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COVER SHEET  
05-05-2000



101347862

Docket No.:

81074 & 81075

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To the Honorable Commissioner of Patents a

ed original documents or copy thereof.

1. Name of conveying party(ies):

Juice Stop International, Inc.  
Juice Stop Franchising Corp.

- Individual(s)
- General Partnership
- Corporation-State **Delaware and California**
- Other

- Association
- Limited Partnership

Additional names(s) of conveying party(ies)  Yes  No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other **Asset Purchase Agreement (see pg. 5)**
- Merger
- Change of Name

Execution Date: April 16, 1999

2. Name and address of receiving party(ies):

Name: Juice Kitchen, LLC

Internal Address: \_\_\_\_\_

Street Address: 1050 17th Street, Suite B195

City: Denver State: CO ZIP: 80265

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State
- Other **Colorado limited liability company**

If assignee is not domiciled in the United States, a domestic designation is  Yes  N  
(Designations must be a separate document from Additional name(s) & address(es)  Yes  N

4. Application number(s) or registration numbers(s):

A. Trademark Application No.(s)

75/366,645

Additional numbers

B. Trademark Registration No.(s)

1,986,707

Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Lisa A. Osman

Internal Address: Dorsey & Whitney LLP

Street Address: 370 17th Street, Suite 4400

City: Denver, State: CO ZIP: 80202

6. Total number of applications and registrations involved:.....

2

7. Total fee (37 CFR 3.41):.....\$ \$65.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Lisa A. Osman

Name of Person Signing

Signature

April 19, 2000

Date

42

Total number of pages including cover sheet, attachments, and

MRI  
12-17-99

RECORDATION FORM  
12-28-1999  
101232489

Docket No.:  
81074 & 81075

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To the Honorable Commissioner of Patents and Trademarks, attached original documents or copy thereof.

1. Name of conveying party(ies):  
**Juice Stop International, Inc.**  
**Juice Stop Franchising Corp.**

Individual(s)                       Association  
 General Partnership               Limited Partnership  
 Corporation-State **Delaware and California**  
 Other \_\_\_\_\_

Additional names(s) of conveying party(ies)       Yes  No

2. Name and address of receiving party(ies):

Name: **Juice Kitchen, LLC**

Internal Address: \_\_\_\_\_

Street Address: **1050 17th Street, Suite B195**

City: **Denver** State: **CO** ZIP: **80265**

Individual(s) citizenship \_\_\_\_\_  
 Association \_\_\_\_\_  
 General Partnership \_\_\_\_\_  
 Limited Partnership \_\_\_\_\_  
 Corporation-State \_\_\_\_\_  
 Other **Colorado limited liability company**

If assignee is not domiciled in the United States, a domestic designation is                       Yes  N  
(Designations must be a separate document from  
Additional name(s) & address(es)                       Yes  N

3. Nature of conveyance:

Assignment                       Merger  
 Security Agreement               Change of Name  
 Other **Asset Purchase Agreement (see pg. 5)**

Execution Date: **February 1999 FOR BOTH CONVEYING PARTIES**

4. Application number(s) or registration numbers(s):

A. Trademark Application No.(s)  
**75/366,645**

Additional numbers                       Yes  No

B. Trademark Registration No.(s)  
**1,986,707**

Additional numbers                       Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: **Lisa A. Osman**

Internal Address: **Dorsey & Whitney LLP**

Street Address: **370 17th Street, Suite 4400**

City: **Denver** State: **CO** ZIP: **80202**

6. Total number of applications and registrations involved:..... **2**

7. Total fee (37 CFR 3.41):.....\$ **/ \$65.00 /**

Enclosed  
 Authorized to be charged to deposit account

8. Deposit account number: \_\_\_\_\_

DO NOT USE THIS SPACE

9. Statement and signature.  
*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.*

**Lisa A. Osman**                      *Lisa A. Osman*                      December **17**, 1999  
Name of Person Signing                      Signature                      Date

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made as of February \_\_, 1999, among Juice Kitchen, LLC, a Colorado limited liability company ("Buyer"), and CapEx, L.P., a Colorado limited partnership ("CapEx"), and Critical Capital Growth Fund, L.P., a Delaware limited partnership ("CCGF") (CapEx and CCGF collectively hereinafter may be referred to as "Lenders"), Juice Stop International, Inc., a Delaware corporation ("JSII"), and Juice Stop Franchising Corp., a California corporation ("JSFC") (JSII and JSFC collectively hereinafter may be referred to as "Sellers").

### RECITALS

WHEREAS, on November 17, 1997 (the "Petition Date"), JSII and JSFC commenced chapter 11 case nos. 98-26359 RJB and 98-26358 RJB, respectively (the "Cases") by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the "Code") in the United States Bankruptcy Court for the District of Colorado (the "Bankruptcy Court");

WHEREAS, JSII and JSFC have retained control of their assets and their businesses as debtors in possession pursuant to the provisions of sections 1107 and 1108 of the Code;

WHEREAS, Lenders have loaned substantial funds to Sellers pursuant to that certain Amended and Restated Senior Secured Convertible Promissory Note Due August 1, 2003 dated as of May 14, 1998, payable by JSII and JSFC, jointly and severally, to the order of CapEx, in the original principal amount of \$425,000, and that certain Senior Secured Convertible Promissory Note Due August 1, 2003 dated as of July 31, 1998, payable by JSII and JSFC, jointly and severally, to the order of CapEx, in the original principal amount of \$575,000, and that certain Senior Secured Convertible Promissory Note Due August 1, 2003 dated as of July 31, 1998, payable by JSII and JSFC, jointly and severally, to the order of CCGF, in the original principal amount of \$1,000,000 (collectively, the "Pre-Petition Loans"), and that certain Secured Post-Petition Draw-Down Promissory Note Due March 31, 1999 dated as of December 30, 1998, payable by JSII and JSFC, jointly and severally, to the order of Lenders, in the original principal amount of \$315,000 which may be increased to \$419,000 upon court approval ("Post-Petition Loans") (the Pre-Petition Loans and Post-Petition Loans collectively hereinafter may be referred to as the "Loans"), which loans are secured by substantially all of the assets of Sellers;

Whereas, as of the Petition Date, the unpaid principal, interest, fees and expenses due to Lenders pursuant to the Pre-Petition Loans was the sum of \$1,604,888, and as of February 17, 1999, the unpaid principal, interest, fees and expenses due to Lenders pursuant to the Post-Petition Loans was the approximate sum of \$167,121.37, (which amount will vary from time to time between the date hereof and the Closing together with fees and expenses of approximately \$32,792;

WHEREAS, Buyer desires to purchase from Sellers, and Sellers desire to sell to Buyer, certain assets of Sellers as provided in this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual agreements, representations, warranties, provisions and covenants herein contained, and subject to approval of the Bankruptcy Court, the parties hereto hereby agree as follows:

## AGREEMENT

### 1. DEFINITIONS.

As used in this Agreement, the terms defined below shall have the respective meanings hereinafter specified:

"Agreement": As defined in the introductory paragraph.

"Acquired Assets": As defined in Section 2.1.

"Assigned Nonbankruptcy Claims": As defined in Section 2.1

"Assumed Contracts": As defined in Section 2.1.

"Assumed Leases": As defined in Section 2.1.

"Assumed Liabilities": As defined in Section 2.4.

"Buyer": As defined in the introductory paragraph.

"CapEx": As defined in the introductory paragraph.

"Cases": As defined in the Recitals.

"CCGF": As defined in the introductory paragraph.

"CERCLA": The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

"Closing": As defined in Section 3.

"Closing Date": As defined in Section 3.

"Code": As defined in the Recitals.

"Environmental Law": means any federal, state or local law, statute or regulation, or any judgment, decree, order, arbitration award, or any license or permit issued by any federal, state

or local governmental authority relating to occupational health and safety or pollution or protection of the environment.

“ERISA”: The Employee Retirement Income Security Act of 1974, as amended.

“Excluded Assets”: As defined in Section 2.2.

“Intellectual Property”: As defined in Section 2.1.

“JSCF”: As defined in the introductory paragraph.

“JSII”: As defined in the introductory paragraph.

“Lenders”: As defined in the introductory paragraph.

“Material Adverse Effect”: As defined in Section 4.1.

“Permits”: As defined in Section 4.7.

“Purchase Price”: As defined in Section 2.3.

“Pre-Petition Loans”: As defined in the Recitals.

“Post-Petition Loans”: As defined in the Recitals.

“Qualified Plans”: As defined in Section 4.14.

“RCRA”: The Resource Conservation and Recovery Act of 1976, as amended.

“Retained Liabilities”: As defined in Section 2.5.

“Rejected Contracts”: As defined in Section 2.2.

“Rejected Leases”: As defined in Section 2.2.

“Sellers”: As defined in the introductory paragraph.

“Taxes”: shall mean any federal, state, local, foreign, or other tax, fee, levy, assessment or other governmental charge, including without limitation, any income, franchise, gross receipts, property, sales, use, services, value added, withholding, social security, estimated, accumulated earnings, alternative or add-on minimum, transfer, license, privilege, payroll, profits, capital stock, employment, unemployment, excise, severance, stamp, occupancy, customs or occupation tax, and any interest, additions to tax and penalties in connection therewith.

"Tax Returns": shall mean all returns, amended returns, declarations, reports, estimates, information returns and statements regarding Taxes which are or were filed or required to be filed under applicable law, whether on a consolidated, combined, unitary or individual basis.

"Undisclosed Contracts": As defined in Section 2.1.

## 2. PURCHASE AND SALE OF THE ASSETS.

2.1 Description of Assets. Subject to the terms and conditions set forth in this Agreement, Sellers hereby agree to sell to Buyer, and Buyer hereby agrees to purchase from Sellers, at the Closing, subject to and upon the terms and conditions contained herein, the following described property and assets of Sellers (collectively, the "Acquired Assets"), free and clear of any option, claim, lien, pledge, mortgage, security interest or other encumbrance of any kind:

(a) All assets of Sellers (other than the Excluded Assets) including, without limitation:

(i) all inventory and supplies of Sellers;

(ii) all prepaid expenses, deposits and other current assets of Sellers, including accounts receivable, cash and cash equivalents;

(iii) all furniture, fixtures and leasehold improvements of Sellers; and

(iv) all equipment, machinery, tools, personal property and other physical assets of Sellers of any nature or kind (including all spare parts);

(b) all rights of Sellers with respect to leasehold interests relating to the real and personal property as listed on Schedule 2.1(b) (the "Assumed Leases").

(c) all trade secrets, processes, know-how, procedures, formulas and confidential information used or useful in the operation of the business of Sellers;

(d) all customer, supplier and mailing lists relating to the business of Sellers;

(e) all rights of Sellers under the contracts and agreements including, without limitation, franchise agreements with franchisees of Sellers and Assumed Leases listed on Schedule 2.1(e) (the "Assumed Contracts");

(f) all rights of Sellers to the telephone numbers listed on Schedule 2.1(f);

(g) all rights of Sellers to the names "Juice Stop," and all other d/b/a names of Sellers;

(h) all trade names, trademarks, copyrights, service marks, patents, patent applications or other intellectual property owned by or licensed to Sellers or used in the operation of Sellers' business (collectively, "Intellectual Property");

(i) all rights under agreements with employees, franchisees and others concerning confidentiality and noncompetition in favor of Sellers;

(j) all business and financial records, books, equipment repair, maintenance or service records relating to the business of Sellers or any of the above-described Assets;

(k) the following claims that may exist or arise in the future (but only to the extent that they arose or may arise under nonbankruptcy law) (collectively, the "Assigned Nonbankruptcy Claims"): (A) claims for breach of warranty for defective goods supplied or sold to Sellers; (B) claims for indemnity against third parties or contribution from third parties toward obligations of the Sellers for which the Buyer may be held liable; and (C) claims that may be raised by way of affirmative defense or offset against efforts by a third party to hold Buyer responsible for obligations of the Sellers, to the extent necessary to permit Buyer to defend against or extinguish any responsibility that Buyer may have for such obligations; and

(l) such other leases and contracts of Seller, if any, that are not set forth on Schedule 2.1(b) or Schedule 2.1(e) and that are not disclosed on either Schedule 2.2(a) or Schedule 2.2(b) (the "Undisclosed Contracts"), to the extent that Buyer hereafter becomes aware of such Undisclosed Contracts and elects in writing, in its sole discretion, to receive the benefits and assume the obligations thereunder.

2.2 Excluded Assets. Notwithstanding anything contained herein to the contrary, Sellers are not selling and Buyer is not purchasing, pursuant to this Agreement, and the term "Acquired Assets" shall not include, any assets or property of Sellers that is not included among the Acquired Assets (all such property shall be referred to collectively as the "Excluded Assets"), including, without limitation, the following:

(a) all liabilities associated with Seller's retail business locations, and all furniture, fixtures, equipment and other tangible personal property located at the addresses set forth on Schedule 2.2 (a) (the "Rejected Leases");

(b) all rights of Sellers under the franchise agreements and other contracts and leases as set forth on Schedule 2.2 (b) (the "Rejected Contracts");

(c) any and all claims or causes of action created or preserved by sections 544, 545, 547, 548, 549, 550 and/or 553 of the Code, except for claims or causes of action that the Sellers, as Debtors, and their estates, may have against Buyer, which claims and causes of action shall be forever released and waived upon closing of the transaction contemplated by this Agreement; and

(d) any and all claims and causes of actions against third parties held by Sellers that arise under nonbankruptcy law other than the Assigned Nonbankruptcy Claims; and

(e) any and all Undisclosed Contracts, except to the extent that Buyer hereafter becomes aware of such contracts and elects in writing, in its sole discretion, to receive the benefits and assume the obligations thereunder.

2.3 Purchase Price. The full consideration which Buyer shall pay at the Closing for the Acquired Assets (the "Purchase Price") and in consideration of the covenants of the Sellers contained herein is:

(a) \$50,000.00 in cash;

(b) satisfaction of the Loans, which will constitute a credit bid by Buyer in the amount of the Loans outstanding as of the Closing, pursuant to section 363(k) of the Code;

(c) assumption of only those Assumed Liabilities specifically identified in Section 2.4 hereof; and

(d) assumption of only those liabilities and obligations under Assumed Leases and Assumed Contracts specifically identified in Schedule 2.1(b) and Schedule 2.1(e).

2.4 Assumption of Certain Liabilities. Buyer hereby agrees that from and after the Closing, and subject to and upon the terms and conditions contained herein, it shall assume and agree to satisfy and perform when due the following specified obligations and liabilities of Sellers (the "Assumed Liabilities"), but no others:

(a) All amounts determined by the Bankruptcy Court as being required to "cure" defaults under Assumed Contracts and Assumed Leases, as set forth in Schedule 2.4(a) (within the meaning of Section 365(b) of the Bankruptcy Code), together with all obligations and liabilities arising after the Closing under the Assumed Contracts and Assumed Leases, to the extent Seller's rights thereunder are actually assigned to Buyer; provided, however, that Buyer shall have the right to elect not to assume any Assumed Contract or Assumed Lease if, within seven (7) business days after of the later of (i) the Sellers' amendment of Schedule 2.4(a) or (ii) the entry of an order of the Bankruptcy Court determining that the "cure" amount for a particular Assumed Contract or Assumed Lease is greater than the cure amount reflected therefor on Schedule 2.4(a), Buyer gives written notice to Sellers and the non-debtor party to such Assumed Contract or Assumed Lease of its election not to take an assignment thereof; and provided, further, that in the event Buyer gives such written notice not to take an assignment of an Assumed Contract or Assumed Lease pursuant to the foregoing proviso, or to not close the sale transaction contemplated in this Agreement, or the Bankruptcy Court does not allow such assignment and/or approve this Agreement, Lenders shall nevertheless be liable to disburse funds necessary to pay the Post-Petition obligations arising under said Assumed Contract or Assumed Lease (from the Petition Date through the date of such written notice(s) or Court Order) if such obligations were included in the budget



submitted by Sellers to Lenders on February 17, 1999, in accordance with the terms of the Stipulation Between Debtors and Lenders for Modification of Post-Petition Credit Facility, dated February 17, 1999 (the "Stipulation").

(b) Obligations or liability to pay for products, leasehold interests, raw materials, goods or services delivered or provided to Sellers during the Cases and that were included in the budget submitted by Sellers to Lenders on February 17, 1999, in accordance with the terms of the Stipulation.

Buyer is not assuming, and shall not be deemed to have assumed, any obligations or liabilities of Sellers other than the Assumed Liabilities specifically described above. No assumption by Buyer of any of the Assumed Liabilities shall relieve or be deemed to relieve any Seller from any obligation or liability under this Agreement with respect to any representations or warranties made by such Seller to Buyer.

2.5 Retained Liabilities. Buyer is not assuming and will not perform any liabilities or obligations not specifically described in Section 2.4 or any of the following obligations or liabilities of Sellers (collectively, the "Retained Liabilities"):

(a) Any obligation or liability of Sellers for Taxes of any kind or nature whether or not incurred prior to the Closing, including, without limitation, any Taxes based on or measured by any income or gain realized upon transfer of any of the Acquired Assets hereunder;

(b) any obligation or liability for services rendered by Sellers either prior to or during the Cases, except to the extent required in order to "cure" a monetary default, as determined by order of the Bankruptcy Court and assumed pursuant to Section 2.4(a) hereof, with respect to an Assumed Contract or Assumed Lease;

(c) any obligation or liability to pay for any products, leasehold interests, goods, raw materials or services delivered or provided to Sellers, except to the extent delivered or provided during the Cases and that were included in the budget submitted by Sellers on February 17, 1999.

(d) any liability or obligation of Sellers for or in respect of any loan, account payable or indebtedness;

(e) any liability or obligation of Sellers arising as a result of or out of any claim, any legal or equitable action, proceeding or investigation pertaining to or relating in any way to Sellers initiated at any time, whether or not described in any schedule hereto;

(f) any obligation or liability based upon acts or omissions of Sellers;

(g) any liability or obligation of Sellers incurred in connection with the making or performance of this Agreement;

(h) any liability or obligation of Sellers arising out of any "employee benefit plan," as such term is defined by ERISA, established or maintained by Sellers or to which Sellers contributes or any liability with respect to any pension or benefit plan of Sellers or the termination of any such plan;

(i) any liability or obligation of Sellers for making payments of any kind (including as a result of the sale of the Acquired Assets or as a result of the termination of employment by Sellers of employees or other labor claims) to employees of Sellers or in respect of payroll Taxes for employees of Sellers, including, without limitation, any liabilities or obligations of Sellers;

(j) any liability or obligation of Sellers under or with respect to any lease, contracts, arrangement or commitment (other than such liabilities or obligations that are included in the Assumed Liabilities); or

(k) any liability or obligation of Sellers arising out of or resulting from non-compliance with any national, regional, state or local laws, statutes, ordinances, rules, regulations, orders, determinations, judgments, or directives, whether legislatively, judicially, or administratively promulgated, including, without limitation, any Environmental Law.

2.6 Allocation of Purchase Price. The purchase price shall be allocated among the Acquired Assets as set forth in Schedule 2.6, and the parties shall file their respective tax returns in accordance with such allocation and shall not take any position or action inconsistent with such allocation.

### 3. CLOSING.

(a) The closing of the purchase and sale of the Acquired Assets and the other transactions contemplated hereby (the "Closing") shall take place at the offices of Brownstein, Hyatt, Farber & Strickland, P.C., 410 17<sup>th</sup> Street, 22<sup>nd</sup> Floor, Denver, Colorado 80202, or at such other place as may be agreed to by the Buyer and Sellers, on the first business day that is eleven days subsequent to the entry of an order of the Bankruptcy Court approving this Agreement and the transactions contemplated hereby (the "Closing Date").

(b) At the Closing:

(i) Buyer and Sellers shall execute such documents as required by the Bankruptcy Court to convey the Acquired Assets pursuant to the terms of this Agreement; and

(ii) Buyer shall pay to Sellers the cash portion of the Purchase Price payable to Sellers at the Closing, and shall mark "paid in full" the promissory notes that evidence the Loans and tender the same to Sellers and execute such releases and

termination of financing agreements with respect to the security for such Loans as may be reasonably requested by Sellers.

4. REPRESENTATIONS AND WARRANTIES OF SELLERS.

Sellers, jointly and severally, make the following representations and warranties to, and covenants with, Buyer and Lenders:

- 4.1 Due Organization. JSII is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. JSFC is a corporation duly organized, validly existing and in good standing under the laws of the State of California. Each of Sellers is duly authorized, qualified and licensed under all applicable laws, regulations, ordinances and orders of public authorities necessary to carry on its business in the places and in the manner as now conducted, except where the failure to be so authorized, qualified or licensed would not have a material adverse effect on the business, operations, assets, properties or condition, financial or otherwise, of such seller (a "Material Adverse Effect"). Complete and correct copies of the Articles of Incorporation and By-laws of each of Sellers have been previously furnished to Buyer. Schedule 4.1 sets forth each name, including any trade name, under which either of Sellers conducts, or has conducted, its business.
- 4.2 Subsidiaries. JSFC does not have, and never has had, any subsidiaries, and except for JSFC, JSII does not have, and never has had, any subsidiaries. JSFC does not presently own, and except for JSFC, JSII does not presently own, of record or beneficially, or control, directly or indirectly, any capital stock, securities convertible into capital stock or any other equity interest in any corporation, association or business entity. Neither Seller is or has been, directly or indirectly, a participant in any joint venture, partnership or other non-corporate entity other than as disclosed in Schedule 4.2.
- 4.3 Authorization. Subject to Bankruptcy Court approval, each Seller has all corporate power and authority to enter into and perform this Agreement and the other documents and instruments to be delivered pursuant to this Agreement and to consummate the transactions contemplated hereby and thereby. The execution and delivery by each Seller of this Agreement and the consummation by each Seller of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action on the part of each Seller. This Agreement has been duly and validly executed and delivered by each Seller and constitutes the legal, valid and binding obligation of each of them and is enforceable against each of them in accordance with its terms, subject only to Bankruptcy Court approval.
- 4.4 Approvals. No action, consent or approval by, or filing by any Seller with any federal, state, municipal, foreign or other court or governmental body or agency, or any other regulatory body, or any other person or entity is required in connection with the execution, delivery or performance by any Seller of this Agreement or the

consummation by any Seller of the transactions contemplated hereby, except for Bankruptcy Court approval.

- 4.5 Predecessor Status. To the best knowledge of the Sellers, Schedule 4.5 sets forth a list of all names of all predecessor companies of each Seller, including the names of any entities from whom each Seller previously acquired significant assets.
- 4.6 Accounts and Notes Receivable. To the best knowledge of the Sellers, Schedule 4.6 sets forth an accurate list as of the Petition Date of the accounts and notes receivable of each Seller, including receivables from and advances to employees and shareholders of each Seller, and any affiliate of each Seller, and an aging of all accounts and notes receivable showing amounts due in 30-day aging categories that reflects the aging as of the Petition Date. To the best knowledge of the Sellers, all accounts and notes receivable of each Seller arose from the sale of products and services in the ordinary course of business and are legal and binding claims of each Seller collectible in the amounts shown on Schedule 4.6.
- 4.7 Permits and Intellectual Property. To the best knowledge of the Sellers, Schedule 4.7 sets forth an accurate list and summary description of all certificates of need, permits, licenses, franchises and certificates owned, held, licensed or otherwise used by either Seller (collectively, "Permits") and all Intellectual Property of the Sellers, including the government office in which the same is registered. To the best knowledge of each Seller, Sellers have taken all steps necessary to protect the registration, ownership and, to the extent applicable, goodwill of the Intellectual Property. Except as set forth in Schedule 4.7, to the best knowledge of Sellers, neither Seller has entered into any agreement pursuant to which any person or entity has any right to receive any royalty or fee with respect to any Intellectual Property. Except as set forth in Schedule 4.7, to the best knowledge of Sellers, neither Seller has any knowledge, or received any notice, of any claims asserted against any Seller with respect to the use of any of the Intellectual Property or challenging the validity or effectiveness of any license or agreement with respect thereto. To the best knowledge of each Seller, the use of the Intellectual Property does not infringe upon the rights of any other party.
- 4.8 Real and Personal Property.
- (a) Schedule 4.8.1, to the best knowledge of Sellers:
- (i) sets forth an accurate list and a complete description of all the real property owned or leased by each Seller;
- (ii) sets forth a fixed asset schedule that lists in summary form all the fixed assets used in the business of each Seller (excluding vehicles); and

(iii) identifies those assets owned, leased or used by each Seller that are owned by affiliates of each Seller.

(b) To the best knowledge of Sellers, all of the Acquired Assets constituting tangible personal property, whether owned or leased, are in good working order and condition, ordinary wear and tear excepted, except as disclosed by Sellers to Buyer in writing.

(c) To the best knowledge of Sellers, and except as set forth in Schedule 4.8.1, the Assumed Leases are in full force and effect, Seller has complied with all material non-monetary obligations thereunder, Seller has not received notice of any non-monetary defaults thereunder, and no interest of either Seller in any Assumed Lease is subject to any mortgage, lien, pledge, charge or other encumbrance. To the best knowledge of Sellers, all Acquired Assets that are fixed assets used by either Seller in the operation of its business are either owned by it or leased under an agreement listed on Schedule 4.8.1.

(d) To the best knowledge of Sellers, Sellers have good and marketable title to, or in the case of leased property, have valid leases under which they enjoy peaceful and undisturbed possession of all of the Acquired Assets, free and clear of all mortgages, liens, pledges, charges or other encumbrances, except as disclosed in Schedule 4.8.2.

#### 4.9 Material Contracts and Commitments.

(a) To the best knowledge of Sellers, the Assumed Contracts constitute all contracts and agreements to which either Seller is a party or by which it or its properties is bound (with the exception of Rejected Contracts).

(b) Sellers have delivered to Buyer copies of the Assumed Contracts that are in writing and in Sellers' possession or reasonable control and a description of the oral Assumed Contracts to the extent within Sellers' knowledge.

(c) Except as disclosed on Schedule 4.9(c), Sellers have not received or given any notice of default with respect to non-monetary defaults under any Assumed Contracts, and, to the best knowledge of Sellers, Sellers have complied with all material non-monetary commitments and obligations pertaining to the Assumed Contracts, and no other party to any Assumed Contract is in default thereunder with respect to non-monetary defaults.

(d) Except as set forth on Schedule 4.9(d), each of the Assumed Contracts is the legal, valid and binding obligation of applicable Seller and, to the best knowledge of each Seller, the other parties thereto, and each of the Assumed Contracts is in full force and effect.

(e) To the best knowledge of Sellers, except as set forth in Schedule 4.9(e), no customer or franchisee of either Seller has advised either Seller of its intent to cancel or substantially reduce or is currently attempting or threatening to cancel or substantially reduce service.

(f) To the best knowledge of Sellers, other than as set forth in Schedule 4.9(f), neither Seller is a party to any contract, agreement or other instrument or commitment being assumed by Buyer which, individually or in the aggregate, has had or could have a Material Adverse Effect.

- 4.10 Labor Matters. Except as set forth in Schedule 4.10, neither Seller is bound by or subject to (and none of its assets or properties is bound by or subject to) any arrangement with any labor union. Except as set forth in Schedule 4.10, no employees of either Seller are represented by any labor union or covered by any collective bargaining agreement nor, to the best knowledge of each Seller, is any organization campaign to establish such representation in progress. There is no pending or, to the best knowledge of each Seller, threatened labor dispute involving either Seller and any group of employees and neither Seller has experienced any labor interruptions over the past three years.
- 4.11 Insurance. Schedule 4.11 sets forth a list, to the best knowledge of each Seller, of all insurance policies currently carried by either Seller. Such insurance policies are currently in full force and effect and shall remain in full force and effect through the Closing.
- 4.12 Compensation. Schedule 4.12 sets forth an accurate list of all officers, directors and key employees of each Seller, the rate of compensation (and the portions thereof attributable to salary, bonus and other compensation, respectively) of each such person as of the date hereof and any increase therein since the Petition Date.
- 4.13 Employee Benefit Plans. To the best knowledge of Sellers, Schedule 4.13 sets forth an accurate list of all employee benefit plans of each Seller including, without limitation, those defined under Section 3(3) of ERISA, fringe benefit plans, vacation plan or policy, sick leave program, medical, disability or life insurance plan, any employment agreement or any pension, retirement, profit-sharing, bonus, stock option, incentive, deferred compensation, or welfare plan, whether or not reduced to writing and the classification of employees covered thereby. The copies of such plans, arrangements and contract and any trusts related thereto which were previously provided to Buyer are true, correct and complete. To the best knowledge of Sellers, neither Seller has established or maintains any plan, program or arrangement to provide post-retirement medical benefits to any employee, former employee or beneficiary of an employee or former employee. To the best knowledge of Sellers, all employee benefit plans listed on Schedule 4.13 are in substantial compliance with ERISA and the regulations promulgated thereunder (to the extent applicable), as well as with all other applicable federal, state and local statutes, ordinances and regulations.
- 4.14 Qualified Plans. To the best knowledge of Sellers, all such plans listed on Schedule 4.14 that are intended to qualify (the "Qualified Plans") under

Section 401(a) of the Internal Revenue Code, have been determined by the Internal Revenue Service to be so qualified, and copies of such determination letters are included as part of Schedule 4.14 hereof. Except as disclosed on Schedule 4.14, to the best knowledge of the Sellers, all reports and other documents required to be filed with any governmental agency or distributed to plan participants or beneficiaries (including, but not limited to, actuarial reports, audits or tax-exempt returns) have been timely filed or distributed. Neither any Seller nor any such plan listed in Schedule 4.14 has engaged in any transaction prohibited under the provisions of Section 4975 of the Internal Revenue Code or Section 406 of ERISA. To the best knowledge of Sellers, no such plan listed in Schedule 4.14 has incurred an accumulated funding deficiency; and neither Seller has incurred any liability for excise tax or penalty due to the Internal Revenue Service or any liability to the Pension Benefit Guaranty Corporation. In addition, to the best knowledge of Sellers, there have been no terminations, partial terminations or discontinuance of contributions to any such Qualified Plan without notice to and approval by the Internal Revenue Service, there have been no "reportable events" with respect to any such plan listed in Schedule 4.14, and neither Seller has incurred liability with respect to any "multi-employer plan."

4.15 Litigation. To the best knowledge of Sellers, Schedule 4.15 sets forth a complete list of all pending claims, lawsuits or arbitrations against Sellers.

4.16 Conformity with Law. To the best knowledge of Sellers, neither Seller is in material default under any applicable law or regulation or under any order of any court or federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality having jurisdiction over it. To the best knowledge of Sellers, each Seller has conducted and is conducting its business in substantial compliance with all applicable federal, state and local statutes, ordinances, permits, licenses, orders, approvals, variances, rules and regulations and is not in violation of any of the foregoing that could have a Material Adverse Effect.

4.17 Taxes. To the best knowledge of the Sellers:

(a) Except as set forth in Schedule 4.17, (1) all Tax Returns of, relating to or which include either Seller which are required to have been filed have been filed on a timely basis with the appropriate authorities and all such Tax Returns are true, correct and complete in all respects, (2) all Taxes required to have been paid by the applicable Seller have been paid in full on a timely basis to the appropriate Taxing authorities, or will be paid in full on the effective date of the Sellers' Plan of Reorganization, (3) all Taxes or other amounts required to have been collected or withheld by the applicable Seller have been timely and properly collected or withheld, and (4) notice of the Cases has been sent to all jurisdictions in which either of the Sellers has had a company-owned store operation or had a franchise store location in the last three years.

(b) Except as set forth in Schedule 4.17, (1) no Taxing authority has asserted in writing any adjustment, deficiency, or assessment that could result in additional Tax for which either Seller is or may be liable, (2) there is no pending audit, examination, investigation, dispute, proceeding or claim for which either Seller has received notice relating to any Tax for which either Seller is or may be liable, (3) no statute of limitations with respect to any Tax for which either Seller is or may be liable has been waived or extended, and (4) neither Seller is a party to any Tax sharing or Tax allocation agreement, arrangement or understanding.

(c) There are no liens on any of the assets of either Seller which arose in connection with any failure or asserted failure to pay any Tax, other than liens for current Taxes not yet due and payable.

4.18 Completeness. The copies of the leases, instruments, agreements, licenses, permits, certificates or other documents which are included on schedules attached hereto or have been delivered to Buyer in connection with the transactions contemplated hereby are all of such documents in Sellers' possession or reasonable control.

4.19 Absence of Changes. Except as set forth in Schedule 4.19, since the Petition Date, to the best knowledge of the Sellers, there has not been:

(a) any material adverse change in the business, operations, assets, properties or conditions (financial or otherwise) of either Seller;

(b) any damage, destruction or loss (whether or not covered by insurance) materially and adversely affecting the properties or business of either Seller;

(c) any increase in the compensation, bonus, commissions or fee arrangement payable or to become payable by either Seller to its officers, directors, employees, consultants, agents or stockholders, other than routine scheduled increases for employees;

(d) any work interruptions, labor grievances or claims filed, materially and adversely affecting the business or future prospects of either Seller;

(e) any sale or transfer, or any agreement to sell or transfer, any material asset, property or right of either Seller to any person, including, without limitation, the Sellers and their affiliates;

(f) any cancellation, or agreement to cancel, any indebtedness or other obligation owing to either Seller, other than intercompany indebtedness owed by one Seller to the other;

(g) any plan, agreement or arrangement granting to any person (other than the Buyer) any preferential rights to purchase or acquire any interest in any of the assets, property or rights of either Seller or requiring consent of any party to the transfer and assignment of



any such assets, property or rights, other than the contemplated offering of the Acquired Assets to bidders, as more fully described in Section 12;

(h) any purchase or acquisition of, or agreement, plan or arrangement to purchase or acquire, any property, rights or assets other than in the ordinary course of business consistent with past practices or any property, rights or assets for consideration in excess of \$5,000;

(i) any waiver of any material rights or claims of either Seller, other than intercompany indebtedness owed by one Seller to the other;

(j) any amendment or termination of any Assumed Contract or any license, permit or franchise of either Seller; or

(k) any agreement or commitment by either Seller to do any of the foregoing or any transaction by either Seller outside the ordinary course of business, except as approved by the Bankruptcy Court during the Cases.

#### 4.20 Environmental Matters.

(a) Except as set forth in Schedule 4.20, (i) to the best knowledge of Sellers, neither Seller has ever generated, transported, disposed of, or contracted for the disposal of, hazardous wastes, hazardous substances, infectious or medical waste, radioactive waste or sewage sludges as these terms are defined by RCRA, CERCLA, the Atomic Energy Act of 1954, as amended, or any comparable state laws, rules or regulations, (ii) to the best knowledge of the Selling Parties, no such wastes, substances, or sludges generated by either Seller or any of their predecessors have finally come to be located on any site which is or has been (including as a potential or suspect site) included in any published federal, state, or local "superfund" or other list of hazardous or toxic waste sites; (iii) to the best knowledge of the Selling Parties, there has been no storage or treatment of such wastes, substances or sludges by either Seller at any site or other facility owned or operated by either Seller in violation of any applicable law, rule, regulation, order, judgment or permit or that would require any material remedial action under any applicable law, (iv) neither Seller has received any notice of any violation with respect to asbestos or hazardous substances at any of its sites or of any Environmental Law, (v) to the best knowledge of Seller, there has been no spill, discharge, leak, emission, injection, escape, dumping or release of any kind onto any property owned or leased by either Seller, or into the environment surrounding any such property, of any toxic or hazardous substances as defined under any local, state or Federal regulations or laws, and (vi) to the best knowledge of the each Seller, neither Seller has ever owned or leased any real estate having any underground storage tanks containing petroleum products or wastes or other hazardous substances regulated by 40 CFR 280 and/or other applicable federal, state or local laws, rules and regulations and requirements.

(b) Except as set forth in Schedule 4.20, to the best knowledge of Sellers, there has been no assertion by any governmental agency or other regulatory authority of any environmental lien or action with respect to either Seller.

(c) To the best knowledge of each Seller, neither Seller has caused or taken any action that is reasonably expected to result in, and it is not subject to, any material potential liability or obligation under any Environmental Law.

4.21 Brokers and Finders. Neither any Seller nor any officer, director, or employee of any Seller has incurred any liabilities for any financial advisory fees, brokerage fees, commissions or finders' fees in connection with this Agreement or any of the transactions contemplated hereby.

4.22 Disclosure. This Agreement and the schedules hereto and all other documents and information furnished to Buyer or Lenders in connection herewith do not and will not include any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they are made, not misleading. If prior to the Closing any Seller becomes aware of any fact or circumstance that would change a representation or warranty of any Seller in this Agreement or any representation made on behalf of any Seller; Sellers shall immediately give notice of such fact or circumstance to Buyer and Lenders; *provided, however*, that such notification shall not relieve any Seller of its obligations under this Agreement.

## 5. REPRESENTATIONS OF LENDERS AND THE BUYER.

Buyer and Lenders, separately, make the following representations and warranties to, and covenants with, Sellers, with respect to Buyer and Lenders, as the case may be.

5.1 Due Organization. Buyer and Lenders are a duly organized, validly existing and in good standing under the laws of the jurisdiction of their organization, and are duly authorized, qualified and licensed under all applicable laws, regulations, and ordinances of public authorities to carry on their business in the places and in the manner as now conducted except for where the failure to be so authorized, qualified or licensed would not have a material adverse affect on their business, operations, assets, properties or condition, financial or otherwise.

5.2 Authorization. Buyer and Lenders have all company power and authority to enter into and perform this Agreement and the other documents and instruments to be delivered pursuant to this Agreement and to consummate the transactions contemplated hereby. The execution and delivery by Buyer and Lenders of this Agreement and the other documents and instruments to be delivered pursuant to this Agreement and the consummation by Buyer and Lenders of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action on the part of Lenders and Buyer. This Agreement has been duly

and validly executed and delivered by Lenders and Buyer and constitutes the legal, valid and binding obligation of each of them and is enforceable against them in accordance with its terms.

5.3 Approvals. No action, consent or approval by, or filing by Lenders or Buyer, with any federal, state, municipal, foreign or other court or governmental body or agency, or any other regulatory body, or any other person or entity is required in connection with the execution, delivery or performance by Lenders or Buyer of this Agreement, except any filing, consent or approval that has been made or obtained prior to Closing.

## 6. COVENANTS.

6.1 Access and Cooperation. During the period from the date hereof through the Closing, Sellers will afford representatives of Buyer and Lenders during reasonable business hours, access to all of their sites, properties, books and records and will furnish Buyer and Lenders with such additional financial and operating data and other information as to the business and properties of Buyer and Lenders may from time to time reasonably request. Sellers will cooperate with Lenders, Buyer, and their representatives, auditors and counsel in the preparation of any documents or other material which may be required in connection with any documents or materials required by any governmental agency.

6.2 Conduct of Business Pending Closing. During the period from the date hereof through the Closing, each of Sellers will:

(a) except with Buyer's prior consent, carry on its business in substantially the same manner as it has heretofore been carried on;

(b) maintain its properties, facilities and equipment, including those held under Assumed Leases and Assumed Contracts, in as good working order and condition, ordinary wear and tear excepted, except as disclosed to Buyer;

(c) perform all of its material obligations under agreements relating to or affecting its respective assets, properties, equipment or rights, except that Sellers shall not be required to perform monetary obligations to the extent not reflected in the Sellers' Budget, dated February 17, 1999, provided that in the event that Debtors discover or incur unbudgeted expenses, they agree to notify Lenders of any such unbudgeted amounts in excess of \$500.00 within two business days of discovery or incurring the same and they agree to use their best efforts to pay such unbudgeted amounts to the extent of available cash.

(d) keep in full force and effect present insurance policies or other comparable insurance coverage with comparable insurers;

(e) except with Buyer's prior consent, use its reasonable efforts to maintain and preserve its business organization intact, retain its present employees and maintain its relationships with franchisees, suppliers, customers and others having business relations with it;

(f) use its reasonable efforts to maintain compliance with all permits, laws, rules and regulations, consent orders, and similar requirements; and

(g) not enter into new or amended debt or lease instruments, without the prior consent of Lenders.

6.3 Prohibited Activities. During the period from the date hereof through the Closing, Sellers will not, without prior written consent of Lenders:

(a) take, or permit or suffer to be taken, any action which is represented and warranted in Section 4.19 not to have occurred since the Petition Date;

(b) enter into any contract or commitment or incur or agree to incur any liability except in the normal course of business or make any capital expenditures; or

(c) create, assume or permit to exist any mortgage, pledge or other lien or encumbrance upon any assets or properties whether now owned or hereafter acquired other than liens for taxes not yet due and payable.

## 7. CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLERS.

The obligation of Sellers to consummate the sale of the Acquired Assets and the other transactions contemplated hereby is subject to the fulfillment, prior to the Closing of each of the following conditions, any of which may be waived by Sellers:

7.1 Representations and Warranties; Performance of Obligations. The representations and warranties of Buyer contained in Section 5 shall be true and correct on and as of the Closing Date with the same force and effect as though made on and as of such date; all of the terms, covenants and conditions of this Agreement to be complied with, performed and satisfied by Lenders and Buyer on or before the Closing shall have been complied with, performed and satisfied; and a certificate to the foregoing effect dated the Closing Date and signed by a duly authorized officer of Lenders and Buyer shall have been delivered to the Sellers.

7.2 Proceedings Satisfactory. The Bankruptcy Court shall have approved this Agreement and the consummation of the transactions contemplated hereby, and such approval shall be final and non-appealable, unless Buyer in its sole discretion elects to waive the requirement of a final and non-appealable order.

7.3 No Litigation. No stay of enforcement shall have been issued by a court or any other governmental agency or body, and remain in effect, that restrains or prohibits the consummation of the transactions contemplated hereby.

8. CONDITIONS PRECEDENT TO OBLIGATIONS OF LENDERS AND BUYER.

The obligation of Buyer and Lenders to consummate the purchase of the Acquired Assets and the other transactions contemplated hereby is subject to the fulfillment, prior to the Closing of each of the following conditions, any of which, with the exception of that portion of Section 8.10 that requires the entry of a Bankruptcy Court order approving this sale transaction, may be waived by Buyer and Lenders:

- 8.1 Representations and Warranties: Performance of Obligations. The representations and warranties of the Seller contained in Section 4 shall be true and correct on and as of the Closing Date with the same force and effect as though made on and as of such date (including, without limitation, that the Schedules are true and correct); all of the terms, covenants and conditions of this Agreement to be complied with, performed and satisfied by each Selling Party on or before the Closing shall have been complied with, performed and satisfied; and a certificate to the foregoing effect dated the Closing Date and signed by each Seller shall have been delivered to Buyer and Lenders.
- 8.2 Proceedings Satisfactory. The Bankruptcy Court shall have entered its Order approving this Agreement and the consummation of the transactions contemplated hereby, which order shall provide, inter alia, that Buyer has purchased the Acquired Assets in "good faith" within the meaning of Section 363(m) of the Bankruptcy Code, and which order is final and nonappealable.
- 8.3 No Litigation. No action or proceeding before a court or any other governmental agency or body shall have been instituted or threatened to restrain or prohibit the transactions contemplated hereby.
- 8.4 No Material Adverse Change. Except as set forth in Schedule 4.9(f) and Schedule 4.19, since the Petition Date, no material adverse change in the results of operations, financial condition or business of either Seller or any Material Adverse Effect shall have occurred and neither Seller shall have suffered any material loss or damages to any of its properties or assets, whether or not covered by insurance; and Buyer and Lenders shall have received a certificate signed by each Seller dated the Closing Date to such effect, as prepared by Buyer.
- 8.5 Environmental Reports. If a report has been commissioned by January 31, 1999, Buyer shall have received (at its sole expense) environmental audit reports with respect to the properties of Sellers in form and substance satisfactory to Buyer.

8.6 Review of Schedules. Buyer and Lenders shall have reviewed and approved the Schedules to be delivered pursuant to this Agreement, and the claims filed in the Cases by other parties, which approval shall be at Buyer's sole discretion; provided, that Buyer shall be deemed to have approved each of the foregoing, if Buyer has not objected to the same within seven (7) business days after delivery of same to Buyer or the filing of the same with the Bankruptcy Court.

8.7 Principal Stockholders. Thomas J. Humphreys, Derrick Humphreys and Joe Oblas have executed a non-compete and confidentiality agreement as mutually agreed with Buyer.

8.8 Consents and Approvals. All necessary consents of, and filings with, any governmental authority or agency relating to the consummation of the transactions contemplated hereby shall have been obtained and made.

8.9 Employment Agreements. The following employees of Sellers shall have executed an Employment Agreement with Buyer, in a form and substance mutually agreeable to such employees and Buyer: Larry Rezendes, Jim Cary, and Will Glennie.

8.10 Bankruptcy Court Approval. The Bankruptcy Court shall have made and entered its order approving this Agreement and the transactions contemplated hereby, which order shall be in the form as set forth in Schedule 8.10 hereto, and which order shall be final and non-appealable, unless Buyer, in its sole discretion, waives the condition of a final, non-appealable order..

## 9. ADDITIONAL COVENANTS.

9.1 Change of Name. Each Seller shall, effective immediately following the Closing, change its name to a name not using "Juice Stop" or "Juice Kitchen," and otherwise reasonably satisfactory to Lenders and Buyer. Sellers acknowledge and agree that the Buyer will acquire as part of the Acquired Assets the exclusive use of the name "Juice Stop," and that no Seller will use any such name or any similar name subsequent to the Closing.

9.2 Further Assurances. From time to time after the Closing, at the request of Buyer and without further consideration, each Seller shall execute and deliver any further instruments and take such other action as may be reasonably requested by Buyer to vest or confirm in Buyer title to the Assets or otherwise carry out the transactions contemplated hereby.

9.3 Books and Records. Buyer shall make the books and records acquired from Sellers available to Sellers and/or Seller's agents at Buyer's office during reasonable business times and upon reasonable prior notice by Sellers for their tax or other legitimate corporate use, at Sellers' sole cost and expense. Buyer agrees that it will not destroy any books and records for at least one year following the Closing.

10. TERMINATION OF AGREEMENT.

10.1 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by mutual consent of the parties hereto;

(b) by the Lenders or Buyer if the purchase and sale of the Acquired Assets shall not have been consummated on or prior to March 31, 1999 or such later date, if any, as Lenders and Buyer shall determine in their sole discretion; provided, however, that if Lenders and Buyer determine to extend the closing date beyond March 31, 1999, Sellers shall have no further obligation to continue their business operations beyond March 31, 1999; and provided, further, that this Agreement shall be terminated if the purchase and sale of the Acquired Assets shall not have been consummated by May 1, 1999, unless Sellers, Lenders and Buyer agree, in writing, to extend the Agreement to a later date.

(c) by Lenders or Buyer if (i) there shall have been a breach of any of the covenants or agreements of any Seller hereunder which cannot be or has not been cured within 20 days (but not later than the Closing Date) after written notice to the breaching party or (ii) there shall have been any breach of any representation or warranty of either Seller contained herein or in any instrument or other document delivered by or on behalf of either Seller in connection herewith; or

(d) by Sellers if (i) there shall have been a breach of any of the covenants or agreements of Lenders and Buyer hereunder which cannot be or has not been cured within 20 days (but not later than the Closing Date) after written notice to the breaching party or (ii) there shall have been any breach of any representation or warranty of Lenders or Buyer contained herein or in any instrument or other document delivered by or on behalf of Lenders or Buyer in connection herewith.

10.2 Liabilities in Event of Termination. The provision of Section 11.6 and Section 11.13 shall survive the termination of this Agreement.

10.3 No Survival of Representations, Warranties and Covenants/Exclusive Remedy for Breach. The representations, warranties and covenants of Sellers, Lenders and Buyer made in this Agreement and in the documents and certificates delivered in connection herewith, and any liability thereon, shall not survive the Closing. The non-breaching party's sole remedy in the event of a material breach of any representations, warranties or covenants by the other party discovered prior to Closing shall be to terminate the Agreement and not close the transaction.

## 11. GENERAL.

11.1 Cooperation. Sellers, Lenders and Buyer shall each deliver or cause to be delivered to the other at the Closing, and at such other times and places as shall be reasonably agreed to, such additional instruments as the other may reasonably request for the purpose of consummating the transactions contemplated by this Agreement. Each Seller will cooperate and use its best efforts to have its officers, directors and employees cooperate with Lenders and Buyer after the Closing in furnishing information, evidence, testimony and other assistance in connection with any actions, proceedings, arrangements or disputes of any nature with respect to matters pertaining to all periods prior to the Closing.

11.2 Effect of Investigation: Best Knowledge.

(a) No investigation by the parties hereto in connection with this Agreement or otherwise shall affect the representations and warranties of the parties contained herein or in any certificate or other document delivered in connection herewith and each such representation and warranty shall survive such investigation, subject to termination upon Closing as more fully provided in Section 10.3.

(b) When a representation or warranty contained herein or in any certificate or other document delivered in connection herewith is made to the "best knowledge" of a party, such party shall be deemed to know all facts and circumstances that a reasonable review of the party's books and records would reveal.

11.3 Successors and Assigns. Except as provided in Article 12, this Agreement and the rights of Sellers may not be assigned. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their successors and permitted assigns and the heirs and legal representatives of any individual party hereto.

11.4 Entire Agreement. This Agreement (including the schedules and annexes attached hereto) and the documents and instruments delivered pursuant hereto constitute the entire agreement and understanding among Sellers, Lenders and Buyer with respect to the subject matter hereof and supersede all prior and current understandings and agreements, whether written or oral, with respect to the subject matter hereof. This Agreement may be modified or amended only by a written instrument executed by Sellers, Lenders, and Buyer.

11.5 Counterparts. This Agreement may be executed in any number of counterparts which together shall constitute one instrument. This Agreement may be executed by facsimile signature.

11.6 Expenses. Whether or not the transactions contemplated hereby are consummated, each of the parties hereto will pay the fees and expenses of their respective agents, representatives, accountants and counsel incurred in connection with this Agreement



and the transactions contemplated hereby, except to the extent contemplated in the Chapter 11 debtor in possession financing and cash collateral agreement approved by Order of the Bankruptcy Court.

- 11.7 Notices. All notices, demands or communications required or permitted hereunder shall be in writing. Any notice, demand or other communication given under this Agreement shall be deemed to be given if given in writing (including telex, telecopy or similar transmission) addressed as provided below (or at such other address as the addressee shall have specified by notice actually received by the addressor) and if either (a) actually delivered in fully legible form, to such address (evidenced in the case of a telex by receipt of the correct answerback or facsimile by electronic confirmation), (b) in the case of a letter, three days shall have elapsed after the same shall have been deposited in the United States mails, with first-class postage prepaid and registered or certified, or (c) one business day after being sent by business overnight carrier.

If to Lenders or Buyer, addressed to them at:

CapEx, LP  
1670 Broadway, Suite 3350  
Denver, CO 80202  
Attn: Evan Zucker

with a copy to:

Brownstein Hyatt Farber & Strickland, P.C.  
410 17<sup>th</sup> Street, Suite 2200  
Denver, CO 80202  
Attn: Gary Reiff  
Lawrence Bass

If to the Sellers, addressed to them at:

Juice Stop International, Inc.  
10333 East Dry Creek Road, Suite 110  
Englewood, CO 80112  
Attn: Will Glennie

with a copy to:

Holme Roberts & Owen  
1700 Lincoln St., #4100  
Denver, CO 80202-2503  
Attn: Duncan Barber  
Elizabeth Brown

- 11.8 Governing Law. This Agreement shall be construed in accordance with the laws of the State of Colorado.
- 11.9 Exercise of Rights and Remedies. No delay of or omission in the exercise of any right, power or remedy accruing to any party as a result of any breach or default by any other party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of or acquiescence in any such breach or default, or of any similar breach or default occurring later; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default occurring before or after that waiver.
- 11.10 No Third-Party Beneficiaries. This Agreement is not intended to be for the benefit of and shall not be enforceable by any person who or which is not a party hereto (or a permitted assign or successor to such party) other than persons entitled to indemnification under Section 10.
- 11.11 Reformation and Severability. In case any provision of this Agreement shall be invalid, illegal or unenforceable, it shall, to the extent possible, be modified in such manner as to be valid, legal and enforceable but so as to most nearly retain the intent of the parties, and if such modification is not possible, such provision shall be severed from this Agreement, and in either case the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.
- 11.12 Consent to Jurisdiction. SELLING PARTIES AND BUYER HEREBY IRREVOCABLY SUBMIT TO THE NONEXCLUSIVE JURISDICTION OF THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF COLORADO, FEDERAL COURTS SITUATED IN THE STATE OF COLORADO, AND THE STATE COURTS OF THE STATE OF COLORADO FOR THE PURPOSE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, AND THE SELLING PARTIES AND THE BUYER HEREBY IRREVOCABLY AGREE THAT ALL CLAIMS IN RESPECT TO SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH COURTS.

11.13. Tax Returns and Filing. At no cost to Buyer or its affiliates, Buyer and its affiliates will reasonably cooperate with Sellers and the Plan Agent appointed under Sellers' Plan of Reorganization in their efforts to file tax returns. Subject to the obligations of Buyer and its affiliates to file their own tax returns on a timely basis (which may be earlier in time than the filing of tax returns by the Sellers or Plan Agents), Buyer and its affiliates shall not adopt any tax filing position after the Effective Date of said Plan that is inconsistent with the provisions of the Plan or the tax filing position adopted by the Sellers or Plan Agent in connection with the distribution of the proceeds of the Liquidating Estate to be created under said Plan. In that connection, if Buyer and

its affiliates are required to and do file their own tax returns prior to the time that tax returns are filed by the Sellers or the Plan Agent, Buyer and its affiliates may adopt any tax filing position deemed by them to be reasonably appropriate, and they shall not be required to amend such tax returns if the Sellers or Plan Agent thereafter files a tax return that adopts a different tax filing position. If Buyer or its successors and assigns at any time receives a tax refund from the Internal Revenue Service, any foreign tax authority or any state or local tax authority attributable to any tax period ending prior to the Effective Date of said Plan (treating for this purpose the Effective Date as the last day of a tax period), Buyer shall immediately deliver the entire amount of such tax refund, net of any expenses reasonably incurred by Buyer in prosecuting such refund claim, including any interest accrued thereon, to the Plan Agent in immediately available funds by wire transfer to such account as shall be designated by the Plan Agent. Buyer shall reasonably cooperate with the Plan Agent and Sellers, and their agents and attorneys, with reasonable access to all relevant information. Buyer shall promptly execute any document or instrument reasonably requested by the Seller or Plan Agent in the prosecution, settlement, and/or compromise of any tax refund claim.

## 12. Overbid Procedures: Break up Fee

12.1 Opportunity for Overbids. Buyer recognizes and agrees that the proposed acquisition contemplated hereby shall be subject to notice to creditors and other parties in interest in the Cases, and that other parties will have an opportunity to make an offer ("Overbid") to purchase the Acquired Assets on the same terms and conditions as set forth herein (except that any third party purchaser shall be required to satisfy the Pre-Petition Loans and the Post-Petition Loans, in full, in cash, at Closing).


12.2 Sale and Overbid Procedures. In order to be considered by the Sellers and the Bankruptcy Court, any Overbid must (i) provide for the assumption of all Assumed Contracts, Assumed Leases, and Assumed Liabilities; (ii) exceed the cash portion of the purchase price (\$50,000) by not less than \$25,000; (iii) not contain any conditions to such overbidder's obligation to close the transaction other than those set forth at Sections 8.1 through 8.10 hereof; (iv) be received by counsel for Sellers by the date fixed by the Bankruptcy Court for the submission of Overbids; and (v) provide for a closing by not later than March 31, 1999. In the event that the Sellers timely receive one or more Overbids that meet the foregoing conditions, the Bankruptcy Court shall conduct an auction sale of the Acquired Assets, at which sale Buyer shall be entitled to submit overbids on its own behalf.

12.3 Breakup Fee. In the event that the Sellers accept and the Bankruptcy Court approves an Overbid, and the sale to the overbidder closes, Buyer shall be entitled to receive from the proceeds of sale, not later than 10 days following the Closing, a "breakup fee" in the amount of \$10,000 (in addition to payment in full of all amounts due under the Pre-Petition Loans and the Post-Petition Loans). Such breakup fee shall compensate Buyer for the effort and expense, including legal fees, that it has incurred and will incur in connection with the negotiation and documentation of this Agreement, including its due diligence efforts.

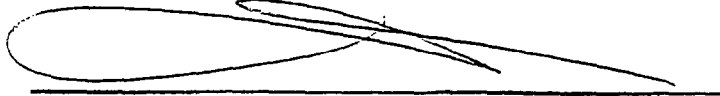
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**SELLERS:**

**JUICE STOP FRANCHISING CORPORATION**

By   
Title: CFO

**JUICE STOP INTERNATIONAL, INC.**

By   
Title: CFO

**BUYER:**

**JUICE KITCHEN, LLC**

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

**LENDERS:**

**CAPEX, L.P.**

By \_\_\_\_\_  
Title

**CRITICAL CAPITAL GROWTH FUND, L.P.**

By \_\_\_\_\_  
Title

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**SELLERS:**

**JUICE STOP FRANCHISING CORP.**


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

**JUICE STOP INTERNATIONAL, INC.**

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

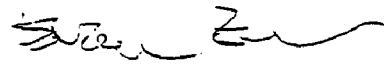
**BUYER:**

**JUICE KITCHEN, LLC**

By   
Title: MANAGER

**LENDERS:**

**CAPEX, L.P.**

By   
Title: MANAGER

**CRITICAL CAPITAL GROWTH FUND, L.P.**

By \_\_\_\_\_  
Title

## LIST OF SCHEDULES

<u>Schedule No.</u>	<u>Description</u>
Schedule 2.1(b)	Assumed Leases
Schedule 2.1(e)	Assumed Contracts
Schedule 2.1(f)	Telephone Numbers
Schedule 2.2(a)	Rejected Leases
Schedule 2.2(b)	Rejected Contracts
Schedule 2.4(a)	Cure Amounts
Schedule 2.6	Allocation of Purchase Price
Schedule 4.1	Names and Trade Names
Schedule 4.2	Subsidiaries
Schedule 4.5	Predecessors
Schedule 4.6	Accounts and Notes Receivable (as of Petition Date)
Schedule 4.7	Permits.
Schedule 4.8.1	Sellers' Real and Personal Property
Schedule 4.8.2	Encumbrances
Schedule 4.9	Liabilities and Obligations
Schedule 4.9(c)	Non-monetary Defaults (Assumed Contracts)
Schedule 4.9(d)	Exceptions to Legal, Valid and Binding Obligations (Assumed Contracts)
Schedule 4.9(e)	Notice of Intention to Cancel
Schedule 4.9(f)	Material Adverse Change
Schedule 4.10	Labor Matters
Schedule 4.11	Insurance
Schedule 4.12	Compensation
Schedule 4.13	Employee Benefit Plans
Schedule 4.14	Qualified Plans
Schedule 4.15	Litigation
Schedule 4.17	Taxes
Schedule 4.19	Material Changes
Schedule 4.20	Environmental Matters
Schedule 8.10	Bankruptcy Court Order

Schedule 2.1(b) - Leases to be Assumed

Phes 400 Ltd.  
700 Colorado Blvd.  
Unit D  
Denver CO 80206

Landlord - 7th & Colorado

Starr Realty Management  
303 East 17th Avenue  
11th Floor  
Denver CO 80203

Landlord - 4940 South Yosemite Ste E-1  
Greenwood Village 80111

Westmark Realty Advisors  
865 South Figueroa Street  
Suite 3500  
Los Angeles CA 90017

Landlord - 7545 South University Blvd.  
Unit D-2 Littleton Colorado 80112

Jordan Perlmutter & Co.  
PO Box 480070  
Denver CO 80248

Landlord - 8246 West Bowles Ave.  
Unit L Littleton CO 80122

Hawthorne Center Associates LP  
7600 West 110th Street  
Overland Park KS 66210

Landlord - 4741 West 119th Street  
Overland Park KS 66209

J.C.Nichols Company  
310 Ward Parkway  
Kansas City MO 64112

Landlord - 6974 Mission Road  
Prairie Village KS 66206

Block 93/111  
8900 Stateline Road  
Suite 333  
Leawood KS 66206

Landlord - 1111 Main Street Suite 109  
Kansas City MO 64105  
Landlord - AT&T Kansas City MO 64105

Cherry Creek Sporting Club  
500 South Cherry Street  
80222  
Glendale CO 80222

Landlord - 500 So. Cherry Street Glendale CO

Chanson LLC  
PO Box 480070  
Denver CO 80248

Landlord - Wadsworth & Bowles

Dell Financial Services  
PO Box 99200  
Chicago IL 60693

Lease on computers

Fidelity Leasing  
PO Box 8500-9805  
Philadelphia PA 19178

Lease on phones at headquarters

Mita Copystar  
PO Box 3083  
Cedar Rapids IA 52406

Lease on copier/fax

Lewan & Associates  
1400 South Colorado Blvd.  
Denver CO 80222

Service - copier/fax

Amex-Blackbird, LLC  
c/o Matthew D. Skeen  
Skeen & Skeen, P.C.  
1600 Broadway, Suite 2350  
Denver CO 80202

700 Colorado Blvd. store

Sanwa Leasing  
P.O.Box 7023  
Troy, MI 48007

IS Equipment



Schedule 2.1(e) - Executory Contracts to be Assumed

Hullman, Jeff  
5545 Wadsworth Bypass  
Unit C  
Arvada CO 80002  
Colorado franchise  
Store # 65

Nelson, Eric  
16748 East Smoky Hill Road  
Unit 98  
Aurora CO 80015  
Colorado franchise  
Store # 69

Bitz, Gary  
6554 South Parker Road  
Suite 110  
Aurora CO 80016  
Colorado franchise  
Store # 76

Van Meter, David  
2525 Arapahoe  
Suite A-5  
Boulder CO 80502  
Colorado franchise  
Store # 75

Miller, Linda  
7400 East Hampden  
Unit 40  
Denver CO 80231  
Colorado franchise  
Store # 32

Japha, Dan  
2027 South University Blvd.  
Denver CO 80210  
Colorado franchise  
Store # 34

Nelson, Eric  
1207 East 9th Avenue  
Denver CO 80218  
Colorado franchise  
Store # 69

Rhoads, Tom  
1101 West Drake Road  
Unit A2  
Fort Collins CO 80526  
Colorado franchise  
Store # 55

Eason, Diana  
9555 South University  
Suite 103  
Highlands Ranch CO 80126  
Colorado franchise  
Store # 78

Eason, Diana  
9249 South Broadway  
Unit 300  
Highlands Ranch CO 80126

Colorado franchise  
Store # 67

Hallman Juice, LLC  
8353 South Willow  
Unit D  
Littleton CO 80124

Colorado franchise  
Store # 44

Ferris, Skip  
1 Grigg Street  
Greenwich CT 06830

Connecticut franchise  
Store # 58

Doka, Andy  
3045 Monsarrat Avenue  
Honolulu HI 96815

Hawaii franchise  
Store # 25 and 138

Parsons, Brad  
920 East Broadway  
Columbia MO 65201

Missouri franchise  
Store # 63

Holtz, Nakia  
6900 "O" Street  
Suite 109  
Lincoln NE 68505

Nebraska franchise  
Store # 133

Parsons, Brad  
311 West Boyde Street  
Norman OK 73069

Oklahoma franchise  
Store # 64

Santos, Joe  
5110 McPherson Road  
Suite 2  
Laredo TX 78041

Texas franchise  
Store # 136

SCHEDULE 2.4(a) - CURE AMOUNTS

NONRESIDENTIAL REAL PROPERTY LEASES

<u>Landlord</u>	<u>Facility</u>	<u>Pre-Petition Cure Amt</u>	<u>Post-Petition ***</u>	<u>Total**</u>
Chandelle Development	700 Colorado Blvd.	-0-		\$ -0-
Greenwood Associates	Yosemite&Bellevue	-0-		-0-
Cherrywood	Dry Creek	3,256		3,256
Chanson Plaza	Wads/Bowles	-0-		-0-
Hawthorne Center	Hawthorn Plaza	2,505	166*	2,772
JC Nichois Co	Prairie Village	1,457		1,457
Block 93/111, LP	Town Pavillion	674		674
Sporting Club	Sporting Club	2,434		<u>2,434<sup>1</sup></u>
				10,593

PERSONAL PROPERTY LEASES

<u>Lessor</u>	<u>Pre-Petition Cure Amt</u>	<u>Post-Petition Amt</u>	<u>Total</u>
Deil Corp.	395		395
Fidelity Leasing (2 Leases)	752	1,908	2,303
Sanwa Leasing (3 Leases)	2,855		2,855
Mira Copy Star	1,103		<u>1,103</u>
			6,656

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\*Interest claimed by landlord on post-petition rent payments

\*\*These amounts do not include any attorneys' fees or interest which will be claimed in connection with necessary cure amounts

\*\*\*This figure does not include all amounts due post-petition. Amounts are included for only those entities that filed a proof of claim or submitted a document in writing specifying the amounts due post-petition.

Schedule 2.1(b) - Leases to be Assumed

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Denver CO 80206

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11th Floor  
Denver CO 80203

Landlord - 4940 South Yosemite Ste E-1  
Greenwood Village 80111

Westmark Realty Advisors  
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Suite 3500  
Los Angeles CA 90017

Landlord - 7545 South University Blvd.  
Unit D-2 Littleton Colorado 80112

Jordan Perlmutter & Co.  
PO Box 480070  
Denver CO 80248

Landlord - 8246 West Bowles Ave.  
Unit L Littleton CO 80122

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7600 West 110th Street  
Overland Park KS 66210

Landlord - 4741 West 119th Street  
Overland Park KS 66209

J.C.Nichols Company  
310 Ward Parkway  
Kansas City MO 64112

Landlord - 6974 Mission Road  
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Block 93/111  
8900 Stateline Road  
Suite 333  
Leawood KS 66206

Landlord - 1111 Main Street Suite 109  
Kansas City MO 64105  
Landlord - AT&T Kansas City MO 64105

Cherry Creek Sporting Club  
500 South Cherry Street  
80222  
Glendale CO 80222

Landlord - 500 So. Cherry Street Glendale CO

Chanson LLC  
PO Box 480070  
Denver CO 80248

Landlord - Wadsworth & Bowles

EXHIBIT A

Dell Financial Services  
PO Box 99200  
Chicago IL 60693

Lease on computers

Fidelity Leasing  
PO Box 8500-9805  
Philadelphia PA 19178

Lease on phones at headquarters

Mita Copystar  
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Van Meter, David  
2525 Arapahoe  
Suite A-5  
Boulder CO 80302  
Colorado franchise  
Store # 75

Miller, Linda  
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Denver CO 80231  
Colorado franchise  
Store # 32

Japha, Dan  
2027 South University Blvd.  
Denver CO 80210  
Colorado franchise  
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Nelson, Eric  
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Denver CO 80218  
Colorado franchise  
Store # 69

Rhoads, Tom  
1101 West Drake Road  
Unit A2  
Fort Collins CO 80526  
Colorado franchise  
Store # 55

Eason, Diana  
9555 South University  
Suite 103  
Highlands Ranch CO 80126  
Colorado franchise  
Store # 78

EXHIBIT B

#476697

TRADEMARK  
REEL: 002069 FRAME: 0341

Eason, Diana  
9249 South Broadway  
Unit 300  
Highlands Ranch CO 80126

Colorado franchise  
Store # 67

Hallman Juice, LLC  
8353 South Willow  
Unit D  
Littleton CO 80124

Colorado franchise  
Store # 44

Ferris, Skip  
1 Grigg Street  
Greenwich CT 06830

Connecticut franchise  
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Doka, Andy  
3045 Monsarrat Avenue  
Honolulu HI 96815

Hawaii franchise  
Store # 25 and 138

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Missouri franchise  
Store # 63

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6900 "O" Street  
Suite 109  
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Nebraska franchise  
Store # 133

Parsons, Brad  
311 West Boyde Street  
Norman OK 73069

Oklahoma franchise  
Store # 64

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Suite 2  
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Texas franchise  
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EXHIBIT C



ASSET PURCHASE AGREEMENT

by and among

JUICE STOP INTERNATIONAL, INC, a Delaware corporation (Seller),

JUICE STOP FRANCHISING CORP., a California corporation (Seller),

JUICE KITCHEN, LLC, a Colorado limited liability company (Buyer),

CAPEX, LP, a Colorado limited liability company (Lender), and

CRITICAL CAPITAL GROWTH FUND, LP, a Delaware limited partnership (Lender)

As of  
February \_\_, 1999