

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM430320

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	Bankruptcy Sale Order dated 2/22/2012 (releasing all prior liens, claims, encumbrances and other interests)

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Real Mex Restaurants, Inc., et al., pursuant to the authority granted under the Bankruptcy Sale Order dated 2/22/2012		02/22/2012	Corporation:

RECEIVING PARTY DATA

Name:	RM Opco, LLC (together with its Affiliates and Subsidiaries and any successor or assigns)
Street Address:	5660 Katella Ave.
Internal Address:	Suite 100
City:	Cypress
State/Country:	CALIFORNIA
Postal Code:	90630
Entity Type:	Limited Liability Company: DELAWARE

PROPERTY NUMBERS Total: 38

Property Type	Number	Word Mark
Serial Number:	77427275	MUCHO MACHO PLATTERS
Serial Number:	75874806	SI WE CAN!
Serial Number:	75701324	SEA OF CORTEZ
Serial Number:	75033506	MARGARITA MONDAYS
Serial Number:	75000279	ACAPULCO MEXICAN RESTAURANT Y CANTINA
Serial Number:	73527093	ACAPULCO
Serial Number:	78647057	CHEVYS FRESH MEX
Serial Number:	75627077	FRESH MEX TEQUINI
Serial Number:	75603748	CHEVYS EXPRESS MEX
Serial Number:	75374284	CHEVYS FRESH MEX
Serial Number:	75369547	CHEVYS EXPRESS MEX
Serial Number:	75064703	CHEVYS FRESH MEX
Serial Number:	74643094	EL MACHINO
Serial Number:	74213180	FRESH MEX
Serial Number:	74026374	CHEVYS MEXICAN RESTAURANT

TRADEMARK

Property Type	Number	Word Mark
Serial Number:	73821940	FRESH MEX
Serial Number:	73613007	FAMOUS FOR FAJITAS AND FIESTAS
Serial Number:	77394104	SINIGUAL
Serial Number:	78705383	BIG PARTY LITTLE BULL
Serial Number:	75752557	
Serial Number:	75751775	EL TORITO EST. 1954
Serial Number:	75751522	EL TORITO
Serial Number:	75751518	
Serial Number:	75751521	EL TORITO EST. 1954
Serial Number:	75753839	EL TORITO
Serial Number:	75573560	WHO-SONG & LARRY'S
Serial Number:	75411514	EL TORITO GRILL
Serial Number:	75399028	EL TORITO
Serial Number:	75398777	EL TORITO
Serial Number:	75381497	EL TORITO
Serial Number:	74608368	EL TORITO
Serial Number:	74228551	FAJITAS CHIQUITAS
Serial Number:	74213198	CASA GALLARDO
Serial Number:	74045254	THE ORIGINAL EL TORITO RESTAURANT EST.19
Serial Number:	73341704	CASA GALLARDO MEXICAN RESTAURANT & BAR
Serial Number:	72386693	EL TORITO
Serial Number:	78695332	REAL MEX RESTAURANTS
Serial Number:	78695277	REAL MEX RESTAURANTS

CORRESPONDENCE DATA

Fax Number: 2149813400

Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.

Phone: 214-981-3483

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Correspondent Name: DUSAN CLARK, ESQ.

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Address Line 2: 2021 MCKINNEY AVE., SUITE 2000

Address Line 4: DALLAS, TEXAS 75201

ATTORNEY DOCKET NUMBER: 33868-30340

NAME OF SUBMITTER: Dusan Clark

SIGNATURE: /Dusan Clark/

DATE SIGNED: 06/07/2017

Total Attachments: 55

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

In re:)	Chapter 11
)	
REAL MEX RESTAURANTS, INC., <i>et al.</i> ,)	Case No. 11-13122 (BLS)
)	
)	(Jointly Administered)
Debtors. ¹)	
)	Related Docket No. 685

**ORDER UNDER 11 U.S.C. §§ 105(a), 363 AND 365 AND FED. R. BANKR. P. 2002,
6004 AND 6006 AUTHORIZING AND APPROVING: (I) SALE OF ASSETS FREE
AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS;
AND (II) ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS
AND UNEXPIRED LEASES TO SUCCESSFUL BIDDER(S) AT AUCTION**

Upon the motion (the "Motion") of the above-captioned debtors and debtors in possession (the "Debtors") for entry of an order authorizing and approving the proposed sale of substantially all of the Debtors' assets (the "Purchased Assets") to RM Opco, LLC (together with its Affiliates and Subsidiaries and any successors or assigns, the "Purchaser") pursuant to that certain Asset Purchase Agreement, a copy of which is attached hereto as Exhibit A and incorporated herein (as amended, the "Purchase Agreement");² and the Court having considered the Motion and the Purchase Agreement, objections thereto, the statements of counsel and any testimony or offer of proof as to testimony on the record at the hearing on February 10, 2012 (the "Sale Hearing"), at which time all interested parties were offered an opportunity to be heard with

¹ The Debtors in these chapter 11 cases, along with the last four digits of each of the Debtors' federal tax identification numbers, are: Real Mex Restaurants, Inc. (2902); RM Restaurant Holding Corp. (2217); Acapulco Mark Corp. (3570); Acapulco Restaurant of Downey, Inc. (2910); Acapulco Restaurant of Moreno Valley, Inc. (4606); Acapulco Restaurant of Ventura, Inc. (3626); Acapulco Restaurant of Westwood, Inc. (1162); Acapulco Restaurants, Inc. (4897); ALA Design, Inc. (8584); Chevys Restaurants, LLC (2992); CKR Acquisition Corp. (8287); El Paso Cantina, Inc. (0112); El Torito Franchising Company (2754); El Torito Restaurants, Inc. (7059); Murray Pacific (1596); Real Mex Foods, Inc. (8585); and TARV, Inc. (8081). The Debtors' headquarters and mailing address is: 5660 Katella Avenue, Suite 100, Cypress, CA 90630.

² Capitalized terms used but not defined herein shall have the meaning ascribed to the Purchase Agreement.

respect to the Motion; and the Court having considered the Declaration of Nicole Fry in Support of Debtors' Motion For Approval of Sale of Substantially All of the Debtors' Assets [Docket No. 865], the Declaration of Marc A. Bilbao in Support of Debtors' Motion For Approval of Sale of Substantially All of the Debtors' Assets [Docket No. 863], and the Supplemental Declaration of Marc A. Bilbao in Support of Debtors' Motion for Approval of Sale of Substantially All of the Debtors' Assets [Docket No. 885] (collectively, the "Sale Declarations") filed by the Debtors in support of the Motion and the other evidence provided to the Court at the Sale Hearing; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their bankruptcy estates, their creditors and other parties in interest; and after due deliberation and good cause appearing therefor;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS:

- A. Jurisdiction and Venue. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157(b)(1) and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). Venue of these cases and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.
- B. Notice. As evidenced by the affidavits of service filed with this Court and based upon the representations of counsel at the Sale Hearing: (i) due, proper, timely, adequate and sufficient notice of the Bid Procedures, Auction and Sale Hearing was published in the Wall Street Journal [Docket No. 825]; (ii) due, proper, timely, adequate and sufficient notice of the Motion, the Auction, the Sale Hearing and the transactions contemplated in the Purchase Agreement and the Ancillary Agreements (collectively, the "Transaction") including the assumption and assignment of the Purchased Contracts and Cure Amounts with respect thereto, has been provided in accordance with Bankruptcy Code sections 105(a), 363 and 365 and

Bankruptcy Rules 2002, 6004, 6006 and 9014 [Docket Nos. 444, 678, 723, 781, 827]; (iii) it appearing that no other or further notice need be provided; (iv) such notice and opportunity to be heard was and is good, sufficient and appropriate under the circumstances; and (v) no other or further notice of the Motion, the Auction, the Sale Hearing, the Purchase Agreement or the Transaction is required.

C. Opportunity to Object. A reasonable opportunity to object and to be heard with respect to the Motion has been given, in light of the circumstances, to all interested persons and entities, including the following: (i) the U.S. Trustee; (ii) counsel to the Committee; (iii) General Electric Capital Corporation (the "DIP Agent"), administrative and collateral agent under the DIP Facility, and the lenders party to the DIP Facility (as defined in the DIP Order); (iv) the agents and the indenture trustees for the Debtors' various prepetition secured and unsecured lenders; (v) all entities known to have expressed an interest in acquiring any of the Purchased Assets; (vi) all parties known to be asserting a lien on any of the Debtors' assets; (vii) all known vendors, suppliers, lenders, contract, license and lease Counter-Parties (as defined below); (viii) the United States Attorney's office; (ix) all state attorneys general in states in which the Debtors do business; (x) various federal and state agencies and authorities asserting jurisdiction over the Purchased Assets, including the Internal Revenue Service; (xi) all federal, state and local taxing authorities with jurisdiction over the Debtors' business; (xii) all regulatory authorities that have a reasonably known interest in the relief requested in the Motion; (xiii) all known creditors of the Debtors; and (xiv) all other parties that have filed a notice of appearance and demand for service of papers in these bankruptcy cases under Bankruptcy Rule 9010(b) as of the date of entry of the Bid Procedures Order.

D. Bidding Procedures Order. Following a duly noticed motion by the Debtors, the Court entered the Bidding Procedures Order on November 9, 2011 (the "Bid Procedures Order") [Docket No. 393] pursuant to which the Court approved, among other things, (i) the Bid Procedures, (ii) procedures related to cure payments payable in connection with the assumption and assignment of executory contracts and unexpired leases ("Cure Procedures"), (iii) procedures related to adequate assurance of future performance ("Adequate Assurance Procedures"), (iv) the form and manner of notice of the Auction, the Sale and the Sale Hearing. Pursuant to subsequent scheduling [Docket Nos. 723, 781], the Bankruptcy Court (i) set January 27, 2012 at 4 p.m. (ET) as the deadline for Qualified Bidders (as defined in the Bid Procedures Order) to submit bids for the Purchased Assets (the "Bid Deadline"), (ii) set February 2, 2012 at 10:00 am (PT) as the date to conduct an Auction of the Purchased Assets, and (iii) set February 10, 2012 at 10:00 a.m. (ET) as the time and date for the Sale Hearing.

E. Sale Motion and Submission of Proposed Asset Purchase Agreement. On December 30, 2011, the Debtors moved for authority to enter into an asset purchase agreement with the Successful Bidder at the Auction of the Purchased Assets, and to sell the Purchased Assets free and clear of liens, claims, encumbrances, and interests. On February 9, 2012, the Debtors submitted the proposed form of the Purchase Agreement, and on February 8, 2012, the Debtors submitted the proposed form of this Order, each as a supplement to the Motion.

F. Prepetition Second Lien Obligations. The Debtors and U.S. Bank, National Association, as successor trustee and collateral agent (the "Prepetition Second Lien Trustee"), entered into that certain Indenture, dated as of July 7, 2009 (as amended, restated or supplemented (the "Prepetition Second Lien Indenture") pursuant to which Real Mex Restaurants, Inc. ("Real Mex") issued to certain holders (collectively, the "Prepetition Second

Lien Secured Noteholders” and, together with the Prepetition Second Lien Trustee, the “Prepetition Second Lien Secured Parties”) 14% senior secured notes (the “Notes”) in an aggregate original principal amount of \$130 million (guaranteed by the other Debtors). The Debtors acknowledged in connection with the DIP Order that they unconditionally owe the Prepetition Second Lien Secured Parties without defense, counterclaim, or offset of any kind, the aggregate principal amount of not less than \$134,000,000 (the “Prepetition Second Lien Obligations”).

G. Prepetition Second Liens. The Debtors acknowledged in connection with the DIP Order that the Prepetition Second Lien Obligations are secured by valid, binding, enforceable liens granted to the Prepetition Second Lien Trustee, for the benefit of the Prepetition Second Lien Secured Parties (the “Prepetition Second Liens”), on substantially all of the Debtors’ assets (collectively, the “Prepetition Collateral”).

H. Allowed Claim and Valid Liens. No party asserted a challenge to either (i) the amount of the Prepetition Second Lien Obligations or (ii) the validity of the Prepetition Second Liens on the Prepetition Second Lien Collateral before the December 13, 2011 deadline (the “Challenge Deadline”) set by the Court in the DIP Order. See DIP Order ¶ 7. As a result, any such challenge is barred. See id.

I. Committee’s Standing Motion. Before the expiration of the Challenge Deadline, the Committee filed a motion for standing (the “Standing Motion”) [Docket No. 817] to prosecute, among other things, (i) a declaratory judgment seeking to determine the scope and perfection of the liens of the Prepetition Second Lien Trustee on certain Prepetition Collateral (the “Scope of Lien Claims”); (ii) except as set forth in the Standing Motion (defined below), to avoid and recover under section 547 of the Bankruptcy Code an interest payment of \$9.2 million

by the Debtors to the Prepetition Second Lien Trustee (the "Preference Claim"); and (iii) to recharacterize certain post-petition adequate protection payments made by the Debtors during these cases pursuant to the DIP Order as payments of principal on account of the Prepetition Second Lien Obligations (the "Adequate Protection Recharacterization Claim," and together with the Scope of Lien Claims, and the Preference Claims, the "Committee Claims").

J. Disposition of Standing Motion. A hearing (the "Standing Hearing") on the Standing Motion was held on January 17, 2012 and the Court found, among other things, that the Committee failed to "demonstrate[] that there are colorable claims and a wrongful refusal" by the Debtors to prosecute. Tr. of Jan. 17, 2011 Hearing at 71. At the Standing Hearing, the Court deferred adjudication on the disposition of the Standing Motion by order dated January 27, 2012 and ordered that the Challenge Deadline for the Committee to assert the claims described in the complaint attached to the Standing Motion was tolled "until (a) March 1, 2012, or (b) the date on which this Court enters an order that resolved such claims ..." [Docket No. 810].

K. Relief Sought by Standing Motion is Moot. The Committee Claims are rendered moot by approval of the Motion, and thus, the Standing Motion and the Committee Claims are denied with prejudice. The Challenge Period (as defined in the DIP Order) has expired as of the date of this Order.

L. Credit Bid Rights. The DIP Order expressly states that the "Second Lien Indenture Trustee ... or its assignee, designee or successor, shall have the right to 'credit bid' up to the amount of the Prepetition Second Lien Obligations during any sale of any portion of the Prepetition Collateral ... provided that ... such claim is allowed, deemed allowed or is not disallowed by order of the Court prior to the Qualified Bid Deadline." See DIP Order ¶ 5(vi). No Prepetition Second Lien Secured Noteholder objected to the inclusion of this provision in the

DIP Order. The Qualified Bid Deadline was January 27, 2012. As of that date, the Prepetition Second Lien Trustee's secured claim on account of the Prepetition Second Lien Obligations was allowed, deemed allowed and was not disallowed by order of this Court.

M. Designation of Credit Bid Rights to Purchaser. As contemplated by the DIP Order and pursuant to the Prepetition Second Lien Indenture, the Prepetition Second Lien Trustee, pursuant to the direction of the holders of approximately 85% of the outstanding principal amount of the Notes (collectively, the "Directing Noteholders"), on behalf of all Prepetition Second Lien Secured Noteholders, among other things, duly authorized, designated and vested the Purchaser with all rights, powers, and authorities to exercise on behalf of the Prepetition Second Lien Trustee the Prepetition Second Lien Trustee's right to (i) credit bid up to the full amount of the Prepetition Second Lien Secured Obligations, to the fullest extent permitted under the DIP Order, the Bid Procedures Order, the Prepetition Second Lien Indenture, section 363(k) of the Bankruptcy Code and applicable non-bankruptcy law (the "Credit Bid"), and (ii) deliver the releases and waivers set forth in section 13.11 of the Purchase Agreement.

N. Notice of the Sale to Prepetition Second Lien Secured Noteholders. The Prepetition Second Lien Trustee sent two notices to all Prepetition Second Lien Secured Noteholders informing them of, among other things, (i) the filing of the chapter 11 cases, (ii) the entry of the Bid Procedures Order, (iii) the Directing Noteholders' intention to direct the Prepetition Second Lien Trustee to designate Purchaser to Credit Bid up to the full amount of the Notes, (iv) the incurrence by the Purchaser of committed financing; (v) the structure of the Purchaser's proposed bid; (vi) the mechanism for distribution of equity interests in the Purchaser to Prepetition Second Lien Secured Noteholders; (vii) the deadline for potential bidders to submit a written offer, (viii) the date and time of the Auction, (ix) the deadline for certain

Auction related objections to the proposed sale of the Debtors' assets; (x) the date of the sale hearing; and (xi) the deadline to object to the proposed sale. No Prepetition Second Lien Secured Noteholder objected to the designation of the Purchaser by the Prepetition Second Lien Trustee to Credit Bid for the Purchased Assets, the Motion or the Transaction.

O. Purchaser's Qualified Bid. On January 27, 2012, pursuant to the Purchase Agreement, the Purchaser made a written offer for the purchase of the Purchased Assets comprised of: (i) an \$80,000,000 Credit Bid, (ii) approximately \$53,569,000 in cash (which cash component, based on subsequent revisions to the Purchaser's Bid, including the assumption of certain liabilities that otherwise would have been paid from the cash consideration, is anticipated to be approximately \$46 million at Closing), and (iii) the assumption of the Assumed Liabilities (collectively, the "Bid"). The Purchaser's Bid constitutes a "Qualified Bid" (as defined in the Bid Procedures Order). The Credit Bid component of the Bid is valid, duly authorized and proper under the Bid Procedures and sections 363(b) and 363(k) of the Bankruptcy Code, the Prepetition Second Lien Indenture and applicable law.

P. Auction. The Debtors conducted the Auction on February 3, 2012 in accordance with, and have otherwise complied in all respects with, the Bid Procedures Order. The Auction conducted pursuant to the Bid Procedures Order afforded a full and fair opportunity for any person or entity to make a higher or otherwise better offer to purchase the Purchased Assets. Other than the Purchaser, only one other entity submitted a Qualified Bid, comprised principally of approximately \$26.1 million in cash consideration, and such Qualified Bid was in an amount that would not be sufficient to satisfy the Debtors' outstanding obligations under the DIP Order. The Auction was duly noticed and conducted in a non-collusive, fair and good faith manner and a reasonable opportunity was given to any interested party to make a higher or

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

Q. Corporate Authority. The Purchased Assets constitute property of the Debtors' estates and title thereto is vested in the Debtors' estates within the meaning of section 541(a) of the Bankruptcy Code. The Debtors have all right, title and interest in the Purchased Assets required to transfer and convey the Purchased Assets to the Purchaser. The Debtors have taken all corporate or other entity action necessary to authorize and approve the Purchase Agreement and the consummation of the Transaction, and the Debtors' sale of the Purchased Assets to Purchaser has been duly and validly authorized by all necessary corporate or other entity action. The Debtors have full corporate or other entity power and authority to execute the Purchase Agreement and all other documents contemplated thereby and to consummate the Transaction. No consents or approvals, other than those expressly provided for in the Purchase Agreement, are required for the Debtors to consummate the Transaction.

R. Transaction in Best Interests. Good and sufficient reasons for approval of the Purchase Agreement and the Transaction have been demonstrated. Approval of the Motion, the Purchase Agreement and the Transaction are in the best interests of the Debtors, their estates, their creditors, including the DIP lenders and the Prepetition Second Lien Secured Parties, and other parties in interest.

S. Business Justification. The Debtors have demonstrated sound business purposes and compelling circumstances for approval of the Motion and the Transaction under

Bankruptcy Code section 363(b) outside of a plan of reorganization. Such business purposes and justifications include that: (a) commencing the bankruptcy cases and pursuing the marketing and sale process, including, but not limited to, the filing and prosecution of the Bid Procedures Motion and the Sale Motion, was necessitated by the Debtors' severe liquidity position and the absence of any pre-bankruptcy sale, financing or other out-of-court solutions; (b) since the commencement of the bankruptcy cases and throughout the sale process there has been a deterioration in the Debtors' operating performance and a decrease in the Debtors' liquidity; (c) there is substantial risk of further deterioration of the value of the Purchased Assets and the Debtors' viability as a going concern if the Transaction is not consummated promptly; (d) the Transaction presents the best opportunity for the Debtors to maximize and realize the value of the Purchased Assets on a going concern basis; (e) unless the Transaction is concluded expeditiously all creditors' recoveries are likely to be adversely affected and there is a significant risk that numerous obligations constituting administrative expenses in the Debtors' bankruptcy cases (including a significant amount of liabilities that would be assumed by the Purchaser under the Purchase Agreement) will be left unpaid; (f) no other party has made a proposal to acquire all or any of the Purchaser Assets in an amount sufficient to satisfy the Debtors' outstanding obligations under the DIP Order or in an amount approaching the cash consideration offered by the Purchaser; (g) the transaction reflected in the Purchase Agreement will provide the opportunity for continuing employment for thousands of employees at continuing locations; and (h) the Transaction resolves the need for costly and contentious litigation that would further strain if not exhaust the limited resources of the Debtors' estates.

T. Highest or Otherwise Best Offer. As demonstrated by (i) the Sale Declarations; (ii) evidence adduced at the Sale Hearing, and (iii) the representations of counsel

made on the record at the Sale Hearing, the Debtors have conducted a fair and open sale process in a manner reasonably calculated to produce the highest or otherwise best offer for the Purchased Assets in compliance with the Bid Procedures Order. The Bid Procedures were substantively and procedurally fair to all parties, were consented to by all parties in the chapter 11 cases, and were the result of intense arm's-length negotiations among the Debtors, the Committee, the holders of a majority of the Notes, the Prepetition Second Lien Trustee, and the DIP lenders. The sale process, Bid Procedures and Auction were non-collusive, duly noticed, and afforded a full, fair and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase all or any of the Purchased Assets. In connection with the Auction and sale process and in accordance with the Bid Procedures Order, the Debtors regularly and appropriately consulted with the Consultation Parties (as defined in the Bid Procedures Order). The Purchase Agreement constitutes the highest or otherwise best offer for the Purchased Assets, and will provide a significantly greater recovery for the Debtors' estates and its stakeholders than would be provided by any other available alternative. In reaching this determination, the Court has taken into account (a) the consideration to be realized directly by the Debtors' estates, (b) the indirect benefits of the Transaction for the Debtors' employees, landlords, vendors and suppliers and the public served, directly and indirectly, by the functions performed by the Debtors' employees and the business, and (c) the value of all of the assets to be transferred or otherwise dealt with in connection with the Transaction. The Debtors' determination that the Purchase Agreement constitutes the highest or otherwise best offer for the Purchased Assets is a result of due deliberation by the Debtors (including the Debtors' independent directors after substantial consultation with the Debtors' professionals and officers) and constitutes a valid and sound exercise of the Debtors' business judgment. Entry of an order

approving the Motion, the Purchase Agreement, and the Transaction is a necessary condition precedent to the Purchaser consummating the Transaction.

U. Releases and Compromises Are Fair and Equitable. The Debtors have exercised reasonable business judgment in providing releases of certain claims against the Purchaser Released Parties in section 13.11(b) of the Purchase Agreement. The releases contained in section 13.11(b) of the Purchase Agreement constitute good faith compromises and settlements of the matters covered thereby. Such compromises and settlements are (i) made in exchange for adequate consideration, (ii) in the best interests of each of the Debtors' estates, creditors, and other parties in interest, (iii) fair, equitable and reasonable, (iv) integral elements of the Transaction, and (v) otherwise approved by the Court as appropriate pursuant to applicable law.

V. Consideration. The Purchase Agreement represents a fair and reasonable offer to purchase the Purchased Assets under the circumstances of these chapter 11 cases. Among other things, the cash component of the Transaction is expected to be approximately \$46 million at Closing. The Purchaser has also agreed to assume liabilities estimated to be in excess of \$38 million. The value of any assets that do not constitute Prepetition Collateral (including, without limitation, foreign intellectual property and leasehold interests) is highly speculative, and thus, the value of the consideration offered by the Purchaser is well in excess of any conceivable value that could be attributed to whatever property may not be encumbered by the Prepetition Second Liens as of the Petition Date. This cash component and the Purchaser's agreement to assume the Assumed Liabilities are essential to provide for the satisfaction of the obligations under the DIP Order and to provide for the payment of other liabilities that would constitute

administrative expenses in the Debtors' bankruptcy cases and potentially go unsatisfied absent the Transaction.

W. Necessity of Funding. To fund the cash component of the Bid, the Directing Noteholders or their Affiliates (the "Exit Lenders") have arranged to provide financing (the "Exit Financing") to the Purchaser on terms that are fair and reasonable and secured by substantially all assets of the Purchaser, including, without limitation, all accounts, inventory, equipment, intellectual property and a pledge of the capital stock of all domestic and first-tier foreign subsidiaries of the Purchaser. Without such funding, the Purchaser would be unable to offer the Debtors the cash consideration that is necessary to provide for the satisfaction of the obligations under the DIP Order and to provide for the payment of other liabilities that would constitute administrative expenses in the Debtors' bankruptcy cases and potentially go unsatisfied absent the Transaction. In addition, the provision of this funding is a critical component of the Purchaser's showing of Adequate Assurance (as defined below). As a result, the funding provided by the Directing Noteholders or their Affiliates is necessary and integral to the Transaction and the benefits that the Transaction provides to the Debtors' estates and all parties in interest would be unavailable or materially reduced in the absence of such funding.

X. Purchaser Financing. The terms of the Exit Financing that the Purchaser is entering into, including the granting of the security interests in substantially all assets of the Purchaser, including, without limitation, all accounts, inventory, equipment, and intellectual property, a pledge of the capital stock of all domestic and first-tier foreign subsidiaries of the Purchaser, and all proceeds thereof, are fair and reasonable and necessary and integral to the Transaction.

Y. Arm's-Length Transaction.

(1) The Purchase Agreement and the Ancillary Agreements were negotiated, proposed and entered into by the Debtors and the Purchaser without collusion, in good faith and from arm's-length bargaining positions. Neither the Purchaser nor any of the Directing Noteholders is an "insider" or "affiliate" of the Debtors, as those terms are defined in Bankruptcy Code sections 101(31) and 101(2). The Debtors, the Purchaser, and the Directing Noteholders have not engaged in any conduct that would cause or permit the Purchase Agreement to be avoided under Bankruptcy Code section 363(n). Specifically, neither the Purchaser nor any of the Directing Noteholders have acted in a collusive manner with any person and the Purchase Price was not controlled by any agreement among bidders.

(2) There was no evidence of insider influence or improper conduct by the Purchaser, the Directing Noteholders, the Prepetition Second Lien Trustee, or any of their Affiliates in connection with the negotiation of the Purchase Agreement with the Debtors. The Purchaser, the Directing Noteholders, and any of their Affiliates did not offer employment to any of the Debtors' senior executives, except in connection with a short term Transition Services Agreement to be negotiated by the Debtors and the Purchaser pursuant to which the Purchaser will agree to pay the Debtors for the services of certain managers and employees employed by the Debtors on the Closing Date in the transition of the Debtors' businesses to the Purchaser pursuant to the terms of the Transition Services Agreement. There was also no evidence of fraud or collusion among the Purchaser, the Directing Noteholders, or any of their Affiliates and any other bidders for the Debtors' assets, or collusion among the Purchaser, the Directing Noteholders, or any of their Affiliates to the detriment of any other bidders. The Debtors established a due diligence room in which the information provided to the Purchaser in

connection with the negotiation of the Purchase Agreement was also provided to other potential bidders for the assets. Moreover, the Debtors established and implemented appropriate procedures to ensure that no potential bidders received any information concerning other potential bidders or the progress of the bid process until after the initial bid process had concluded.

Z. Good Faith Purchaser. Purchaser is a good faith purchaser of the Purchased Assets within the meaning of Bankruptcy Code section 363(m) and is therefore entitled to all of the protections afforded thereby. The Debtors, the Purchaser, the Directing Noteholders and the Prepetition Second Lien Trustee have proceeded in good faith in all respects in that *inter alia*: (a) the Purchaser and the Directing Noteholders recognized that the Debtors were free to deal with any other party interested in acquiring the Purchased Assets; (b) the Purchaser and the Directing Noteholders complied with the provisions of the Bid Procedures Order; (c) the Purchaser's bid was subjected to the competitive bid procedures set forth in the Bid Procedures Order; and (d) all payments to be made by the Purchaser and all other material agreements or arrangements entered into by the Purchaser, the Directing Noteholders, and the Debtors in connection with the Transaction have been disclosed.

AA. Free and Clear.

(1) The Debtors are the sole and lawful owners of the Purchased Assets, or otherwise have a valid, enforceable property interest in such assets. The transfer of the Purchased Assets to the Purchaser under the Purchase Agreement shall be a legal, valid, and effective transfer of the Purchased Assets, and will vest the Purchaser with all of the Debtors' right, title, and interest in the Purchased Assets, including, without limitation, the Purchased Contracts (including Designation Right Contracts that are subsequently designated Purchased

Contracts), free and clear of any and all liens, claims and interests (collectively "Interests"), other than Permitted Exceptions and unbilled obligations under non-residential real property leases that are Purchased Contracts (whether or not such charges accrued prior to or after the Closing Date), including but not limited to the following:

liens (including, without limitation, mechanics' materialmen's and other consensual and non-consensual liens and statutory liens), claims (as defined in Bankruptcy Code section 101(5)), encumbrances, obligations, liabilities, contractual commitments or interests of any kind or nature whatsoever, including without limitation, mortgages, leases, licenses, options, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, judgments, demands, rights of first refusal, rights of recovery, claims for reimbursement, contribution, indemnity, exoneration, products liability, alter-ego, environmental liability, employment-related liabilities (including, without limitation, wage and wage supplement liabilities, severance and other termination pay liabilities and WARN Act liability), pension liability, or tax, decrees of any court or foreign or domestic governmental entity, interests, or charges of any kind or nature, if any, including, but not limited to, any restrictions on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership, debts arising in any way in connection with any agreements, acts, or failures to act, of the Debtors or the Debtors' predecessors or Affiliates (as defined in Bankruptcy Code section 101(2)), reclamation claims, demands, guaranties, options, rights, contractual or other commitments, restrictions, and matters of any kind and nature, whether known or unknown, asserted or unasserted, choate or inchoate, filed or unfilled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of the bankruptcy case, and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under doctrines of successor liability.

The sale of the Purchased Assets shall also be free and clear of all Interests including (i) those that purport to give to any party a right or option to effect any forfeiture, modification or termination of the Debtors' interests in the Purchased Assets, or any similar rights, and (ii) those relating to taxes arising under or out of, in connection with, or in any way relating to the operation of the Debtors' business prior to the Closing Date (except to the extent such taxes constitute Permitted Exceptions). Nothing in this paragraph is intended to limit or restrict the

Purchaser's rights and obligations with respect to the Assumed Liabilities as set forth in the Purchase Agreement.

(2) The Purchaser would not have entered into the Purchase Agreement and would not consummate the Transaction, thus adversely affecting the Debtors, their estates, and their creditors, if the transfer of the Purchased Assets to the Purchaser and the assumption and assignment of the Purchased Contracts to the Purchaser were not free and clear of all Interests of any kind or nature whatsoever, or if the Purchaser would, or in the future could, be liable for any of the Interests. A sale of the Purchased Assets other than one free and clear of any Interests would adversely impact the Debtors' estates, and would yield substantially less consideration, and thus less value, for the Debtors' estates, with less certainty than the Transaction.

(3) The Purchaser will not consummate the Transaction unless the Purchase Agreement specifically provides, and the Court specifically orders, that none of the Purchaser or its Affiliates, equity security holders, managers, officers, directors, agents, counsel, advisors or representatives or the Purchased Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly, any Interest.

(4) The Debtors may transfer the Purchased Assets free and clear of any Interests of any kind or nature whatsoever because, in each case, one or more of the standards set forth in Bankruptcy Code section 363(f)(1)-(5) has been satisfied. Each entity with an Interest in the Purchased Assets to be transferred on the Closing Date: (i) has, subject to the terms and conditions of this Order, consented to the Transaction or is deemed to have consented; (ii) could be compelled in a legal or equitable proceeding to accept money satisfaction of such Interest; or (iii) otherwise falls within the provisions of Bankruptcy Code section 363(f). Except as set forth

in this Order and in the Purchase Agreement with respect to Permitted Exceptions, those holders of Interests who did not object to the Motion are deemed to have consented pursuant to Bankruptcy Code section 363(f)(2). All holders of Interests are adequately protected by having their Interests attach to the proceeds attributable to the Purchased Assets against or in which such Interests are asserted, subject to the terms of such Interests, with the same validity, force and effect, and in the same order of priority, that such Interests now have against the Purchased Assets or their proceeds, if any, subject to any rights, claims and defenses the Debtors or their estates, as applicable, may possess with respect thereto.

BB. Debtors' Liquidity Situation and the Budget. The Debtors' current liquidity situation is extremely acute. The Debtors would be unable to continue to operate in the ordinary course if they were required to pay all of their non-operating administrative expenses that have been incurred to date. In the absence of the liquidity provided pursuant to the budget attached hereto as Exhibit B (the "Budget"), the Debtors would be forced to cease operations, liquidate their assets and terminate a large number of employees. The Debtors have developed the Budget pursuant to which all of the Debtors' "operating expenses" (such as trade payables, rent, wages, etc, but excluding, among other things, stub rent associated with leases that will not be assumed and certain taxes incurred in the ordinary course of business) should continue to be paid during the period from the date of the Sale Hearing through Closing, with any such accrued and unpaid "operating expenses" as of the Closing to be assumed and paid by the Purchaser in accordance with the Purchase Agreement. The Debtors presented evidence, through their financial advisor, that they believe the sale will close, and that as a result, all such "operating expenses" incurred in the ordinary course of business will be satisfied. The Budget has been approved by the DIP Agent, the Prepetition First Lien Secured Agent and the Majority

Prepetition Second Lien Secured Noteholders (each as defined in the DIP Order) in accordance with the terms of the DIP Order. Nothing in this order is intended to preclude the Court from revisiting the allocation of fees. The Committee reserves all of its rights with respect to the "actual" and "projected amounts" of professional and restructuring fees set forth in the Budget; provided, however, this reservation of rights in no way modifies the Carve-Out (as defined in the DIP Order) or the Purchase Price, nor does it limit the Committee's right to seek a different allocation of professional fees under the Carve-Out or the Purchase Price.

CC. No Sub Rosa Plan. The Purchase Agreement and Transaction do not constitute a *sub rosa* chapter 11 plan for which approval has been sought without the protections that a disclosure statement would afford. The Purchase Agreement and the Transaction neither impermissibly restructures the rights of Debtors' creditors nor impermissibly dictates a liquidating plan for the Debtors.

DD. No Fraudulent Transfer. The Purchase Agreement was not entered into for the purpose of hindering, delaying or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession, or the District of Columbia. No Debtor nor the Purchaser is entering into the Transaction fraudulently.

EE. Not a Successor. The Purchaser (a) is not, and shall not be, considered a successor to the Debtors, (b) has not, *de facto* or otherwise, merged with or into the Debtors, (c) is not a continuation or substantial continuation of the Debtors or any enterprise of the Debtors, (d) does not have a common identity of incorporators, directors or equity holders with the Debtors, and (e) is not holding itself out to the public as a continuation of the Debtors. Except as otherwise provided in the Purchase Agreement, the (i) transfer of the Purchased Assets to the Purchaser and (ii) assumption by the Debtors and assignment to the Purchaser of the

Purchased Contracts do not and will not subject the Purchaser to any liability whatsoever with respect to the operation of the Debtors' businesses before the Closing Date or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of law or equity, including, without limitation, any theory of antitrust, successor, transferee or assignee liability. Those of the Debtors' employees who are to be employed by Purchaser pursuant to the Purchase Agreement are being hired under new employment contracts or other arrangements to be entered into or to become effective at or after the time of the Closing. Nothing in this paragraph is intended to limit or restrict the Purchaser's rights and obligations with respect to the Assumed Liabilities as set forth in the Purchase Agreement.

FF. Assumption and Assignment of Contracts and Leases

(1) The Debtors have demonstrated that it is an exercise of their sound business judgment to assume and assign the Purchased Contracts (including those contracts that are Designation Right Contracts that the Purchaser subsequently designates as Purchased Contracts) to Purchaser. The assumption and assignment of executory contracts and unexpired leases currently or subsequently designated by the Purchaser as Purchased Contracts is integral to the Purchase Agreement, is in the best interests of the Debtors and their estates, creditors and all other parties in interest, and represents a reasonable, sound, and prudent exercise of the Debtors' business judgment. With respect to the contracts (i) of counterparties who have not timely objected to the Transaction, and (ii) set forth on Exhibit C, the Purchaser has provided evidence of its ability to provide adequate assurance of future performance as contemplated under sections 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(1) of the Bankruptcy Code ("Adequate Assurance"), provided, however, the Court will continue its consideration of

issues under Section 365 and whether or not adequate assurance of future performance has been provided to the Supplemental Cure and Adequate Assurance Hearing or such other and further hearing as the Debtors, the Purchaser and the non-Debtor contract counter-parties (the "Counter-Parties") may agree, as to any contract or lease on account of which an adequate assurance objection was timely filed.

(2) The Debtors filed a *Notice of Proposed Cure Amounts to Counterparties to Executory Contracts and Unexpired Leases that may be Assumed and Assigned* (the "Cure Notice") [Docket No. 678] pursuant to which the Debtors identified the dollar amount, if any, that is necessary to be paid by the Purchaser in order to cure all defaults, as of December 31, 2011, if any, under its executory contracts and unexpired leases based on the Debtors' books and records (the "Debtor Asserted Cure Amount"). The Counter-Parties were required to file objections (a "Cure Objection"), if any, to the Debtor Asserted Cure Amount by no later than January 13, 2012. The Cure Notice expressly provided that in the absence of timely filed Cure Objection, "the Court may fix [the] Cure Amount as stated in the Cure Notice with no further notice." Pursuant to the Bid Procedures Order, Counter-Parties were also required to file objections to the Purchaser's proposed Adequate Assurance ("Adequate Assurance Objection") by no later than February 10, 2012. Counter-Parties that failed to timely file an Adequate Assurance Objection or a Cure Objection are forever barred from objecting to the assumption and assignment of contracts on the grounds of a failure to provide Adequate Assurance or to assert a cure amount different than that set forth in the Purchase Agreement.

(3) Annexed hereto as Exhibit C is a list of Assignable Contracts (i) that the Purchaser has designated as a Purchased Contract,³ (ii) for which no Cure Objection or Adequate Assurance Objection was timely filed, and (iii) the dollar amount, if any, that is necessary to be paid by the Purchaser in order to cure all defaults, if any, under such agreement (the "Cure Amount").

(4) Set forth on Schedule 2.5(b)(ii) of the Purchase Agreement is a list of Assignable Contracts that the Purchaser has designated as Designation Right Contracts. Set forth on Schedule 2.5(b)(i) of the Purchase Agreement is a list of Assignable Contracts that indicates (a) the Cure Amount for those executory contracts and leases where no Cure Objection was timely filed, and (b) the Debtor Asserted Cure Amount and cure amount asserted by the Counter-Party for those contracts and leases where a Cure Objection was timely filed.

GG. Consumer Privacy. On January 30, 2012, the Court entered an order directing the appointment of a consumer privacy ombudsman pursuant to section 332 of the Bankruptcy Code [Docket No. 819]. On February 1, 2012, The U.S. Trustee appointed Luis Salazar as the ombudsman ("Ombudsman") [Docket No. 842]. On February 8, 2012, the Ombudsman filed his report and recommendations (the "Ombudsman Report") [Docket No. 877]. The Ombudsman Report concludes, among other things, that the Purchase Agreement and the Transaction meet the requirement of section 363(b)(1) of the Bankruptcy Code, and should be approved, provided the Purchaser retains the Debtors' privacy policies as of the Petition Date with respect to personally identifiable information of customers and provides notice to those customers of their ability to opt out of having their personally identifiable information transferred to the Purchaser, all as more specifically described in the Ombudsman Report. The

³ Purchaser reserves the right, in its sole discretion, to add or remove a Purchased Contract from this list prior to Closing provided that (i) notice is provided to the applicable Counter-Party and (ii) any Cure Objection or Adequate Assurance Objection is resolved by Court order or consent.

recommendations in the Ombudsman Report are consistent with applicable law. At the Sale Hearing, the Debtors and Purchaser agreed to implement each of the recommendations contained in the Ombudsman Report applicable to a Qualified Buyer (as defined in the Ombudsman Report), and Purchaser agreed to file a certification within thirty days after closing of the Sale that such recommendations have been implemented. Accordingly, the Transaction meets the requirements of section 363(b)(1) of the Bankruptcy Code with respect to the sale of personally identifiable information.

HH. Store Closings and Employees. The Debtors have acted diligently and in good faith in connection with the previous closings of the Debtors' store locations. The Debtors also have used their best efforts to mitigate as much as possible the impact of store closings on the Debtors' employees, including, whenever possible, transferring employees to other store locations in order to maintain continuity of employment and minimize layoffs and terminations.

II. Prompt Consummation. The Transaction must be approved and consummated promptly in order to preserve the viability of the business and maximize the value of the Debtors' estates. Time is of the essence in consummating the Transaction.

JJ. Resolution of Oracle America, Inc. Objection. Oracle America, Inc. ("Oracle") filed an objection to the proposed assumption and assignment of certain agreements between the Debtors and Oracle (Docket No. 758) ("Oracle Objection"). In settlement of the Oracle Objection, the Debtors and Oracle have agreed that, (a) for sixty (60) days after entry of this Order, the Debtors may continue to use and access the Oracle software and applications subject to the terms and conditions of the underlying agreements between the Debtors and Oracle (the "Oracle Agreements"); (b) the Designation Rights Period as to any Oracle Agreement shall expire sixty (60) days after entry of this Order; and (c) the procedures set forth in Paragraph 12

in this Order shall be applicable to the assumption and assignment or rejection of any Oracle Agreements. The Oracle Objection is deemed withdrawn.

KK. Findings of Fact and Conclusions of Law. Any of the findings of fact contained herein shall constitute a finding of fact even if it is stated as a conclusion of law, and any conclusion of law contained herein shall constitute a conclusion of law even if it is stated as a finding of fact. The Court's findings shall also include any oral findings of fact and conclusions of law made by the Court during or at the conclusion of the Sale Hearing.

NOW, THEREFORE, IT IS HEREBY ORDERED, DECREED AND ADJUDGED THAT:

1. **Motion is Granted.** The Motion and the relief requested therein is GRANTED and APPROVED, as set forth herein. The Motion complies with all aspects of Local Rule 6004-1.
2. **Objections Overruled.** Any objections to the entry of this Order or the relief granted herein and requested in the Motion that have not been withdrawn, waived, settled, continued as set forth herein, or otherwise resolved pursuant to the terms hereof are denied and overruled on the merits with prejudice.
3. **Approval.** The Purchase Agreement and all of the terms and conditions thereto are hereby authorized and approved in all respects. The Debtors hereby are authorized to (i) execute the Purchase Agreement, along with any additional instruments or documents that may be reasonably necessary or appropriate to implement the Purchase Agreement, provided that such additional documents do not materially change the Purchase Agreement's terms; (ii) consummate the Transaction (including, without limitation, to convey to Purchaser any and all of the Purchased Assets intended to be conveyed) and the Closing in accordance with the terms and conditions of the Motion, the Purchase Agreement, and this Order; and (iii) take all

other and further actions as may be reasonably necessary to implement the Transaction. The Parties shall have no obligation to proceed with the Closing of the Purchase Agreement until all conditions precedent to their obligations to do so as set forth in the Purchase Agreement have been satisfied or waived. The obligations of the Purchaser under the Purchase Agreement to consummate the transactions contemplated therein at the Closing are subject to the satisfaction of the conditions precedent set forth in section 10.1 of the Purchase Agreement on the Closing Date.

4. Free and Clear.

(a) Except as otherwise provided herein or in the Purchase Agreement, the Debtors are authorized to transfer the Purchased Assets to the Purchaser and, as of the Closing Date, the Purchaser shall take title to and possession of the Purchased Assets, including, without limitation, the Purchased Contracts, free and clear of all Interests of any kind or nature whatsoever, and all such Interests shall attach to the proceeds attributable to the property against or in which such Interests are asserted, subject to the terms of such Interests, with the same validity, force and effect, and in the same order of priority that such Interests now have against the Purchased Assets or their proceeds, if any, subject to any rights, claims and defenses the Debtors or their estates, as applicable, may possess with respect thereto. For the avoidance of doubt, the sale is not free and clear of any unbilled obligations under non-residential real property leases that are Purchased Contracts (including Designation Right Contracts that are subsequently designated Purchased Contracts), including, but not limited to year-end adjustments and reconciliations regardless of whether such obligations accrued before or after the Closing Date.

(b) The provisions of this Order authorizing the sale and assignment of the Purchased Assets free and clear of Interests and the Excluded Liabilities, shall be self-executing, and neither the Debtors nor the Purchaser shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate and implement the provisions of this Order.

(c) The Motion shall be deemed to provide sufficient notice as to the sale and assignment of the Purchased Assets free and clear of all Interests and Excluded Liabilities in accordance with Rule 6004-1 of the Local Bankruptcy Rules. Following the Closing, no holder of any Interest on the Purchased Assets or other party in interest may interfere with the Purchaser's use and enjoyment of the Purchased Assets based on or related to such Interest, or any actions that the Debtors may take in their chapter 11 cases and no party may take any action to prevent, interfere with or otherwise enjoin consummation of the Transaction.

5. Valid Transfer.

(a) As of the Closing Date, the Transaction effects a legal, valid, enforceable and effective sale and transfer of the Purchased Assets to the Purchaser and shall vest the Purchaser with all right, title, and interest of the Debtors to the Purchased Assets free and clear of (i) all liens, Claims (as defined in Section 101(5) of the Bankruptcy Code), encumbrances, and Interests accruing, arising, or relating thereto any time prior to the Closing Date and (ii) any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership of the Purchased Assets. As of the Closing Date, the Transaction and the Purchase Agreement and the instruments contemplated thereby shall be enforceable against and binding upon the Purchaser and the Debtors, and shall not be subject to rejection or avoidance by the Debtors or any chapter 11 or chapter 7 trustee of the Debtors and their estates.

(b) The Purchaser is hereby authorized in connection with the consummation of the Transaction to allocate the Purchased Assets and the Purchased Contracts among its Affiliates, designees, assignees, and/or successors in a manner as it, in its sole discretion, deems appropriate and to assign, sublease, sublicense, transfer or otherwise dispose of any of the Purchased Assets or the rights under any Purchased Contract to its Affiliates, designees, assignees, and/or successors with all of the rights and protections accorded under this Order and the Purchase Agreement, and the Debtors shall cooperate with and take all actions reasonably requested by Purchaser to effectuate any of the foregoing.

6. General Assignment. On the Closing Date, this Order shall be construed as, and shall constitute for any and all purposes, a full and complete general assignment, conveyance and transfer of the Debtors' interests in the Purchased Assets or a bill of sale transferring good and marketable title in the Purchased Assets. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the Transaction.

7. Injunction. Except as otherwise provided herein or in the Purchase Agreement, all persons and entities, including, but not limited to, the Debtors' employees, former employees, all debt security holders, equity security holders, administrative agencies, governmental, tax and regulatory authorities, secretaries of state, federal, state and local officials, lenders, contract parties, lessors, parties to or beneficiaries under any benefit plan, customers, trade creditors and all other creditors, holding Interests of any kind or nature whatsoever against or in the Debtors or in the Debtors' interests in the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, known or unknown, liquidated or unliquidated, senior or subordinated), arising under or out of, in connection with, or

in any way relating to, such Purchased Assets or with respect to any Interests arising out of or related to the Transaction, shall be and hereby are forever barred, estopped and permanently enjoined from commencing, prosecuting or continuing in any manner any action or other proceeding of any kind relating to the Purchased Assets or their claims against the Debtors, the Purchaser, their respective property, their respective successors and assigns, alleged or otherwise, their respective Affiliates, the Prepetition Second Lien Trustee or such Purchased Assets. Notwithstanding the foregoing, nothing herein shall prevent the Debtors from pursuing an action against the Purchaser arising under the Purchase Agreement or limit or restrict any of the Purchaser's rights and obligations with respect to the Assumed Liabilities as set forth in the Purchase Agreement.

8. Release of Interests. Except as otherwise provided herein or in the Purchase Agreement, this Order (i) shall be effective as a determination that, on the Closing Date, all Interests of any kind or nature whatsoever existing as to the Purchased Assets before the Closing Date have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected, and (ii) shall be binding upon and shall govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Purchased Assets.

9. Direction to Release Interests. Except as otherwise provided herein or in the Purchase Agreement, on the Closing Date, the Debtors' creditors are authorized and directed to execute such documents and instruments and to take all other actions as may be reasonably necessary to document and effectuate the release of their Interests in the Purchased Assets, if any, as such Interests may have been recorded or may otherwise exist. If any such creditor fails to execute any such documents or instruments or take any such actions, the Purchaser is authorized to execute such documents and instruments and to take such actions on behalf of the creditor so as to document the release of such Interests, and all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Purchased Assets are ordered and directed to accept such documents, instruments and actions so as to release the Interests and to reflect that release on their records.

10. No Successor Liability.

(a) To the extent permitted under applicable law, the Purchaser, its Affiliates, successors and assigns shall not be deemed, as a result of any action taken in connection with the transfer of the Purchased Assets, to (i) be a successor to the Debtors or their estates, (ii) have, *de facto* or otherwise, merged or consolidated with or into the Debtors or their estates, or (iii) be a continuation or substantial continuation of the Debtors or any enterprise of the Debtors, and the Purchaser shall have no successor or vicarious liability of any kind or character, including, but not limited to, under any theory of antitrust, environmental, successor,

assignee or transferee liability, labor and employment law, WARN Act, *de facto* merger or substantial continuity, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether asserted or unasserted, fixed or contingent, liquidated or unliquidated with respect to the Debtors or any obligations of the Debtors arising prior to the Closing Date, including, but not limited to, liabilities on account of any taxes or other government fees, contributions or surcharges arising, accruing or payable under, out of, in connection with, or in any way relating to, the operation of the Purchased Assets prior to the Closing Date; provided, that, nothing herein limits or restricts the Purchaser's rights and obligations with respect to the Assumed Liabilities as set forth in the Purchase Agreement. Except as otherwise provided herein or in the Purchase Agreement, the transfer of the Purchased Assets to the Purchaser pursuant to the Purchase Agreement shall not result in the Purchaser, its Affiliates, successors, assigns, members, or shareholders, or the Purchased Assets, having any liability or responsibility for, or being required to satisfy in any manner, whether in law or in equity, whether by payment, setoff or otherwise, directly or indirectly, (i) any claim against the Debtors or against any insider of the Debtors, or (ii) any Interest. In the event that Purchaser elects to be treated as a successor employer under section 3121(a)(1) of the Internal Revenue Code, or makes an election to assume, on an employee by employee basis, immigration-related liabilities with respect to former employees of the Debtors hired by the Purchaser, the Purchaser shall not by reason of any such election be deemed to have assumed any other liabilities or to be a successor for any other purpose. The Purchaser has given substantial consideration under the Purchase Agreement to the Debtors' estates. The consideration given by the Purchaser shall constitute valid and valuable consideration for the releases of any potential claims of successor liability of the Purchaser,

which releases shall be deemed to have been given in favor of the Purchaser by all holders of Interests against the Debtors or the Purchased Assets.

(b) Upon the Closing, and except as otherwise provided herein or as otherwise expressly provided in the Purchase Agreement with respect to Assumed Liabilities, the Purchaser shall not be liable for any claims against, and liabilities and obligations of, the Debtors or any of the Debtors' predecessors or Affiliates. Without limiting the generality of the foregoing, (i) other than as specifically set forth herein and in the Purchase Agreement, the Purchaser shall have no liability or obligation (x) under or in respect of any claims or liabilities under contracts that are not Purchased Contracts, (y) to pay wages, vacation pay, bonuses, severance pay, benefits (including, without limitation, contributions or payments on account of any under-funding with respect to any pension plans), WARN Act liability, or any other payment to employees of the Debtors, or (z) in respect of any collective bargaining agreement, employee pension plan, employee health plan, employee retention program, employee incentive program or any other similar agreement, plan or program to which any Debtors are a party (including, without limitation, liabilities or obligations arising from or related to the rejection or other termination of any such plan, program agreement or benefit); and (ii) Purchaser shall in no way be deemed a party to or assignee of any such employee benefit, agreement, plan or program, and all parties to any such employee benefit, agreement, plan or program are enjoined from asserting against Purchaser any Claims arising from or relating to such employee benefit, agreement, plan or program.

11. Assumption and Assignment of Purchased Contracts

(a) Subject to and conditioned upon the Closing and the payment of the applicable Cure Amounts, and the terms of this Order, the Debtors' assumption and

assignment of the Purchased Contracts listed on Exhibit C hereto by the Purchaser free and clear of all Interests is approved, and the requirements of Bankruptcy Code sections 365(b) and 365(f) with respect thereto hereby are deemed satisfied. Each Purchased Contract set forth on Exhibit C shall be transferred to, and remain in full force and effect for the benefit of, the Purchaser in accordance with their respective terms, notwithstanding any provision in any such agreement that prohibits, restricts or conditions such assignment or transfer. Each Counter-Party to a Purchased Contract on Exhibit C is forever barred, estopped, and enjoined from raising or asserting against the Debtors and their estates, or the Purchaser and any of its Affiliates, or the property of each, including, without limitation, the Purchased Assets, (i) any fee, default, breach, claim, pecuniary loss, liability or obligation (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinate) arising under or related to such Purchased Contract on Exhibit C existing as of the Closing Date or arising by reason of the Closing, or (ii) any objection to the assumption and assignment of such Purchased Contract on Exhibit C.

(b) There shall be no accelerations, assignment fees, modifications, increases (including advertising rates) or any other fees charged to the Purchaser or the Debtors as a result of the assumption and assignment of any Purchased Contract on Exhibit C assumed and assigned pursuant to this Order. Any provisions in any Purchased Contract on Exhibit C that prohibit or condition the assignment of such agreement or allow the Counter-Party to such agreement to terminate, recapture, impose any penalty, condition on renewal or extension or modify any term or condition upon the assignment of such agreement are either deemed satisfied or constitute unenforceable anti-assignment provisions that are void and of no force or effect but

only in connection with the assignment of the Purchased Contract pursuant to the terms of this Order.

(c) Upon the Closing and the payment of the relevant Cure Amounts, the Purchaser shall be deemed to be substituted for each relevant Debtor as a party to each Purchased Contract, and the Debtors and their estates shall be relieved from any liability for breach of such contracts occurring after the Closing Date. The failure of the Debtors or the Purchaser to enforce at any time one or more terms or conditions of any Purchased Contract shall not be a waiver of such terms or conditions or of the right of the Debtors or the Purchaser, as the case may be, to enforce every term and condition of such contracts. The validity of the assumption and assignment of the Purchased Contracts to the Purchaser shall not be affected by any existing dispute between any of the Debtors and any Counter-Party to such Purchased Contract. Any party that may have had the right to consent to the assignment of any Purchased Contract is deemed to have consented for the purposes of section 365(e)(2)(A)(ii) of the Bankruptcy Code.

12. Designation Right Contracts.

(a) Subject to the conditions set forth in the Purchase Agreement and without further Court order, the Purchaser shall have the right during the applicable Designation Rights Period to provide a written notice to the Debtors requesting (x) assumption and assignment of any Assignable Contract, or (y) assumption and assignment of any Assignable Contract not designated by Purchaser either as a Purchased Contract on Exhibit C, or an Excluded Contract prior to Closing (collectively, "Designation Right Contracts") or (z) the rejection of any Designation Right Contract. Upon the filing with the Court of a "Rejection Notice of Designation Right Contract," in the form attached hereto as Exhibit D (the "Rejection

Notice"), the Designation Right Contract that is listed in a Rejection Notice shall be deemed rejected upon the applicable rejection Effective Date (the "Rejection Effective Date").

(i) Uncontested Rejection. Without further order of this Court and subject to compliance with the Purchase Agreement, the Purchaser may direct the Debtors to reject any Designation Right Contract for which no Cure Objection and no Adequate Assurance Objection was timely filed upon the earlier of (x) the date of filing of such Rejection Notice on the Bankruptcy Court's docket or (y) for non-residential real property leases, the date that the property is vacated and surrendered to the Counter-Party. Neither the Purchaser nor the Debtors shall be liable for any administrative expenses or other claim incurred after the Rejection Effective Date for a Designation Right Contract that has been listed in a Rejection Notice.

(ii) Contested Rejection. During the Designation Rights Period any Designation Right Contract for which either (x) a Cure Objection was timely filed and/or (y) an Adequate Assurance Objection was timely filed, may be rejected by the Debtors as directed by the Purchaser in accordance with the following procedures:

(A) Rejection Notice. The Debtors will file a Rejection Notice to reject a Designation Right Contract pursuant to section 365 of the Bankruptcy Code, which Rejection Notice shall set forth, among other things: (i) the Designation Right Contract(s) to be rejected and (x) the names and addresses of the counterparties to such Agreement(s), and (y) the Rejection Effective Date for each such Designation Right Contract(s), which date (1) may not be before the date of service of the Rejection Notice, and (2) in the case of an unexpired lease of nonresidential real property (the "Leased Premises"), shall be the date that the Debtors provide written notice of their unequivocal surrender of such Leased Premises to the respective landlord and return, as applicable, the keys, key codes and/or alarm codes to the landlord (the "Surrender

Date"); provided that no request to reject a lease of non-residential real property may be withdrawn from a Rejection Notice after the Surrender Date absent the consent of the affected landlord; (ii) a general description of the property to be abandoned with respect to any such Designation Right Contract on the Rejection Effective Date and the name and address of any third party equipment or personal property lessors with a known interest in the property to be abandoned; and (iii) the deadlines and procedures for filing objections to the Rejection Notice (as set forth below). The Rejection Notice shall also include a copy of the proposed form of order the Debtors intend to submit with respect to the requested rejection, substantially in the form annexed hereto as Exhibit E.

(B) Service of the Rejection Notice. The Debtors will serve the Rejection Notice (i) by overnight mail service upon (a) the Designation Right Contract counterparties or landlords affected by the Rejection Notice and by email or facsimile upon their counsel, if known, and (b) any third party equipment or personal property lessor with an interest in any property to be abandoned and their counsel, if known; and (ii) by email or facsimile upon (or by first class mail service in the event that email or facsimile contact information is not readily available): (a) the United States Trustee; (b) counsel to the Purchaser; and (c) counsel to the Committee.

(C) Objection Procedures. Parties objecting to a proposed rejection must file and serve a written objection so that such objection is filed with the Court and is actually received by the following parties (collectively, the "Objection Service Parties") no later than ten (10) days after the date the Debtors serve the relevant Rejection Notice: (a) counsel to the Debtors; (b) the United States Trustee; (c) counsel to the Purchaser; (d) counsel to Committee; (e) the Designation Right Contract counterparty or landlord affected by the

Rejection Notice or its counsel, if known; and (f) any third party equipment or personal property lessor identified in the Rejection Notice.

(D) Certificate of No Objection. If an objection to the rejection of any Designation Right Contract(s) is/are not timely filed, the Debtors shall file with the Court a certificate of no objection, with a proposed order rejecting such Designation Right Contract(s) with the Rejection Effective Date to be set no sooner than the later of (i) 10 days after service of the Rejection Notice; (ii) the Surrender Date; or (iii) such other date to which the Debtors and the counterparty or counterparties to such Designation Right Contract(s) have agreed.

(E) Unresolved Objections. If an objection to the rejection of any Designation Right Contract(s) is/are timely filed and not withdrawn or resolved, the Debtors shall file a notice for a hearing to consider the objection for the Designation Right Contract(s) to which such objection relates. If such objection is overruled or withdrawn, such Designation Right Contract(s) shall be rejected with the Rejection Effective Date to be set no sooner than the later of (i) 10 days after service of the Rejection Notice notwithstanding any extension of the objection deadline beyond such date pursuant to Bankruptcy Rule 9006; (ii) the Surrender Date; (iii) such other date to which the Debtors and the counterparty or counterparties to such Designation Right Contract(s) have agreed as set forth in the Rejection Notice or as otherwise ordered by the Court.

(iii) Abandonment of Property. The Debtors are authorized to abandon any personal property that may be located on Leased Premises on the Rejection Effective Date (the "Abandoned Personal Property"); and following the Rejection Effective Date, the landlord Counter-Party may dispose of the Abandoned Personal Property without liability to any party.

(iv) If an affected landlord or counterparty or any other party in interest (the "Rejection Claimant") asserts a claim or claims against any Debtor arising from the rejection of a Designation Right Contract, such Rejection Claimant shall submit a proof of claim on or before the date that is thirty (30) days after notice of entry of the order rejecting the Designation Right Contract. If a Rejection Claimant does not timely file such proof of claim, such claimant shall be forever barred from asserting a claim for such rejection damages.

(v) Uncontested Assignment. Without further order of this Court and subject to compliance with the Purchase Agreement, the Purchaser may direct the Debtors to assume and assign any Designation Right Contract during the Designation Rights Period. Any Designation Right Contract for which: (x) no Cure Objection and no Adequate Assurance Objection was timely filed or (y) a Cure Objection and/or an Adequate Assurance Objection was timely filed but consensually resolved between the Counter-Party and Purchaser, may be assumed by the Debtors and assigned to the Purchaser upon the filing with the Court of an "Uncontested Assignment Notice" (in the form attached hereto as Exhibit F) and payment of any applicable Cure Amount. Upon the filing of an Uncontested Assignment Notice, such Designation Right Contract, without further order of the Court, shall be deemed to be, and shall be treated as, a Purchased Contract as if originally listed on Exhibit C for all purposes under this Order.

(vi) Contested Assignment. During the Designation Rights Period any Designation Right Contract for which either (x) a Cure Objection was timely filed and/or (y) an Adequate Assurance Objection was timely filed, may be assumed by the Debtors and assigned to the Purchaser upon further order of the Court provided, that, the Debtors shall provide such Counter-Parties with ten (10) days' notice of the Purchaser's intent to seek assumption and

assignment of such Designation Right Contract, with the opportunity to object, and any hearing concerning a Cure Objection or Adequate Assurance Objection shall occur no earlier than three (3) days after the expiration of such notice period. To the extent the Court authorizes the assumption and assignment of such Designation Right Contract, then upon entry of the order authorizing assumption and assignment, such contract shall be deemed to be, and shall be treated as, a Purchased Contract as if originally listed on Exhibit C for all purposes under this Order.

(b) During the Designation Rights Period and subject to the Purchaser's obligations under the Purchase Agreement and Transition Services Agreement, (including, but not limited to, the Purchaser's reimbursement obligations as set forth in section 2.5 of the Purchase Agreement), (i) each Designation Right Contract shall be held by the Debtors and shall not be rejected pursuant to section 365 of the Bankruptcy Code unless and until the Purchaser provides the Debtor with a Rejection Notice; (ii) the Debtors shall not terminate, amend, supplement, modify or waive any rights under any Designation Right Contract or take any affirmative action not required by the terms thereof without the prior written consent of the Purchaser; and (iii) the chapter 11 cases will not be converted, dismissed or closed prior to the expiration of the Designation Rights Period. From and after the Closing Date, the Debtors shall cooperate with the Purchaser in any reasonable arrangement the Purchaser may request to provide the Purchaser with all the benefits of, or under, the applicable Designation Right Contract, including enforcement for the benefit of the Purchaser of any and all rights of the Debtors against any Counter-Party to the applicable contract arising out of such Counter-Party's breach. Following the end of the Designation Rights Period any Designation Right Contract not previously designated a Purchased Contract or otherwise assumed and assigned pursuant to an

Uncontested Assignment Notice or Court order shall be rejected pursuant to section 365 of the Bankruptcy Code without the need for a further court order.

(c) The procedures set forth in this Order with respect to the rejection or assumption and assignment of the Designation Right Contracts shall not limit, restrict or prohibit the Debtors from (i) seeking to reject or assume and assign contracts or leases pursuant to standard motion practice under the Bankruptcy Code, or (ii) seeking, pursuant to any such motion, rejection of any lease or contract retroactive to the later of (x) the date that the Debtors first notified the Counter-Party of such rejection and (y) as to non-residential real property leases, the date the Debtors surrendered the property to the applicable Counter-Party.

13. Adequate Assurance of Future Performance. The Purchaser has provided adequate assurance of its future performance under the Purchased Contracts listed on Exhibit C within the meaning of Bankruptcy Code sections 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B). All other requirements and conditions under the Bankruptcy Code for the assumption by the Debtors and assignment to the Purchaser of the Purchased Contracts have been satisfied for all Purchased Contracts (including Designation Right Contracts that are subsequently designated as Purchased Contracts) where the Counter-Party did not timely file an Adequate Assurance Objection. Upon the Closing: (i) the Purchaser shall be fully and irrevocably vested with all right, title and interest of the Debtors under the Purchased Contracts listed on Exhibit C; and (ii) the Debtors shall be relieved from any liability for any breach of such Purchased Contracts occurring thereafter pursuant to Bankruptcy Code section 365(k).

14. Cure. The Purchaser shall pay or otherwise satisfy the Cure Amounts in accordance with the Purchase Agreement with respect to any Purchased Contract on Exhibit C or any Designation Right Contract that is subsequently designated as a Purchased Contract pursuant

to the provisions of this Order. Except with respect to any Purchased Contract on account of which an objection to the Cure Notice was filed in accordance with the Bid Procedures Order, the Cure Amounts are hereby fixed at the amounts set forth in the Cure Notice, and the applicable Counter-Parties are hereby forever bound by such Cure Amounts. The payment of the applicable Cure Amounts (if any) shall (a) effect a cure of all defaults existing under the applicable Purchased Contract as of the Closing Date, (b) compensate for any actual pecuniary loss to such non-Debtor party resulting from such default, and (c) together with the assumption and assignment of the Purchased Contract to the Purchaser, constitute adequate assurance of future performance thereof.

15. Supplemental Cure and Adequate Assurance Hearing. The Court shall hold a hearing on February 27, 2012 at 2:00 p.m. (prevailing Eastern Time), or such other and further hearing as the Debtors, the Purchaser and the Counter-Parties may agree, to consider any Adequate Assurance Objections or Cure Objections that were filed and otherwise made in accordance with the Bid Procedures Order.

16. License Approvals.

(a) The Debtors shall cooperate fully with and support the Purchaser in executing such applications and furnishing such documents as are necessary for the Purchaser to secure the administrative transfer or new issuance of all Liquor License Approvals. All applicable federal, state and/or municipal alcoholic beverage control, law enforcement, and regulatory agencies are directed not to interrupt any activities of the Business associated with the purchase, storage, sale or service of food and beverages, including alcohol beverages, without first bringing the matter before this Court. Furthermore, the Business shall continue operating under all existing alcoholic beverage and other licenses and permits of the Debtors

until such licenses have been administratively transferred or newly issued to the Purchaser, including, but not limited to, the state and/or municipally-issued alcoholic beverage licenses specifically identified on Exhibit G to this Order, state food service licenses, local occupational licenses, and any other licenses or permits already held by the Debtors and needed by the Purchaser to continue operation of the Business without interruption (collectively the "Government Licenses").

(b) To the greatest extent available under applicable law, the Purchaser shall be authorized, as of the Closing Date, to operate under any and all of the Government Licenses of the Debtors with respect to the Purchased Assets and the Purchased Contracts, and all Government Licenses are deemed to have been, and hereby are, directed to be transferred by judicial order of this Court to the Purchaser as of the Closing Date. The judicially-directed transfers of the Government Licenses ordered by this Court: (i) shall be in effect while the Purchaser, with assistance from the Debtors, works promptly and diligently to apply for and secure all necessary state and/or municipal approvals for the administrative transfer or new issuance of such Government Licenses to the Purchaser; and (ii) shall terminate on a license-by-license basis following the final determination of the Purchaser's application for administrative transfer or issuance of such Governmental License to the Purchaser.

(c) To the extent any Government License necessary for the operation of the Business is determined not to be an executory contract assumable and assignable under Bankruptcy Code section 365, the Purchaser shall apply for and obtain with the Debtors' full cooperation the administrative transfer or new issuance of each such necessary license or permit promptly after the Closing, and such necessary licenses or permits of the Debtors shall be maintained in good standing by the Debtors to the fullest extent allowed by applicable state

and/or municipal laws for the Purchaser's benefit until they are duly transferred to the Purchaser or equivalent new licenses and permits are issued to the Purchaser.

17. Binding Effect of Order. This Order shall be binding upon and shall govern the acts of all persons and entities, including without limitation all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Purchased Assets. The terms and provisions of the Purchase Agreement and this Order shall be binding in all respects upon each of the Debtors and their successors or assigns, their estates, all creditors of (whether known or unknown) and holders of equity interests in the Debtors, the Purchaser and their respective Affiliates, successors and assigns, and any affected third parties, including, but not limited to, all persons asserting Interests in the Purchased Assets and all non-Debtor Counter-Parties to the Purchased Contracts, notwithstanding any subsequent appointment of any trustee of the Debtors under any chapter of the Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding. This Order and the Purchase Agreement shall inure to the benefit of the Debtors, their estates, their creditors, the Purchaser, and their respective Affiliates, successors and assigns.

18. Fair Consideration: Bankruptcy Code Section 363(n). The consideration provided by the Purchaser under the Purchase Agreement constitutes (a) reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act, (b) fair consideration under the Uniform Fraudulent Conveyance Act and (c) reasonably equivalent

value, fair consideration and fair value under any other applicable laws of the United States, any state, territory or possession, or the District of Columbia. The Transaction may not be avoided, or costs or damages imposed on or awarded against any party in interest in these bankruptcy cases under Section 363(n) or any other provision, of the Bankruptcy Code.

19. Payment of DIP Obligations. In connection with, and as part of, the Closing, (a) cash in an amount equal to the outstanding DIP Obligations (as defined in the DIP Order) other than the face amount of the then issued and undrawn Letters of Credit (as defined in the DIP Credit Agreement (as defined in the DIP Order)) under the LC Facility (as defined in the DIP Order), calculated as of the Closing Date by the DIP Agent, shall be paid directly by the Purchaser to the DIP Agent on the Closing Date by wire transfer for distribution to the DIP Secured Parties and the Prepetition First Lien Secured Parties (each as defined in the DIP Order) as indefeasible payment of such DIP Obligations; and (b) cash in an amount equal to (x) one hundred percent (100%) of the total face amount of the then outstanding Letters of Credit, calculated as of the Closing Date by the DIP Agent, plus (y) the aggregate maximum amount of all Post-Closing Letter of Credit Fees (as defined below) for the remaining portion of the month in which the Closing occurs and the three months thereafter (assuming that all then outstanding Letters of Credit remain outstanding until the earlier of (A) their then existing expiration date and (B) the last day of such three month period) (the amount referenced in this clause (y), the "Post-Closing Letter of Credit Fee Deposit," the amounts referenced in the immediately preceding clauses (x) and (y), collectively, the "L/C Cash Collateral"), shall be paid directly by the Purchaser to the DIP Agent on the Closing Date by wire transfer to cash collateralize the outstanding Letters of Credit and secure Purchaser's payment of the Post-Closing Letter of Credit Fees. From the Closing Date until the expiration or termination of the last outstanding

Letter of Credit (including those Letters of Credit with respect to which the time for delivery of a termination notice prior to automatic renewal passed prior to the Closing Date), the Purchaser shall pay to the DIP Agent for each month during which any Letter of Credit remains outstanding, a fee (the "Letter of Credit Fee") in an amount equal to the product of the average daily undrawn face amount of all Letters of Credit issued, guaranteed or supported by risk participation agreements multiplied by a per annum rate equal to 2.00% (which rate shall be increased to 4.00% during any period in which the Purchaser does not comply with the terms of this Paragraph 19 and Paragraph 20 below) (the "Post-Closing Letter of Credit Fees"). Each month, the DIP Agent shall provide Purchaser with a notice with the calculation of the Post-Closing Letter of Credit Fees and the applicable interest rate, and shall provide Purchaser with two (2) business days to make such payment. The Post-Closing Letter of Credit Fees shall be paid to the DIP Agent for the benefit of the applicable DIP Secured Parties in cash in arrears, on the first day of each calendar month (the "L/C Fee Payment Date"). On each L/C Fee Payment Date, the Purchaser shall remit to DIP Agent, or the DIP Agent shall remit to Purchaser, as applicable, cash to replenish (or reduce) the Post-Closing Letter of Credit Fee Deposit so that the amount of such Post-Closing Letter of Credit Fee Deposit immediately following such remittance will be no less than the aggregate maximum amount of Post-Closing Letter of Credit Fees that could become due and owing under this Paragraph 19 for the ninety (90) day period immediately following such L/C Fee Payment Date assuming that all then outstanding Letters of Credit remain outstanding until the earlier of (x) their then existing expiration date and (y) the last day of such three month period. The DIP Agent shall be entitled to apply the L/C Cash Collateral to all outstanding obligations in respect of the Letters of Credit under the DIP Credit Agreement, including all Post-Closing Letter of Credit Fees and the Ancillary Fees (as defined

below), as and when such amounts would have been due and payable under the DIP Credit Agreement if such DIP Credit Agreement remained in effect through and including the expiration or termination of the last outstanding Letter of Credit issued under the L/C Facility. The DIP Agent and DIP Secured Parties shall have the right not to renew any and all Letters of Credit at the end of their respective current terms (without taking into account any evergreen or other renewal provision that have not extended the terms of the Letters of Credit on or before the Closing Date) and shall have the right to deliver any termination notice related thereto to effectuate such termination. As soon as reasonably practicable, but in no event later than four (4) business days following the date on which a Letter of Credit has expired or been terminated and the DIP Secured Parties (and any corresponding letter of credit issuer) have no further obligations to honor any drawing in respect of such Letter of Credit, the DIP Agent shall return to the Purchaser by wire transfer to an account specified in writing by Purchaser a portion of the L/C Cash Collateral equal to (a) 100% of the face amount of such Letter of Credit that has expired or terminated without being drawn plus the portion, if any, of the Post-Closing Letter of Credit Fee Deposit relating to the portion of any Post-Closing Letter of Credit Fee that had not yet accrued on account of such expired or terminated Letter of Credit, minus (b) all reasonable costs and expenses incurred by the DIP Agent on account of obligations with respect to such Letter of Credit or, without duplication, such reasonable fees, charges and expenses in respect of the issuance, negotiation, acceptance, amendment, transfer and payment of such Letter of Credit or otherwise payable pursuant to the application and related documentation under which such Letter of Credit was issued (the "Ancillary Fee"), and the DIP Agent and DIP Secured Parties will thereafter have no further interest in such returned L/C Cash Collateral. If the Purchaser provides a beneficiary of any Letter of Credit with a replacement Letter of Credit, then upon

such beneficiary's return to the DIP Agent of the undrawn existing Letter of Credit and the termination of such Letter of Credit, and as soon as reasonably practicable, but in no event later than four (4) business days following the date on which a Letter of Credit has expired or been terminated, the DIP Agent shall remit to Purchaser or its designee by wire transfer to an account specified in writing by Purchaser an amount equal to that portion of the L/C Cash Collateral that collateralized such Letter of Credit as calculated in accordance with this Paragraph 19 including the portion, if any, of the Post-Closing Letter of Credit Fee Deposit relating to the portion of any Post-Closing Letter of Credit Fee that had not yet accrued on account of such returned letter of credit. Notwithstanding anything to the contrary set forth herein, DIP Agent shall use its reasonable best efforts to cooperate with Purchaser in the replacement of all or any portion of the Letters of Credit including, without limitation, causing Letter of Credit Cash Collateral to be transferred to any new or replacement Letter of Credit provider upon the return to the DIP Agent and termination of such undrawn Letter of Credit.

20. Liens on the L/C Cash Collateral. The DIP Agent, on behalf of the DIP Secured Parties, shall have, and the Purchaser shall grant to the DIP Agent, a first priority perfected lien and security interest in the L/C Cash Collateral to secure its obligations relating to the Letters of Credit, the Post-Closing Letter of Credit Fees and all other related fees and expenses relating to such Letters of Credit. This Order shall be sufficient and conclusive evidence of the validity, enforceability, perfection, and priority of the DIP Agent's first priority perfected lien and security interest in the L/C Cash Collateral without the necessity of (a) filing or recording any financing statement or other instrument or document which may otherwise be required under the law of any jurisdiction or (b) taking any other action to validate or perfect such liens or to entitle the liens to the priorities granted herein. In addition to the foregoing, the

Purchaser shall enter into, execute and deliver an agreement in form and substance reasonably acceptable to Purchaser and the DIP Agent, which shall (x) evidence the validity, enforceability, perfection and priority of such first priority lien and security interest in the L/C Cash Collateral, and (y) evidence the obligation of the Purchaser to reimburse the DIP Secured Parties in accordance with the DIP Credit Agreement for all amounts drawn under the Letters of Credit and to pay the Post-Closing Letter of Credit Fees and Ancillary Fees in accordance with this Order. The execution and delivery of such agreement by Purchaser shall be a condition precedent to the Closing that may be waived only by the DIP Agent in its sole discretion. The DIP Agent may, in its sole discretion (and at its sole cost and expense), enter into and file, as applicable, financing statements, security agreements, notices of liens, and other similar documents, and all such financing statements, security agreements, notices, and other agreements or documents shall be deemed to have been filed or recorded at the time of and on the Closing Date. Without limiting the foregoing, the DIP Agent may file a photocopy of this Order as a financing statement with any recording officer designated to file financing statements or similar office, and in such event, the subject filing or recording officer shall be authorized to file or record such copy of this Order. The terms and conditions of the foregoing Paragraphs 19 and 20 hereof shall govern and control notwithstanding any provision of this Order or the Purchase Agreement to the contrary.

21. Good Faith. The Transaction was negotiated at arm's-length and was undertaken by the Debtors, the Purchaser, the Directing Noteholders, and the Prepetition Second Lien Trustee without collusion and in good faith, as that term is used in Bankruptcy Code section 363(m) and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Transaction shall not affect the validity of the Transaction (including the assumption, assignment and sale of the Purchased Contracts) with the Purchaser,

unless such authorization is duly stayed pending such appeal. The Purchaser is a good-faith purchaser of the Purchased Assets, and is entitled to and granted all of the benefits and protections afforded by Bankruptcy Code section 363(m).

22. Surrender of Possession. Except as otherwise expressly provided in the Purchase Agreement, all persons or entities, presently on or after the Closing Date, in possession of some or all of the Purchased Assets are directed to surrender possession of the Purchased Assets to the Purchaser on the Closing Date or at such time thereafter as the Purchaser may request. The Debtors agree to exercise commercially reasonable efforts to assist the Purchaser in assuring that all entities that are presently, or on the Closing Date may be, in possession of some or all of the Purchased Assets in which the Debtors hold an interest will surrender possession of the Purchased Assets either to (i) the Debtors before the Closing Date, or (ii) the Purchaser on or after the Closing Date.

23. Professional Fee Escrow Account. The Purchaser shall deposit into the Professional Fee Escrow Account the amounts required by Sections 2.3(n) and 2.3(o) of the Purchase Agreement. Notwithstanding anything to the contrary herein, in the Budget, the Purchase Agreement, or the Professional Fee Escrow Agreement, this Court shall retain jurisdiction over the allocation of, the procedures for the disbursement of, and the payment of funds from the Professional Fee Escrow Account. The Court shall determine the allocation, allowance and amounts of payments to professionals from the Professional Fee Escrow Account pursuant to its consideration of final fee applications filed by Professionals in these Cases, and no payments shall be made from the Professional Fee Escrow Account except pursuant to further order(s) of this Court. To the extent any funds remain on deposit in the Professional Fee Escrow

Account after satisfaction of all payments ordered to be paid by the Court from such account, such remaining funds shall be returned to the Purchaser.

24. Other Allowed Administrative Expense Claims Escrow Account. The Purchaser shall deposit into the Other Allowed Administrative Expense Claims Escrow Account as required by Section 2.3(m) of the Purchase Agreement. The allocation of, and the procedures for the disbursement of, the funds from the Other Allowed Administrative Expense Claims Account as set forth in the Purchase Agreement is hereby approved and authorized. Any funds remaining on deposit in the Other Allowed Administrative Expense Claims Escrow Account after satisfaction of all of the Other Allowed Administrative Expense Claims shall be remitted to the Debtors.

25. Releases Approved and Effective Against All Parties. The releases set forth in section 13.11(b) of the Purchase Agreement are incorporated as if set forth in full herein and are hereby approved and shall be, and hereby are, effective and binding, subject to the respective terms thereof, on all Persons and entities to the extent set forth therein, and no Person or entity shall possess standing to assert any matters described by section 13.11(b) of the Purchase Agreement after the Closing Date.

26. Avoidance Actions. The sale of the Avoidance Actions (as defined in the DIP Order) pursuant to the Purchase Agreement is hereby approved. To the extent any Avoidance Action is not assignable to the Purchaser or any of its designees, assignees, and/or successors, the Debtors, and any chapter 11 or chapter 7 trustee (or any other designee) of the Debtors and their estates, shall be prohibited from bringing any such Avoidance Actions against the Purchaser, its Affiliates, designees, assignees, and/or successors.

27. Debtors' Name Change. Pursuant to the requirements set forth in section 8.9 of the Purchase Agreement, the Debtors shall change their name reasonably satisfactory to the Purchaser which does not include the words "Real Mex" "Chevy's" "El Torito" "Acapulco" or any other trade name, trade mark, corporate name, service mark or the domain names conveyed to the Purchaser in the Purchase Agreement, either alone or in combination with other words, graphics of designs. As soon as practicable after the Debtors change their legal name in accordance with this paragraph 27, the Debtors shall file a notice reflecting such legal name change and a revised form of caption for use in these chapter 11 cases. Upon the Debtors' filing of such notice, (i) the case caption to be used in these chapter 11 cases shall be changed to reflect the revised form of caption proposed by the Debtors, and all parties filing pleadings and other papers in these chapter 11 cases shall use such revised caption, and (ii) the Clerk of Court is directed to take any action necessary and appropriate to reflect such new case caption, including making any appropriate docket entry.

28. Consumer Privacy. The recommendations contained in the Ombudsman Report are incorporated herein by reference, and the Debtors and Purchaser shall comply with such recommendations as they are applicable to Qualified Buyers (as defined in the Ombudsman Report). The transfer of all consumer "personally identifiable information" (as defined in section 101(41A) of the Bankruptcy Code) from the Debtors to the Purchaser is approved.

29. Conduct of the Business Pending Closing. During the period after entry of this Order through the Closing Date (the "Pre-Closing Period") the Debtors shall (i) conduct the Business only in the Ordinary Course of Business in accordance with the Budget and (ii) in compliance with the applicable provisions of the Purchase Agreement and this Order. The Debtors shall certify to Purchaser, on a weekly basis, that cash expenditures made during the

Pre-Closing Period (i) have been made in accordance with the Budget, and (ii) comply with the covenants set forth in Section 8.2(a) of the Purchase Agreement.

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

31. Retention of Jurisdiction. This Court retains exclusive jurisdiction, to, among other things, interpret, implement, and enforce the terms and provisions of this Order and the Purchase Agreement, all amendments thereto and any waivers and consents thereunder, the Ancillary Agreements and each of the agreements executed in connection with the Transaction, including, but not limited to, retaining jurisdiction to (i) compel delivery of the Purchased Assets to the Purchaser; (ii) compel delivery of the Purchase Price or performance of other obligations owed to the Debtors; (iii) interpret, implement and enforce the provisions of this Order and the Purchase Agreement; (iv) adjudicate, if necessary, any and all disputes arising out of, concerning or otherwise relating in any way to the Transaction; (v) protect the Purchaser against any Interests in the Debtors or the Purchased Assets of any kind or nature whatsoever, attaching to the proceeds of the Transaction; (vi) resolve Cure Objections and Adequate Assurance Objections; (vii) determine the proper allocation and payment of amounts deposited in the Professional Fee Escrow Account, and (viii) enforce any release granted hereunder or pursuant to the Purchase Agreement.

32. Non-Material Modifications. The Purchase Agreement and any related agreements, documents or other instruments may be waived, modified, amended or supplemented by agreement of the parties thereto, in a writing signed by such parties, and in accordance with the terms thereof, without further action or order of the Court, provided that any

such waiver, modification, amendment or supplement does not have a material adverse effect on the Debtors' estates.

33. Subsequent Plan Provisions. Nothing contained in any chapter 11 plan confirmed in the Debtors' cases or any order confirming any such plan or in any other order in these chapter 11 cases (including any order entered after any conversion of any or all of these cases to cases under chapter 7 of the Bankruptcy Code) shall alter, conflict with, or derogate from the provisions of the Purchase Agreement or this Order.

34. Pepsi Equipment. Notwithstanding the foregoing, the Debtors' proposed sale of their operating assets shall not include the sale of fountain, bar and related equipment owned by Bottling Group, LLC and/or its affiliates and subsidiaries, operating collectively as Pepsi Beverages Company, whether currently in the possession of the Debtors or otherwise (the "Pepsi Equipment"); provided that (i) nothing in this provision is intended to limit, restrict or prohibit the Debtors' right to assume and assign to the Purchaser, pursuant to section 365 of the Bankruptcy Code, any of the Debtors' contracts with Bottling Group, LLC, Pepsi Beverages Company, Pepsi-Cola Fountain Co., Inc. or any of their affiliates (the "Pepsi Contracts") and (ii) following any such assumption and assignment the Purchaser shall have the right to continue to use the Pepsi Equipment in accordance with the terms of the Pepsi Contracts.

35. Failure to Specify Provisions. The failure to specifically refer to any particular provisions of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Purchase Agreement be authorized and approved in its entirety; provided, however, that this Order shall govern if there is any inconsistency between the Purchase Agreement (including all ancillary documents executed

in connection therewith) and this Order. Likewise, all of the provisions of this Order are non-severable and mutually dependent.

36. Automatic Stay. To the extent applicable, the automatic stay pursuant to section 362 of the Bankruptcy Code is hereby lifted with respect to the Debtors to the extent necessary, without further order of the Court (a) to allow the Purchaser to give the Debtors any notice provided for in the Purchase Agreement, and (b) to allow the Purchaser to take any and all actions contemplated or permitted by the Purchase Agreement.

37. No Stay of Order. Notwithstanding the provisions of Bankruptcy Rules 6004(h) and 6006(d), this Order shall not be stayed and it shall be effective and enforceable immediately upon its entry. Time is of the essence in closing the Transaction and the Debtors and the Purchaser intend to close the Transaction as soon as practicable. Any party objecting to this Order must exercise due diligence in filing an appeal and pursuing a stay, or risk its appeal being dismissed as moot.

38. Cooperation with Administration of the Estates. The Debtors shall retain or shall be permitted reasonable access to the books and records after the Closing Date in order to administer their bankruptcy cases or otherwise manage their affairs. The Purchaser and its employees shall, at the expense of the Purchaser, promptly and unconditionally cooperate with all reasonable requests of the Debtors and provide any information or documentation reasonably necessary or desirable to enable the Debtors to administer their estates, reconcile claims or otherwise manage their affairs.

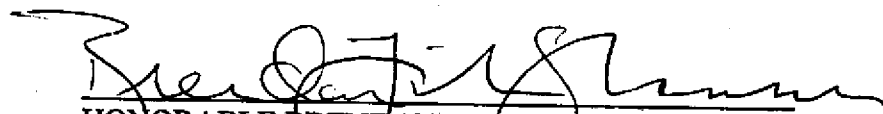
39. Confidentiality Agreements. The Debtors are authorized to enforce their rights under any confidentiality agreements they entered into with other potential bidders with

respect to the Purchased Assets for the benefit of the Purchaser for the term of each respective confidentiality agreement.

40. Oracle America, Inc. Objection. Oracle America, Inc. ("Oracle") filed an objection to the proposed assumption and assignment of certain agreements between the Debtors and Oracle (Docket No. 758) ("Oracle Objection"). The Purchaser, the Debtors and Oracle will submit a separate order resolving the Oracle Objection. Oracle reserves all rights with respect to its objection.

41. Further Assurances. From time to time, as and when requested by any party, each party to the Purchase Agreement shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as such other party may reasonably deem necessary or desirable to consummate the Transaction, including such actions as may be necessary to vest, perfect or confirm, of record or otherwise, in Purchaser its right, title and interest in and to the Purchased Assets.

Dated: February 22, 2012
Wilmington, Delaware


HONORABLE BRENDAN L. SHANNON,
UNITED STATES BANKRUPTCY JUDGE

General Information

Court United States Bankruptcy Court for the District of Delaware;
United States Bankruptcy Court for the District of Delaware

Docket Number 1:11-bk-13122

Status CLOSED