

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE

IN RE:)
)
) CASE NO. 16-04928-MFH
TENNESSEE SEAFOOD, LLC)
) CHAPTER 11
) JUDGE MARIAN F. HARRISON
Debtor.)
)
)

**THE DEADLINE FOR FILING A TIMELY RESPONSE IS: MAY 12, 2017
IF A RESPONSE IS TIMELY FILED, THE HEARING WILL BE: MAY 16, 2017
AT 9:00 A.M., IN COURTROOM 3, AT THE CUSTOMS HOUSE, 701 BROADWAY,
NASHVILLE, TN 37203**

NOTICE OF MOTION TO SELL SUBSTANTIALLY ALL ASSETS

Debtors have asked the court for the following relief: Authority to Sell Substantially All Assets.

YOUR RIGHTS MAY BE AFFECTED. If you do not want the court to grant the attached motion by entering the attached order, or if you want the court to consider your views on the motion, then on or before the response date stated above, you or your attorney must:

1. File with the court your response or objection explaining your position. Please note: the Bankruptcy Court for the Middle District of Tennessee requires electronic filing. Any response or objection you wish to file must be submitted electronically. To file electronically, you or your attorney must go to the court website and follow the instructions at: <https://ecf.tnmb.uscourts.gov>.

If you need assistance with Electronic Filing you may call the Bankruptcy Court at (615) 736-5584. You may also visit the Bankruptcy Court in person at: 701 Broadway, 1st Floor, Nashville, TN (Monday - Friday, 8:00 A.M. - 4:00 P.M.).

2. Your response must state the deadline for filing responses, the date of the scheduled hearing and the motion to which you are responding.

If a response is filed before the deadline stated above, the hearing will be held at the time and place indicated above. **THERE WILL BE NO FURTHER NOTICE OF THE HEARING DATE.** You may check whether a timely response has been filed by viewing the case on the court's website at <https://ecf.tnmb.uscourts.gov>.

If you or your attorney does not take these steps, the court may decide that you do not

oppose the relief sought in the motion and may enter the attached order granting that relief.

Date: April 21, 2017

Signature: **/S/ STEVEN L. LEFKOVITZ**
Steven L. Lefkovitz, No. 5953
Attorney for Debtor
618 Church Street, Suite 410
Nashville, Tennessee 37219
Phone: (615) 256-8300
Fax: (615) 255-4516
Email: slefkovitz@lefkovitz.com

(the “Bankruptcy Court”).

3. Debtor operates or has franchise rights to operate seven (7) Long John Silver’s Restaurants (including a co-branded store with an A&W franchise) at locations identified on **Exhibit A** (the “*LJS Restaurants*”). The operation of the LJS Restaurants and all related rights and incidental activities thereto being referred to as the “*Business*”.

4. On December 22, 2016, the Debtor received a letter of intent from LJS Opco Two, LLC (“Buyer”), in which Buyer made an offer to purchase the Business.

5. The Debtor and Buyer have entered into an Asset Purchase Agreement that provides for the sale of the Business to Buyer, subject to this Court’s approval. A true and correct copy of the Asset Purchase Agreement is attached hereto as Exhibit A.

6. The Debtor seeks this Court’s approval of the sale of the Business, to be sold to Buyer at private sale, closing on or before May 18, 2017.

7. The Debtor seeks this Court’s approval, as a part of the proposed sale of the Business, to convey the Bankruptcy Estate’s interest in the Business free and clear of (a) any mortgages, security interests, liens or encumbrances of any kind, including any administrative expenses, priority claims asserted herein, claims of set-off and/or recoupment and any ownership claims or any arrangement which is intended as financing (and not a true lease); (b) any demands or claims of creditors against the Debtor; and (c) any person claiming through, by or on behalf of the Debtor, whether such claim, demand, lien or interest be direct or indirect, known or unknown, or claiming that a buyer is a successor or successor-in-interest or pursuant to any other theory.

8. The sale of the Bankruptcy Estate’s interest in the Business is authorized and appropriate under the Bankruptcy Code. Section 363(b) provides that “the trustee, after notice and

a hearing, may use, sell, or lease other than in the ordinary course of business, property of the estate.” The Court’s power to authorize a sale under Section 363(b) of the Bankruptcy Code is to be exercised at its discretion, utilizing a flexible, case-by-case approach. *In re Baldwin United Corp.*, 43 B.R. 905 (Bankr. S.D.Ohio 1984). The key consideration is the Court’s finding that a good business reason exists for the sale. *Stephens Industries, Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986).

9. Sound business reasons exist for selling the Business as set out herein. The maximum value for the Business will be obtained by selling it pursuant to the Asset Purchase Agreement. The Debtor is unable to reorganize by continuing to operate the Business, as it has defaulted on the LJS Franchise Agreements and is unable to pay the amounts necessary to cure the defaults. The Debtor has been unable to locate another potential purchaser with interest in the Business other than Buyer.

10. The sale of the Business pursuant to the Asset Purchase Agreement represents a higher and better alternative than a Chapter 7 liquidation, as this sale will generate more money for the Bankruptcy Estate than a liquidation sale of the personalty. Further, the sale will result in the landlord creditors receiving payment and/or obtaining a viable tenant going-forward, as each of the landlord creditors is prepared to accept Buyer as a tenant. Additionally, there is a possibility that current employees of the Business may be hired by the Buyer after the closing.

11. Section 363(f) of the Bankruptcy Code authorizes the sale of property under Section 363(b) to be free and clear of interests in such property held by an entity if:

- (1) Applicable non-bankruptcy law permits a sale of such property free and clear of such interests;
- (2) Such entity consents;
- (3) Such interest is a lien and the price at which such property is to be sold is greater

- than the aggregate value of all liens on such property;
- (4) Such interest is in bona-fide dispute; or
- (5) Such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

12. A Debtor in Possession need only satisfy one of the above requirements to justify approval of a sale free and clear of liens and interests. Michigan Employment Security Comm'n v. Wolverine Radio Co., 930 F.2d 1132, 1147 n. 24 (6th Cir. 1991). The Debtor believes that the proposed sale satisfies one or more of these conditions.

13. In this case, Debtor's only secured creditor is the Internal Revenue Service. The Debtor believes, based on its conversations, that the Internal Revenue Service consents to the proposed sale. In the alternative, the IRS could be compelled to accept a money satisfaction of its lien. Consequently, it is appropriate to sell the Business free and clear of the Internal Revenue Service's lien.

14. The Debtor further respectfully requests that this Court waive the 14 day stay of FRBP 6004(h). In support thereof, the Debtor and Buyer propose to close the sale on or before May 18, 2017. Postponing the sale date for 14 days after the expiration of the order would interfere with the proposed closing. Further, the Debtor believes that the IRS and each of the landlord creditors support the proposed sale.

WHEREFORE, the Debtor respectfully requests this Court to enter an Order:

1. AUTHORIZING the Debtor to sell the Business pursuant to the terms of the Asset Purchase Agreement, free and clear of any liens, claims or encumbrances, with liens attaching to the proceeds, as described herein;

2. WAIVING the 14 day stay of FRBP 6004(h); and

3. GRANTING such other relief as is just, equitable, and appropriate.

Date: April 21, 2017

Respectfully Submitted,

/s/ Steven L. Lefkovitz

STEVEN L. LEFKOVITZ

LAW OFFICES LEFKOVITZ & LEFKOVITZ

618 CHURCH ST STE 410

NASHVILLE, TN 37219

Phone: 615 256-8300

Fax : 615 255-4516

Email: slefkovitz@lefkovitz.com

CERTIFICATE OF SERVICE

A true and exact copy of the foregoing has been sent to Beth Roberts Derrick, Assistant U.S. Trustee, 318 Customs House, 701 Broadway, Nashville, Tennessee 37203 via the U.S. Bankruptcy Court's Electronic Filing System and to all other Creditors and Parties of Interest by U.S. Mail, postage pre-paid, on the 21st day of April, 2017.

/s/ Steven L. Lefkovitz

PROPOSED ORDER

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE

IN RE:)	
)	
TENNESSEE SEAFOOD, LLC)	CASE NO. 16-04928-MFH
)	CHAPTER 11
Debtor.)	JUDGE MARIAN F. HARRISON
)	
)	
)	

**ORDER GRANTING DEBTOR'S MOTION TO SELL SUBSTANTIALLY
ALL ASSETS PURSUANT TO 11 U.S.C. § 363**

Upon the Debtors' Motion for Authority to Sell Substantially All Assets [Docket #__]
and upon the entire record herein, the Court finds that said Motion for Authority to Sell
Substantially All Assets is well taken, and;

It is so **ORDERED** that the Debtor is hereby the Debtor to sell the Business pursuant to
the terms of the Asset Purchase Agreement, free and clear of any liens, claims or encumbrances,
with liens attaching to the proceeds, as described in the motion;

It is so **ORDERED** that the 14 day stay of FRBP 6004(h) shall be waived.

THIS ORDER WAS SIGNED AND ENTERED ELECTRONICALLY AS INDICATED

AT THE TOP OF THE FIRST PAGE.

APPROVED FOR ENTRY:

LEFKOVITZ & LEFKOVITZ

/s/ STEVEN L. LEFKOVITZ

Steven L. Lefkovitz, No. 5953

Attorney for Debtor

618 Church Street, Suite 410

Nashville, Tennessee 37219

Phone: (615) 256-8300

Fax: (615) 255-4516

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ASSET PURCHASE AGREEMENT

by and among

LJS OPCO TWO, LLC,

LONG JOHN SILVER'S, LLC,

LJS RESTAURANTS, LLC

AND

TENNESSEE SEAFOOD, LLC

FARID ROSTAMPOUR

Dated as of

April __, 2017

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "**Agreement**") is dated as of April __, 2017 (the "**Effective Date**"), and is by and among, LJS Opco Two, LLC, a Delaware limited liability company ("**Buyer**"), Long John Silver's, LLC (as successor to Long John Silver's, Inc.), a Delaware limited liability company ("**Franchisor**"), LJS Restaurants, LLC (as successor to LJS Restaurants, Inc.), a Delaware limited liability company ("**LJSR**"), Tennessee Seafood, LLC, a Tennessee limited liability company ("**Seller**") and Farid Rostampour, an individual, as signatory with regards to the provisions of Section 7.1, 7.2, 7.7, 8.2, and the mutual release outlined in Article 10 herein.

Buyer, Franchisor, and LJSR are sometimes referred to collectively herein as the "**LJS Parties**." The Seller and LJS Parties may sometimes be referred to individually as a "**Party**" and collectively as the "**Parties**."

Background:

- A. Franchisor owns a distinctive food service system, and trademarks and service marks related thereto, under which food is sold to the public from restaurants and other facilities operated under the trade name "Long John Silver's".
- B. Pursuant to franchise agreements between Franchisor and Seller (the "**Franchise Agreements**"), Seller operates or has franchise rights to operate seven (7) LJS Restaurants at locations identified as the Operating LJS Restaurants on Exhibit A (the "**Operating LJS Restaurants**"). Pursuant to a franchise agreement between Franchisor and Seller, Seller operated (1) LJS Restaurant at the location identified as the Closed LJS Restaurant on Exhibit A (the "**Closed LJS Restaurant**"). The Closed LJS Restaurant ceased operations on December 22, 2009. The Operating LJS Restaurants and the Closed LJS Restaurant are collectively referred to as the "**LJS Restaurants**". The operation of the LJS Restaurants and all related rights and incidental activities thereto being referred to as the "**Business**".
- C. Seller has entered into certain sub-subleases with LJSR for premises of which LJS Restaurants are, or were operated, both as set forth on Exhibit B (the "**Sub-Subleases**").
- D. Seller has entered into certain commercial leases with various landlords, for premises of which LJS Restaurants are operated as set forth on Exhibit C (collectively the "**Third Party Leases**").
- E. Seller has entered into a lease with a landlord for the store identified as Store ID 32055 on Exhibit A (the "**1617 S. Highland Lease**") and Seller operates the store identified as Store ID 32063 on Exhibit A on a month to month lease (the "**Savannah Lease**").
- F. Seller has failed to pay on its obligations to Franchisor and LJSR, and as of October 14, 2016 has a balance due and owing to the LJS Parties, in the approximate amount of Two Million Nine Hundred Eighty Six Thousand Eight Hundred Eighty Nine and 83/100 (\$2,986,889.83) for unpaid royalty fees, advertising fees, rent arrearages and other

obligations under the various agreements identified above (the “*Franchisor/LJSR Claim*”).

- G. Seller has filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code (the “*Bankruptcy Code*”) commencing a Chapter 11 bankruptcy case, Case No. 3:16-bk-04928 (the “*Bankruptcy Case*”) in the United States Bankruptcy Court for the Middle District of Tennessee (the “*Bankruptcy Court*”).
- H. The Parties have negotiated and entered into this Agreement, for which Seller shall seek approval from the Bankruptcy Court, in order (i) to sell certain assets pursuant to the terms and conditions described herein and (ii) to effect the transition to Buyer of the operations of the LJS Restaurants.
- I. As part of this Agreement, Seller will execute a Termination of Sub-Subleases in connection with the Sub-Subleases identified on Exhibit B. The Termination of Sub-Subleases is attached as Exhibit D to this Agreement.
- J. As part of this Agreement, Seller will assign to Buyer the Third Party Leases identified on Exhibit C (the “*Third Party Lease Assignments*”). The Third Party Lease Assignments are attached as Exhibit E to this Agreement.
- K. As part of this Agreement, Seller shall enter into an Agreement to Cancel Lease in relation to the 1617 S. Highland Lease, and the Savannah Lease shall be mutually terminated by Seller and the applicable landlord. Buyer shall enter into new leases for the store identified as Store ID 32055 and the store identified as Store ID 32063 on Exhibit A.
- L. As part of this Agreement, Seller will cease operations at the LJS Restaurants and all rights of Seller to operate such LJS Restaurants shall terminate and the Franchise Agreements related thereto shall be terminated subject to certain post-termination obligations of Seller that are specified herein.
- M. The Parties also agree, except for obligations undertaken in this Agreement or specifically reserved herein in this Agreement, to exchange mutual reciprocal releases among the Parties resolving all disputes or claims between them, except as otherwise addressed herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements, covenants, representations, warranties, and promises set forth herein, and in order to prescribe the terms and conditions of such purchase and sale, intending to be legally bound, the Parties agree as follows:

ARTICLE 1.

PURCHASE AND SALE OF ASSETS; ASSUMPTION OF CERTAIN LIABILITIES

- 1.1 **Purchase and Sale.** Subject to the terms and conditions set forth in this Agreement, at the Closing, Seller agrees to sell, transfer and deliver to Buyer, and Buyer agrees to purchase, acquire and accept from Seller, free and clear of all liens and claims to the maximum extent permitted by Section 363 of the Bankruptcy Code, on an “as is, where

is” basis and without any representation or warranty on the part of Seller except as expressly set forth herein, all right, title and interest to all assets of Seller applicable to the LJS Restaurants or the Business (excepting the Excluded Assets described in Section 1.2 below) as of the Closing Date (the “*Purchased Assets*”) including, but not limited to:

- 1.1.1 all machinery, equipment, furniture, furnishings, fixtures, signage, computers, cash registers, smallwares, leasehold improvements and other items of tangible personal property located at the LJS Restaurants;
- 1.1.2 all inventory and Cash Banks (as defined in Section 2.2.3 below);
- 1.1.3 all intellectual property rights of Seller with respect to the LJS Restaurants including without limitation, owned (and licenses owned for) art work and graphic materials, to the extent transferrable under applicable law without third party consent;
- 1.1.4 all licenses, permits or other governmental authorizations of Seller applicable to the LJS Restaurants, but only to the extent transferrable under applicable law without approval of any governmental agency except the Bankruptcy Court (the “*Licenses*”);
- 1.1.5 all of Seller’s right, title and interest under the Third Party Leases;
- 1.1.6 all Assumed Contracts (as defined in Section 1.4.2);
- 1.1.7 a copy of and right to use all of the computer hardware, software and software systems, including all “POS” system software (including but limited to licenses, computer programs, source and object codes, as well as all documentation and listings related thereto used by the LJS Restaurants) and credit card equipment, owned by Seller relating to the operations of the LJS Restaurants, but only to the extent transferable under applicable law;
- 1.1.8 all rights of Seller with respect to the LJS Restaurants under all warranties, representations, indemnities, waivers or guaranties made by third parties to or for the benefit of Seller with respect to the Purchased Assets;
- 1.1.9 the goodwill of Seller with respect to the LJS Restaurants including, but not limited to, goodwill associated with assumed names related to the intellectual property rights of Seller;
- 1.1.10 subject to Section 1.2.3 hereof, all books, data and records of Seller respecting the LJS Restaurants;
- 1.1.11 phone numbers with respect to the LJS Restaurants and computerized data relating to the same, to the extent transferrable under applicable law without third party consent; and

- 1.1.12 all claims of the Seller against third parties relating to the above (excluding, for the avoidance of doubt, all such rights of the Seller to the extent relating to the Retained Liabilities).
- 1.2 **Excluded Assets.** Notwithstanding any other provision of this Agreement to the contrary and acknowledging that claims or assets that arise post-Closing from the use by Buyer of the Purchased Assets are the property of Buyer, the Purchased Assets shall not include any assets, properties or rights of Seller identified in Section 1.2 including the following (the "*Excluded Assets*").
- 1.2.1 all of the Seller's federal, state, local, and other tax returns, reports, declarations, and applications related to Taxes ("*Tax Returns*") and other records which are not directly related to or reasonably necessary to the conduct of the LJS Restaurants;
- 1.2.2 any tax credits, tax refunds, tax benefits, signing bonuses with vendors, or other benefits (including rights to rebates from vendors) relating to periods prior to the Closing Date;
- 1.2.3 personnel and payroll records related to Seller, accounting and financial records as may be required for Seller to complete administration of the Bankruptcy Case; provided however, that to the extent such books and records pertain to the LJS Restaurants, Seller shall provide Buyer with access to, and upon request, copies of such books and records for a period of one year after the Closing Date or alternatively, within that timeframe, permit Buyer to retrieve such books and records;
- 1.2.4 all insurance policies owned by Seller or relating to the business, including without limitation all director's and officer's liability policies, all life insurance policies on any current or former officer, director, or employee of Seller, all claims and other rights arising under such policies (whether prior to or after the Closing Date), and all credits, premium refunds, cash surrender values, proceeds, causes of action, claims or rights thereunder except all such rights relating to any claim for damage that has not been previously asserted or settled to the premises of or personal property at any LJS Restaurant;
- 1.2.5 other than the Cash Banks, all cash in bank accounts, bank deposits, and accounts receivable;
- 1.2.6 all service contracts and other contracts, except as expressly assumed in Section 1.4.2;
- 1.2.7 all automobiles and other vehicles;
- 1.2.8 all assets located at Seller's corporate office;
- 1.2.9 all equity ownership interest in Seller;

- 1.2.10 all depository and financial accounts, wherever located;
 - 1.2.11 employment records and personnel files of any employee (provided that, with respect to certain employees designated by Buyer, certain historical employee information shall be made available to Buyer for Buyer's review prior to Closing, and for copying within 30 days post-closing in accordance with applicable law);
 - 1.2.12 all employee benefit plans currently or previously sponsored or maintained by Seller or any of Seller's ERISA Affiliates (together with Seller, the "*Seller Controlled Group*") or their respective predecessors or with respect to which the Seller Controlled Group or their respective predecessors has made or is required to make payments, transfers or contributions, or has any obligation, in respect of any present or former employees, directors, officers, shareholders, consultants or independent contractors of Seller or any of Seller's ERISA Affiliates or their respective predecessors (collectively, the "*Seller Benefit Plans*"), and all insurance policies, fiduciary liability policies, benefit administration contracts, actuarial contracts, trusts, escrows, surety bonds, letters of credit, and other contracts primarily relating to any Seller Benefit Plan; and
 - 1.2.13 all contracts, leases and agreements, other than the Assumed Contracts (defined below), together with all tangible personal property subject to or associated with such excluded contracts and agreements.
- 1.3 **Purchased Assets "As Is". BUYER UNDERSTANDS AND ACKNOWLEDGES THAT BUYER IS PURCHASING THE PURCHASED ASSETS IN THEIR "AS IS, WHERE IS" CONDITION, SUBJECT TO SELLER'S REPRESENTATIONS AND WARRANTIES SET FORTH IN ARTICLE 3 OF THIS AGREEMENT. BUYER COVENANTS THAT IT WILL ACCEPT A CONVEYANCE OF SUCH PURCHASED ASSETS IN THE STATE AND CONDITION REPRESENTED BY SELLER UNDER THIS AGREEMENT, SUBJECT TO REASONABLE USE TO THE CLOSING DATE. BUYER IS SOLELY RELYING UPON ITS INTENDED EXAMINATION OF THE PURCHASED ASSETS, WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, FROM SELLER AS TO THE VALUE, CONDITION, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, NON-INFRINGEMENT, OR TITLE OF THE PURCHASED ASSETS AND THE BUSINESS, OTHER THAN SELLER'S REPRESENTATIONS AND WARRANTIES SET FORTH IN ARTICLE 3 OF THIS AGREEMENT.**
- 1.4 **Assumed Contracts**. Buyer agrees to assume and perform the following obligations first arising or accruing from and after the Closing Date:
- 1.4.1 all Seller's right, title, interest and obligations in the Third Party Leases, each which will be assigned pursuant to the Third Party Lease Assignments; and

- 1.4.2 the Material Contracts (referenced in Section 3.13) including the Third Party Leases, and all other contracts, written or oral, relating to the purchase of goods or services in connection with the operation of the LJS Restaurants which Buyer chooses to assume (collectively, including the Material Contracts, the "**Assumed Contracts**"), in each case to the extent of obligations first accruing and applying to the period after the Closing Date.
- 1.5 **Retained Liabilities.** Buyer is not assuming, and shall not be deemed to have assumed any liabilities of Seller other than the Assumed Contracts. Except for the Assumed Contracts, Buyer shall not have any obligation for or with respect to any liability or obligation of Seller of any nature whatsoever, whether accrued or fixed, absolute or contingent, known or unknown, or determined or determinable, and whether incurred prior to, on, or after the Closing Date (such liabilities not assumed by Buyer are hereinafter referred to as the "**Retained Liabilities**"), all of which Retained Liabilities will be paid or satisfied by Seller.

ARTICLE 2. PURCHASE PRICE AND CLOSING

- 2.1 **Closing.** The transactions contemplated by this Agreement shall be consummated (the "**Closing**") on or before May 18, 2017 (the "**Closing Date**"). The Closing shall be effective as of 12:01 a.m. Eastern Daylight Time on the Closing Date (the "**Effective Time**").
- 2.2 **Purchase Price and Settlement.** The acquisition of the LJS Restaurants, Business and Purchased Assets by Buyer from Seller shall be accomplished pursuant to the following terms:
- 2.2.1 Buyer shall pay Twenty Five Thousand and 00/100 Dollars (\$25,000) upon execution of this Agreement, which payment shall be refundable if the Closing does not occur;
- 2.2.2 Buyer shall pay Two Hundred Ninety-Five Thousand and 00/100 Dollars (\$295,000) to Seller at the Closing, for total cash consideration of Three Hundred Twenty Thousand and 00/100 Dollars (\$320,000);
- 2.2.3 Buyer shall pay an amount equal to the total Cash Banks at each Operating LJS Restaurant. By signing this Agreement, the Parties acknowledge that, on the date of closing, the Parties shall conduct a joint inventory to determine cash in registers or safes located at the Operating LJS Restaurants (the "**Cash Banks**");
- 2.2.4 The LJS Parties will write-off all outstanding pre-petition advertising, royalty, and other payments required under the Franchise Agreements, and write-off all outstanding pre-petition rent and other payments required under the Sub-Subleases (collectively, the "**Accrued Obligations**") which have accrued or which are due and owing from Seller to Franchisor and LJSR respectively, as of the filing of the Bankruptcy Case, which amount totals

Two Million Nine Hundred Eighty Six Thousand Eight Hundred Eighty Nine and 83/100 Dollars (\$2,986,889.83), as outlined in the proof of claim filed by Franchisor in the Bankruptcy Case; however, nothing in this Agreement shall be deemed to waive any obligations accrued post-petition, which LJS expressly reserves the right to collect from Seller and/or any other obligors;

- 2.2.5 Buyer shall pay an amount necessary to cure pre-petition defaults and/or enter into new leases for each of the LJS Restaurants, estimated to be in the aggregate amount of One Hundred Twenty One Thousand Seven Hundred Sixty Four and 58/100 Dollars (\$121,764.58);
- 2.2.6 Seller shall have paid all post-petition royalties and advertising payments owed related to its operation of the LJS Restaurants, including to LJS and A&W Restaurants, Inc.;
- 2.2.7 Seller shall have paid all post-petition rent for the LJS Restaurants;
- 2.2.8 Seller shall have paid all post-petition amounts due under any contracts related to the LJS Restaurants;
- 2.2.9 A settlement statement reflecting the amount summarized under Section 2.2.1 through 2.2.8 will be provided at Closing, and any amounts due from either Buyer or Seller at Closing, after netting all amounts reflected under Sections 2.2.1 through 2.2.8, will be paid at that time, subject to any proration of Estimated Prorated Amounts under Section 2.4; and
- 2.2.10 Other than the amounts paid and credited under this Section 2.2 or Section 2.4 below, there are no other monies being transferred, paid, or otherwise credited against any other amounts due and owing. It is understood by the Parties that, other than the amounts paid and credited under said Sections 2.2 and 2.4, this is a final settlement of any monies due and owing to each Party.

2.3 Additional Purchase Terms. In addition to the settlement of any amounts owed under Section 2.2, the acquisition of the LJS Restaurants by Buyer from Seller shall be further accomplished pursuant to the following terms:

- 2.3.1 Consistent with Section 1.4, Buyer agrees to assume and perform all of Seller's obligations first arising or accruing from and after the Closing Date for all Assumed Contracts.

2.4 Prorated Items.

- 2.4.1 At Closing, the Parties shall calculate the proration (as of the Effective Time) of certain prepaid items, rents and other charges under the Third Party Leases, soda rebates, other vendor rebates, utilities (if applicable), state, and local real and personal property taxes for the LJS Restaurants, and other expenses that relate to both pre-Closing and post-Closing periods with

respect to the LJS Restaurants and Assumed Contracts (the “*Estimated Prorated Amounts*”).

2.4.2 The items that are prorated under Section 2.4.1 shall be payable in the manner set forth below:

- (a) if a prorated amount is payable by Buyer and determinable or estimable at the Closing, it shall be paid to Seller by Buyer at the Closing;
- (b) if a prorated amount is payable by Buyer and not determinable or estimable at the Closing, it shall be billed by Seller when determinable and paid by Buyer to Seller in immediately available funds, within five (5) business days after the date the amount is determined;
- (c) if a prorated amount is payable by Seller and determinable or estimable at the Closing, it shall be paid by Seller to Buyer at the Closing; and
- (d) if a prorated amount is payable by Seller and not determinable or estimable at the Closing, it shall be billed by Buyer when determinable and paid by Seller to Buyer in immediately available funds, within five (5) business days after the date the amount is determined.

ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer that the statements contained in this Article 3 are true and correct as of the date hereof and will be true and correct as of the Closing Date as though made again on and as of the Closing Date. For purposes of this Article 3, “*Knowledge*,” “*Seller’s Knowledge*,” “*Knowledge of Seller*,” “*Known*,” or words of similar import shall mean the actual or constructive knowledge of **Farid Rostampour**, or any information that is readily apparent from a review or receipt of any documents, facts, or other information that was in their possession or presented to them by others within or outside Seller’s organization.

3.1 Organization and Authority of Seller. Seller is a limited liability company, validly existing, and in full force and effect under the laws of the state of Tennessee, as evidenced by a Certificate of Existence from the Office of the Secretary of State of Tennessee. Seller has full power and authority to carry on its business within the State of Tennessee. Seller is duly authorized under its articles of organization, operating agreement, and other company documents and under applicable laws to execute, deliver, and perform this Agreement. The execution, delivery, and performance of this Agreement, and all other related agreements by Seller and its member, have been duly authorized by all necessary member actions and constitute legal, valid, and binding obligations of Seller enforceable against Seller in accordance with its terms, subject only to the Bankruptcy Court’s approval.

- 3.2 **No Conflict.** Subject to the Bankruptcy Court's approval, the execution, delivery, and performance of this Agreement by Seller will not: (i) violate or result in a breach of any term of Seller's formation documents; (ii) violate any law, order, rule, or regulation, in each case applicable to Seller, the Purchased Assets, or the LJS Restaurants, of any court or of any Governmental Authority having jurisdiction over Seller, the Purchased Assets, or the LJS Restaurants; (iii) result in the creation or imposition of any Lien upon any of the Purchased Assets; or (iv) breach any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or payment under, or to cancel, terminate or modify, any contract, permit or agreement relating to Seller or the LJS Restaurants by which it or they, or any of the Purchased Assets, may be bound. For purposes of this Agreement, "***Governmental Authority***" means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of law), or any arbitrator, court or tribunal of competent jurisdiction.
- 3.3 **Required Consents.** Subject to the Bankruptcy Court's approval, Seller shall have obtained and provided to Buyer by the Closing Date all consents from, or notices to, any third parties, including, without limitation, any Governmental Authority, landlord, or any vendor of Seller, that are required in connection with the execution, delivery, or performance of this Agreement or the consummation of the transactions contemplated hereby by Seller (collectively, the "***Required Consents***").
- 3.4 **Title to LJS Restaurants.** Seller has a valid leasehold interest in, all of the LJS Restaurants, with the exception of the LJS Restaurant identified on **Exhibit A** as 32063, of which Seller operates under a month-to-month lease. Subject to the Bankruptcy Court's approval, all LJS Restaurants (including leasehold interests) will be at Closing free and clear of Liens caused by Seller. For purposes of this Agreement, "**Lien**" means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other, except statutory liens for rent due and current year's taxes not yet due), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.
- 3.5 **Tangible Personal Property Assets.**
- 3.5.1 Each Operating LJS Restaurant contains the tangible personal property Purchased Assets (such as furniture, trade fixtures, equipment, signage, supplies, and small wares) required to operate the Operating LJS Restaurant in accordance with the Franchise Agreement and applicable law.
- 3.5.2 The equipment located at the Operating LJS Restaurants is in working order, and is adequate for the operation of the Operating LJS Restaurants as they are currently operated.

3.6 Real Property Assets.

3.6.1 Exhibit A identifies the location of each LJS Restaurant.

3.6.2 Seller has not received any written or oral notice from any Governmental Authority that Seller's ownership, use, or operation of the LJS Restaurants is presently in violation of any applicable building code, zoning, land use or other law, order, ordinance, rule, or regulation affecting the operation of the LJS Restaurants (including, but not limited to, the Americans with Disabilities Act of 1990, as amended). There are no pending or, to Seller's Knowledge, threatened condemnation proceedings affecting the LJS Restaurants.

3.6.3 Seller has provided Buyer with a true, correct, and complete copy of the Third Party Leases. The Third Party Leases are in full force and effect and are valid, binding, and enforceable in accordance with their 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. Seller has not assigned its interest, or any portion thereof, under the Third Party Leases, or subleased any part of the premises demised thereby to any third party. Subject to and except for in relation to the Bankruptcy Case, Seller has not received any notice or other communication (whether oral or written) from the lessor under the Third Party Leases regarding any actual, alleged, or potential violation or breach of, or default by Seller under, the Third Party Leases. To Seller's Knowledge, subject to and except for in relation to the Bankruptcy Case, the lessees under the Third Party Leases are not in material default under the Third Party Leases, and no event has occurred which would, with the passage of time or giving of notice, or both, constitute a material default thereunder. There are no security deposits being held by the lessor under the Third Party Leases. Subject to the Bankruptcy Court's approval, at Closing, Buyer will receive a valid leasehold interest in each of the Third Party Leases free and clear of all mortgages, pledges, security interests or other Liens caused by Seller.

3.6.4 All mechanical, electrical, heating, air conditioning, drainage, sewer, water, and plumbing systems located at or used in each of the applicable LJS Restaurants comply with the terms of the Third Party Leases and will be in working order on the Closing Date.

3.7 Compliance with Laws. Subject to and except for in relation to the Bankruptcy Case, to Seller's Knowledge, Seller is, and during the past two (2) years has been, in compliance in all material respects with all laws and regulations applicable to Seller and the Business and no legal proceeding has been filed or commenced against Seller alleging any failure to so comply. Subject to and except for in relation to the Bankruptcy Case, Seller has not received, at any time during the past two (2) years, any written notice from any Governmental Authority regarding (i) any actual or alleged violation of, or failure to comply with, any legal requirement, or (ii) any actual or alleged obligation on the part of

Seller to undertake, or to bear all or any portion of the cost of, any remedial action of any nature. Subject to and except for in relation to the Bankruptcy Case, to Seller's Knowledge, no event has occurred, and no condition or circumstance exists, that is reasonably likely (with or without notice or lapse of time) to constitute or result directly or indirectly in a violation by Seller of, or a failure on the part of Seller to comply with, any rule, regulation, or order.

3.8 **Permits**. Subject to the Bankruptcy Court's approval, to the extent required, Seller has all material approvals, authorizations, consents, licenses, franchises, certifications, and permits required by any Governmental Authority for the ownership of the LJS Restaurants or operation of the Operating LJS Restaurants (collectively, the "***Permits***"). No other licenses or permits are required in the conduct of the Business. Each Permit is valid and in full force and effect. Subject to and except for in relation to the Bankruptcy Case, Seller is, and during the past two (2) years has been, in compliance in all material respects with all of the terms and requirements of each Permit, and Seller has not received, at any time during the past two (2) years, any written notice from any Governmental Authority or any other Person regarding (i) any actual or alleged material violation or breach of any Permit, or (ii) any actual revocation, withdrawal, suspension, cancellation, termination of, or modification to any Permit.

3.9 **Litigation and Proceedings**. Subject to and except for in relation to the Bankruptcy Case, there is no claim, suit, arbitration, action, order or proceeding now pending, or, to Seller's Knowledge, threatened, at law or in equity, or before any court, arbitrator, or Governmental Authority, relating to the LJS Restaurants or the Business or to which Seller is (or would be in the case of threatened actions) parties. Subject to and except for in relation to the Bankruptcy Case, to Seller's Knowledge, no event has occurred and no circumstance exists that is reasonably likely to give rise to, or serve as a basis for, any action, suit, or proceeding.

3.10 **Restaurant Employees**.

3.10.1 Seller will provide a true and complete listing of all Persons who, as of March 1, 2017, were salaried employees of Seller and who had an annual base salary in excess of \$40,000 as of such date, together with the following information for each individual: name, job title or position, annual base salary or hourly rate, date of hire, and employment status (full-time or part-time, exempt or non-exempt).

3.10.2 Seller will provide a true and complete listing of all Persons who, as of March 1, 2017, were hourly employees of Seller as of such date, together with the following information for each individual: name, job title or position, hourly rate, date of hire, and employment status (full-time or part-time, exempt or non-exempt).

3.10.3 Seller has provided a true and complete list, including the name of the parties, the date such claim or complaint was made, the date such claim or complaint was resolved, and any judgment or settlement amounts, of all

concluded or settled litigation, claims, arbitrations, or proceedings of Seller, relating to Seller's employees or former employees and the employment practices at the LJS Restaurants, in each case occurring from March 1, 2012 through the date hereof.

3.10.4 Except as Seller has provided to the contrary:

- (a) Seller is not a party to any written employment contracts or collective bargaining agreements with any employee of Seller. There is no organizational effort currently being made or, to Seller's Knowledge, threatened by, or on behalf of, any labor union to organize employees of Seller and no demand for recognition of employees of Seller has been made by, or on behalf of, any labor union. Seller has no Knowledge of any union organizing activity occurring with regard to any of the LJS Restaurants during the past five (5) years;
- (b) Seller has not received written notice from a Governmental Authority that Seller is or is alleged to be in violation of any applicable law relating to the hiring, employment, or discharge of any of the LJS Restaurants' employees, and, to Seller's Knowledge, no such violation exists;
- (c) Seller has not received written notice from any person of any event or occurrence, pending or threatened, that could reasonably be expected to serve as the basis for a claim against Seller relating to any employment or workplace-related conduct;
- (d) Seller is and has been in compliance in all material respects with all applicable employment and workplace laws, including without limitation those related to employment, equal employment opportunity, nondiscrimination, immigration, wages, hours, benefits, collective bargaining, the payment of social security and similar Taxes, occupational safety and health, non-retaliation, and layoffs, in each case relating to Seller's employees and/or employment practices at the LJS Restaurants; provided, however, that Buyer acknowledges that Seller shall not be responsible for any claims, liabilities, costs or damages arising after the Effective Time as a result of Buyer's non-compliance or breach of any applicable employment or workplace laws after the Effective Time, regardless of whether Buyer operates the LJS Restaurants or manages its employees in a manner similar or identical to the manner in which Seller operated the LJS Restaurants or managed its employees prior to the Effective Time; and
- (e) Seller has taken all commercially reasonable steps to obtain and maintain accurate employee information for purposes of remaining in compliance with all applicable employment and workplace laws.

3.10.5 There are no former employees of Seller (or any of their dependents) who currently receive COBRA health plan continuation coverage from Seller's group health insurance carrier.

3.11 **Taxes.** Subject to and except for in relation to the Bankruptcy Case, Seller has timely filed (or will timely file after giving effect to any applicable extensions) all Tax Returns required to be filed by Seller for all periods up to the Closing Date. All Tax Returns are, or if not yet filed will be, true, accurate, and complete in all material respects and reflect all taxes payable by Seller. Subject to and except for in relation to the Bankruptcy Case, Seller's Tax Returns have not been audited by any Governmental Authority within the last year prior to the date hereof. Subject to and except for in relation to the Bankruptcy Case, Seller has paid (or will timely pay) all taxes which are due and payable (or which relate to any period prior to the Closing Date) or for which assessments have been received prior to the Closing Date. Subject to and except for in relation to the Bankruptcy Case, there are no audits, suits, actions, claims, investigations, inquiries, or proceedings pending or to Seller's Knowledge, threatened, against Seller with respect to taxes, nor has any deficiency or claim for any Taxes been imposed or assessed. Subject to and except for in relation to the Bankruptcy Case, there are no outstanding notices of deficiencies, adjustments, or changes in assessments with respect to any taxes. Seller has not waived any statute of limitations with respect to any taxable year. There is no agreement, waiver, or consent providing for an extension of time with respect to the assessment of any taxes against Seller. Subject to and except for in relation to the Bankruptcy Case, all amounts required to be withheld or collected by Seller for taxes with respect to any other person have been so withheld or collected and paid to the appropriate Governmental Authority and all Forms W-2 and 1099 required with respect thereto have been properly completed and timely filed.

3.12 **Employee Benefit Plans.**

3.12.1 Seller has provided a true and complete list of each pension, profit sharing, other deferred compensation, bonus, incentive compensation, stock purchase, stock option, supplemental retirement, severance, or termination pay, medical, hospitalization, life insurance, dental, disability, salary continuation, vacation, supplemental unemployment benefits plan, program, arrangement or contract, and each other employee benefit plan, program, arrangement or contract, currently maintained, contributed to, or required to be contributed to, by Seller for the benefit of any employee of Seller, whether or not any of the foregoing is funded, whether formal or informal, whether or not subject to the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**") and whether legally binding or not (collectively, the "**Benefit Plans**").

3.12.2 With respect to each of the Benefit Plans:

- (a) the Benefit Plan is, and at all times since its inception, has been, maintained, administered, operated, and funded in all material respects in accordance with its terms and in material compliance with all

applicable requirements of all applicable laws, including, but not limited to, ERISA and the Code or taxes or excise taxes, and so as not to incur any penalties under ERISA or under the Code, and

- (b) no transaction or event has occurred or, to Seller's Knowledge, is threatened or about to occur (including, without limitation, any of the transactions contemplated by this Agreement) that constitutes or could constitute a nonexempt prohibited transaction under Section 406 or 407 of ERISA or under Section 4975 of the Code.

3.13 Material Contracts.

3.13.1 Seller has delivered to Buyer complete and correct copies of all contracts or agreements, including specifically the Third Party Leases, but excluding the Franchise Agreements (collectively, the "*Material Contracts*") to which Seller is a party or by which any of the LJS Restaurants are bound and which:

- (a) involve the receipt or expenditure of funds in excess of \$10,000 in calendar years 2014, 2015, 2016 or thereafter;
- (b) cannot be cancelled without payment or penalty upon notice of thirty (30) days or less;
- (c) limit or purport to limit the ability of Seller (insofar as it relates to the LJS Restaurants) to compete in any line of business or with any Person or in any geographic area or during any period of time after the Closing Date; or
- (d) are otherwise material to the Business.

3.13.2 Subject to and except for in relation to the Bankruptcy Case, each Material Contract to be assumed by Buyer is in full force and effect and constitutes a legal, valid, and binding agreement, enforceable against Seller in accordance with its terms and, to Seller's Knowledge, against each party, 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. Subject to and except for in relation to the Bankruptcy Case, Seller has not given to or received from any other party, any notice or other communication (whether oral or written) regarding any actual, alleged, possible or potential violation or breach of, or default under, any Material Contract to be assumed by Buyer. To Seller's Knowledge, the other parties to each Material Contract to be assumed by Buyer are not in violation or breach of or default under such Material Contract.

3.14 Brokers. No broker, finder, or investment banker is entitled to any brokerage, finder or other fee or commission in connection with the transactions contemplated by this Agreement.

- 3.15 **Affiliated Transactions.** Except as disclosed by Seller, no related person of Seller is a party to any agreement, contract, commitment or transaction with Seller. Seller has provided a true and complete list that sets forth and describes in reasonable detail material services, assets and facilities that are furnished by Seller to any related persons or by any of such related persons to Seller in connection with the operation of the Business.

ARTICLE 4.
REPRESENTATIONS AND WARRANTIES OF BUYER AND FRANCHISOR

Buyer and Franchisor hereby represent and warrant to Seller that:

- 4.1 **Organization and Authority of Buyer and Franchisor.** Buyer and Franchisor are limited liability companies, validly existing, and in full force and effect under the laws of the state of Delaware. Buyer and Franchisor have full power and authority to carry on their business within the state of Delaware. Buyer and Franchisor are duly authorized under their articles of organization, operating agreements, and other company documents and under applicable laws to execute, deliver, and perform this Agreement. The execution, delivery, and performance of this Agreement, and all other related agreements by Buyer and Franchisor and their members, have been duly authorized by all necessary member actions and constitutes legal, valid, and binding obligations of Buyer and Franchisor enforceable against Buyer in accordance with their terms as reflected in Buyer's resolution and Franchisor's resolution, also attached to this Agreement as **Exhibit F.**
- 4.2 **No Conflict.** The execution, delivery, and performance of this Agreement by Buyer and Franchisor will not (i) violate or result in a breach of any term of Buyer's or Franchisor's organizational documents, or (ii) violate any law, order, rule, or regulation applicable to Buyer or Franchisor, or of any court or Governmental Authority having jurisdiction over Buyer or Franchisor.
- 4.3 **Brokers.** No broker, finder, or investment banker is entitled to any brokerage, finder, or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Buyer or Franchisor.
- 4.4 **Sufficient Funds.** As of the Closing Date, Buyer and Franchisor shall have available cash resources and financing in an amount sufficient to consummate the transactions contemplated in this Agreement, including resources to pay all expenses, fees and any Assumed Contracts.

ARTICLE 5.
CONDUCT PRIOR TO CLOSING

- 5.1 **Due Diligence.** Buyer acknowledges that Seller shall (i) provide Buyer and its representatives and prospective lenders and their representatives (collectively, "**Buyer Group**") reasonable access, during regular business hours, to complete their due diligence investigation of the Business, and (ii) furnish Buyer with such additional financial, operating, and other relevant data and information as Buyer may reasonably request.

Such access includes access to the properties to which Seller has any right, title, and interest under the Third Party Leases for purposes of conducting such investigations as Buyer deems necessary to complete its diligence, subject to the execution of such access agreement(s) as Seller reasonably requires.

- 5.2 **Continuous Operations.** Buyer shall maintain continuous operations at each of the Operating LJS Restaurants to the Closing Date in the accordance with the Franchise Agreements, including but not limited to maintaining the quality and standards required by the Franchise Agreements and maintaining inventory levels reasonably necessary to operate each of the Operating LJS Restaurants. Seller shall not cancel any utilities or contracts related to the Operating LJS Restaurants until advised to do so by Buyer for a period not to exceed sixty (60) days from the Closing Date. Any amount accrued for any utilities or contracts after Closing, shall be reimbursed by Buyer to Seller.
- 5.3 **Cash Banks.** Seller covenants and agrees that at least \$600.00 will be left in the Cash Banks at each Operating LJS Restaurant as of the Closing Date.

ARTICLE 6. CLOSING DELIVERIES

- 6.1 **Buyer's Deliveries.** Buyer shall execute and deliver, or in the case of documents or deliverables from third parties, use commercially reasonable efforts to cause to be delivered, to Seller all of the following items prior to or on the Closing Date:
- 6.1.1 pay the amount as set forth by Section 2.2.1 and Section 2.2.2. Notwithstanding the foregoing, if Seller has not fully satisfied its payment obligations under Section 2.2.6, Section 2.2.7 and Section 2.2.8 prior to closing, then each of the remaining amounts owed under Section 2.2.6, Section 2.2.7, and Section 2.2.8 will be paid by Seller at Closing and shall be reflected on the settlement statement;
 - 6.1.2 pay the amount equal to the total Cash Banks as set forth by Section 2.2.3;
 - 6.1.3 write-off all Accrued Obligations as set forth in Section 2.2.4;
 - 6.1.4 a statement of the prorated amount payable as set forth in Section 2.4.1;
 - 6.1.5 provide the prorated amount payable as set forth in Section 2.4.2(a);
 - 6.1.6 enter into an assignment and assumption agreement, executed by Buyer, assuming Seller's rights and obligations under the Assumed Contracts and Seller's rights and obligations under the Third Party Leases, as required;
 - 6.1.7 a closing certificate executed by the member of Buyer, on behalf of Buyer, certifying to Seller that:
 - (a) the conditions set forth in Section 6.1 and Section 6.2 have been satisfied; and

- (b) all documents to be executed and delivered by Buyer at the Closing have been executed by a duly authorized representative of Buyer; and
- 6.1.8 execute any other documents reasonably required from Buyer to consummate the transactions contemplated hereby.
- 6.2 **Seller's Deliveries.** Seller shall execute and deliver, or in the case of documents or deliverables from third parties, use commercially reasonable efforts to cause to be delivered, to Buyer all of the following items prior to or on the Closing Date:
 - 6.2.1 pay the amounts as set forth by Section 2.2.6, Section 2.2.7 and Section 2.2.8, if said amounts have not been paid prior to the closing;
 - 6.2.2 a statement of the prorated amount payable as set forth in Section 2.4.1;
 - 6.2.3 a bill of sale, duly executed by Seller, conveying all of the Purchased Assets other than the Third Party Leases to Buyer, free and clear of all Liens;
 - 6.2.4 an assignment and assumption agreement, executed by Seller, assigning its rights and obligations under the Assumed Contracts;
 - 6.2.5 provide the prorated amount payable as set forth in Section 2.4.2(c);
 - 6.2.6 an assignment and assumption of lease instrument, duly executed by Seller and the landlords, if requested by Buyer, for the Third Party Leases;
 - 6.2.7 copies of all Required Consents, except to the extent waived by Buyer;
 - 6.2.8 evidence, in form and substance satisfactory to Buyer, that all outstanding Liens against any of the Purchased Assets have been released;
 - 6.2.9 a duly executed written certificate in compliance with the Treasury Regulation Section 1.1445-2(b)(2), certifying that Seller is not a foreign person within the meaning of such Treasury Regulation;
 - 6.2.10 a closing certificate executed by the member of Seller, on behalf of Seller, certifying to Buyer that:
 - (a) the conditions set forth in Section 6.1 and Section 6.2 have been satisfied; and
 - (b) all documents to be executed and delivered by Seller at the Closing have been executed by a duly authorized representative of Seller; and
 - 6.2.11 all other documents reasonably required from Seller to consummate the transactions contemplated hereby.

ARTICLE 7.
CONDUCT FOLLOWING CLOSING

7.1 Restrictive Covenant Agreement.

- 7.1.1** Commencing on the Closing Date and continuing for a period ending on the second (2nd) anniversary of the Closing Date (the “*Non-Competition Period*”), neither Seller, nor Farid Rostampour, or any entity controlled by them, shall, without the prior written consent of Buyer, directly or indirectly, alone or with any other person become associated with, render services to, invest in, lease to, represent, advise, consult or otherwise participate in, as an officer, employee, director, stockholder, partner, promoter, owner, licensee, subcontractor, supplier, or agent of, lender to, consultant, representative, or distributor for, any business, activity or enterprise which is involved in the operation of any quick service restaurant primarily serving fried fish within the Commonwealth of Kentucky or the State of Tennessee.
- 7.1.2** During the first twelve (12) months of the Non-Competition Period, Seller shall not, directly or indirectly, employ, engage, or solicit for purposes of employment or engagement any person currently employed by Buyer in the LJS Restaurants; provided, however, that this restriction shall not apply to any person currently employed by Seller who works primarily in Seller’s corporate office, or any other person with respect to whom Buyer has waived this provision within the twelve (12) months non-solicitation period.
- 7.1.3** Seller acknowledges and agrees that the limitations as to time, geographical area, and scope of activity to be restrained by this Section 7.1 are reasonable and acceptable to them, and do not impose any greater restraint than is reasonably necessary to protect the goodwill and other business interests of Buyer. Seller further agrees that the performance of the covenants and agreements contained in this Section 7.1, and the enforcement by Buyer of such covenants and agreements, will cause no undue hardship to them.
- 7.1.4** If the duration or geographical extent of, or business activities covered by, the covenants in this Section 7.1 are in excess of what is valid and enforceable under applicable law, then such provisions shall be construed to cover only that duration, geographical extent or activities that are valid and enforceable. Seller acknowledges the uncertainty of the law in this respect and expressly stipulates that this Agreement be given the construction which renders its provisions valid and enforceable to the maximum extent (not exceeding its express terms) possible under applicable law.

- 7.2 Confidentiality.** Neither Seller, Farid Rostampour, nor Buyer, Franchisor, or LJSR shall disclose to any third party, otherwise than is provided by law, and as necessary to be disclosed to the Bankruptcy Court, the terms and conditions governing this transaction. Except as and to the extent required by law, no Party shall disclose or use, nor shall direct its representatives to disclose or use to the detriment of the other Party, any Confidential

Information (as defined below) with respect to which that Party or its representatives furnished, or will furnish to the other Party or its representatives, at any time or in any manner other than in connection with this Agreement. For purposes of this Section 7.2, "**Confidential Information**" means any information about a Party stamped "confidential" or identified in writing as such by that Party promptly following its disclosure, unless: (i) such information is already known to the other Party or its representatives or to others not bound by a duty of confidentiality at the time of its disclosure or such information becomes publicly available through no fault of that Party or its representatives; (ii) the use of such information is necessary or appropriate in making any filing or obtaining any consent or approval required for the consummation of the possible acquisition; or (iii) the furnishing or use of such information is required by or necessary or appropriate in connection with legal proceedings. Subsequent to the Closing, Section 7.2 shall not restrict the Buyer's use of any Confidential Information as the Buyer, in its sole discretion, believes is appropriate for the operation of the LJS Restaurants.

- 7.3 **Consent and Estoppel With Respect to Third Party Leases.** Seller shall use commercially reasonable efforts, and Buyer shall cooperate with Seller, to obtain from the landlords under the Third Party Leases, the Required Consents to the assignment of the Third Party Leases, if any there be. Any costs and expenses required by the landlord in connection with the assignment of the Third Party Leases will be paid by Seller.
- 7.4 **Required Consents.** Seller shall use commercially reasonable efforts, and Buyer shall cooperate with Seller, to obtain all Required Consents (it being understood and agreed that commercially reasonable efforts shall not be construed to mean that Seller shall be required to incur any fees or expenses more than would be commercially reasonable in the context of the transactions contemplated by this Agreement).
- 7.5 **Cooperation.** It is understood by the Parties that there may be certain actions that will occur after Closing, including finalizing the assignment consent on the Third Party Leases. The Parties will work in good faith with one another to ensure that any and all necessary documents or investigation will be completed and signed as soon as possible after the Closing, recognizing that time is of the essence.
- 7.6 **Telephone Matters.** Seller will take all necessary steps upon the request of Buyer to assist in assigning any telephone numbers or fax numbers associated specifically with the Business to Buyer.
- 7.7 **Non-Disparagement and Non-Disclosure.** The Parties agree not to make any statements, written or verbal, or cause or encourage others to make any statements, written or verbal, that defame, disparage or in any way criticize the personal or business reputation, practices, or conduct of the other Party. The Parties acknowledge and agree that this prohibition extends to statements, written or verbal, made to anyone, including but not limited to, competitors, vendors, and employees (past and present). Seller (and Farid Rostampour) shall not disclose, or permit any of their third party advisors to disclose, the terms of this Agreement, including specifically the financial terms, to any other person except with the written consent of LJS Parties, unless such disclosure is mandated, required, or in connection with the Bankruptcy Case.

- 7.8 **Employees.** In compliance with all applicable laws, Buyer may, at its sole and absolute discretion, interview, screen and elect to hire any of Seller's employees of the Business at any time on or after the Closing Date.

ARTICLE 8. INDEMNIFICATION

- 8.1 **Effect of Closing.** The representations and warranties contained in this Agreement shall survive the Closing and shall remain in full force and effect until the date that is eighteen (18) months after the Closing Date; provided, however that the representations and warranties in Section 3.1 (Incorporation and Authority), Section 3.2 (No Conflict), Section 3.4 (Title to LJS Restaurants), Section 3.5 (Tangible Personal Property Assets), Section 3.6.3 (Title to Leasehold Interest), and Section 3.14 (Brokers), shall survive indefinitely (collectively, the "**Fundamental Representations**"); and provided further, that the representations and warranties in Section 3.11 (Taxes) and Section 3.12 (Employee Benefits Plans) shall survive for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation, or extension thereof) plus sixty (60) days. All covenants and agreements of the Parties contained herein shall survive the Closing indefinitely or for the period explicitly specified therein. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.
- 8.2 **Indemnification by Seller.** From and after the Closing Date, Seller and Farid Rostampour shall indemnify, defend and hold harmless Buyer, Franchisor, LJSR and their officers, directors, employees, members, heirs, successors, and assigns, from and against any and all losses, damages, debts, liabilities, obligations, judgments, orders, awards, claims, fines, penalties, costs, and expenses (including reasonable legal or accounting fees or expenses) (collectively, "**Losses**") imposed on, incurred by, or asserted against any of them as a result of:
- 8.2.1 any breach or material inaccuracy of a representation or warranty of Seller or Farid Rostampour contained in Article 3;
 - 8.2.2 any Excluded Asset;
 - 8.2.3 any breach or non-fulfillment of any covenant, agreement, or other obligation of Seller or Farid Rostampour contained in this Agreement; or
 - 8.2.4 the Retained Liabilities.
- 8.3 **Indemnification by Buyer.** From and after the Closing Date, Buyer shall indemnify, defend and hold harmless Seller, and Seller's officers, directors, employees, members, heirs, successors, and assigns, from and against any and all Losses imposed on, incurred by, or asserted against any of them as a result of:

- 8.3.1 any breach of a representation or warranty of Buyer contained in Article 4;
- 8.3.2 any breach or non-fulfillment of any covenant, agreement, or other obligation of Buyer contained in this Agreement; or
- 8.3.3 obligations arising under the Assumed Contracts following the Closing Date.

ARTICLE 9. FRANCHISOR CONSENT

- 9.1 Franchisor hereby consents to the transaction contemplated by this Agreement.
- 9.2 Franchisor and Seller agree to terminate the Franchise Agreements as of the Closing Date.

ARTICLE 10. MUTUAL RELEASE

- 10.1 **Seller's Release of Buyer, Franchisor and LJSR.** Upon satisfaction of all terms, conditions, and covenants of this Agreement, including all payment obligations of the Parties under Sections 2.2 and 2.4 of this Agreement, Seller, and its officers, members, agents, employees, affiliates, successors and assigns, and Farid Rostampour, hereby release and forever discharge Buyer, Franchisor, LJSR and their officers, members, agents, employees, affiliates, successors and assigns, from all actions, suits, debts, complaints, claims, and demands, whatsoever, in law or in equity, which Seller or its affiliates, or Farid Rostampour, have, may have, or may claim in the future relating to Seller's operation of the LJS Restaurants, or the Business, excepting any obligations and duties herein that extend beyond the date of Closing. By his signature on this Agreement, Farid Rostampour hereby acknowledges that he will release Buyer, Franchisor, and LJSR from any liability relating to Seller's operation of the LJS Restaurants. Notwithstanding the foregoing, the release set forth in this Section 10.1 will not release Buyer, Franchisor, or LJSR of any liabilities, claims, demands, or obligations relating to their performance of the terms, covenants, conditions, or obligations under this Agreement.
- 10.2 **Buyer, Franchisor, and LJSR's Release of Seller.** Upon satisfaction of all terms, conditions, and covenants of this Agreement, including all payment obligations of the Parties under Sections 2.2 and 2.4 of this Agreement, Buyer, Franchisor, and LJSR, and their officers, members, agents, employees, affiliates, successors and assigns, hereby release and forever discharge Seller, and its officers, members, agents, employees, affiliates, successors and assigns, and Farid Rostampour, from all actions, suits, debts, complaints, claims, and demands, whatsoever, in law or in equity, which Buyer, Franchisor, or LJSR have, may have, or may claim in the future relating to Seller's operation of the LJS Restaurants, or the Business. Notwithstanding the foregoing, the release set forth in this Section 10.2 will not release Seller or Farid Rostampour of any liabilities, claims, demands, or obligations relating to its performance of the terms, covenants, conditions, or obligations under this Agreement.

**ARTICLE 11.
MISCELLANEOUS**

11.1 Notices.

11.1.1 For a notice or other communication under this Agreement to be valid, it must be in writing and delivered: (i) by hand; (ii) by overnight carrier or registered or certified mail, return receipt requested and postage prepaid; or (iii) by email.

11.1.2 A valid notice or other communication under this Agreement will be effective when received by the party to which it is addressed. It will be deemed to have been received as follows:

- (a) if it is delivered by hand, or delivered by registered or certified mail, return receipt requested and postage prepaid, upon receipt as indicated by the date on the signed receipt;
- (b) if it is delivered by overnight carrier, the next business day after being deposited with such carrier for next day delivery;
- (c) if it is delivered by email, when the party to which the email is addressed, by notice in accordance with this Section (but without any need for further acknowledgement), acknowledges having received that email, with an automatic "read receipt" not constituting acknowledgment of an email for purposes of this Section; and
- (d) if the party to which it is addressed rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address for which no notice was given, then upon that rejection, refusal, or inability to deliver. For a notice or other communication to a party under this Agreement to be valid, it must be addressed using the information specified below for that party or any other information specified by that party in a notice in accordance with this Section 11.1.

If to Seller, to:

Tennessee Seafood, LLC
Attn: Farid Rostampour
3446 Old Timber Road
Clarksville, TN 37042
Email: frostampour@tnseafood.com

If to Buyer, to:

LJS Opco Two, LLC
Attn: Forrest W. Ragsdale III
9505 Williamsburg Plaza, Suite 300
Louisville, KY 40222
Email: forrest.ragsdale@ljsilvers.com

- 11.2 Governing Law.** This Agreement will be executed and delivered in the Commonwealth of Kentucky, and the provisions of this Agreement will all be governed by and construed and enforced in accordance with the laws of such state, regardless of any difference in, or change in, domicile of any of the Parties.
- 11.3 Jurisdiction.** If any party brings any proceeding arising out of this Agreement or any transaction document related to this Agreement, then that party must bring that proceeding only in a state or federal court of general jurisdiction in Jefferson County, Kentucky. Each Party hereby submits to the exclusive jurisdiction of foregoing courts for purposes of any such proceeding. Each Party hereby waives any claim that any proceeding brought in accordance with this Section has been brought in an inconvenient forum or that the venue of that proceeding is improper.
- 11.4 Waiver of Trial by Jury.** Each Party hereby waives its right to a trial by jury in any proceedings arising out of this Agreement.
- 11.5 No Rights of Subrogation.** Nothing in this Agreement, whether express or implied, is intended to give any Person any right of subrogation against any party to this Agreement.
- 11.6 Entire Agreement.** This Agreement constitutes the entire understanding among the Parties with respect to the subject matter of this Agreement and supersedes all other agreements, whether written or oral, among the Parties.
- 11.7 Amendments.** No amendment to this Agreement will be effective unless it is in writing and signed by all Parties.
- 11.8 Severability.** If any provision of this Agreement is held to be unenforceable, then that provision is to be construed by modifying it to the minimum extent necessary to make it enforceable, unless such modification is not permitted by law, in which case that provision is to be disregarded. If an unenforceable provision is modified or disregarded in accordance with this Section, the rest of the Agreement is to remain in effect as written, and the unenforceable provision is to remain as written in any circumstances other than those in which the provision is held to be unenforceable.
- 11.9 No Assignment.** No Party may assign this Agreement without the prior written consent of the other Parties.
- 11.10 Counterparts.** This Agreement may be executed in any number of counterparts and all such counterparts taken together will be deemed to constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by fax or by electronic delivery—including, by way of example and not limitation, portable document

format (".pdf") or tagged image file format (".tiff")—will be equally effective as delivery of an originally executed counterpart. The Parties acknowledge and agree that in any dispute or controversy between them, including any administrative or legal proceedings, respecting or in any way relating to this Agreement, each waives the right to raise any defense based on its execution of this Agreement in counterparts or the delivery of such executed counterparts by fax or by electronic delivery, as applicable. Moreover, when this Agreement is executed in counterparts, each counterpart when so executed and delivered will be treated in all respects as an original.

- 11.11 Headings.** The headings of the Articles, Sections and paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction hereof.
- 11.12 Expense.** The Parties each agree to bear their own legal and accounting fees and other expenses incurred in connection with the preparation and the consummation of this Agreement.
- 11.13 Acknowledgement.** Each Party confirms and agrees that: (i) it has read and understood all of the provisions of this Agreement; (ii) it has negotiated with the other party at arm's length with equal bargaining power; and (iii) are entering into this Agreement without any statement, representation, or warranty, express or implied, except for those specifically written in this Agreement.

THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

SIGNATURES ARE ON THE NEXT PAGE.

The Parties are signing this Asset Purchase Agreement as of the date indicated in the introductory paragraph.

BUYER:

LJS OPCO TWO, LLC

Forrest W. Ragsdale III
Forrest W. Ragsdale III, Senior Vice
President/General Counsel

FRANCHISOR:

LONG JOHN SILVER'S, LLC

Forrest W. Ragsdale III
Forrest W. Ragsdale III, Senior Vice
President/General Counsel

LJS RESTAURANTS, LLC

Forrest W. Ragsdale III
Forrest W. Ragsdale III, Senior Vice
President/General Counsel

SELLER:

TENNESSEE SEAFOOD, LLC

By: _____
Farid Rostampour, President

Farid Rostampour, individually

The Parties are signing this Asset Purchase Agreement as of the date indicated in the introductory paragraph.

BUYER:

LJS OPCO TWO, LLC

Forrest W. Ragsdale III, Senior Vice
President/General Counsel

FRANCHISOR:

LONG JOHN SILVER'S, LLC

Forrest W. Ragsdale III, Senior Vice
President/General Counsel

LJS RESTAURANTS, LLC

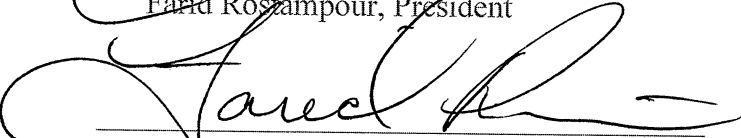
Forrest W. Ragsdale III, Senior Vice
President/General Counsel

SELLER:

TENNESSEE SEAFOOD, LLC

By: 

Farid Rostampour, President



Farid Rostampour, individually

Exhibit A

The LJS Restaurants

The Operating LJS Restaurants

Store ID	Address	City	State	Postal
32054	174 Stonebrook Place	Jackson	TN	38305
32055	1617 S. Highland Avenue	Jackson	TN	38301
32056	1919 N. Highland Avenue	Jackson	TN	38305
32057	2625 Highway 78	Dyersburg	TN	38024
32061	555 Lone Oak Road	Paducah	KY	42003
32062	1414 31 W. By-Pass	Bowling Green	KY	42101
32063	970 Pickwick Street	Savannah	TN	38372

The Closed LJS Restaurant

Store ID	Address	City	State	Postal
23352	806 Highway 72 E.	Corinth	MS	38834

Exhibit B

Sub-Subleases Between Seller and LJSR

Store ID	Address	City	State	Postal	Property Owner	LL Contact Information
32057	2625 Highway 78	Dyersburg	TN	38024	Lojon Property LLC	1370 Avenue of the Americas New York, NY 10019 Tel: (212) 581-4540
23352	806 Highway 72 E.	Corinth	MS	38834	Lojon Property LLC	1371 Avenue of the Americas New York, NY 10019 Tel: (212) 581-4540

Exhibit C

Third Party Leases

Store ID	Address	City	State	Postal	Property Owner	LL Contact Information
32054	174 Stonebrook Place	Jackson	TN	38305	174 Stonebrook, LLC	621 Old Hickory Boulevard Jackson, TN 38305
32056	1919 N. Highland Avenue	Jackson	TN	38305	Julian Dale and Gaye Lynn Coleman	P.O. Box 416 8765 Highway 140 McKenzie, TN 38201
32061	555 Lone Oak Road	Paducah	KY	42003	Valley Road Properties, LLC	817 Broadway Street Paducah, KY 42001
32062	1414 31 W. By-Pass	Bowling Green	KY	42101	Wedeking Investments, L.P.; and Wells Richardson	6131 Wedeking Avenue, Building G, Suite 1 Evansville, IN 47715; and 667 Bentworth Drive Bowling Green, KY 42103

Exhibit D

Termination of Sub-Subleases

Exhibit E

Third Party Lease Assignments

Exhibit F

Certificates and Resolutions of Buyer and Franchisor