Quantity: 9 Year Built: 2007 Grade:  
Condition: Functional: 4-Good Class Code: 3507  
Dimensions  
Width/Diameter: Length: Size/Area:  
Height: Bushels: Circumference:

## Commercial

## Existing Commercial Buildings

Building Number	Building Name	Structure Type	Units/Bldg	YearBuilt	
1		321 - Restaurant	1	2007	<a href="#">View</a>

## General Building Information

Building Number: 1 Building Name: Structure Type: 321 - Restaurant  
Units/Building: 1 Identical Units: 1  
Grade: G Year Built: 2007 Year Remodeled: 0  
Class Code: 3507 Effective Year: 0 Percent Complete: 0

## Interior/Exterior Data Section #1

Level From: 01 Level To: 01 Use Type: 031 - Restaurant

## Dimensions

Area: 15,729 Use SK Area: 1  
Perimeter: 664 Wall Height: 15

## Features

Exterior Wall Desc: 02 - Construction: 1-Wood Economic Life: 40  
Frame Frame/Joist/Beam  
% Interior Finished: 100 Partitions: 2-Normal Heat Type: 2-Hot Water or  
Steam  
AC Type: 1-Central Plumbing: 3-Above Normal  
Physical Condition: 4-Good Functional Utility: 4-Good



3280646 LIEN

PrintPropertyRecordCard

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## Building Other Features

Description	Qty	Width	Length	Height	Area	Calculated Value	Unadjusted Value
PP1 - Porch, open	1	04	13	0	52	1112.54	1113
PP1 - Porch, open	1	00	00	0	315	6739.425	6739
PP1 - Porch, open	1	05	21	0	105	2246.475	2246
EE1 - Enclosed Entry	1	08	08	0	64	4859.136	4859
EE1 - Enclosed Entry	1	08	11	0	00	6681.312	6681
CF2 - Cooler, chiller, 5 to 31 degrees	1	09	33	0	297	28632.985254	28633
SS2 - Sprinkler System, dry pipe	1	00	00	0	15,729	51716.952	51717
CF3 - Cooler, freezer, -15 to 5 degrees	1	09	12	0	108	18780.798053	18781

## Elevators and Escalators

No elevators or escalators exist for this building

## Ag/Forest Land

## Ag/Forest Land

No ag/forest land exists for this parcel

## **AGREEMENT REGARDING SALE OF COMMERCIAL REAL ESTATE**

**This Agreement relating to the sale of real estate (“Agreement”) is made and entered into the 29th day of July, 2016 by and between the following parties:**

**Buyer:**

Paradigm Restaurants, L.C., or assigns  
David Harper  
1185 West 3050 South  
Ogden, UT 84401

**Seller:**

Jeremiah Foster, Trustee of Shoot the Moon  
Bankruptcy  
Resolute Commercial  
7201 E Camelback Road, Suite 250  
Scottsdale, AZ 85251

Buyer agrees to purchase, and Seller agrees to sell the following described real property (hereinafter referred to as “Property”) commonly known as the Chili’s Pocatello, ID location in the City of Pocatello, County of Bannock, Idaho legally described as:

LOT 4 (R), BLOCK 1, POCATELLO RAIL CROSSINGS, A COMMERCIAL  
SUBDIVISION BEING A REPLAT OF LOTS 1-5, 7, 8

BLOCK 1 OF RAIL CROSSING SUBDIVISION, ACCORDING TO THE  
PLAT THEREOF, FILED AS INSTRUMENT NO. 20808578, RECORDS OF  
BANNOCK COUNTY, IDAHO.

TOGETHER with all interest of Seller in vacated streets and alleys adjacent thereto, all easements and other appurtenances thereto, and all improvements thereon. All existing permanently installed fixtures and equipment that are attached property are included in the purchase price, included but not limited to electrical, plumbing and heating fixtures.

**PURCHASE PRICE AND TERMS:**

Total purchase price is One Million Six Hundred Thousand U.S. Dollars (\$1,600,000.00) payable at Closing.

**CLOSING DATE:** The date of closing (the “Closing”) shall be on or before the earlier of September 30, 2016 (the “Closing Date”) and five (5) days after the Order of the United States Bankruptcy Court approving this sale is entered (the “Sale Order”) and other contingencies are satisfied; provided, however, that the Closing shall not occur prior to the expiration of the Due Diligence Period (as defined in Addendum No. 1) without the prior written consent of Buyer. The parties may, by mutual agreement, close the transaction anticipated by this Agreement at any time prior to the date specified. Buyer and Seller will deposit with the Title Company (as defined below) all instruments and funds necessary to complete the purchase in accordance with this Agreement.

**POSSESSION:** Seller shall deliver to Buyer possession of the Property and allow occupancy on the date the deed is recorded.

Seller shall provide keys and/or means to operate locks, mailboxes, security systems, alarms if applicable.

**BUYER'S REPRESENTATION OF FUNDS:** Buyer represents that within ten (10) business days of the full execution of this Agreement Buyer shall provide evidence that Buyer can perform its obligations under this Agreement.

**PROPERTY INSPECTIONS:** Buyer is aware that Seller is not making any representations or warranties except as expressly provided in this Agreement.

**CONTINGENCIES:** There are no contingencies to this Agreement, except as expressly set forth below:

**FINANCING CONTINGENCY:**

This Agreement is contingent upon Buyer obtaining the financing specified in the section of this Agreement entitled "PURCHASE PRICE AND TERMS". Such Financing Contingency must be satisfied in ten (10) business days of the full execution of this Agreement.

**APPRAISAL CONTINGENCY:** There is no appraisal contingency.

**TITLE CONTINGENCY:** A copy of a preliminary title commitment for the Property is attached hereto as Exhibit A (the "Commitment"). Buyer will review and approve or disapprove of the condition of title pursuant to the process set forth in Addendum No. 1 to this Agreement.

**INSURANCE CONTINGENCY:** This Agreement is not contingent upon Buyer's ability to acquire, at a rate acceptable to the Buyer, hazard insurance on the Property.

**This Agreement is contingent upon the following**

- (1) Simultaneous closing of the purchase of the business assets of Chili's pursuant to the terms of an Asset Purchase Agreement dated of even date herewith.**
- (2) Buyer's or Buyer's assignee's simultaneous closing of the purchase of two separate parcels of real estate from Seller, described as the Chili's location in Great Falls, Montana and the Chili's location in Helena, Montana;**
- (3) Approval of Buyer as the Franchisee of eleven (11) Chili's Grill and Bar Restaurants pursuant to Franchise Agreements with Brinker International, Inc. for such restaurants;**

- (4) Sale of Property free and clear of liens; and**
- (5) Bankruptcy Court Approval from the U.S. Bankruptcy Court in case number 15-60979-11 pursuant to the Sale Order, which Sale Order shall be reviewed and approved by Buyer.**

**CONVEYANCE:** The Seller shall convey the Property by Grant deed, free of all liens and encumbrances except those described in the Commitment, as approved by Buyer.

**CLOSING AGENTS FEES:** Title Company's closing and escrow fee will be paid by both parties equally.

**TITLE INSURANCE:** Seller, at Seller's expense, shall furnish Buyer with ALTA Standard Coverage Owners Title Insurance Policy (as evidenced by a standard form American Land Title Association title insurance commitment) in an amount equal to the purchase price based on the Commitment, as approved by Buyer. Buyer may purchase additional owner's title insurance coverage in the form of "Extended Coverage" or "Enhanced Coverage" for an additional cost to Buyer.

**CONDITION OF TITLE:** All mortgages, judgments and liens shall be paid or satisfied by the Seller at or prior to closing unless otherwise provided herein. Seller agrees that no additional encumbrances, restrictions, easements or other adverse title conditions will be placed against the title to the Property subsequent to the effective date of the Commitment approved by the Buyer.

**SPECIAL IMPROVEMENT DISTRICTS:** Special Improvement Districts (including rural SIDs), including those that have been noticed to Seller by City/County but not yet spread or currently assessed, if any, will be prorated as of the Closing Date.

**ASSOCIATION SPECIAL ASSESSMENTS:** Seller and Buyer agree to prorate taxes, Special Improvement District assessments for the current tax year, as well as pre-paid rents, water and sewer system charges, and/or common area maintenance fees, if any, as of the Closing Date unless otherwise agreed.

**CONDITION OF PROPERTY:** Seller agrees that the Property shall be in the same condition, normal wear and tear excepted, from the date of the execution of this Agreement up to the time Buyer takes possession of the Property. Seller agrees to leave the Property in broom clean or better condition and allow Buyer a walk-through inspection of said Property prior to Closing to insure that all appurtenances and appliances included in the sale remain on the Property.

**MEGAN'S LAW DISCLOSURE:** Pursuant to the provisions of Title 46, Chapter 23, Part 5 of the Montana Code Annotated, certain individuals are required to register their address with the local law enforcement agencies as part of Montana's Sexual and Violent Offender Registration Act. In some communities, law enforcement offices will make the information concerning

registered offenders available to the public. If you desire further information, please contact the local County Sheriff's office, the Montana Department of Justice in Helena, Montana, and the probation officers assigned to the area.

**RADON DISCLOSURE STATEMENT:** The following disclosure is given pursuant to the Montana Radon Control Act, Montana Code Annotated Section 75-3-606. RADON GAS: RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN MONTANA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY OR STATE PUBLIC HEALTH UNIT. If the Property has been tested for radon, the Seller will provide a copy of the test results concurrent with an executed copy of this Agreement. If the Property as received radon mitigation treatment, the Seller will provide the evidence of the mitigation treatment concurrent with an executed copy of this Agreement.

**BUYER'S REMEDIES:**

If the Seller accepts the offer contained in this Agreement, but refuses or neglects to consummate the transaction within the time period provide in this Agreement, unless such failure results from failure to obtain the approval of the US Bankruptcy Court in Case No. 15-60979-11, the Buyer may file as an administrative expense a claim in Case No. 15-60979-11 in an amount equal to Buyer's fees and costs incurred which are associated with this transaction; provided, however, that if the Bankruptcy Court declines to approve the Sale Order due to Seller's acceptance of a higher and better offer, then Buyer may file such administrative claim.

**SELLER'S REMEDIES:**

If the Seller accepts the offer contained in this Agreement and Buyer refuses or neglects to consummate the transaction within the time period provided in this Agreement, the Seller may recover from Buyer any earnest money which has been forfeited to Buyer by a third party under a separate Agreement with a third party relating to the Property.

The parties agree that neither party shall be entitled to an award of consequential damages and expressly waive any entitlement to such claims.

**BUYER'S/SELLER'S CERTIFICATION:** By entering into this Agreement, each person or persons executing this Agreement as Buyer or Seller represents that he/she is eighteen (18) years of age or older, of sound mind, and legally competent to own or transfer real property in the State of Montana; and, if acting on behalf of a corporation; partnership, or other non-human entity, that he/she is duly authorized to enter into this Agreement on behalf of such entity.

**CONSENT TO DISCLOSE INFORMATION:** Buyer and Seller hereby consent to the procurement and disclosure by Buyer, Seller and Salespersons and their attorneys, representatives, and other parties having interests essential to this Agreement, of any and all information reasonably necessary to consummate the transaction described in this agreement specifically including access to escrows for review of contracts, deeds, trust indentures, or similar documents concerning this property or underlying obligations pertaining thereto.

**RISK OF LOSS:** All loss or damage to any of the above-described real property or personal property to any cause is assumed by Seller through the time of closing unless otherwise specified.

**TIME IS OF THE ESSENCE:** Time is of the essence as to the terms and provisions of this Agreement.

**ATTORNEY FEES:** In any action brought by the Buyer or the Seller to enforce any of the terms of this Agreement, the prevailing party in such action shall be entitled to such reasonable attorney fees as the court or arbitrator shall determine just.

**COMMISSION:** The Seller's commitment to pay a commission in connection with this transaction is an integral part of this Agreement. Buyer shall have no obligation to pay any commission in connection with this Agreement.

**FACSIMILE/ELECTRONIC SIGNATURE:** The parties agree that a facsimile or electronic copy of this Agreement which contains the parties' signatures may be used as the original.

**COUNTERPARTS:** A copy of this document may be executed by each individual/entity separately, and when each has executed a copy thereof, such copies, taken together, shall be deemed to be a full complete contract between the parties.

**ENTIRE AGREEMENT:** This Agreement, together with an Asset Purchase Agreement and two additional Agreements Regarding Sale of Commercial Real Estate (one each for locations in Helena, MT and Great Falls, MT) together with any attached exhibits and any addenda or amendments signed by the parties, shall constitute the entire Agreement between Seller and Buyer, and supersedes any other written or oral agreements between Seller and Buyer. This Agreement can be modified only in writing, signed by the Seller and Buyer.

**BUYER'S ACKNOWLEDGMENT:** Buyer acknowledges that he/she has examined, or will examine, the Property, that Buyer enters into this Agreement in full reliance upon his/her independent investigation and judgment, that prior verbal representations by the Seller or Seller's agent or representatives do not modify or affect this Agreement, and that by signing this Agreement, Buyer acknowledges having read and understand this entire Agreement.

The parties hereto, all agree that the transaction contemplated by this document may be conducted by electronic means.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

DATED this 29th day of July, 2016.

PARADIGM RESTAURANTS, L.C.

By: David Myer  
Its: MANAGING MEMBER

Date: 7/29/16

JEREMIAH FOSTER, TRUSTEE OF  
SHOOT THE MOON BANKRUPTCY

By: [Signature]  
Its: Trustee

Date: July 29, 2016





## Title Fees & Breakdown

Policy Issuing Agent For:  
First American Title Insurance Company

File No.: 587088


Owner's Policy:	\$3,000,000.00
Premium:	\$7,055.00
Additional Coverage:	
Credit:	\$0.00
Endorsements:	
Inspection:	N/A
Additional Chain:	N/A

First Lender's Policy:	
Premium:	\$0.00
Credit:	\$0.00
Endorsements:	
Inspection:	N/A
Additional Chain:	N/A

### Breakdown of Fees:

Underwriting Fees:	\$846.60
Title Agent Fees:	+ <u>\$6,208.40</u>
<b>Total Title Fees:</b>	<b>\$7,055.00</b>
CPL Fee:	\$25.00
Recording Fees:	\$10 1 <sup>st</sup> page / \$3.00 each additional page
E-file Fee:	\$4.50 per document

Please contact Marie Hunter at [mhunter@pioneertitleco.com](mailto:mhunter@pioneertitleco.com) or (208)233-9595 with any questions.

 <b>First American Title™</b>	<b>Title Insurance Commitment</b>
	ISSUED BY <b>First American Title Insurance Company</b>
<b>Commitment</b>	

#### INFORMATION

The Title Insurance Commitment is a legal contract between you and the Company. It is issued to show the basis on which we will issue a Title Insurance Policy to you. The Policy will insure you against certain risks to the land title, subject to the limitations shown in the Policy.

The Company will give you a sample of the Policy form, if you ask.

The Policy contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or you as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <http://www.alta.org/>.

The Commitment is based on the land title as of the Commitment Date. Any changes in the land title or the transaction may affect the Commitment and the Policy.

The Commitment is subject to its Requirements, Exceptions and Conditions.

**THIS INFORMATION IS NOT PART OF THE TITLE INSURANCE COMMITMENT. YOU SHOULD READ THE COMMITMENT VERY CAREFULLY.**

If you have any questions about the Commitment, contact:

**FIRST AMERICAN TITLE INSURANCE COMPANY  
1 First American Way, Santa Ana, California  
92707**

#### TABLE OF CONTENTS

AGREEMENT TO ISSUE POLICY	1
CONDITIONS	2
SCHEDULE A	Insert
1. Commitment Date	
2. Policies to be Issued, Amounts and Proposed Insureds	
3. Interest in the Land and Owner	
4. Description of the Land	
SCHEDULE B-I – REQUIREMENTS	Insert
SCHEDULE B-II – EXCEPTIONS	Insert

#### AGREEMENT TO ISSUE POLICY

We agree to issue policy to you according to the terms of the Commitment. When we show the policy amount and your name as the proposed insured in Schedule A, this Commitment becomes effective as of the Commitment Date shown in Schedule A.

If the Requirements shown in this Commitment have not been met within six months after the Commitment Date, our obligation under this Commitment will end. Also, our obligation under this Commitment will end when the Policy is issued and then our obligation to you will be under the Policy.

Our obligation under this Commitment is limited by the following:


- The Provisions in Schedule A.
- The Requirements in Schedule B-I.
- The Exceptions in Schedule B-II.
- The Conditions on Page 2.

This Commitment is not valid without SCHEDULE A and Sections I and II of SCHEDULE B.

#### Issued By:

**Pioneer Title Company of Bannock County**  
135 N. Arthur Ave.  
Pocatello, ID 83204

An authorized Agent of:  
First American Title Insurance Company



Authorized Signatory

(This Commitment is valid only when Schedules A and B are attached) **This jacket was created electronically and constitutes an original document**

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## **CONDITIONS**

### **1. DEFINITIONS**

(a) "Mortgage" means mortgage, deed of trust or other security instrument. (b) "Public Records" means title records that give constructive notice of matters affecting your title according to the state statutes where your land is located.

### **2. LATER DEFECTS**

The Exceptions in Schedule B – Section II may be amended to show any defects, liens or encumbrances that appear for the first time in the public records or are created or attached between the Commitment Date and the date on which all of the Requirements (a) and (c) of Schedule B – Section I are met. We shall have no liability to you because of this amendment.

### **3. EXISTING DEFECTS**

If any defects, liens or encumbrances existing at Commitment Date are not shown in Schedule B, we may amend Schedule B to show them. If we do amend Schedule B to show these defects, liens or encumbrances, we shall be liable to you according to Paragraph 4 below unless you knew of this information and did not tell us about it in writing.

### **4. LIMITATION OF OUR LIABILITY**

Our only obligation is to issue to you the Policy referred to in this Commitment, when you have met its Requirements. If we have any liability to you for any loss you incur because of an error in this Commitment, our liability will be limited to your actual loss caused by your relying on this Commitment when you acted in good faith to:

Comply with the Requirements shown in Schedule B – Section I

or

Eliminate with our written consent any Exceptions shown in Schedule B – Section II.

We shall not be liable for more than the Policy Amount shown in Schedule A of this Commitment and our liability is subject to the terms of the Policy form to be issued to you.

### **5. CLAIMS MUST BE BASED ON THIS COMMITMENT**

Any claim, whether or not based on negligence, which you may have against us concerning the title to the land must be based on this Commitment and is subject to its terms.



## Title Insurance Commitment

Policy Issuing Agent For:  
First American Title Insurance Company

File No.: 587088  
Reference No.:

### Schedule A

1. Effective Date: January 15, 2016 7:30AM
2. Policy or Policies to be issued:

	Liability	Premium
A. ALTA Owner's Policy - Standard	\$3,000,000.00	\$7,055.00
Proposed Insured: To be determined and agreed to by the Company		
Endorsements:		\$0.00
Inspection Fee: N/A		
B. ALTA Lender's Policy -		\$0.00
Proposed Insured:		
Endorsements:		\$0.00
Inspection Fee: N/A		
		\$0.00

3. The estate or interest in the land described or referred to in this Commitment is:

FEE SIMPLE

4. Title to the estate or interest in the land is at the Effective Date vested in:

Shoot the Moon Realty, LLC

5. The land referred to in this Commitment is described as follows:

Lot 4 (R), Block 1, Pocatello Rail Crossings, a Commercial Subdivision Being a Replat of Lots 1-5, 7, 8 Block 1 of Rail Crossing Subdivision, according to the plat thereof, filed as Instrument No. 20808578, records of Bannock County, Idaho.

File No.: 587088

Reference No.:

### Schedule B – Part I

The following Requirements must be met:

1. Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
2. Pay us the premiums, fees, and charges for the policy.
3. Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered, and recorded.
4. You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.
5. Documents satisfactory to us releasing any encumbrances shown on Schedule B Part II herein not to be shown on the forthcoming policy or policies must be provided.
6. We require a copy of the Certificate of Organization, Operating Agreement and Resolutions, and any amendments showing the power and authority of the party or parties who plan to execute the forthcoming conveyance or encumbrance on behalf of Shoot the Moon Realty, LLC.

File No.: 587088

Reference No.:

## Schedule B – Part II

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company.

### General Exceptions:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interest, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title including discrepancies, conflicts in boundary lines, shortage in area, or any other facts that would be disclosed by an accurate and complete land survey of the land, and that are not shown in the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.
6. Any liens, or rights to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

### Special Exceptions:

7. General taxes for the year [2014](#), which are liens, in the original sum of \$24,751.98, the first half of which is paid and the second half of which is now delinquent, plus penalty and interest.  
Parcel No.: RPPRC000400
8. General taxes for the year [2015](#), which are liens, in the original sum of \$25,449.56, of which the first half became delinquent on December 20, 2015 plus penalty and interest, and the second half of which will not become delinquent until June 20, 2016  
Parcel No.: RPPRC000400
9. General taxes for the year 2016, which are liens and are not yet due and payable.  
Parcel No.: RPPRC000400
10. Liens, dues and/or assessments owing the association herein named which may have heretofore attached pursuant to the terms and provisions of covenants, conditions and restrictions imposed upon said premises.  
Association: Rail Crossings Owners Association

11. Covenants, Conditions, Restrictions, Reservations, and Easements

Dated: May 23, 2007

Executed by: Rail Crossings, LLC

Recorded: May 29, 2007

Instrument No.: [20712477](#)

Deleting or omitting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).

Amended and Restated Declaration to said covenants

Recorded: April 18, 2008

Instrument No.: [20808580](#)

Amendment to said covenants

Recorded: May 5, 2010

Instrument No.: [21007380](#)

12. Terms, covenants, conditions and provisions contained in the by-laws and/or articles of incorporation of the hereafter named association.

Association: Rail Crossings Owners Association

Recorded: May 29, 2007

Instrument No.: [20712477](#)

13. Covenants, conditions, restrictions and easements as set forth on the plat.

Name of Plat: Pocatello Rail Crossings

Instrument: [20808578](#)

14. An easement containing certain terms, conditions and provisions affecting a portion of said premises and for the purposes stated herein

For: Sewer, Water and Gas lines

In Favor of: City of Pocatello

Recorded: September 21, 1959

Instrument No.: [348688](#)

Said easement was partially released by Ordinance 2804 by the City of Pocatello as Instrument No. 20622561, recorded October 2, 2006.

15. Covenants, conditions, restrictions and easements contained in Deed.

Recorded: January 10, 1986

Instrument No.: [764103](#)

16. An easement containing certain terms, conditions and provisions affecting a portion of said premises and for the purposes stated herein

For: Storm Sewer Lines

In Favor of: State of Idaho

Recorded: January 10, 1986

Instrument No.: [764104](#)

17. Exceptions and reservations contained in the Deed from the State of Idaho, wherein mineral rights are reserved to the State. (47-701, Idaho Code 1947)

Recorded: June 30, 1995

Instrument No.: [95009268](#)



18. Cross-Easement and Access Agreement with Covenant and Conditions upon the terms, conditions and provisions contained therein:  
Dated: September 1, 2006  
Recorded: September 6, 2006  
Instrument No.: [20620090](#)
19. An easement containing certain terms, conditions and provisions affecting a portion of said premises and for the purposes stated herein  
For: gas pipeline  
In Favor of: Intermountain Gas Company  
Recorded: September 14, 2006  
Instrument No.: [20620787](#)
20. Development Agreement upon the terms, conditions and provisions contained therein:  
Between: Rail Crossings, LLC and City of Pocatello  
Dated: March 29, 2007  
Recorded: April 23, 2007  
Instrument No.: [20709321](#)
21. An easement containing certain terms, conditions and provisions affecting a portion of said premises and for the purposes stated herein  
For: To construct, maintain and repair power lines over, through, under and across said lands, together with the right, at the sole expense of Grantee, to excavate and refill ditches and trenches for the location of said power lines, and the further right to remove trees, bushes, sod, flowers and shrubbery and other obstructions and improvements, interfering with the location, construction and maintenance of said power lines.  
In Favor of: Idaho Power Company, an Idaho corporation  
Recorded: May 18, 2007  
Instrument No.: [20711654](#)
22. Memorandum of Common Maintenance Agreement upon the terms, conditions and provisions contained therein:  
Between: Rail Crossings, LLC and Shoot the Moon, LLC and HTMFT, LLC  
Dated: January 1, 2009  
Recorded: June 24, 2009  
Instrument No.: [20913832](#)
23. A Deed of Trust to secure an indebtedness of \$2,212,500.00, and any other amounts as therein provided, payable under the terms, conditions, provisions and stipulations thereof.  
Dated: February 12, 2014  
Grantor: Shoot the Moon Realty, LLC  
Trustee: Alliance Title & Escrow Corp.  
Beneficiary: Western Alliance Bank  
Recorded: February 21, 2014  
Instrument No.: [21402143](#)
24. Assignment of Rents/Leases to secure payment of the indebtedness shown as Paragraph No. 23 herein, and upon the terms and conditions therein  
Assignor: Shoot the Moon Realty, LLC  
Assignee: Western Alliance Bank  
Recorded: February 21, 2014  
Instrument No.: [21402144](#)

25. Financing Statement filed under the provisions of the Uniform Commercial Code.

Debtor: Shoot the Moon Realty, LLC  
Secured Party: Western Alliance Bank  
Recorded: February 21, 2014  
Instrument No.: [21402145](#)

26. A Deed of Trust to secure an indebtedness of \$5,184,000.00, and any other amounts as therein provided, payable under the terms, conditions, provisions and stipulations thereof.

Dated: June 12, 2014  
Grantor: Shoot the Moon Realty, LLC  
Trustee: Alliance Title & Escrow Corp.  
Beneficiary: Western Alliance Bank  
Recorded: June 27, 2014  
Instrument No.: [21408312](#)

27. Assignment of Rents/Leases to secure payment of the indebtedness shown as Paragraph No. 26 herein, and upon the terms and conditions therein

Assignor: Shoot the Moon Realty, LLC  
Assignee: Western Alliance Bank  
Recorded: June 27, 2014  
Instrument No.: [21408313](#)

28. Financing Statement filed under the provisions of the Uniform Commercial Code.

Debtor: Shoot the Moon Realty, LLC  
Secured Party: Western Alliance Bank  
Recorded: January 13, 2015  
Instrument No.: [21500394](#)

29. Unrecorded Leaseholds, if any, rights of parties in possession other than the vestees herein, rights of secured parties under financing statements as to personal property located on the premises herein and the rights of tenants to remove trade fixtures.

30. Subject to those additional items which may be required by First American Title Insurance Company, following a review of this report.

End of Exceptions

NOTE: As an accommodation and not part of this Commitment, no liability is assumed by noting the following conveyances describing all or part of the subject property, which have been recorded within the last 24 months:

Deed Type: Special Warranty Deed  
Grantors: Rail Crossings, LLC  
Grantees: Shoot the Moon Realty, LLC  
Instrument: 20807094  
Dated: March 28, 2008  
Recorded Date: April 1, 2008

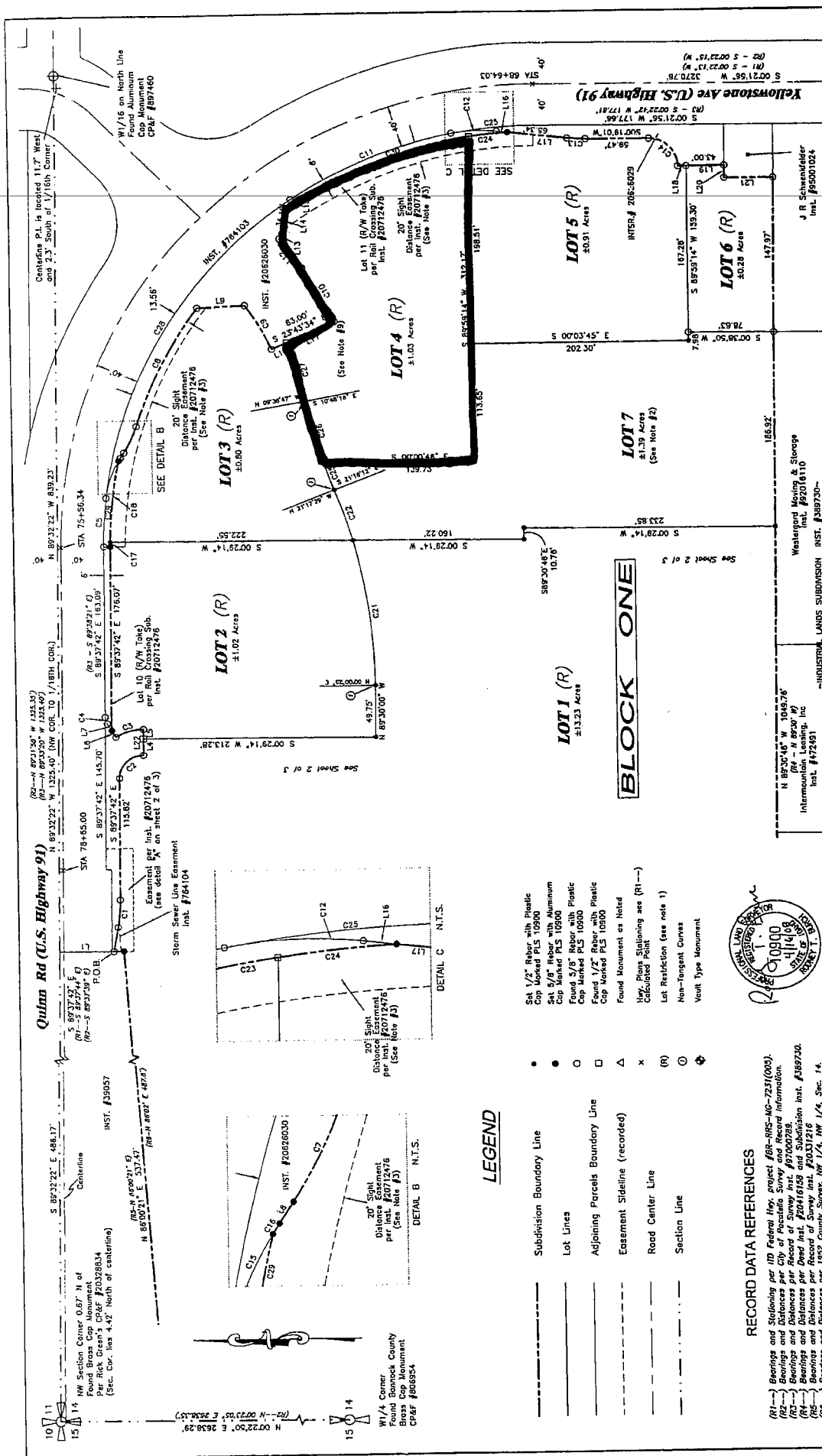
NOTE: The County Records and/or the City Engineer's Office show the address to be:

1599 Yellowstone, Pocatello, ID 83201

NOTE: There is no notice of record and therefore no search has been made for any unpaid assessments, charges, or fees for sewer, water, garbage, irrigation, or other possible utility services.

NOTE: If the proposed insured under the Policy to issue has any questions concerning the coverage or exclusions from coverage, the Company will be pleased to provide an explanation.

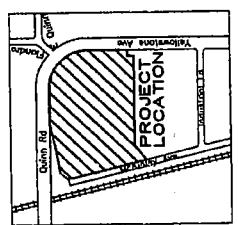
NOTE: Pursuant to the State of Idaho insurance regulations, a cancellation fee is to be charged on all cancelled orders. Unless otherwise advised, orders will be considered cancelled six months after the effective date on the Commitment. The amount of the fee assessed shall be in accordance with our rate filing with the Idaho Department of Insurance.



# NOTES

1. LOTS 1 THROUGH 6 ARE ONLY TO BE ACCESSED FROM INTERIOR OF BLOCK ONE. ACCESS TO LOT 7 SHALL BE BY A DRIVEWAY FROM HIGHWAY 91. THERE SHALL BE NO INDIVIDUAL LOT ACCESS FROM HIGHWAY 91.
2. OWNERSHIP OF LOT 7 IS RESERVED WITH OWNERSHIP OF LOT 1. LOT 7 SHALL BE USED AS A DRIVEWAY AND SHALL BE MAINTAINED BY THE OWNER OF LOT 1. THE RESPONSIBILITY OF THE OWNER OF LOT 1 SHALL BE TO MAINTAIN LOT 7 IN A CONDITION SUITABLE FOR ITS USE AS A DRIVEWAY. THE OWNER OF LOT 1 SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF LOT 7 AND SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE DRIVEWAY. THE OWNER OF LOT 1 SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE DRIVEWAY AND SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE DRIVEWAY.
3. ONLY LANDSCAPING LESS THAN 30" HIGH SHALL BE ALLOWED IN THE INTERIOR OF BLOCK ONE. LANDSCAPING SHALL BE PROHIBITED IN THE INTERIOR OF BLOCK ONE. LANDSCAPING SHALL BE PROHIBITED IN THE INTERIOR OF BLOCK ONE. LANDSCAPING SHALL BE PROHIBITED IN THE INTERIOR OF BLOCK ONE.
4. IMPROVEMENTS, EXCEPT FOR LOT 7, ARE PROHIBITED IN THE INTERIOR OF BLOCK ONE. IMPROVEMENTS, EXCEPT FOR LOT 7, ARE PROHIBITED IN THE INTERIOR OF BLOCK ONE. IMPROVEMENTS, EXCEPT FOR LOT 7, ARE PROHIBITED IN THE INTERIOR OF BLOCK ONE.
5. THE 10' WIDE GAS LINE EASEMENT INST. #2046918 WAS RELEASED BY INST. #2072157. THE 10' WIDE POWER EASEMENT INST. #2072154 AND #2072156 WERE RELEASED BY INST. #2072156 AND #2072155.

# VICINITY MAP



# RECORD DATA REFERENCES

- (R1) Bearings and Stationing per ID Federal Hwy. project #BR-RHS-MG-7231(005).
- (R2) Bearings and Distances per City of Pocatello Survey and Record Information.
- (R3) Bearings and Distances per Record of Survey Inst. #19206000.
- (R4) Bearings and Distances per Bond Inst. #20000000.
- (R5) Bearings and Distances per 1952 County Survey, NW 1/4, NW 1/4, Sec. 14.

# LEGEND

- Subdivision Boundary Line
- Lot Lines
- Adjoining Parcels Boundary Line
- Easement Sideline (recorded)
- Road Center Line
- Section Line
- Non-Tangent Curves
- Lot Restriction (see note 1)
- Vault Type Monument
- Found Monument as Noted
- Mark Plans Stationing as (R1--)
- Calculated Point
- 20' Sight Distance Easement per Inst. #20712476 (See Note #3)
- 20' Utility Easement per Inst. #20712476 (See Note #3)
- 20' Drainage Easement per Inst. #20712476 (See Note #3)
- Found Monument as Noted
- Mark Plans Stationing as (R1--)
- Calculated Point
- 20' Sight Distance Easement per Inst. #20712476 (See Note #3)
- 20' Utility Easement per Inst. #20712476 (See Note #3)
- 20' Drainage Easement per Inst. #20712476 (See Note #3)

# BASIS OF BEARING

Based on bearings per Idaho State Plane Coordinate System, NAD 83, Zone 12N, UTM, with a combination scale factor 1.0000222400.

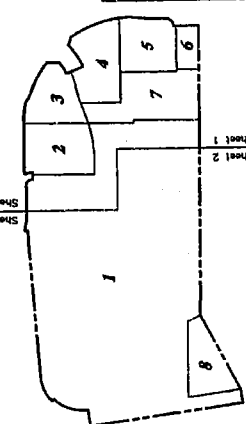
# POCATELLO Rail Crossings, A Commercial Subdivision

Being a Replat of Lots 1-5, 7, 8 Block 1 of Rail Crossing Subdivision together with the easement parcels in Inst. #20724252 and #20725163 Located in the NW 1/4 of Section 14 and the NE 1/4 of Section 15, T6S, R34E, N.M.



DIOPTRA  
A Company of Geomatics Professionals  
4922 Yellowstone Ave Suite J  
Pocatello, ID 83201  
208-237-3373

POCATELLO RAIL CROSSINGS  
Drawn By: RIB  
Scale: 1"=60'  
Date: 4-9-08  
Project: 07072-FP-DWG



Sheet 1  
Sheet 2

# **EXHIBIT B**

## **Secured Creditor Security Interests and Priorities in Assets**

Exhibit	Store	Prior Entity	Year Entity Created	FF&E	Liquor License	Franchise	Inventory	Building
A	Franklin	Shoot the Moon of Idaho *	4/27/2006	Western Alliance Bank (1)	Western Alliance Bank (1)	Western Alliance Bank (1)	Western Alliance Bank (1)	
A	Broadway	Shoot the Moon of Idaho *	4/27/2006	Western Alliance Bank (1)	Western Alliance Bank (1)	Western Alliance Bank (1)	Western Alliance Bank (1)	
A	Twin Falls	Shoot the Moon of Idaho */**	4/27/2006	Western Alliance Bank (1)		Western Alliance Bank (1)	Western Alliance Bank (1)	
A	Pocatello	Shoot the Moon of Idaho *	4/27/2006	Western Alliance Bank (1)	Western Alliance Bank (1)	Western Alliance Bank (1)	Western Alliance Bank (1)	Western Alliance Bank (2)
B	Northtown	Shoot the Moon of Washington	4/25/2006	Sterling Savings Bank (9)	Western Alliance Bank (1)	Western Alliance Bank (1)	Western Alliance Bank (1)	
				Western Alliance Bank (1)				

Exhibit	Store	Prior Entity	Year Entity Created	FF&E	Liquor License	Franchise	Inventory	Building
C/H/I	Great Falls Chili's	Shoot the Moon of Montana	2/6/2009	First Interstate Bank (3 & 4)	First Interstate Bank (3 & 4)	First Interstate Bank (3 & 4)	First Interstate Bank (3 & 4)	First Interstate Bank (4)
C/H/I	Helena Chili's	Shoot the Moon of Montana	2/6/2009	First Interstate Bank (3 & 4)	First Interstate Bank (3 & 4)	First Interstate Bank (3 & 4)	First Interstate Bank (3 & 4)	First Interstate Bank (3)
C/H/I	Moonshine Grill - Great Falls	Shoot the Moon of Montana	2/6/2009	First Interstate Bank (3 & 4)	First Interstate Bank (3 & 4)	First Interstate Bank (3 & 4)	First Interstate Bank (3 & 4)	
C/H/I	Moonshine Grill Helena	Shoot the Moon of Montana	2/6/2009	First Interstate Bank (3 & 4)	First Interstate Bank (3 & 4)	First Interstate Bank (3 & 4)	First Interstate Bank (3 & 4)	
D	Meridian Chili's	Shoot the Moon III	6/1/2009	Prairie Mountain Bank(6)	US Foods (7)	First Interstate Bank (3 & 4)	Prairie Mountain Bank(6)	

Exhibit	Store	Prior Entity	Year Entity Created	FF&E	Liquor License	Franchise	Inventory	Building
E	Idaho Falls	Shoot the Moon 4 **	10/29/2010	American Express Bank (8)	American Express Bank (8)	First Interstate Bank (3 & 4)	American Express Bank (8)	
F	Coeur D' Alene Chili's	Shoot the Moon 5	10/29/2010	Prairie Mountain Bank(5)	Prairie Mountain Bank(5)	First Interstate Bank (3 & 4)	Prairie Mountain Bank(5)	
				Sterling Savings Bank (10)				
G	Downtown Spokane	Shoot the Moon 22	11/2/2010	American Express Bank (8)	American Express Bank (8)	First Interstate Bank (3 & 4)	American Express Bank (8)	
				Sterling Savings Bank (11)				
H	Corporate	Shoot the Moon Enterprises	9/20/2005	First Interstate Bank (3 & 4)	N/A	N/A	First Interstate Bank (3 & 4)	
I	Corporate	Shoot the Moon, LLC	4/28/2006					



Exhibit	Store	Prior Entity	Year Entity Created	FF&E	Liquor License	Franchise	Inventory	Building
(1)	Western Alliance Bank	\$4,810,574.85	(Claim 450)	STM Enterprises				
(2)	Western Alliance Bank	\$2,131,775.43	(Claim 451)	STM Realty				
(3)	First Interstate Bank	\$4,701,314.91	(Claim 348)	Mortgage on Moonshine Grill/Chili's Helena				
(4)	First Interstate Bank	\$5,864,995.70	(Claim 357)	Great Falls				
(5)	Prairie Montain Bank	\$ 195,813.29	(Claim 191)	STM 5				
(6)	Prairie Mountain Bank	\$1,135,006.97	(Claim 190)	STM III				
(7)	US Foods	\$962,668.14	(Claim 372)					
(8)	American Express Bank	\$392,012.10	(Claim 498)					
(9)	Sterling Savings Bank	\$23,375.85	(Claim 313)					
(10)	Sterling Savings Bank	\$50,092.98	(Claim 312)					
(11)	Sterling Savings Bank	(No proof of claim or amount for this UCC)						
* Zion National Bank claims a Purchase Money Security Interest. There are issues as to whether their loan proceeds were used to purchase the described assets.								
**Alliance Funding Group claims a lease interest or a security interest in certain assets located at the Idaho Falls and Twin Falls Chili's location.								

# **EXHIBIT A**

No.	UCC #	Date	Amended/Terminated	Secured Party	Collateral Description	Priority of which Assets	Proof of Claim Filed	Was POC Timely Filed	Amount of Claim	Claim #	Claim Schedule	Amount on Schedule
Shoot the Moon Idaho, LLC				Pocatello Chili's, Twin Falls Chili's, Franklin Chili's, Broadway Chili's								
1	2008-1043975-1	3/31/2008	Amended: 7/29/2008 (6510633) Amended: 3/30/2010 (6546731) Amended: 4/15/2010 (6547541) Continued: 11/27/2012 (6592546) Terminated: 7/14/2014 (6625585)	Citicorp Leasing, Inc	accounts, equipment, fixtures, documents, contract rights, general intangibles, chattel paper, instruments and the proceeds of all such property....		N				N	
2	2013-1120130-5	3/13/2014		SDG Group, LLC	Accounts, deposit accounts, documents, general intangibles, good, equipment, inventory, fixtures, instruments, money, securities accounts, supporting obligations; property of Debtor held by secured party or any other party for who secured party is acting as agent including without limitation, safekeeping, collection or pledge, for the account of Debtor or as to which Debtor may have any right or power; other goods and personal property of Debtor, wherever located,		N				Y	UNKNOWN
3	2014-1143189-6	7/16/14		Western Alliance Bank	All inventory, chattel paper, accounts, documents, instruments, equipment, and general intangibles; whether any of the foregoing is owned now or acquired later; all accessions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing		Y	Y	\$ 4,810,574.85	450	Y	
4	2014-1145347-2	9/3/2014		Zions First National Ban	All furniture... see specific list		Y	Y	\$ 494,221.73	380	Y	

No.	UCC #	Date	Amended/Terminated	Secured Party	Collateral Description	Priority of which Assets	Proof of Claim Filed	Was POC Timely Filed	Amount of Claim	Claim #	Claim Schedule	Amount on Schedule
5	2014-1148327-4	11/14/2014		Corporation Service Company, As Representative ( American Micro Loan)	(i)All accounts including bu not limited to Credit Card Receivables and Discount Payments as defined in this agreement, chattel paper, documents, equipment, general intangibles, instruments, and inventory ... (ii) All trademarks, trade names, service marks, logos and other sources of business identifiers, and all registrations, recordings and applications with the US Patent and Trademark Office and all Renewals, Reissues, and Extensions thereof....(iii) Cash or cash equivalent, demand deposits and bank accounts (iv) All proceeds, as that term is defined in Article 9 of the UCC (v) Notes, Promissory Notes, and instruments		N				N	
6	2015-1156275-4	5/4/2015		Assn Company	The secured party named in this record is acting in a representative capacity for purposes of forwarding notices and inquiries regarding this record.		N				Y	UNKNOWN
7	2015-1156344-8	5/5/2015		Corporation Service Company, As Representative (Yellowstone Capital)	Accounts, including but not limited to, credit card receivables; Chattel Paper; Inventory; Equipment; Instruments, including but not limited to, Promissory Notes Investment Property; Documents; Deposit Accounts; Letter of Credits Rights; General Intangibles, supporting obligations; proceeds and products of the foregoing		N				N	
8	2015-1157436-1	5/27/2015		Susquehanna Commercial Finance, Inc.	All equipment, general intangibles and all modifications and attachments thereto and replacements therefore now and hereafter covered by the Equipment Lease Agreement dated as of 5/7/15 between Alliance Funding Group as Lessor and SHOOT THE MOON OF IDAHO, LLC as Lessee and all additional commitments related thereto.		N				N	
9	150528843600	5/28/2015	Amended: 7/30/2015 party info change	Axis Capital, Inc.	All equipment, general intangibles and all modifications and attachments thereto and replacements therefore now and hereafter covered by the Equipment Lease Agreement dated as of 5/7/15 between Alliance Funding Group as Lessor and SHOOT THE MOON OF IDAHO, LLC as Lessee and all additional commitments related thereto.		N				N	

No.	UCC #	Date	Amended/Terminated	Secured Party	Collateral Description	Priority of which Assets	Proof of Claim Filed	Was POC Timely Filed	Amount of Claim	Claim #	Claim Schedule	Amount on Schedule
10	2015-1164747-6	10/15/2015		World Global Financing Inc.	All property, assets, rights and interest in property of Debtor of any kind or description, tangible, whether now owned or existing or hereafter acquired or arising and whosesoever's located including, but not limited to the following: All deposit accounts, accounts and accounts receivable of Debtor, whether now in existence or hereafter coming into existence all letter of credit rights: all chattel paper contract rights, instruments, documents, general intangibles, payments intangibles trademarks, service marks, trade names, patents, copyrights and licenses), inventory (including raw materials inventory, finished goods inventory, parts, supplies) and goods in process of debtor, whether now in existence or owned or hereafter coming into existence or acquired, whether located, and all returned goods and repossessions and replacements thereof: all vehicles, furniture, machinery and equipment now owned and hereafter acquired by Debtor (including all embedded software): all investment property : all supporting obligations, software and commercial tort claims: all accessions....		N				N	

## **EXHIBIT B**

No.	UCC #	Date	Amended/Terminated	Secured Party	Collateral Description	Priority of which Assets	Proof of Claim Filed	Was POC Timely Filed	Amount of Claim	Claim #	Claim Schedule	Amount on Schedule
<b>Shoot the Moon Washington, LLC</b>				<b>Northtown Chili's</b>								
1	200-091-0190-2	3/31/2006	Amended: 7/29/2008 (2008-211-5179-4) Amended: 3/30/2010 (2010-089-3602-9) Amended: 4/15/2010 (2010-105-7902-3) Amended: 12/13/2012 (2012-348-3415-1) Continued: 12/13/2012 (2012-348-3416-8) Terminated: 7/14/2014 (2014-195-8580-9)	Citicorp Leasing, Inc.	Accounts, equipment, fixtures, documents, contract rights, general intangibles, chattel paper, instruments and proceeds of all the foregoing and all such property (collateral) more fully described on Schedule A attached.		N				N	
2	2013-072-4695-9	3/13/2013	Terminated: 11/17/14	VWM Group, LLC	Accounts, deposit accounts, documents, general intangibles, goods, equipment, inventory, fixtures, instruments, money, securities accounts, supporting obligations, property of Debtor held by secured party...		N				N	TERMINATED
3	2013-205-7368-1	7/24/2013		<b>Sterling Savings Bank</b>	<b>Interest in equipment and fixtures</b> located at 4750 N. Division Ste. 1120, Spokane, WA		N				Y	\$ <b>23,375.85</b>
4	2014-197-9396-9	7/16//14		<b>Western Alliance Bank</b>	<b>All inventory</b> , chattel paper, accounts, documents, instruments, <b>equipment, and general intangibles</b> , whether any of the foregoing is owned now or acquired later; all accessions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing		Y	Y	\$ <b>4,810,574.85</b>	450	Y	
5	2014-269-5512-1	9/26/2014		American Express Bank, FSB	All assets of the Debtor, whether now owned or hereafter acquired or arising		Y	Y	\$ 392,012.10	498	Y	
6	2014-335-9750-5	12/1/2014		Gibraltar Capital Advance, LLC	Interest in all present and future assets and properties used all accounts, chattel paper, cash, deposit accounts, personal property, assets and fixtures, all licenses and permits, general intangibles, intellectual property, instruments, equipment and inventory wherever located, and all proceeds, products and revenue now or hereafter owned or acquired by Merchant from an...		Y	Y	\$ 56,181.70	447	N	
7	2014-336-0195-0	12/2/2014		Corporation Service Co. as Representative (CAN Capital)	Future accounts, chattel paper, deposit accounts, personal property, assets and fixtures, general intangibles, instruments, equipment, inventory wherever located, and proceeds now or hereafter owned or acquired by Merchant.		Y	Y	313752.01	360	N	
8	2014-344-2121-2	12/10/2014		Corporation Service Co. as Representative (IOU Central)	Debtor has contractually agreed not to pledge, mortgage, encumber or otherwise permit the collateral to be subject to any other lien, security interest, encumbrance or charge...		Y	Y	86089.05	381	N	
9	2015-033-7549-1	2/2/2015		ACH Capital, LLC	Ass assets of the Debtor, now existing and hereafter arising, wherever located		N				Y	UNKNOWN

No.	UCC #	Date	Amended/Terminated	Secured Party	Collateral Description	Priority of which Assets	Proof of Claim Filed	Was POC Timely Filed	Amount of Claim	Claim #	Claim Schedule	Amount on Schedule
10	2015-231-5569-1	8/19/2015		Corporation Service Co. as Representative (Yellowstone Financial)	Accounts, including but not limited to, credit card receivables; Chattel Paper; Inventory; Equipment; Instruments, including but not limited to, Promissory Notes Investment Property; Documents; Deposit Accounts; Letter of Credits Rights; General Intangibles, supporting obligations; proceeds and products of the foregoing		N				N	
11	2015-281-7595-3	10/8/2015		World Global Financing, Inc.	All property, assets, rights and interest in property of Debtor, of any kind of description, tangible, whether now owned or existing or hereafter acquired or arising and whosoever's located including, but not limited to the following: All deposit accounts, accounts and accounts receivable of Debtor, whether now in existence or hereafter coming into existence all letter of credit rights: all chattel paper (whether tangible or electronic) contract rights, instruments (including promissory notes), documents, general intangibles (including without limitation payments intangibles trademarks, service marks, trade names, patents...		N				Y	\$ 49,882.00
12	2015-293-9920-4	10/20/2015		Pearl Alpha Funding	Accounts, including but not limited to, credit card receivables; Chattel Paper; Inventory; Equipment; Instruments, including but not limited to, Promissory Notes Investment Property; Documents; Deposit Accounts; Letter of Credits Rights; General Intangibles, supporting obligations; proceeds and products of the foregoing		N				Y	\$ 5,486.00



## **EXHIBIT C**

No.	UCC #	Date	Amended/Terminated	Secured Party	Collateral Description	Priority of which Assets	Proof of Claim Filed	Was POC Timely Filed	Amount of Claim	Claim #	Claim Schedule	Amount on Schedule
Shoot the Moon of Montana, LLC				GF Chili's, GF Moonshine, Helena Chili's, Helena Moonshine								
1	583140990	6/23/2011	Amended: 2/13/2013 Name change	Sound Garden	Personal property including without limitation accounts, chattel paper, documents, equipment, general intangibles, instruments, inventory ... (b) all trademarks, trade names, service marks, logos and other sources of business identifies, and all registrations, recordings and applications with the U.S. Patent and Trademark Office and all renewals, reissues and extension thereof whether now owned or hereafter acquired, together with any written agreement granting any right to use any Trademarks; and (c) All proceeds as that term is defined in Article 9 of the UCC. ...		N				Y	UNKNOWN
2	590073064	3/25/2013	Terminated: 1/16/2014	American Express	All assets of the Debtor, whether now owned or hereafter acquired or arising		N				Y	TERMINATED
3	140116230751	1/16/2014		American Express Bank FSB	All assets of the Debtor, whether now owned or hereafter acquired or arising		Y	Y	\$ 392,012.10	498	Y	
4	140929553798	9/29/2014		American Express Bank, FSB	All assets of the Debtor, whether now owned or hereafter acquired or arising		Y	Y	\$ 392,012.10	498	Y	
5	141009566476	10/9/2014	Terminated: 8/5/2015	Corporation Service Company, as Representative (On Deck Capital, Inc.)	(i) Any and all amounts owing to Debtor now or in the future from any merchant processor(s) processing charges made by customers of Debtor via credit card or debit card transactions; and (ii) all other tangible and intangible personal property, including, but no limited to (a) inventory, (b) equipment (c) investment property, including certificated and uncertificated securities, securities accounts, security entitlements, commodity contracts and commodity accounts, (d) instruments, including promissory notes (e) chattel paper including tangible chattel paper and electronic chattel paper, (f) documents, (g) letter of credit rights, (h) accounts, including heal care, (i) deposit accounts, (J) general intangibles, including payment intangibles and software and (k) as extracted collateral as such terms may from time to time be defined in the UCC....		N				N	

No.	UCC #	Date	Amended/Terminated	Secured Party	Collateral Description	Priority of which Assets	Proof of Claim Filed	Was POC Timely Filed	Amount of Claim	Claim #	Claim Schedule	Amount on Schedule
6	150413786801	4/13/2015		Axis Capital, Inc.	All Equipment, general intangibles and all modifications and attachments thereto and replacements therefore now and hereafter covered by Equipment Lease Agreement dated as of 5/7/15 between Alliance Funding Group and Shoot the Moon, LLC		N				N	
7	150528843600	5/28/2015	Amended: 7/30/2015 party info change	Axis Capital Inc.	All equipment, general intangibles and all modifications and attachments thereto and replacements therefore now and hereafter covered by the Equipment Lease Agreement dated 5/7/15 between Alliance Funding Group and Shoot the Moon 4, LLC		N				N	
8	150825942940	8/25/2015		Corporation Service Company, as Representative (Yellowstone Capital, LLC)	Accounts, including but not limited to, credit card receivables; Chattel Paper; Inventory; Equipment; Instruments, including but not limited to, Promissory Notes Investment Property; Documents; Deposit Accounts; Letter of Credits Rights; General Intangibles, supporting obligations; proceeds and products of the foregoing		N				N	
9	150910962092	9/10/2015		Funding Metrics, LLC	Accounts, including but not limited to, credit card receivables; Chattel Paper; Inventory; Equipment; Instruments, including but not limited to, Promissory Notes Investment Property; Documents; Deposit Accounts; Letter of Credits Rights; General Intangibles, supporting obligations; proceeds and products of the foregoing		Y	Y	\$ 80,127.64	363	Y	
10	151007990514	10/7/2015		Richmond Capital Group LLC	All Merchant's future accounts, contract rights and other entitlements arising from or relating to the payment of monies from Merchants' customers and/or other third party payors.... For the payments due to Merchant as a result of Merchant's sale of goods or services (the Transactions) until the amount specified below has been delivered by or on behalf of Merchant to RCG.		N				Y	\$ 228,375.00
11	151009992974	10/9/2015		World Global Financing Inc.	All property, assets, rights, and interest in property of Debtor, of any kind or description, tangible, whether now owned or existing or hereafter acquired or arising or whosoever's located including, but not limited to the following:		N				N	

No.	UCC #	Date	Amended/Terminated	Secured Party	Collateral Description	Priority of which Assets	Proof of Claim Filed	Was POC Timely Filed	Amount of Claim	Claim #	Claim Schedule	Amount on Schedule
				World Global Financing (Continuation)	All deposit accounts, accounts and accounts receivable of Debtor, whether now in existence or hereafter coming into existence all letter of credit rights: all chattel paper (whether tangible or electronic) contract rights, instruments (including promissory notes), documents, general intangibles ( including, without limitation, payments intangibles trademarks, service marks, trade names, patents, copyrights and licenses), inventory (including raw materials inventory, finished goods inventory, parts, supplies) and goods in process of debtor, whether now in existence or owned or hereafter coming into existence or acquired, whether located, and all returned goods and repossessions and replacements thereof: all vehicles, furniture, machinery and equipment now owned and hereafter acquired by Debtor (including all embedded software): all investment property: all supporting obligations, software and commercial tort claims: all accessions. Additions replacements, and substitutions relating to any of the foregoing: all records of any kind relating to any of the foregoing: all proceeds relating to any of the foregoing ( including insurance, general intangibles and accounts proceeds): All insurance policies insuring the foregoing property or any part thereof including unearned premiums and all refunds.							

## **EXHIBIT D**

No.	UCC #	Date	Amended/Terminated	Secured Party	Collateral Description	Priority of which Assets	Proof of Claim Filed	Was POC Timely Filed	Amount of Claim	Claim #	Claim Schedule	Amount on Schedule
BINDER 2												
Shoot the Moon III, LLC			Meridian Chili's and OTB									
1	99766148	3/13/2009	Terminated: 8/17/2010 (579571074) Continued: 2/21/2014 (140221277964)	Prairie Mountain Bank	Furniture, Fixtures, Equipment and Inventory now owned or hereafter acquired, located at, but not limited to On the Border, 3004 North Eagle Road, Meridian, ID 83646		Y	Y	\$ 1,135,006.97	190	Y	
2	99766269	3/13/2009		Prairie Mountain Bank	Furniture, fixtures, equipment and inventory now owned or hereafter acquired, located at, but not limited to Chili's, 3078 North Eagle Road, Meridian, ID 83646.		Y	Y	\$ 1,135,006.97	190	Y	
3	99766522	3/13/2009		Prairie Mountain Bank	Furniture, fixtures, equipment and inventory now owned or hereafter acquired.		Y	Y	\$ 1,135,006.97	190	Y	
2	583734212	8/18/2011		Sound Garden 1-770-218-5478	Accounts, chattel paper, documents, equipment, general intangibles, instruments, inventory (as those terms are defined in Article 9 of the Uniform Commercial Code in effect from time-to-time in the State of New York) wherever located, now or hereafter owned or acquired by the Merchant; (b) All trademarks, trade names, service marks, logos and other sources of business identifiers, and all registrations, recordings and applications with the U.S. Patent and Trademark Office and all renewals, reissues and extensions...		N				Y	UNKNOWN
3	523734101	8/18/2011	Continued: 2/21/2014 (140221277919)	Sound Garden 770-218-5478	Accounts, chattel paper, documents, equipment, general intangibles, instruments, inventory (as those terms are defined in Article 9 of the Uniform Commercial Code in effect from time-to-time in the State of New York) wherever located, now or hereafter owned or acquired by the Merchant; (b) All trademarks, trade names, service marks, logos and other sources of business identifiers, and all registrations, recordings and applications with the U.S. Patent and Trademark Office and all renewals, reissues and extensions...		N				Y	UNKNOWN
4	586134007	3/28/20012		US Food, Inc.	Security interest, and lien in and to all goods, inventory, equipment and fixtures sold to Applicant by Seller from time to time, and a separate security interest in all other assets of Applicant, including, without limitation.... (a) accounts, (b) goods for sale, lease or other disposition which have given rise to accounts and have been returned to or repossessed or stopped in transit by Applicant; and (c) goods, including, without limitation, inventory, equipment, fixtures, trade fixtures and vehicles.		Y	Y	\$ 962,668.14	372	Y	

No.	UCC #	Date	Amended/Terminated	Secured Party	Collateral Description	Priority of which Assets	Proof of Claim Filed	Was POC Timely Filed	Amount of Claim	Claim #	Claim Schedule	Amount on Schedule
5	140929553798	9/29/2014		American Express Bank, FSB	All assets of the Debtor, whether now owned or hereafter acquired or arising		Y	Y	\$ 392,012.10	498	Y	
6	150216716412	2/16/2015	terminated	Corporation Service Company, As Representative	Accounts, including but not limited to, credit card receivables; Chattel Paper; Inventory; Equipment; Instruments, including but not limited to, Promissory Notes Investment Property; Documents; Deposit Accounts; Letter of Credits Rights; General Intangibles, supporting obligations; proceeds and products of the foregoing		N					
7	150224725818	2/24/2015		ACH Capital LLC as agent for Cap Call LLC	All assets of the Debtor, now existing and hereafter arising, wherever located.		N				N	
8	150429806309	4/29/2015		Corporation Service Company, As Representative (Yellowstone Capital)	Accounts, including but not limited to, credit card receivables; Chattel Paper; Inventory; Equipment; Instruments, including but not limited to, Promissory Notes Investment Property; Documents; Deposit Accounts; Letter of Credits Rights; General Intangibles, supporting obligations; proceeds and products of the foregoing		N				N	
9	150528843600	5/28/2015	Amended: 7/30/2015 party info change	Axis Capital Inc.	All equipment, general intangibles and all modifications and attachments thereto and replacements therefore now and hereafter covered by the Equipment Lease Agreement dated 5/7/15 between Alliance Funding Group and Shoot the Moon 4, LLC		N				N	
10	150814929677	8/14/2015		Corporation Service Company, As Representative (Yellowstone Capital)	Accounts, including but not limited to, credit card receivables; Chattel Paper; Inventory; Equipment; Instruments, including but not limited to, Promissory Notes Investment Property; Documents; Deposit Accounts; Letter of Credits Rights; General Intangibles, supporting obligations; proceeds and products of the foregoing		N				N	
11	150819935308	8/19/2015		Corporation Service Company, As Representative (Yellowstone Capital)	Accounts, including but not limited to, credit card receivables; Chattel Paper; Inventory; Equipment; Instruments, including but not limited to, Promissory Notes Investment Property; Documents; Deposit Accounts; Letter of Credits Rights; General Intangibles, supporting obligations; proceeds and products of the foregoing		N				N	
12	150825942940			Corporation Service Company, As Representative (Yellowstone Capital)	Accounts, including but not limited to, credit card receivables; Chattel Paper; Inventory; Equipment; Instruments, including but not limited to, Promissory Notes Investment Property; Documents; Deposit Accounts; Letter of Credits Rights; General Intangibles, supporting obligations; proceeds and products of the foregoing		N				N	

## **EXHIBIT E**



No.	UCC #	Date	Amended/Terminated	Secured Party	Collateral Description	Priority of which Assets	Proof of Claim Filed	Was POC Timely Filed	Amount of Claim	Claim #	Claim Schedule	Amount on Schedule
<b>Shoot the Moon 4, LLC</b>			<b>Idaho Falls Chili's</b>									
1	580282308	10/18/2010	Terminated: 6/21/2012	Prairie Mountain Bank	Furniture, Fixtures, Equipment, Inventory and Accounts Receivables now owned or hereafter acquired AND Idaho Retail Alcohol Beverage License No. 3931.		N				Y	TERMINATED
2	585156272	1/4/2012		RBL Group, LLC	Personal property including, without limitation all of Debtor's Accounts; Deposit Accounts; Documents; General Intangibles, Goods, Equipment, Inventory, Fixture, Instruments, Money, Securities Accounts; Supporting Obligations...		N				N	
3	140929553798	9/29/2014		American Express Bank, FSB	Accounts, including but not limited to, credit card receivables; Chattel Paper; Inventory; Equipment; Instruments, including but not limited to, Promissory Notes Investment Property; Documents; Deposit Accounts; Letter of Credits Rights; General Intangibles, supporting obligations; proceeds and products of the foregoing		Y	Y	\$ 392,012.10	498	Y	
4	150423800265	4/23/2015		Corporation Service Co. as Representative (CAN Capital)	Future accounts, chattel paper, deposit accounts, personal property, assets and fixtures, general intangibles, instruments, equipment, inventory wherever located, and proceeds now or hereafter owned or acquired by Merchant		Y	Y	313752.01	360	N	
5	150429806309	4/29/2015		Corporation Service Co. as Representative ( Yellowstone Capital, LLC)	Accounts, including but not limited to, credit card receivables; Chattel Paper; Inventory; Equipment; Instruments, including but not limited to, Promissory Notes Investment Property; Documents; Deposit Accounts; Letter of Credits Rights; General Intangibles, supporting obligations; proceeds and products of the foregoing		N				N	
6	150528843600	5/28/2015	Amended: 7/30/2015 party info change	Axis Capital Inc.	All equipment, general intangibles and all modifications and attachments thereto and replacements therefore now and hereafter covered by the Equipment Lease Agreement dated 5/7/15 between Alliance Funding Group and Shoot the Moon 4, LLC		N				N	
7	150814929677	8/14/2015		Corporation Service Co. as a Representative (Yellowstone Capital, LLC)	Accounts, including but not limited to, credit card receivables; Chattel Paper; Inventory; Equipment; Instruments, including but not limited to, Promissory Notes Investment Property; Documents; Deposit Accounts; Letter of Credits Rights; General Intangibles, supporting obligations; proceeds and products of the foregoing		N				N	

No.	UCC #	Date	Amended/Terminated	Secured Party	Collateral Description	Priority of which Assets	Proof of Claim Filed	Was POC Timely Filed	Amount of Claim	Claim #	Claim Schedule	Amount on Schedule
8	150819935380	8/19/2015		Corporation Service Co. as Representative (Yellowstone Capital, LLC)	Accounts, including but not limited to, credit card receivables; Chattel Paper; Inventory; Equipment; Instruments, including but not limited to, Promissory Notes Investment Property; Documents; Deposit Accounts; Letter of Credits Rights; General Intangibles, supporting obligations; proceeds and products of the foregoing		N				N	
9	150825942940	8/25/2015		Corporation Service Co. as Representative (Yellowstone, LLC)	Accounts, including but not limited to, credit card receivables; Chattel Paper; Inventory; Equipment; Instruments, including but not limited to, Promissory Notes Investment Property; Documents; Deposit Accounts; Letter of Credits Rights; General Intangibles, supporting obligations; proceeds and products of the foregoing		N				N	
10	150914964605	9/14/2015		Arch Capital Funding, LLC	Accounts, including but not limited to, credit card receivables; Chattel Paper; Inventory; Equipment; Instruments, including but not limited to, Promissory Notes Investment Property; Documents; Deposit Accounts; Letter of Credits Rights; General Intangibles, supporting obligations; proceeds and products of the foregoing		N				Y	Unknown
11	151009992101	10/9/2015		Arch Capital Funding, LLC	Accounts, including but not limited to, credit card receivables; Chattel Paper; Inventory; Equipment; Instruments, including but not limited to, Promissory Notes Investment Property; Documents; Deposit Accounts; Letter of Credits Rights; General Intangibles, supporting obligations; proceeds and products of the foregoing		N				Y	Unknown

## **EXHIBIT F**

No.	UCC #	Date	Amended/Terminated	Secured Party	Collateral Description	Priority of which Assets	Proof of Claim Filed	Was POC Timely Filed	Amount of Claim	Claim #	Claim Schedule	Amount on Schedule
<b>Shoot the Moon 5, LLC</b>			Coeur D'Alene Chili's									
1	579050925	7/1/2010	Continuation: 6/30/2015 (150630880204)	Prairie Mountain Bank	Furniture, Fixtures, Equipment, Inventory and Accounts Receivable now owned or hereafter acquired AND Idaho Retail Alcohol Beverage License No. 3907		Y	Y	\$ 195,813.29	191	Y	
2	585156272	1/4/2012		RBL Group, LLC	Personal property including, without limitation all of Debtor's Accounts; Deposit Accounts; Documents; General Intangibles, Goods, Equipment, Inventory, Fixture, Instruments, Money, Securities Accounts; Supporting Obligations...		N				N	
3	130724029026	7/24/2013		Sterling Savings Bank	Purchase money security interest in equipment and fixtures, as listed in exhibit...		N				Y	\$ 50,092.98
4	140929553798	9/29/2014		American Express Bank, FSB	All assets of the Debtor, whether now owned or hereafter acquired or arising.		Y	Y	\$ 392,012.10	498	Y	
5	150203703169	2/3/2015		ACH Capital LLC	All assets of the Debtor, now existing and hereafter arising, wherever located.		N				Y	UNKNOWN
6	150429807742	4/29/2015		Corporation Service Co. as Representative (BizCredit, Inc.)	All of Debtor's present and future accounts, chattel paper, deposit accounts, documents, personal property, general intangibles, instruments, equipment (including assets and fixtures), inventory and proceeds, each as defined in Article 9 of the UCC, whether now or hereafter owned or acquired by Debtor and wherever located, and all proceeds of any such property		N				N	
7	150528843600	5/28/2015	Amended: 7/30/2015 party info change	Axis Capital Inc.	All equipment, general intangibles and all modifications and attachments thereto and replacements therefore now and hereafter covered by the Equipment Lease Agreement dated 5/7/15 between Alliance Funding Group and Shoot the Moon 4, LLC		N				N	
8	150814929677	8/14/2015		Corporation Service Co. as Representative (Yellowstone Capital, LLC)	Accounts, including but not limited to, credit card receivables; Chattel Paper; Inventory; Equipment; Instruments, including but not limited to, Promissory Notes Investment Property; Documents; Deposit Accounts; Letter of Credits Rights; General Intangibles, supporting obligations; proceeds and products of the foregoing		N				N	
9	150910962127	9/10/2015		Funding Metrics, LLC	Accounts, including but not limited to, credit card receivables; Chattel Paper; Inventory; Equipment; Instruments, including but not limited to, Promissory Notes Investment Property; Documents; Deposit Accounts; Letter of Credits Rights; General Intangibles, supporting obligations; proceeds and products of the foregoing		Y	Y	\$ 61,688.96	362	Y	

No.	UCC #	Date	Amended/Terminated	Secured Party	Collateral Description	Priority of which Assets	Proof of Claim Filed	Was POC Timely Filed	Amount of Claim	Claim #	Claim Schedule	Amount on Schedule
10	1510291013787	10/29/2015		Capcall, LLC	All now owned and hereafter acquired accounts chattel paper deposit accounts contract rights letter of credit rights instruments payment and general intangibles goods inventory equipment and fixtures investment property and all books and records relating to all of the foregoing property, including without limitation, all computer programs and all proceeds of the foregoing.		N				N	

## **EXHIBIT G**

No.	UCC #	Date	Amended/Terminated	Secured Party	Collateral Description	Priority of which Assets	Proof of Claim Filed	Was POC Timely Filed	Amount of Claim	Claim #	Claim Schedule	Amount on Schedule
<b>Shoot the Moon 22, LLC</b>			<b>Downtown Spokane</b>									
1	585156272	1/4/2012		RBL Group, LLC	Personal property including, without limitation all of Debtor's Accounts; Deposit Accounts; Documents; General Intangibles, Goods, Equipment, Inventory, Fixture, Instruments, Money, Securities Accounts; Supporting Obligations...		N				N	
2	130724029037	7/24/2013		Sterling Savings Bank	Purchase Money Security Interest in equipment and fixtures, as listed on Exhibit A....		N				N	
3	140929553798	9/29/2014		American Express Bank, FSB	All assets of Debtor, whether now owned or hereafter acquired or arising		Y	Y	\$ 392,012.10	498	Y	
4	150127693777	1/27/2015		Gibraltar Capital Advance, LLC	present and future assets and properties used in Merchant's business including, without limitation, all accounts, chattel paper, cash, deposit accounts, personal property, assets and fixtures, all licenses and permits, general intangibles, intellectual property, instruments, equipemnt and inventory wherever located, and all proceeds, products and revenue now or hereafter owned or acquired by Merchant from any and all of the foregoing.		Y	Y	\$ 56,562.18	448	N	
5	150429806309	4/29/2015		Corporation Service Co. as Representative (Yellowstone Capital, LLC)	All of Debtor's present and future accounts, chattel paper, deposit accounts, documents, personal property, general intangibles, instruments, equipment (including assets and fixtures), inventory and proceeds, each as defined in Article 9 of the UCC, whether now or hereafter owned or acquired by Debtor and wherever located, and all proceeds of any such property		N				N	
6	150528843600	5/28/2015	Amended: 7/30/2015 party info change	Axis Capital Inc.	All Equipment, general intangibles and all modifications and attachments thereto and replacements therefore now and hereafter covered by Equipment Lease Agreement dated as of 5/7/15 between Alliance Funding Group and Shoot the Moon, LLC		N				N	
7	150814929677	8/14/2015		Corporation Service Company, as Representative (Yellowstone Capital, LLC)	Accounts, including but not limited to, credit card receivables; Chattel Paper; Inventory; Equipment; Instruments, including but not limited to, Promissory Notes Investment Property; Documents; Deposit Accounts; Letter of Credits Rights; General Intangibles, supporting obligations; proceeds and products of the foregoing		N				N	
8	150819935380	8/19/2015		Corporation Service Company, as Representative (Yellowstone Capital, LLC)	Accounts, including but not limited to, credit card receivables; Chattel Paper; Inventory; Equipment; Instruments, including but not limited to, Promissory Notes Investment Property; Documents; Deposit Accounts; Letter of Credits Rights; General Intangibles, supporting obligations; proceeds and products of the foregoing		N				N	

No.	UCC #	Date	Amended/Terminated	Secured Party	Collateral Description	Priority of which Assets	Proof of Claim Filed	Was POC Timely Filed	Amount of Claim	Claim #	Claim Schedule	Amount on Schedule
9	150825942940	8/25/2015		Corporation Service Company, as Representative (Yellowstone Capital, LLC)	Accounts, including but not limited to, credit card receivables; Chattel Paper; Inventory; Equipment; Instruments, including but not limited to, Promissory Notes Investment Property; Documents; Deposit Accounts; Letter of Credits Rights; General Intangibles, supporting obligations; proceeds and products of the foregoing		N				N	
10	150914964605	9/14/2015		Arch Capital Funding LLC	Accounts, including but not limited to, credit card receivables; Chattel Paper; Inventory; Equipment; Instruments, including but not limited to, Promissory Notes Investment Property; Documents; Deposit Accounts; Letter of Credits Rights; General Intangibles, supporting obligations; proceeds and products of the foregoing		N				N	
9	151009992101	10/9/2015		Arch Capital Funding	Accounts, including but not limited to, credit card receivables; Chattel Paper; Inventory; Equipment; Instruments, including but not limited to, Promissory Notes Investment Property; Documents; Deposit Accounts; Letter of Credits Rights; General Intangibles, supporting obligations; proceeds and products of the foregoing		N				N	



## **EXHIBIT H**

No.	UCC #	Date	Amended/Terminated	Secured Party	Collateral Description	Priority of which Assets	Proof of Claim Filed	Was POC Timely Filed	Amount of Claim	Claim #	Claim Schedule	Amount on Schedule
<b>Shoot the Moon Enterprises, LLC</b>				<b>Corporate</b>								
1	95971657	4/2/2008	Amended: 7/30/2008 (97331275) Amended: 3/31/2010 (578069560) Amended: 4/16/2010 (578252009) Continued: 2/4/2013 (589523971) Terminated: 7/15/14 (140715462682)	Citicorp Leasing, Inc.	Accounts, equipment, fixtures, documents, contract rights, general intangibles, chattel paper, instruments and proceeds of all the foregoing and all such property more fully described in Schedule A.....(i)All equipment in all of its forms, including but not limited to all pumps, tanks, compressors, tools, hydraulic lifts and other machinery, computer hardware and software, vehicles, furniture, fixtures, office and record keeping equipment, parts and all other tangible personal property and all leases and licenses with respect thereto (ii) Each and every account, contract right, chattel paper, instrument including each and every promissory note, investment property, deposit account, letter of credit right, supporting obligation, general intangible, including each and every payment intangible and other obligation of any kind, whether or not arising out of a sale, lease or other disposition of goods or other property, out of the rendering of services, out of an Advance, out of the overpayment of taxes or other liabilities or otherwise arises under any.... (iii) All trademarks, trade secrets, good will, trade names, customer lists, permits and franchises, and the right to use Debtor's name (iv) All certificates of title and documents (v) All other personal property of Debtor		N				N	
2	97468195	8/12/2008	Continued: 8/12/2008 (97468195)	First Interstate Bank	Inventory, Chattel Paper, accounts, equipment, general intangibles and fixtures; whether any of the foregoing is owned now or acquired later; all accessions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; all proceeds relating to any of the foregoing (including insurance, general intangibles and other accounts proceeds).		Y	Y	\$ 4,701,314.91	348	Y	
3	583140990	6/23/2011	Amended: 2/13/2013 (589637987)	Sound Garden	Accounts, chattel paper, documents, equipment, general intangibles, instruments, inventory wherever located, now or hereafter owned or acquired by the Merchant (b) all trademarks, trade names, service marks, logos and others sources of business identifiers, and all registrations, recordings and applications with the U.S. Patent and Trademark Office and all renewals, reissues and extension thereof.... (c) All proceeds as that term is defined in Article 9 of the UCC...		N				Y	UNKNOWN

No.	UCC #	Date	Amended/Terminated	Secured Party	Collateral Description	Priority of which Assets	Proof of Claim Filed	Was POC Timely Filed	Amount of Claim	Claim #	Claim Schedule	Amount on Schedule
4	583141022	6/23/2011		Sound Garden	Accounts, chattel paper, documents, equipment, general intangibles, instruments, inventory wherever located, now or hereafter owned or acquired by the Merchant (b) all trademarks, trade names, service marks, logos and others sources of business identifiers, and all registrations, recordings and applications with the U.S. Patent and Trademark Office and all renewals, reissues and extension thereof.... (c) All proceeds as that term is defined in Article 9 of the UCC...		N				Y	UNKNOWN
5	586134229	3/28/2012		US Foods, Inc.	Security interest, and lien in and to all goods, inventory, equipment and fixtures sold to Applicant by Seller from time to time, and a separate security interest in all other assets of Applicant, including without limitation al of Applicant's now existing or owned or hereafter arising or acquired (a) accounts, (b) goods for sale, lease or other disposition which have given rise to Accounts and have been returned to or repossessed or stopped in transit by Applicant; and (c) goods, including without limitation, inventory, equipment, fixtures, trade fixtures and vehicles.		Y	Y	\$ 692,668.14	372	Y	
6	589942178	3/13/2013		VMW Group, LLC	Accounts, deposit accounts; documents; general intangibles, goods, equipment, inventory, fixtures, instruments, money securities accounts, supporting obligations, property of Debtor held by Secured Party or any other party for whom Secured Party is acting as agent, including, without limitation, all property of every description now or hereafter in the possession or custody of or in transit to Secured Party or such other party for any purpose, including with limitation.....		N				Y	UNKNOWN

No.	UCC #	Date	Amended/Terminated	Secured Party	Collateral Description	Priority of which Assets	Proof of Claim Filed	Was POC Timely Filed	Amount of Claim	Claim #	Claim Schedule	Amount on Schedule
7	59068764	5/17/2013		KeyBank National Association	All inventory, equipment, accounts (including but not limited to all healthy-care-insurance receivables) chattel paper, instruments (including but not limited Promissory Note), letter-of-credit rights, letters of credit, documents, deposit accounts, investment property, money, other rights to payment and performance and general intangibles (including but not limited to all software and all payment intangibles); all oil, gas and other minerals before extractions; all oil, gas, other minerals and accounts constituting as –extracted collateral; all fixtures; all timber to be cut; all attachments, accessions, accessories, fittings, increases, tools, parts, repairs, supplies, and commingled good relating to the foregoing property, and all additions, replacements of and substitutions for all or any part of the foregoing property; all records and data and embedded software relating to property; all good will relating to the foregoing property; all records and data and embedded software relating to the foregoing property, and all equipment, inventory and software to utilize, create, maintain and process any the foregoing property, and all equipment, inventory and software to utilize, create, maintain and process any such records and data....		N				Y	UNKNOWN
8	140717465601	7/17/2014		Western Alliance Bank	All inventory, chattel paper, accounts, documents, instruments, equipment and general intangibles; whether any of the foregoing is owned now or acquired later; all accessions, additions, replacements, and substitutions relating to any of the foregoing, all records of any kind relating to any of the foregoing		Y	Y	\$ 4,810,574.85	450	Y	
9	150430808564	4/30/2015		Corporation Service Company, As Representative (Ascentium Capital LLC)	Equipment, personal property and other assets (collectively, “Property”) financed under, covered by or described in the lease, rental equipment finance agreement or installment payment agreement designated as Agreement 2143818 and as set forth in Schedule A to Agreement 2143818, together with all replacements for, additions to, substitutions for and accessions to the Property, and all proceeds of any of the foregoing, including without limitation, proceeds of insurance.		Y	Y	\$ 314,946.96	498	N	
10	150528843600	5/28/2015	Amended: 7/30/2015 party info change	Axis Capital Inc.	All equipment, general intangibles and all modifications and attachments thereto and replacements therefore now and hereafter covered by the Equipment Lease Agreement dated 5/7/15 between Alliance Funding Group and Shoot the Moon 4, LLC		N				N	

# **EXHIBIT I**

No.	UCC #	Date	Amended/Terminated	Secured Party	Collateral Description	Priority of which Assets	Proof of Claim Filed	Was POC Timely Filed	Amount of Claim	Claim #	Claim Schedule	Amount on Schedule
<b>Shoot the Moon, LLC</b>			<b>Corporate</b>									
1	95971536	4/2/2008	Amended: 7/30/2008 Amended: 3/31/2010 Amended: 4/16/2010 Continued: 2/4/2013 Termination: 7/15/2014	Citicorp Leasing, Inc.	i) All equipment in all of its forms, including but not limited to all pumps, tanks, compressors, tools, hydraulic lifts and other machinery... ii) Each and every account, contract right, chattel paper, instrument including each and every promissory note, investment property, deposit account, letter of credit right, supporting obligation, general intangible, including each and every payment intangible and other obligation of any kind, whether or not arising out of sale, lease or other disposition of goods or other property... iii) All trademarks, trade secrets, good will, trade names, customer lists, permits and franchises, and the right to sue Debtor's name iv) All certificates of title and documents; and v) All other personal property of Debtor (except inventory) of every kind of description which is now or hereafter comes into the possession of Secured Party.... vi)		N				N	
2	97468195	9/12/2008	Continued: 7/8/2013	First Interstate Bank	All inventory, Chattel Paper, accounts, equipmetn, general intangibles and fixtures; whether any of the foregoin is owned now or acquired later; all accessions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; all proceeds relaitng to any of the foregoing (including insurance, general intangibles and othe raccounts proceeds).		Y	Y	\$ 4,701,314.91	348	Y	
3	585156272	1/4/2012		RBL Group, LLC	Accounts,; Deposit accounts; documents; gneral intangibles, goods, equipment, inventory, fixtures, instruments, money,		N				N	
3	140423358551	4/23/2014		Corporation Service Company, as Representative (Direct Capital Corporation)			N				N	
4	141113605533	11/13/2014		Corporation Service Company, as Representative (American MicroLoan)			N				N	

# EXHIBIT C

## **Administrative Claims and Professional Fees**

- 1) US Foods 503(b)(9) claim: \$51,588.36 (Doc. 698)
- 2) US Foods PACA claim: \$112,482
- 3) Estimated closing costs: \$59,150 (0.5% of purchase price)
- 4) Sales commissions:
  - 4.1) Business enterprise and Leased Restaurants: \$190,000 (4% to Rob Hunziker of Advanced Restaurant Sales)
  - 4.2) Helena: \$80,400 (3% to Mark Macek of Macek Companies, Inc.) and \$53,600 (2% to Hunziker)
  - 4.3) Great Falls: \$56,000 (2% to Macek) and \$28,000 (1% to Hunziker)
  - 4.4) Pocatello: \$48,000 (3% to Clay Anderson of Colliers Paragon, LLC); \$32,000 (2% to Hunziker)
- 5) Trustee fee: \$354,900
  - 5.1) \$142,500 (3% of enterprise sale amount)
  - 5.2) \$212,400 (3% of real estate sale amount)
- 6) Outstanding professional fees (approved and pending):
  - 6.1) Shipman & Goodwin: \$17,492.89 (3d and 4th Fee Applications – approved)
  - 6.2) Datsopoulos, MacDonald & Lind: \$289,036.02 (2d Fee Application – pending)
  - 6.3) Trustee: \$59,201.94 (3d Fee App – approved); \$116,915.36 (4th Fee Application – pending)

# **EXHIBIT D**

## **Pre-petition Taxes**

- 1) Real property tax on Owned Restaurants: \$298,977
  - 1.1) Helena \$101,994
  - 1.2) Great Falls \$138,356
  - 1.3) Pocatello \$58,627
  
- 2) Idaho sales tax: \$539,718
  - 2.1) Twin Falls \$50,175
  - 2.2) Pocatello \$50,175
  - 2.3) Boise – Franklin \$50,175
  - 2.4) Boise- Broadway \$50,175
  - 2.5) Meridian \$162,919
  - 2.6) Coeur D’Alene \$81,695
  - 2.7) Idaho Falls \$94,405