

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

_____	)	
	)	Chapter 11
In re:	)	
	)	Case No. 17-11444-SAH
EATERIES, INC., <i>et al.</i> <sup>1</sup>	)	
	)	Jointly Administered
Debtors.	)	
_____	)	

**DEBTOR'S MOTION FOR AN ORDER (A) APPROVING THE SALE OF THE  
ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES,  
AND INTERESTS; AND (B) AUTHORIZING THE ASSUMPTION AND  
ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED  
LEASES OF THE DEBTOR; BRIEF IN SUPPORT; NOTICE OF  
OPPORTUNITY FOR HEARING; NOTICE OF HEARING; AND  
NOTICE OF OPPORTUNITY TO BID**

**NOTICE OF OPPORTUNITY FOR HEARING**

**Your rights may be affected. You should read this document carefully and consult your attorney about your rights and the effect of this document.** If you do not want the Court to grant the requested relief, or you wish to have your views considered, you must file a written response to the motion with the Clerk of the United States Bankruptcy Court for the Western District of Oklahoma, 215 Dean A. McGee Avenue, Oklahoma City, OK 73102 **no later than 21 days from the date of the filing of the motion.** You should also serve a file-stamped copy of the response to the undersigned [and others who are required to be served] and file a certificate of service with the Court. A hearing on the motion has been set for December 27, 2017 at 9:30 a.m. before the Honorable Sarah A. Hall, 9th Floor Courtroom, 215 Dean A McGee Avenue, Oklahoma City, Oklahoma 73102. If no response is timely filed, the court may grant the motion without further notice.

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<sup>1</sup> The affiliated Debtors are Eateries, Inc. and GRP of Zanesville, LLC, Case No. 17-11445-SAH. Although there are multiple Debtors in this case, this Motion is filed only by Eateries, Inc.

**NOTICE OF HEARING  
(TO BE HELD IF A RESPONSE IS FILED)**

Notice is hereby given that if a response to the above-titled Motion is filed, the hearing on the matter will be held on December 27, 2017 at 9:30 a.m. in the 9th Floor Courtroom of the United States Bankruptcy Court for the Western District of Oklahoma, 215 Dean A. McGee Avenue, Oklahoma City, OK 73102. If no response is timely filed and the court grants the requested relief prior to the above-referenced hearing date, the hearing will be stricken from the docket of the Court.

**NOTICE OF OPPORTUNITY TO BID**

Notice is hereby given that if any person is willing to offer a higher price for the Assets that are the subject of this Motion, you are invited to do so but you must do so no later than 21 days from the date of the filing of the motion by filing an response to this Motion and therein state your willingness to offer a higher price than the Purchase Price described in this Motion and upon the same terms as set forth in the Asset Purchase Agreement attached hereto as Exhibit “B”.

Eateries, Inc. (“Eateries”), debtor and debtor-in-possession in the above-captioned case (“Debtor”), files this motion (the “Sale Motion”) for entry of an order (the “Sale Order”<sup>2</sup>) (a) Approving the Sale of the Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests to the Fresh Capital, LLC, Fiesta Holdings, Inc., and Practical Investors, LLC, or their nominee (collectively, the “Purchaser”); and (b) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases of the Debtor.<sup>3</sup>

In support of this Sale Motion, the Debtor respectfully represents as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over the Sale Motion pursuant to 28 U.S.C. §§ 1334 and 157. This Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

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<sup>2</sup> A proposed form of Sale Order is attached hereto as Exhibit “A.”

<sup>3</sup> Capitalized terms used herein and not otherwise defined have the meaning set forth in the APA or the Bidding Procedures Order, as applicable.

2. The statutory bases for the relief requested herein are §§ 105, 363, 364, and 365 of Title 11, United States Code (the “Bankruptcy Code”), and Rules 2002, 4001, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).<sup>4</sup>

### **BACKGROUND**

3. On April 18, 2017 (the “Petition Date”), the Debtor filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Oklahoma (the “Bankruptcy Court”). The Debtor continues to operate and manage its business as debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, an official committee of unsecured creditors (the “Creditors Committee”) has not yet been appointed in the Case. No request has been made for the appointment of a trustee or examiner.

4. A description of the Debtor’s businesses, the reasons for filing these Chapter 11 Cases, and the relief sought from the Bankruptcy Court to allow for a smooth transition into operations under Chapter 11 of the Bankruptcy Code is set forth in the First Day Affidavit of William C. Liedtke, III [Doc. 10] and the Declaration of David R. Payne filed September 26, 2017 [Doc. 211] (collectively, the “Sworn Statements”). The Debtor hereby adopts and incorporates the Sworn Statements as if fully set forth herein.

5. Immediately prior to the filing of this bankruptcy, Eateries (directly or through its various subsidiaries, including Zanesville) operated a chain of 15 restaurants located in 9 states, and employed more than 450 people. These restaurants are located in various shopping malls whose business is directly related to the volume of shoppers visiting the anchor tenants in such

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<sup>4</sup> Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532. “Rule” references are to the Federal Rules of Bankruptcy Procedure, and “Civil Rule” references are to the Federal Rules of Civil Procedure. References to “LBR” are to the Local Rules of Bankruptcy Practice of the United States District Court for the Western District of Oklahoma.

malls. The continued increase in online shopping has left brick-and-mortar shopping centers to fight over a smaller group of consumers. As a result, over the last year certain segments of the retail shopping industry have experienced a significant downturn resulting in announcements by Macy's, Sears, and, most recently, JC Penney that they have or will close hundreds of these anchor stores. This downturn has had a direct impact on this business of those restaurants located in shopping malls experiencing decreased business.

6. As a result of the decreased business, Eateries has been attempting to renegotiate its lease terms with several of its landlords without success. Indeed, the downturn has resulted in the closure of four of Eateries' restaurant locations in advance of the filing of this bankruptcy, leaving 11 locations in operation in six states, employing approximately 375 people, at the time of the filing of this case.

7. Debtor has been unable to raise sufficient capital to continue operating and developing its assets because of the Debtor's current capital structure and the decline in the shopping mall based restaurant business. As a result, the Debtor has reached an agreement to sell the Purchased Assets, subject to higher and better offers, to the Purchaser.

8. SpiritBank, an Oklahoma Banking Corporation ("DIP Lender"), provided debtor-in-possession financing (the "DIP Facility") in an amount not to exceed \$500,000.00 to the Debtor pursuant to this Court's Order entered May 15, 2017 [Doc. 122] (the "DIP Order").

9. Accordingly, the Debtor proposes to sell, subject to the terms of the APA between the Debtor and the Purchaser<sup>5</sup>, the Purchased Assets, which constitute substantially all of the Debtor's assets and are defined in the APA, excluding the Excluded Assets (as defined in the APA) in accordance with §§ 363 and 365 of the Bankruptcy Code and pursuant to the entry of

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<sup>5</sup> Collectively, the Purchaser and the Debtor shall be referred to herein as the "Parties."



the Sale Order, in exchange for the Purchase Price as defined below (the “Sale”). The Debtor and its team of professionals believe the value of the Purchase Price is at least \$2,000,000.00.

10. The Debtor previously conducted a stalking horse auction sale pursuant to this Court’s Order (A) Establishing Bidding Procedures In Connection With the Sale of Substantially All of the Debtor’s Assets (B) Approving the Form and Manner of Notices, (C) Scheduling Dates for an Auction and Sale Hearing, (D) Authorizing and Approving the Form of a Stalking Horse Asset Purchase Agreement, and (E) Approving Procedures to Determine Cure Amounts Related to the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, entered on August 25, 2017 (the “Bidding Procedures Order”) [Doc. 173], establishing, among other things, bidding procedures (the “Bidding Procedures”). Prior to the entry of the Bidding Procedures Order, the Offering Summary<sup>6</sup> was mailed or e-mailed to 162 prospective purchasers. Thereafter, as provided in the Bidding Procedures Order, information regarding the proposed sale, the Offering Summary, the Notice of Auction and Sale Hearing, and the Bidding Procedures were mailed or e-mailed to same group of 162 prospective purchasers as well as the Notice Parties identified in the Bidding Procedures Order except for the United States Securities and Exchange Commission (the “SEC”) and three of the landlords who were inadvertently omitted. This Debtor is not now nor will it ever become a public company and does not intend to file a Plan, therefore the lack of notice to the SEC is not prejudicial to the sale process. One of the omitted landlords, Colony Square TEI Investors, LLC, was a landlord for GRP of Zanesville LLC and not Eateries, Inc. Two of the omitted landlords; T Danville Mall, LLC, and Morgantown Mall Associates, LP; have entered into an agreed modification of their leases which specifically contemplate the sale and as such have actively participated in the sale process. In

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<sup>6</sup> Capitalized Terms defined in the Bidding Procedures Order have the same meaning as defined therein.

additional each of these omitted parties will receive notice of this Motion including the opportunity to bid if they so choose. The Debtor submits there is no prejudice to any omitted party and therefore, this Court should approve this Motion without the need for further marketing. In addition, all of the sale documents have been and will continue to be made publicly available on the website maintained by the Debtor at “<https://www.eateriesinc.com>.”

11. Although there were expressions of interest received from 5 of 162 prospective purchasers, no one signed the required non-disclosure agreement or engaged in any significant due diligence.

12. After the conclusion of the Auction held on September 25, 2017, the Debtor determined, in a valid and sound exercise of its business judgment, that (i) the highest and best Qualifying Bid for the Purchased Assets was that of Purchaser as the winning bidder at the auction. The Purchaser’s winning bid is the same as the Purchase Price that is the subject of this Motion. There were no other bidders at the Auction and there are no other potential purchasers known to the Debtor or its professionals.

13. On September 29, 2017, this Court entered an Order (the “Prior Sale Order”) [Doc. 215] granting the Debtors’ motion approving the APA; approving the sale of the Debtors’ assets free and clear of all liens, claims, encumbrances, and interests to the Winning Bidder; and authorizing the assumption and assignment of certain executory contracts and unexpired leases, filed July 13, 2017 (the “Prior Sale Motion”) [Doc. 141]. That Sale was affected through an Auction utilizing the Court’s Bidding Procedures Order [Doc. 173].

14. Thereafter, it was discovered that notice of the Prior Sale Motion was defective whereupon the Court entered an order vacating the Prior Sale Order on October 27, 2017 [Doc. 235].

15. Although defective notice of the Prior Sale Motion led to the vacation of the Prior Sale Order, the Prior Sale Motion was the product of the aforementioned marketing process conducted under the terms of the Bidding Procedures Order, which Order was the result of a properly noticed Motion for Order Establishing Bidding Procedures. Accordingly, the Debtor has conducted a sufficient marketing process for the Assets and, as a result, the Purchase Price is in fact the highest and best price anyone can reasonably expect to obtain for the Assets. Consequently, the Debtor submits no further marketing is reasonable or necessary to ensure that the Sale to the Purchaser is fair and reasonable. The Debtor alleges the Purchase Price is the fair market value of the Assets because “an asset is worth what someone will pay for it...”. *In re Kandel*, 2015 WL 1207014, at 2 (Bankr. N.D. Ohio Mar. 13, 2015). No other potential purchaser has even kicked the tires in this case, much less made any sort of offer for the Assets.

16. Further marketing efforts or another auction are not necessary in this case given the previous sale process that has occurred. However, in the event a legitimate higher offer is received from a ready, willing, and able alternative buyer upon the same terms as set forth in the APA (the “Alternate Buyer”), then the Purchaser has agreed that it will allow the Alternate Buyer to be substituted in its place and acquire the Assets.

#### **RELIEF REQUESTED**

17. By this Sale Motion, the Debtor respectfully requests this Court approve the Sale to the Purchaser on the terms of the APA by entry of the attached proposed Sale Order. The attached proposed Sale Order provides for the (a) approval of the Sale of the Purchased Assets free and clear of all liens, claims, encumbrances, and interests of any kind to the Purchaser and (b) authorizes the assignment of certain executory contracts and unexpired leases of the Debtor have been assumed and are to be assigned to the Purchaser in connection with the Sale.

**BRIEF IN SUPPORT**

**TERMS OF THE PROPOSED SALE**

18. The Debtor believes that it is in the best interests of the Debtor's estate and creditors to pursue a sale of the Purchased Assets under §§ 105, 363, and 365. The Debtor believes that marketing for higher and better offers is not necessary and that the proposed Sale will enable the Debtor to maximize value for all creditors.

19. Significant terms of the Sale as set forth in the APA are summarized as follows:<sup>7</sup>

- **Purchase Price:** The Purchaser for the Purchase Price of \$2,000,000.00, to be allocated among the Purchased Assets as set forth in the APA (such amount may be adjusted pursuant to the APA). The Purchase Price shall be payable as follows:
  - Payment in cash in an amount sufficient to pay off the DIP Facility;
  - Purchaser's assumption of Debtor's Post-Petition trade payables incurred in connection with the operation of the Purchased Assets;
  - Purchaser's assumption of all allowed administrative claims in this Case; and
  - Payment of the remaining balance of the Purchase Price as a credit against the secured indebtedness owing by the Debtor to the Purchaser.
- **Closing Conditions:** Primary conditions necessary to close this transaction require the execution of the APA, approval by relevant state agencies of the transfer of various liquor licenses and entry of an order from the Bankruptcy Court approving the Sale that has not been stayed, modified or reversed (the "Closing Contingencies"). Further details of the Closing Contingencies are in the APA, including, but not limited to, Sections 2.01, 2.02, and 8.02.
- **Two-Step Sale Process:** The closing shall occur in two phases. The First Closing will occur as soon as possible after the

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<sup>7</sup> To the extent this summary of significant terms differs from the terms in the Stalking Horse APA, the Stalking Horse APA controls.

satisfaction of the Closing Contingencies and the Second Closing will occur within two business days after the satisfaction of the Closing Contingencies as reflected in Section 2.02 of the APA (collectively the “Closing Date”), or such other time and date as the Parties may agree to in writing.

- **Higher and Better Offers:** The sale of the Purchased Assets shall be subject to higher and better offers if any are received prior to entry of the Sale Order.
- **Effective Date of the Sale:** The Effective Date of the Sale shall be September 29, 2017.

20. The Debtor believes the parties claiming valid and perfected liens, claims, or encumbrances to the Purchased Assets are the DIP Lender in an amount not exceeding \$500,000.00 pursuant to the DIP Order and collectively Fresh Capital, LLC, Fiesta Holdings, Inc. and Practical Investors, LLC (collectively, the “Secured Creditor”<sup>8</sup>) pursuant to certain documents executed and delivered pre-petition to Secured Creditor by the Debtors (the DIP Lender and the Secured Creditor are collectively the “Lien Holders”). The Lien Holders have consented to the Sale on the terms stated herein and in the APA. The Debtor is not aware of any legal or factual basis to dispute the nature, extent or validity of the liens, claims and encumbrances of the Secured Creditor.

21. To the best of Debtor’s knowledge, information, and belief after due inquiry, that the Purchaser is a known insider and secured creditor of Debtor.

22. Purchaser has demonstrated to Debtor it is purchasing the Purchased Assets in good faith and for fair value.

23. The APA is the product of substantial, extensive, and good faith negotiations conducted at arm’s length, without collusion and with all parties being represented by independent counsel.

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<sup>8</sup> The Purchaser and the Secured Creditor are one and the same parties.

24. Purchaser has demonstrated to Debtor that it has the financial ability to consummate the Sale and is a ready, willing, and able buyer for the Purchased Assets. The Purchaser shall be allowed to pay a portion of the Purchase Price by credit against their claims which total \$1,331,845.00.

25. Purchaser understands that it is purchasing the Assets in the context of a distressed seller and a bankruptcy. Details of such representations and warranties are set forth in detail herein and in the APA and are limited thereby. Except as provided herein and in the APA, none of the representations, warranties, covenants, and agreements contained therein or herein shall survive the closing of the sale of the Purchased Assets.

26. In the exercise of its business judgment, Debtor believes the Sale is in the best interest of all parties and represents the highest and best price received prior to the filing of this Sale Motion.

**ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES**

27. Under the terms of the APA, executory contracts and unexpired leases that are to be assumed and assigned by Purchaser are set forth on schedules to the APA (the “Assumed Executory Contracts”). Except as set forth in the APA, the Purchaser will not assume any liabilities or debts of the Debtor and the Purchased Assets shall be transferred to the Purchaser free and clear of all liens, claims, encumbrances, and interests pursuant to § 363(f).

28. Further, the Purchaser may from time to time, in its sole discretion, add or remove any Assumed Executory Contract from the schedule of Assumed Executory Contracts. At the Sale Hearing, the Debtor shall seek to assume and assign to the Purchaser the Assumed Executory Contracts. Accordingly, as part of this Sale Motion, the Debtor respectfully requests this Court approve Debtor’s assumption and assignment to Purchaser of said Assumed Executory

Contracts. Additional details about the Assumed Executory Contracts are found in Sections 1.01(c) and 1.01(d) of the APA and the corresponding Sections in the Disclosure Schedule to the APA.

29. As reflected in the Certificate of Service filed September 11, 2017 [Doc. 192], notice of the assumption and assignment of the Assumed Executory Contracts was provided to each of the counter-parties to each of the Assumed Executory Contracts on September 11, 2017, and therein set forth the amount of the cure costs for each of the contracts and leases to be assumed by the Debtor and assigned to the Purchaser (the “Notice of Assumption”). No one filed any response to Notice of Assumption or otherwise provided any dispute as to the amount of the cure costs set forth therein.

30. Debtor alleges there are at this point no cure costs due to any counter-party to any of the Assumed Contracts.

**I. THE DEBTOR-IN-POSSESSION’S SALE OF THE PURCHASED ASSETS TO THE BUYER SHOULD BE APPROVED PURSUANT TO § 363(B)(1) OF THE BANKRUPTCY CODE.**

31. Section 363(b)(1) provides that “[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Courts have uniformly held that approval of a proposed sale of property pursuant to § 363(b) is appropriate if a Court finds that the transaction represents a reasonable business judgment on the part of the debtor or trustee. See *Institutional Creditors of Continental Air Lines, Inc. v. Continental Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986) (applying reasonable business judgment standard to sale of assets under § 363(b)); *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (same); *In re Donohue*, 410 B.R. 311, 315 (Bankr. D. Kan. 2009) (requiring “sound business reason” for authorization of sale under § 363(b)); *In re Buerge*, 479

B.R. 101, 106 (Bankr. D. Kan. 2012) (requiring “sound business reason”); *In re Med. Software Solutions*, 286 B.R. 431, 439–40 (Bankr. D. Utah 2002) (requiring “sound business reason”).

32. Courts have made clear that a Chapter 11 debtor-in-possession’s business judgment is entitled to substantial deference with respect to the bid procedures to be used in selling assets of the estate. See, e.g., *Official Committee of Subordinated Bondholders v. Integrated Resources, Inc. (In re Integrated Resources, Inc.)*, 147 B.R. 650, 656-57 (Bankr. S.D.N.Y. 1992) (noting that overbid procedures and break-up fee arrangements that have been negotiated by a debtor are to be reviewed according to the deferential “business judgment” standard, under which such procedures and arrangements are “presumptively valid”). Here, the Debtor’s proposed sale is reasonable, appropriate, and within Debtor’s sound business judgment because it will serve to maximize the value of the Debtor’s estate.

33. In addition to a sound business purpose, courts require that there be adequate and reasonable notice of the sale and a fair and reasonable price and good faith negotiations with the Buyer. See *In re Abbotts Dairies*, 788 F.2d 143, 147 (3d Cir. 1986); *Buerge*, 479 B.R. at 106; *In re JL Bldg., LLC*, 452 B.R. 854, 859 (Bankr. D. Utah 2011); *Med. Software Solutions*, 286 B.R. at 439-40; *In re Tempo Tech Corp.*, 202 B.R. 363, 367 (D. Del. 1996).

34. The paramount goal of any proposed sale of property of a debtor is to maximize the value received by the estate and courts uniformly agree that competitive bidding maximizes value and is appropriate in the bankruptcy context. See, e.g., *Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 564-65 (8th Cir. 1997) (with reference to bankruptcy sales, “a primary objective of the Code [is] to enhance the value of the estate at hand”); *In re Buerge*, 479 B.R. at 106 (“The trustee’s duty is to maximize the value obtained from a sale”); *In re C.W. Min. Co.*, 08-20105 JAB, 2010 WL 841395 (Bankr. D. Utah Mar. 2,



2010) (courts “must always scrutinize whether a trustee has fulfilled his duty to maximize the value obtained from a sale”); *In re Psychrometric Sys., Inc.*, 367 B.R. 670, 674, 76 (Bankr. D. Colo. 2007) (recognizing the “strong policy favoring competitive bidding” for sales in bankruptcy proceedings); *Integrated Resources*, 147 BR. at 659 (“It is a well-established principle of bankruptcy law that the debtor’s duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate”) (quoting *Cello Bag Co. v. Champion Int’l Corp. (In re Atlanta Packaging Prods., Inc.)*, 99 B.R. 124, 131 (Bankr. ND. Ga. 1988)).

35. The Debtor submits that the proposed sale of the Purchased Assets is a reasonable business decision in light of the circumstances and is in the best interest of the estate and its creditors. Further, the Debtor submits that the proposed sale presents the best opportunity to realize the maximum value of the estate’s assets for distribution to creditors and is necessary to preserve the value of the estate’s assets for the estate and its creditors. Additionally, such process will be conducted in good faith and at arm’s length, be subject to proper notice, and will yield the highest and best offer for the Purchased Assets. Accordingly, the Debtor submits that the sale of the Purchased Assets is an appropriate exercise of the Debtor’s business judgment.

36. Debtor requests authority to pay customary closing costs and cure claims as provided in the APA and herein, and then to pay in full the DIP Facility without the need for any further authorization from this Court. This Court has approved the DIP Facility loan by interim order and as a part of such loan, granted to DIP Lender a lien upon the Purchased Assets. There is no doubt the post-petition liens of DIP Lender upon the Purchased Assets are valid and existing liens. Payment of the DIP Facility is in compliance with the post-petition loan agreements approved and authorized by this Court. Therefore, the payments as requested should

be authorized as a part of the Sale Order. The balance of the sale proceeds will be held in escrow by the Debtor pending further order of this Court.

## **II. DEBTOR'S SALE OF THE PURCHASED ASSETS SHOULD BE APPROVED PURSUANT TO § 363(F) OF THE BANKRUPTCY CODE**

37. By this Motion, the Debtor seeks entry of the Sale Order authorizing and approving the sale of the Purchased Assets to the Purchaser subject to the receipt of a higher price from the Alternate Buyer. Except as expressly provided in the APA or the Sale Order, the Purchased Assets are to be sold to the Purchaser, free and clear of all liens, claims, encumbrances, and interests pursuant to § 363(f).

38. Pursuant to § 363(f), a debtor may sell property under § 363(f) “free and clear of any interest in such property” if one of the following conditions is satisfied:

- (1) applicable non-bankruptcy law permits the sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f); see also *In re Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988) (holding that § 363(f) is written in disjunctive; court may approve sale “free and clear” provided at least one of the requirements is met).

39. The Debtor submits that one or more of the conditions set forth in § 363(f) will be satisfied with respect to the Sale of the Purchased Assets. In particular, the Debtor believes that § 363(f) will be satisfied because each of the parties holding liens on the Purchased Assets, if any, will consent, or absent any objection to this Sale Motion, will be deemed to have consented to the sale and transfer of the Purchased Assets. In addition, in the event the Purchaser pays cash

for the Purchased Assets, any liens in such Purchased Assets will attach to the proceeds to the same extent, validity and priority as existed in the Purchased Assets, thus satisfying § 363(f).

40. Applicable case law provides that a sale of a debtor's assets free and clear of all liens, claims, encumbrances, and interests is permissible under § 363(f) as long as the liens, claims, encumbrances, and interests attach to the net proceeds of the sale. *Folger Adam Security, Inc. v. DeMatteis/MacGregor, JV*, 209 F.3d 252, 259 (3d Cir. 2000) ("The holdings of the courts suggest that any interest in property that can be reduced to a money satisfaction constitutes a claim for purposes of § 363(f) and, therefore, attaches to the proceeds of the sale."); *In re Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988). Further, in the event the Purchaser is the Purchaser through a cash offer, the APA provides for satisfaction of any liens senior to the liens of the Purchaser via cash payment or by allowing such senior liens to continue on the property as a permitted lien, thus satisfying § 363(f).

41. Lastly, all junior liens will be satisfied by operation of § 363(f) as the sale process will set the value of the Purchased Assets. See *In re Beker Industries Corp.*, 63 B.R. 474, 475-76 (S.D.N.Y. 1986) (holding that sale price in a § 363 sale need only exceed the value of the property, not the value of the debts secured by the property, to satisfy § 363(f)(3)); *In re Terrace Gardens Park Partnership*, 96 B.R. 707, 712-713 (Bankr. W.D. Tex. 1989) (analyzing two approaches to § 363(f)(3) and adopting approach from *Beker Industries*); *In re Hartfield Homes, Inc.*, 30 B.R. 353, 355 (Bankr. E.D.Pa. 1983) (" . . . if the proposed sale price is the best price obtainable under the circumstances of a particular case, then the fact that junior lienholders may receive little or nothing from the proceeds of the sale would not, standing alone, constitute reason for disapproving the proposed sale").

42. As such, Debtor respectfully requests this court approve the Sale of the Purchased Assets, free and clear of all liens, claims, encumbrances, and interests pursuant to § 363(f).

### **III. THE PURCHASER SHOULD BE FOUND TO BE A GOOD FAITH BUYER**

43. Section 363(m) of the Bankruptcy Code states:

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

11 U.S.C. § 363(m).

44. While the Bankruptcy Code does not define “good faith,” the Tenth Circuit has held that the standard for a good faith purchaser is one who buys (i) in “good faith,” i.e., through a sale that does not involve fraud or collusions, and (ii) for value. *See In re Indep. Gas & Oil Producers, Inc.*, 80 Fed. Appx. 95, 99-100 (10th Cir. 2003) (citing *Tompkins v. Frey (In re Bel Air Associates, Ltd.)*, 706 F.2d 301 (10th Cir. 1983)); *Plotner v. AT&T*, 172 B.R. 337, 341 (W.D.Okl. 1994) (“A sale lacks good faith when it ‘involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.’”)(citations omitted); *In re Abbotts Dairies*, 788 F.2d at 147 (“The requirement that a purchaser act in good faith . . . speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a buyer’s good faith status at a judicial sale involves fraud, collusion between the buyer or the trustee, or an attempt to take grossly unfair advantage of other bidders.”); *see also In re Sasson Jeans, Inc.*, 90 B.R. 608, 610 (S.D.N.Y. 1988) (quoting *In re Bel Air Assocs., Ltd.*, 706 F.2d 301, 305 (10th Cir. 1983)).

45. The Debtor presented evidence at the hearing conducted on September 27, 2017, (the “Prior Hearing”) showing that the proposed agreement finalized with the Purchaser is the

result of and due to the open and competitive nature of the Bidding Procedures, and will be the result of arm's length negotiations in good faith. No one objected or offered any facts to the contrary. Additionally, the APA with the Purchaser is necessarily "for value" as it is the result of an open marketing process that has been conducted prior to the filing of this Motion which set the value for the Purchased Assets. The Debtor thus requests that the Court make a finding in the Sale Order that the Purchaser has acted in good faith within the meaning of § 363(m).

**IV. THE FOURTEEN (14) DAY STAY PROVIDED FOR IN BANKRUPTCY RULE 6004(H) SHOULD BE WAIVED**

46. Due to the necessity to facilitate the orderly and, more importantly, timely sale of the Purchased Assets, the Debtor requests that the Court lift the stay provided by Federal Rule of Bankruptcy Procedure 6004(h) which provides that an order authorizing the sale of property is stayed for fourteen (14) days after the entry of such order, unless the Court orders otherwise. Given the sufficiency of notice to all parties in interest, the Debtor requests that the Court relieve it of the stay provided by the rule.

**V. THE DEBTOR SHOULD BE AUTHORIZED TO ASSUME AND ASSIGN EXECUTORY CONTRACTS AND UNEXPIRED LEASES TO PURCHASER**

47. A court should approve the assumption or rejection of an unexpired lease or executory contract where a debtor's business judgment has been reasonably exercised. *See, e.g., In re J. H. Land & Cattle Co., Inc.*, 8 B.R. 237, 238 (Bankr. W.D. Okla. 1981) ("The test for court approval of a debtor's (trustee's) proposed rejection of an executory contract or lease under § 365 is one of 'business judgment'") (internal citation omitted); *In re III Enterprises, Inc.* V, 163 B.R. 453, 469 (Bankr. E.D. Pa.) ("Generally, a court will give great deference to a debtor's decision to assume or reject an executory contract. A debtor need only show that its decision to assume or reject the contract is an exercise of sound business judgment - a standard which we have concluded many times is not difficult to meet"), *aff'd sub nom., Pueblo Chem., Inc. v. III*

*Enters, Inc.*, V, 169 B.R. 551 (E.D. Pa. 1994); *In re W. Wood Products, Inc.*, 11-12-10057 JS, 2013 WL 1386285 (Bankr. D.N.M. Apr. 4, 2013) (“Generally, the Court should not interfere with the debtor-in-possession's exercise of business judgment to reject a lease or executory contract unless the decision is ‘so manifestly unreasonable that it could not be based on sound business judgment[.]’”) (citation omitted).

48. Further, § 365(b)(1) authorizes the proposed assumption and assignment of executory contracts if defaults under the executory contracts are cured and adequate assurance of future performance is given. See *In re Valley View Shopping Ctr., L.P.*, 260 B.R. 10, 24 (Bankr. D. Kan. 2001); *In re Health Science Prods., Inc.*, 191 B.R. 895, 909 (Bankr. N.D. Ala. 1995) (ability to make current payments on contract combined with projected future financial stability constituted “adequate assurance”); *In re Mako, Inc.*, 102 B.R. 818, 821 (Bankr. E.D. Okla. 1988) (willingness and ability to cure defaults and projected cash flows sufficient to meet obligations under the contract met the “adequate assurance” requirement).

49. The Debtor submits that assumption and assignment of the Assumed Executory Contracts is a sound exercise of the Debtor’s business judgment. Assumption and assignment of the Assumed Executory Contracts is necessary for consummation of the Sale and the Debtor will no longer have use for the Assumed Executory Contracts following the closing of the sale. Furthermore, the assumption procedure provides for proper notice to those parties subject to Assumed Executory Contracts and provides the cure of any default under the Assumed Executory Contracts and for the provision of adequate assurance of future performance. Accordingly, assumption and assignment is appropriate and in the best interest of the estates.

## **VII. NOTICE**

50. All creditors and parties in interest listed on the amended consolidated creditor

matrix [Doc. 115] will be served with actual notice of the relief sought herein. Debtor therefore requests that the Court find that all parties who receive actual notice of this Motion be bound by the Order granting the relief requested herein.

### **VIII. CONCLUSION**

The Debtor respectfully requests that the Court grant the relief requested herein and such other and further relief as is just and proper.

Respectfully submitted this 27th day of November, 2017.

Respectfully submitted,

#### **CROWE & DUNLEVY**

/s/ Mark A. Craige

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-and-

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---

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#### **COUNSEL FOR DEBTOR AND DEBTOR- IN-POSSESSION**

**EXHIBIT A**



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

_____	)	
In re:	)	Chapter 11
	)	
EATERIES, INC., <i>et al.</i> <sup>1</sup>	)	Case No. 17-11444-SAH
	)	
Debtors.	)	Jointly Administered
_____	)	

**ORDER (A) AUTHORIZING AND APPROVING (I) THE ASSET PURCHASE AGREEMENT; (II) THE SALE OF THE DEBTOR'S ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS; AND (III) THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (B) GRANTING RELATED RELIEF**  
[This Order Relates to the Motion at Docket No. \_\_\_\_]

The motion (the "Motion")<sup>2</sup> filed November 27, 2017 [Doc. \_\_\_\_] of Eateries, Inc. ("Eateries"), debtor and debtor-in-possession ("Debtor") in the above-captioned case ("Debtor's

<sup>1</sup> The affiliated Debtors are Eateries, Inc. and GRP of Zanesville, LLC, Case No. 17-11445-SAH. Although there are multiple Debtors in this case the Motion and this Order are only for Eateries, Inc.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Asset Purchase Agreement (as defined below) or, if not defined in the Asset Purchase Agreement, the Motion.

Chapter 11 Case”), requesting entry of an order (this “Sale Order”) (a) approving the Sale of the Purchased Assets (as defined in the Asset Purchase Agreement, dated August 9, 2017 (together with all ancillary documents, as may be amended, modified or supplemented, the “APA”)) free and clear of all liens, claims, encumbrances, and interests of any kind to the Purchaser; and (b) authorizing the assumption and assignment of certain executory contracts and unexpired leases (the “Assigned Contracts”) of the Debtor that are to be assumed and assigned to the Purchaser in connection with the Sale comes on for the Court’s consideration.

Upon the unopposed factual allegations in the Motion and the incorporated Sworn Statements therein; and all parties in interest having been heard or having had the opportunity to be heard regarding the APA; and it appearing that adequate and proper notice of the Motion has been given and that no other or further notice need be given as discussed herein; and there being no objections to the Sale Motion and upon the record of the Sale Hearing and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtor, its estate, its creditors and all other parties in interest; and that the legal and factual bases set forth in the Motion and the Sworn Statements establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY FOUND AND DETERMINED THAT:<sup>3</sup>**

A. Jurisdiction. The Court has jurisdiction to hear and determine the Motion and to grant the relief requested in the Motion pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(b).

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<sup>3</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact to the fullest extent of the law. *See* Fed. R. Bankr. P. 7052.

B. Venue. Venue of Debtor's Chapter 11 Case and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

C. Statutory Predicates. The statutory and legal predicates for the relief requested in the Motion are §§ 105, 363, and 365 of title 11 of the United States Code (references hereinafter to 11 U.S.C. § 101 *et. seq.* as the "Bankruptcy Code"), and Rules 2002, 6004, 6006, 9006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").<sup>4</sup>

D. Notice. As reflected in the Certificate of Service filed on November 28, 2017 [Doc. \_\_\_\_], a copy of the Motion and notice of the Sale Hearing has been provided to the Amended Consolidated Creditor Matrix [Doc. 116], which includes: (i) all parties that expressed interest in the possible purchase of any of the Purchased Assets; (ii) counsel for the Office of the United States Trustee for this district (the "United States Trustee"); (iii) counsel for Fresh Capital, LLC, Practical Investors, LLC, and Fiesta Holdings, Inc. (collectively the "Purchaser"); (iv) all entities known by the Debtor to have filed a notice of appearance or a request for receipt of Chapter 11 notices and pleadings filed in the Debtor's Chapter 11 Case as of the date hereof; (v) all federal, state and local regulatory and taxing authorities and recording offices which have a known interest in the relief requested in the Motion; (vi) all other parties on the Debtor's Master Service List; (vii) any entity known or reasonably believed to have asserted a security interest in or lien against any of the Purchased Assets (and their counsel, if known); (viii) all counterparties to any contract being assigned as set forth in the APA; and (ix) such other entities as may have been reasonably requested by the Purchaser (collectively, the "Notice Parties").

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<sup>4</sup> Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532. "Rule" references are to the Federal Rules of Bankruptcy Procedure, and "Civil Rule" references are to the Federal Rules of Civil Procedure.

E. Notice Sufficient. Based upon the Certificates of Service previously filed with the Court, adequate and sufficient notice of the Motion and the transactions contemplated thereby, including without limitation, the assumption and assignment of any assigned contracts (the “Assigned Contracts”) to the Purchaser, has been provided in accordance with §§ 105(a), 363, and 365 and Rules 2002, 6004, 6006 and 9006. Such notice provided a reasonable opportunity to object and be heard with respect to the Sale, the Motion and the relief requested therein, including the assumption and assignment of the Assigned Contracts to the Purchaser and the amounts necessary under § 365(b) to cure defaults thereunder, as such amounts have been transmitted pursuant to a written notice delivered to the applicable counterparty including the Notice Parties.

F. Assets Property of the Estate. The Purchased Assets sought to be transferred and/or assigned by the Debtor to the Purchaser pursuant to the APA are property of the Debtor’s estate and title thereto is vested in the Debtor’s estate.

G. Sufficiency of Marketing. The Debtor and its professionals marketed the Purchased Assets and conducted the marketing and sale process as described in the Motion. Based upon the record of these proceedings, all creditors and other parties in interest and all prospective purchasers have been afforded a reasonable and fair opportunity to bid for the Purchased Assets.

H. APA. On August 9, 2017, the Debtor entered into the APA, subject to higher or better offers. Based on the facts and circumstances set forth in the Motion, the Court finds the terms of the APA are fair and reasonable.

I. Marketing. The marketing of the Assets as described in detail in the Motion as well as the notice to all parties of the Motion was substantively and procedurally fair to all

parties and all potential bidders and afforded notice and a full, fair, and reasonable opportunity for any person to make a higher or otherwise better offer to purchase the Purchased Assets. The Debtor conducted the marketing of the Assets in accordance with the previously approved Bidding Procedures.

J. Corporate Authority. Subject to the entry of this Sale Order, the Debtor: (i) has full power and authority to execute the APA and all other documents contemplated thereby; (ii) has all of the power and authority necessary to consummate the transactions contemplated by the APA (collectively, the “Transactions”); and (iii) has taken all company action necessary to authorize and approve the APA and the sale of the Purchased Assets, and any actions required to be performed by the Debtor in order to consummate the Transactions contemplated in the APA. No consents or approvals, other than those expressly provided for in the APA or this Sale Order, are required for the Debtor to consummate the Sale.

K. Arm’s-Length Sale and Purchaser’s Good Faith. The APA was negotiated and is undertaken by the Debtor and the Purchaser at arm’s length without collusion or fraud, and in good faith within the meaning of § 363(m). The Purchaser recognized that the Debtor was free to deal with any other party interested in acquiring the Purchased Assets and the Motion allowed for anyone to offer a higher price. The marketing process provided a full and fair opportunity to obtain a higher price for the Assets and no other offers were obtained from any other prospective buyer or party to this case. All payments to be made by the Purchaser and other agreements or arrangements entered into by the Purchaser in connection with the Sale have been disclosed. The Purchaser has not violated § 363(n) by any action or inaction. As a result of the foregoing, the Purchaser is a “good faith purchaser” within the meaning of § 363(m) and otherwise has proceeded in good faith in all respects in connection with the Sale specifically and this Debtor’s

Chapter 11 Case generally. As a good faith purchaser within the meaning of § 363(m), the Purchase is entitled to all of the protections afforded thereby, including in the event this Sale Order or any portion thereof is reversed or modified on appeal, and otherwise has proceeded in good faith in all respects in connection with the Sale specifically and this Debtor's Chapter 11 Case generally.

L. Sale Highest or Best Offer. The total consideration provided by the Purchaser for the Purchased Assets as reflected in the APA is the highest and best offer for the Purchased Assets. No other person or entity or group of persons or entities has offered to purchase the Purchased Assets for an amount that would provide greater value to the Debtor than the Purchaser. The Court's approval of the Motion, the APA, and the Transactions maximizes the Debtor's recovery for the Purchased Assets, and, thus, is in the best interests of the Debtor and its estate, creditors and all other parties in interest.

M. No Fraudulent Transfer. The Purchase Price constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act and any other applicable law, and may not be avoided under § 363(n). The APA was not entered into, and the Sale is not being consummated, for the purpose of hindering, delaying, or defrauding creditors of the Debtor under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia, or any other applicable law. Neither the Debtor nor the Purchaser has entered into the APA or is consummating the Sale with any fraudulent or otherwise improper purpose.

N. No Liability Under Section 363(n). Neither the Debtor nor the Purchaser engaged in any conduct that would cause or permit the APA or the consummation of the Sale to be voided, or costs or damages to be imposed, under § 363(n).

O. Transfer of Purchased Assets Free and Clear. The Debtor is the sole and lawful owner of the Purchased Assets. Subject to § 363(f), and except as otherwise provided in the APA, the transfer of each of the Purchased Assets to the Purchaser will be, as of the deadlines established by the APA (the “Closing Date”), a legal, valid, and effective transfer of the Purchased Assets, which transfer vests or will vest the Purchaser with all right, title, and interest of the Debtor to the Purchased Assets free and clear of all Interests accruing or arising any time prior to or on the Closing Date. The Effective Date of the Sale, however, shall be September 29, 2017. As used in this Order, the term “Interests” shall have the broadest meaning permissible under the Bankruptcy Code and applicable law and shall include, without limitation:

- (i) all liens and encumbrances covering the Purchased Assets;
- (ii) all equity interests in the Purchased Assets and/or the Debtor;
- (iii) all “claims” as defined in § 101(5) against the Purchased Assets and/or the Debtor and all debts arising under, relating to, or in connection with any act or omission of the Debtor and liabilities, obligations, demands, guaranties, options, rights, contractual commitments, restrictions, interests and matters of any kind and nature, whether arising prior to or subsequent to the commencement of the Debtor’s Chapter 11 Case, and whether imposed by agreement, understanding, statute, law, equity or otherwise (including, without limitation, rights and remedies with respect to claims, liens, encumbrances, and interests (x) that purport to give to any party rights of setoff or recoupment, rights or options to effect any forfeiture, modification, or restriction, profit sharing interests, rights and options of first refusal, rights and options to purchase or repurchase or terminate the Debtor’s or the Purchaser’s interests in the Purchased Assets, or any similar rights, or (y) in respect of taxes and charges of any kind or nature, if any, including, without limitation, any restriction on use, transfer, receipt of income or other exercise of any attributes of ownership), including claims and debts relating to any of the following:
  - (a) labor or employment agreements;
  - (b) mortgages, deeds of trust, security interests, and liens;
  - (c) intercompany loans and receivables between the Debtor and any non-Debtor affiliate;

- (d) pension, welfare, compensation, or other employee benefit plans, agreements, practices, and programs, including, without limitation, any pension plan of any Debtor, any affiliate of any Debtor, or any member of the Debtor's "control group";
- (e) employee, worker's compensation, occupational disease, or unemployment or temporary disability related claim that might otherwise arise under or pursuant to state, federal, or other applicable law.
- (f) environmental, health, and safety laws with respect to any assets owned or operated by Debtor or any corporate predecessor at any time prior to the Closing Date and any liabilities of the Debtor;
- (g) bulk sales or similar laws;
- (h) tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, and any taxes arising under or out of, in connection with, or in any way relating to the operation of the Purchased Assets prior to Closing, including excise taxes or stamp taxes assessed by any applicable taxing authority;
- (i) violations, or other non-compliance with any laws, regulations, standards, guidelines, enforcement orders, or any other authority or requirement enforced by, or under the supervision of, the Occupational Safety and Health Administration; and
- (j) any theories of successor liability or causes of action related thereto.

P. Free and Clear Findings Required by Purchaser. The Purchaser would not have entered into the APA and would not consummate the transactions contemplated thereby if the Sale of the Purchased Assets to the Purchaser were not free and clear from any and all Interests pursuant to § 363(f), or if the Purchaser or the Purchased Assets would, or in the future could, have liability for any of such Interests. Effective upon the Closing Date, the Purchaser and the Purchased Assets shall have no liability, *in rem* or *in personam*, for any Interests. A sale of the Purchased Assets other than one free and clear of all Interests would yield substantially less value for the Debtor's estate, with less certainty, than the Sale as contemplated. Therefore, the



Sale contemplated by the APA maximizes the Debtor's recovery on the Purchased Assets, and, thus, is in the best interests of the Debtor and its estate, creditors and all other parties in interest.

Q. Satisfaction of Section 363(f) Standards. The Debtor may sell the Purchased Assets free and clear of all Interests because, with respect to each creditor or other person or entity asserting an Interest, one or more of the standards set forth in § 363(f)(1)-(5) has been satisfied. Those holders of Interests who did not object (or who ultimately withdrew their objections, if any) to the Sale or the Motion are deemed to have consented to the Motion and Sale pursuant to § 363(f)(2). Those holders of Interests who did object fall within one or more of the other subsections of § 363(f).

R. No Successor Liability. The conveyance of the Purchased Assets does not amount to a consolidation, merger, or *de facto* merger of the Purchaser and the Debtor or the Debtor's estate. There is not substantial continuity between the Purchaser and the Debtor. There is no continuity of enterprise between the Debtor and the Purchaser. The Purchaser is not a mere continuation of the Debtor or the Debtor's estate. The Purchaser does not constitute a successor to the Debtor or the Debtor's estate. As set forth above in ¶¶ Q and R and below in ¶ 4, the Purchaser's acquisition of the Purchased Assets shall be free and clear of any Interest and the Purchaser shall have no *in personam* liability for any Interest under any theory of successor liability of any nature whatsoever. The Purchaser's operations shall not be deemed a continuation of the Debtor's business as a result of the acquisition of the Purchased Assets. The Purchaser would not have acquired the Purchased Assets but for the foregoing protections against potential claims based upon "successor liability" theories.

S. Assigned Contracts. Each and every provision of the Assigned Contracts or applicable non-bankruptcy law that purports to prohibit, restrict, or condition; or could be

construed as prohibiting, restricting, or conditioning; assignment of any Assigned Contract has been satisfied or is otherwise unenforceable under § 365. All counterparties of the Assigned Contracts who did not or do not timely file an objection to the assumption and assignment of the Assigned Contracts to which they are counterparty are deemed to consent to the assumption by the Debtor of their respective Assigned Contracts and the assignment thereof to the Purchaser, and the Purchaser shall enjoy all of the rights and benefits under each such Assigned Contract as of the applicable date of assumption and assignment without the necessity of obtaining such non-debtor party's written consent to the assumption or assignment thereof. Upon the assignment and sale to the Purchaser, the Assigned Contracts shall be deemed valid and binding, in full force and effect in accordance with their terms, subject to the provisions of this Sale Order, and shall be assigned and transferred to the Purchaser, notwithstanding any provision in the Assigned Contracts prohibiting or otherwise restricting assignment or transfer. The Debtor has demonstrated that it is an exercise of its sound business judgment to assume and assign the Assigned Contracts to the Purchaser in connection with the consummation of the Sale of the Purchased Assets, and the assumption and assignment of the Assigned Contracts is in the best interests of the Debtor, its estate and creditors, and other parties in interest. The Assigned Contracts being assigned to the Purchaser are an integral part of the Sale of the Purchased Assets and, accordingly, their assumption and assignment are reasonable and an enhancement to the value of the Debtor's estate.

T. Cure/Adequate Assurance. Pursuant to the APA and the notices sent to the counterparties to the Assigned Contracts, the Purchaser has demonstrated adequate assurance of future performance of all Assigned Contracts within the meaning of § 365, including its promise to perform the Debtor's obligations under the Assigned Contracts for periods on and after the

Closing. The Cure Costs are deemed the amounts necessary to “cure” (within the meaning of § 365(b)(1)) all “defaults” (within the meaning of § 365(b)) under such Assigned Contracts. Any objections to the Cure Costs, to the extent not otherwise resolved, are hereby overruled. To the extent that any counterparty failed to timely object to its Cure Cost or to raise any other alleged default or breach of contract, such counterparty is deemed to have consented to such Cure Cost and to the assignment of its respective Assigned Contract(s) to the Purchaser and to have waived any other defaults or breaches. The Court finds that with respect to all such Assigned Contracts, the payment of the Cure Costs as provided in the APA is appropriate and is deemed to fully satisfy the Debtor’s obligations under §§ 365(b) and 365(f). Accordingly, all of the requirements of §§ 365(b) and 365(f) have been satisfied for the assumption by the Debtor, and the assignment by the Debtor to the Purchaser, of each of the Assigned Contracts to be assumed and assigned to the Purchaser as of Closing. To the extent any Assigned Contract is not an executory contract within the meaning of § 365, it shall be transferred to the Purchaser in accordance with the terms of this Sale Order that are applicable to the Purchased Assets, and the Purchaser shall have no liability or obligation for any (a) defaults or breaches under such agreement that relate to acts or omissions that occurred in the period, or otherwise arose, prior to the date of the entry of this Sale Order, and (b) claims, counterclaims, offsets, or defenses (whether contractual or otherwise, including without limitation, any right of recoupment) with respect to such Assigned Contract, that relate to any acts or omissions that arose or occurred prior to the date of the entry of this Sale Order.

U. Assets Assignable. Each and every provision of the documents governing the Purchased Assets or applicable non-bankruptcy law that purports to prohibit, restrict, or

condition; or could be construed as prohibiting, restricting, or conditioning; assignment of any of the Purchased Assets, if any, have been satisfied or are otherwise unenforceable under § 365.

V. Sale as Exercise of Business Judgment. Entry into and consummation of the APA constitutes the exercise of sound business judgments by the Debtor, and such acts are in the best interests of the Debtor, its estate and creditors, and all parties in interest. The Court finds that the Debtor has articulated good and sufficient business reasons justifying the Sale of the Purchased Assets to the Purchaser. Additionally: (i) the APA constitutes the highest and best offer for the Purchased Assets; (ii) the APA and the closing thereon presents the best opportunity to realize the maximum value of the Purchased Assets and avoid a decline and devaluation of the Purchased Assets; (iii) there is risk of deterioration of the value of the Purchased Assets if the Sale is not consummated promptly; and (iv) the APA and the closing thereon will provide a greater recovery for the Debtor's creditors than would be provided by any other presently available alternative. The Debtor has demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the Sale prior to, and outside of, a plan of reorganization. Because the entry into and consummation of the APA constitutes the exercise of sound business judgment by the Debtor, the Debtor, its respective members, officers, directors, employees, advisors, professionals, and agents shall not have nor incur any liability to the estate or any holder of a Claim or Equity Interest for any act or omission in connection with, related to, or arising out of the negotiations of the APA or the consummation of the transactions contemplated thereunder, other than liability arising out of or relating to any act or omission that constitutes a breach of the APA, willful misconduct, fraud, or gross negligence, in each case as determined by a court of competent jurisdiction.

W. Compelling Reasons for an Immediate Sale. Good and sufficient reasons for approval of the APA have been articulated by the Debtor. The Debtor has demonstrated compelling circumstances for the Sale outside: (a) the ordinary course of business, pursuant to § 363(b); and (b) a plan of reorganization, in that, among other things, the immediate consummation of the Sale to the Purchaser is necessary and appropriate to preserve and to maximize the value of the Debtor's estate. To maximize the value of the Purchased Assets and preserve the viability of the businesses to which the Purchased Assets relate, it is essential that the Sale occur promptly. Time is of the essence in consummating the Sale in order to preserve the value of the Purchased Assets.

X. Final Order. This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Rules 6004(h) and 6006(d), the Court expressly finds that there is no just reason for delay in the implementation of this Sale Order and expressly directs entry of judgment as set forth herein.

Y. Title to Purchased Assets. The Debtor's rights, title, and interests in, to, and under each of the Purchased Assets are not subject to cancellation or termination, and have not been adversely affected, as a result of any pre-Closing non-payment of royalties, working interest owners, taxes, or any other amounts.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:**

1. Motion Granted. The relief requested in the Motion is GRANTED and the Sale is approved, all as set forth in this Sale Order.
2. Objections. No objections to the relief sought in the Motion have been filed.
3. Approval. Pursuant to §§ 105, 363, and 365, the APA, the assumption and assignment of the Assigned Contracts to the Purchaser as of the Closing Date, and the Sale of the

Purchased Assets and the other Transactions are hereby approved and the Debtor is hereby authorized and directed to consummate, and shall be deemed for all purposes to have consummated, the Sale, including the sale, transfer, and assignment of all of the Debtor's right, title, and interest in the Purchased Assets to the Purchaser free and clear of any and all Interests in accordance with the terms of the APA. Pursuant to §§ 105, 363, and 365, the Debtor and the Purchaser are each hereby authorized and directed to take any and all actions necessary or appropriate to: (a) consummate the Sale of the Purchased Assets to the Purchaser and the Closing of the Sale, the APA, and this Sale Order, (b) assume and assign the Assigned Contracts to be assumed and assigned to the Purchaser as of the Closing Date, and (c) perform, consummate, implement, and close fully the APA together with any and all additional instruments and documents that may be reasonably necessary or desirable to implement the APA. The Debtor is hereby authorized and directed to perform each of its respective covenants and undertakings as provided in the APA prior to or after the Closing of the Sale without further order of the Court. The Purchaser and the Debtor shall have no obligation to close the Sale except as is contemplated and provided for in the APA. The Purchaser shall not be required to seek or obtain relief from the automatic stay under § 362 to enforce any of its remedies under the APA or any other sale-related document. The automatic stay imposed by § 362 is modified solely to the extent necessary to implement the provisions of this Sale Order.

4. Transfer Free and Clear. Pursuant to §§ 105, 363, and 365, upon the Closing, the transfer is free and clear of any Interest. Neither the Purchaser, nor its respective successors and assigns, nor the Purchased Assets shall have any liability, *in rem* or *in personam*, for any Interest.

5. Surrender of Possession. Any and all Purchased Assets in the possession or control of any person or entity, including any vendor, supplier, or employee of the Debtor shall

be transferred to the Purchaser free and clear of all Interests and shall be delivered to the Purchaser and deemed delivered at the time of Closing (or such other time as provided in the APA).

6. Valid Transfer. Effective upon the Closing, the transfer to the Purchaser of the Debtor's right, title, and interest in the Purchased Assets pursuant to the APA shall be, and hereby is deemed to be, a legal, valid, and effective transfer of the Debtor's right, title, and interest in the Purchased Assets, and vests with or will vest in the Purchaser all right, title, and interest of the Debtor in the Purchased Assets, free and clear of all Interests.

7. Exculpation and Release. None of the Purchaser, or its affiliates, successors, assigns, and advisors shall have or incur any liability to, or be subject to any action by the Debtor, its estate or any of their predecessors, successors, or assigns, arising out of the negotiation, investigation, preparation, execution, or delivery of the APA, and the entry into and consummation of the Sale. Because the entry into and consummation of the APA constitutes the exercise of sound business judgment by the Debtor, the Debtor, its respective members, officers, directors, employees, advisors, professionals, or agents, shall not have nor incur any liability to the estate or any holder of a Claim or Equity Interest for any act or omission in connection with, related to, or arising out of the negotiations of the APA or the consummation of the transactions contemplated thereunder, other than liability arising out of or relating to any act or omission that constitutes a breach of the APA, willful misconduct, fraud, or gross negligence, in each case as finally determined by a court of competent jurisdiction.

8. Good Faith Purchaser. The APA has been entered into by the Purchaser in good faith and the Purchaser is a good faith purchaser of the Purchased Assets as that term is used in § 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the

authorization provided herein of the Sale shall neither affect the validity of this Sale nor the transfer of the Purchased Assets to Purchaser free and clear of Interests, unless such authorization is duly stayed before the Closing pending such appeal. The Purchaser is entitled to all of the protections afforded by § 363(m) of the Bankruptcy Code.

9. No Bulk Sales. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the transactions contemplated by the APA, the Motion, and this Sale Order.

10. Fair and Equivalent Value. The consideration provided by the Purchaser for the Purchased Assets under the APA shall be deemed for all purposes to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law, and the Sale may not be avoided, or costs or damages imposed or awarded under § 363(n) or any other provision of the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act, or any other similar state laws.

11. Right to Transfer and Receive Marketable Title. Upon the Closing, this Sale Order shall be construed and shall constitute for any and all purposes approval for Debtor to transfer and for the Purchaser to receive a full and complete general assignment, conveyance, and/or bill of sale to transfer of all of the Debtor's marketable right, title, and interest in the Purchased Assets to the Purchaser at the Closing pursuant to the terms of the APA, free and clear of all Interests.

12. No Successor Liability. The consummation of the Sale does not amount to a consolidation, merger, or *de facto* merger of the Purchaser and the Debtor or the Debtor's estate. There is not substantial continuity between the Purchaser and the Debtor. There is no continuity of enterprise between the Debtor and the Purchaser. The Purchaser is not a mere continuation of



the Debtor or the Debtor's estate. The Purchaser does not constitute a successor to the Debtor or the Debtor's estate. Upon the Closing, the Purchaser's acquisition of the Purchased Assets shall be free and clear of any "successor liability" claims of any nature whatsoever, whether known or unknown and whether asserted or unasserted as of the time of the Closing. The Purchaser's operations shall not be deemed a continuation of the Debtor's business as a result of the acquisition of the Purchased Assets purchased.

13. Authorization to Assign. Notwithstanding any provision of any contract governing the Purchased Assets or any Assigned Contract to be assumed and assigned to the Purchaser as of the Closing Date pursuant to § 365(f) or applicable non-bankruptcy law that prohibits, restricts, or conditions the assignment of the Purchased Assets or the Assigned Contracts, the Debtor is authorized to (a) assign the Purchased Assets to the Purchaser and (b) assume and assign the Assigned Contracts to the Purchaser as of the Closing Date, in each case, which assignments shall take place on and be effective as of the Closing Date unless the Debtor and the Buyer shall mutually agree to an earlier date for the transaction to be made effective for accounting purposes so long as such date is on or after September 27, 2017, and before December 31, 2018, or as otherwise provided by a separate order of this Court.

a. There shall be no accelerations, assignment fees (other than general recording fees), increases, or any other fees charged to the Purchaser or the Debtor as a result of the assumption and assignment of the Purchased Assets and the Assigned Contracts.

b. The Debtor has met all of the requirements of § 365(b) for each of the Assigned Contracts to be assumed and assigned to the Purchaser as of Closing. Notwithstanding the foregoing, unless required by the Purchaser under the APA, the

Debtor shall not be required by the Court to assume and assign any Assigned Contracts, and, if no such assumption and assignment occurs, no Cure Costs shall be due and no adequate assurance of future performance shall be required.

c. The Debtor's assumption of the Assigned Contracts is subject to the consummation of the Sale of the Purchased Assets to the Purchaser. To the extent that an objection by a counterparty to any Assigned Contract, including an objection related to the applicable Cure Cost, is not resolved prior to the Closing, the Purchaser, may, without any further approval of the Court or notice to any party, elect to (i) not have the Debtor assume and assign such Assigned Contract to it, or (ii) have the Debtor postpone the assumption of such Assigned Contract until the resolution of such objection; provided that the Debtor, the Purchaser, and the relevant non-debtor counterparty under each Assigned Contract shall have authority to compromise, settle, or otherwise resolve any objections to proposed Cure Costs without further order of the Bankruptcy Court, with any such agreed upon Cure Costs being paid to the appropriate counterparty as a condition subsequent to such assumption and assignment of the relevant Assigned Contract.

14. Assigned Contracts. At the Closing, subject to the provisions of this Sale Order, the Purchaser shall succeed to the entirety of the Debtor's rights and obligations in the Assigned Contracts to be assumed and assigned to the Purchaser first arising and attributable to the time period occurring on or after the Effective Date and shall have all rights thereunder.

a. Upon Closing, (i) all pre-Effective Date defaults (monetary and non-monetary) under the Assigned Contracts shall be deemed cured and satisfied in full through the payment of the Cure Costs, (ii) no other amounts will be owed by the Debtor,

its estate, or the Purchaser with respect to amounts first arising or accruing during, or attributable or related to, the period prior to the Effective Date with respect to the Assigned Contracts, and (iii) any and all persons or entities shall be forever barred and estopped from asserting a claim against the Debtor, its estate, or the Purchaser or the Purchased Assets that any additional amounts are due or defaults exist under the Assigned Contracts that arose or accrued during, or relate to or are attributable to, the period before the Effective Date. The obligations pursuant to the terms of the APA to pay the Cure Costs and Purchaser's promise to perform the Debtor's obligations under the Assigned Contracts for the period on or after the Effective Date shall constitute adequate assurance of its future performance under the Assigned Contracts being assigned to it at the Closing within the meaning of §§ 365(b)(1)(C) and (f)(2)(B).

b. Upon assumption of those Assigned Contracts to be assumed by the Debtor and assigned to the Purchaser as of Closing, such Assigned Contracts shall be deemed valid and binding, in full force and effect in accordance with their terms, subject to the provisions of this Sale Order, and shall be assigned and transferred to the Purchaser, notwithstanding any provision in such Assigned Contracts or other restrictions prohibiting assignment or transfer. To the extent any executory contract or unexpired lease is assumed and assigned to the Purchaser under this Sale Order, such assumption and assignment will not take effect until the Closing. Furthermore, other than Assigned Contracts, no other contract shall be deemed assumed by the Debtor and assigned to the Purchaser pursuant to section 365 of the Bankruptcy Code. The failure of the Debtor or the Purchaser to enforce at any time one or more terms or conditions of any Assigned

Contract shall not be a waiver of such terms or conditions, or of the Debtor's and the Purchaser's rights to enforce every term and condition of such Assigned Contract.

c. Upon the reasonable request of the Purchaser, all counterparties to the Assigned Contracts to be assumed and assigned to Purchaser at the Closing shall cooperate and expeditiously execute and deliver; and shall not charge the Debtor or the Purchaser for; any instruments, applications, consents, or other documents which may be required or requested by any public or quasi-public authority or other party or entity to effectuate the applicable transfers in connection with the Transactions.

d. Notwithstanding the foregoing, in accordance with and pursuant to the terms and conditions of Section 1(k) of the APA, the Debtor may, at the Purchaser's sole discretion and direction, amend the list of Assigned Contracts to delete any such contract in which case such designated contract shall not be an Assigned Contract and shall be excluded from the Sale.

15. Governmental Authorization to Effectuate Sale and Assignments. Each and every federal, state, and governmental agency or department, and any other person or entity, is hereby authorized to accept any and all documents and instruments in connection with or necessary to consummate the transactions contemplated by the APA. No governmental unit may revoke or suspend any lawful right, license, trademark, or other permission relating to the use of the Purchased Assets sold, transferred, or conveyed to the Purchaser on account of the filing or pendency of Debtor's Chapter 11 Case or the consummation of the Transactions. For the avoidance of doubt, the Sale of the Purchased Assets authorized herein shall be of full force and effect, regardless of whether the Debtor or any of their affiliates lack good standing in any jurisdiction in which such entity is formed or is authorized to transact business.

16. Inconsistencies with Prior Orders, Pleadings, or Agreements. To the extent this Sale Order is materially inconsistent with any prior order or pleading with respect to the Motion in Debtor's Chapter 11 Case, the terms of this Order shall govern. To the extent there is material inconsistency between the terms of this Order and the terms of the APA (including all ancillary documents executed in connection therewith), the terms of this Sale Order shall govern.

17. Subsequent Orders and Plan Provisions. This Sale Order shall not be modified by any Chapter 11 plan confirmed in Debtor's Chapter 11 Case or any subsequent order of this Court.

18. Binding Effect of Sale Order. This Sale Order and the APA shall be binding in all respects upon the Debtor, its estate, and all parties in interest to Debtor's Chapter 11 Case, including, but not limited to, all creditors of, and holders of equity interests in, the Debtor, any holders of liens, claims, encumbrances, or other Interests in, against, or on, all or any portion of the Purchased Assets (whether known or unknown), the Purchaser, and all successors and assigns of the Purchaser, the Purchased Assets, and any trustees, examiners, "responsible persons," or other fiduciaries appointed in Debtor's Chapter 11 Case or Chapter 7 case, if converted, under the Bankruptcy Code. The APA shall not be subject to rejection or avoidance under any circumstances. If any order under § 1112 of the Bankruptcy Code is entered, such order shall provide (in accordance with §§ 105 and 349) that this Sale Order, including the rights granted to the Purchaser hereunder, shall remain effective and, notwithstanding such dismissal, shall remain binding on parties in interest.

19. Failure to Specify Provisions. The failure specifically to include or make reference to any particular provisions of the APA or any related ancillary document in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the

Court that the APA and all related ancillary documents are authorized and approved in their entirety.

20. Retention of Jurisdiction. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Sale Order, including, without limitation, the authority to: (i) interpret, implement, and enforce the terms and provisions of this Sale Order (including the exculpation, release, and injunctive provisions in this Sale Order) and the terms of the APA, all amendments thereto, and any waivers and consents thereunder; (ii) protect the Purchaser, or the Purchased Assets, from and against any Interests; (iii) compel delivery of all Purchased Assets to the Purchaser; (iv) compel the Debtor and the Purchaser to perform all of their respective obligations under the APA; and (v) resolve any disputes arising under or related to the APA or the Sale.

21. No Material Modifications. The APA and any related agreements, documents, or other instruments may be modified, amended, or supplemented through a written document signed by the parties thereto in accordance with the terms thereof without further order of the Court; provided, however, that any such modification, amendment, or supplement is neither material nor materially changes the economic substance of the transactions contemplated hereby.

22. Immediate Effect. This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding any provision in the Bankruptcy Rules to the contrary, the Court expressly finds there is no reason for delay in the implementation of this Sale Order and, accordingly: (i) the terms of this Sale Order shall be immediately effective and enforceable upon its entry; (ii) the Debtor are not subject to any stay in the implementation, enforcement, or realization of the relief granted in this Sale Order; and (iii) the Debtor may, in their discretion and without further delay, take any action and perform any act authorized under this Sale Order.

23. Provisions Non-Severable. The provisions of this Sale Order are non-severable and mutually dependent; provided, however the Purchaser may, in its sole discretion, waive any provision determined to be unenforceable in whole or in part.

24. The proceeds from the sale of the Purchased Assets (net only of those amounts set forth below) shall be paid indefeasibly into a segregated account of the Debtor (the “Sale Proceeds Account”) subject to further order of this Court and net only of the following amounts that the Debtors are authorized to pay at Closing:

a. To the DIP Lender, payment in full in cash of the DIP Facility including all DIP Obligations.

b. To holders of prior liens, if any, that are set forth and disclosed in the closing statements in the amount of the value of any prior liens in the Assets being sold that is agreed upon by the holder of the prior lien and the Debtor, subject to the written consent of the Lender, or, failing such agreement, such disputed amount shall be retained by the Debtors in the Sale Proceeds Accounts or escrow with the title company for determination by the Court of the extent, priority, validity, and/or value of such asserted prior lien; and

c. If the Purchaser is not the Purchaser, it shall be entitled to seek the allowance of an administrative claim upon the filing of a motion pursuant to § 503(b).

25. Satisfaction of Conditions Precedent. Neither the Purchaser nor the Debtor shall have an obligation to close the Transactions until all conditions precedent in the APA to each of their respective obligations to close the Transactions have been met, satisfied, or waived in accordance with the terms of the APA.

# # #

APPROVED FOR ENTRY:

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***COUNSEL FOR THE PURCHASER***

**EXHIBIT B**

ASSET PURCHASE AGREEMENT

BETWEEN AND AMONG

EATERIES, INC.  
(a Delaware corporation)

as Seller,

and

PRACTICAL INVESTORS LLC,  
(an Oklahoma limited liability company)

FRESH CAPITAL LLC  
(an Oklahoma limited liability company)

FIESTA HOLDINGS, INC  
(a Delaware corporation)

collectively, as Purchaser

DATED AS OF  
August 9, 2017

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## EXHIBITS

Exhibit A	Restaurants
Exhibit B	Restaurant Transfer Amounts
Exhibit C	Form of Bill of Sale (with assignment of transferable warranties)
Exhibit D	Proposed Form of Sale Approval Order *
Exhibit E	Assignment of Copyrights
Exhibit F	Assignment of Service Marks

## DISCLOSURE SCHEDULE

Section 1.01(b)	Assigned Equipment
Section 1.01(c)	Assumed Leases
Section 1.01(d)	Assumed Contracts
Section 1.01(e)	Assigned Liquor Licenses
Section 1.01(h)	Assigned Intellectual Property
Section 2.03	Secured Indebtedness

\*The Seller advises all parties interested in submitting a bid that on August 16, 2017 the Bankruptcy Court announced unequivocally that the Bankruptcy Court will not enter the Sale Approval Order with paragraph 8 included. However, that issue was not then in front of the Bankruptcy Court, and at this time, the Purchaser is not willing to waive this requirement and proceed with purchasing the Assets without the inclusion of such paragraph in the Sale Approval Order. The Purchaser intends to address its position with the Bankruptcy Court through formal papers filed in the Bankruptcy Case. The form of the Sale Approval Order attached hereto is being attached at the specific request of counsel for the Purchaser.

## ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT (this "Agreement") made and entered into this 9<sup>th</sup> day of August, 2017 between and among EATERIES, INC., a Delaware corporation ("Seller"); and PRACTICAL INVESTORS LLC, an Oklahoma limited liability company ("Practical"), FRESH CAPITAL LLC, an Oklahoma limited liability company ("Fresh Capital"); and FIESTA HOLDINGS, INC., a Delaware corporation ("Fiesta," and with Practical and Fresh Capital, being collectively the "Purchaser").

### RECITALS

WHEREAS, the Seller is engaged in the business of operating the restaurants listed on Exhibit A (each, a "Restaurant," and collectively, the "Restaurants"). The operation of the Restaurants, collectively, shall be referred to herein as the "Business."

WHEREAS, on April 18, 2017, Seller each commenced a voluntary case, (the "Bankruptcy Case")<sup>1</sup>, under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Western District of Oklahoma (the "Bankruptcy Court");

WHEREAS, Seller is currently operating its businesses (including the Business) and managing its properties and assets as debtor and debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, each of Practical, Fresh Capital and Fiesta are secured creditors of Seller and hold the Secured Indebtedness of the Seller as more fully described in Section 2.03.

WHEREAS, the Seller wishes to sell, and Purchaser wishes to purchase, the Assets of the Business set forth herein on the terms and subject to the conditions set forth in this Agreement and subject to the approval of the Bankruptcy Court and higher and better offers at the Auction;

WHEREAS, the Seller shall assume and assign the Assumed Leases and the Assumed Contracts, subject to the terms hereof and approval of the Bankruptcy Court, to Purchaser;

WHEREAS, Purchaser acknowledges that the transactions provided in this Agreement are of direct and material benefit to it; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Purchaser, intending to be legally bound, hereby agree as follows:

---

<sup>1</sup> The Bankruptcy Case pending in the Bankruptcy Court is Eateries, Inc., Case No. 17-11444-SAH, and is jointly administered with GRP of Zanesville, LLC, Case No. 17-11445-SAH.

**ARTICLE I.**  
**SALE OF ASSETS; EXCLUDED ASSETS**

SECTION 1.01. Transferred Assets. Seller hereby agrees to, sell, assume and assign and deliver to Purchaser, and Purchaser, hereby agrees to purchase and accept from the Seller, all of the Seller's right, title and interest in and to the following assets (but specifically excluding the Excluded Assets) free and clear of all Liens (such assets shall be collectively referred to herein as the "Assets");

(a) Inventory. All inventory of food, non-alcoholic beverages, alcoholic beverages (only to the extent transferable under applicable Law), paper products, cooking supplies and cleaning supplies used or held for use in the operation of each Restaurant on its applicable Effective Transfer Date (the "Inventory");

(b) Equipment. All fixtures, furniture, equipment, machinery and tangible personal property, used or held for use (whether at the Restaurants, in storage or in transit) in the operation of the Restaurants, including but not limited to tables, chairs, smallwares, signs, lights, ornaments, decor, collectibles, appliances, computers and computer equipment, tools, machinery, display cases, shelves, cabinets, racks, bars, bar equipment, and any desktop and laptop personal computers that are used in the operation of the Restaurants as set forth in Section 1.01(a) of the Disclosure Schedule; except to the extent such equipment is owned by a third party as set forth in Section 1.01(b) of the Disclosure Schedule and as such ownership shall be proven to the reasonable satisfaction of the Purchaser, or, in the alternative, as ordered by the Bankruptcy Court. Seller also agrees to transfer to Purchaser all of the unexpired and transferable warranties for this equipment;

(c) Assumed Leases. All of the Seller's interests in and to all Leases set forth in Section 1.01(c) of the Disclosure Schedule (collectively the "Assumed Leases") on the applicable Effective Transfer Date of each Restaurant to which the underlying Assumed Lease pertains, including all of the Seller's interests in any tenant improvements, fixtures, easements, rights of way and other appurtenances related to such Assumed Lease (collectively, the "Leased Real Property");

(d) Assumed Contracts. All of the Seller's rights, privileges and claims under the Contracts of the Seller relating to each Restaurant, to the extent assignable in accordance with their terms and applicable Law, which Purchaser wishes to assume, as listed in Section 1.01(d) of the Disclosure Schedule (the "Assumed Contracts") on each applicable Effective Transfer Date of such Restaurant;

(e) Liquor Licenses. All of the Seller's Liquor Licenses used in the operation of each Restaurant, together with that certain Liquor License owned by Seller and previously used in connection with a certain establishment no longer operating as a Restaurant and referred to as the "Butler Liquor License", to the extent assignable or otherwise transferable in accordance with their terms and applicable Law, which Purchaser wishes to assume, as set forth in Section 1.01(e) of the Disclosure Schedule (the "Assigned Liquor Licenses") transferred on the applicable Effective Transfer Date of such Restaurant;



(f) Permits. All of the Seller's Permits relating to each Restaurant, to the extent assignable or otherwise transferable in accordance with their terms and applicable Law, which Purchaser wishes to assume, (the "Assigned Permits") on the applicable Effective Transfer Date of such Restaurant;

(g) Books and Records. All books, records, correspondence, advertising and promotional materials, marketing information, operating manuals, training manuals, recipes, menus, business reports, vendor and customer lists and databases, studies and pricing information relating exclusively to, or used exclusively in, the operation of the Business, and the right to use, but not exclusively, and a copy of the documentation of, all shared recipes used in connection with the operation of the Restaurants and other businesses of the Seller; any proprietary recipes used exclusively in the Business shall be transferred on an exclusive basis and the Seller shall not use such recipes after the last Effective Transfer Date; provided, however, that Seller shall have the right to retain copies of any portions of such materials that relate to the Business or any of the Assets as operated and used by Seller prior to the applicable Effective Transfer Date;

(h) Intellectual Property. All Intellectual Property Rights used by the Seller exclusively in connection with the Business set forth on Section 1.01(h) of the Disclosure Schedule, including all goodwill associated therewith, to the extent assignable in accordance with the terms thereof and applicable Law (the "Assigned Intellectual Property"); provided that the Seller will be granted a license to use such Intellectual Property in connection with each Restaurant that is not yet transferred to Purchaser pursuant to the terms and conditions of a licensing agreement which will be agreed to as to form and filed with the Bankruptcy Court prior to the Auction which is to be executed at the Initial Closing (the "Seller Intellectual Property License Agreement");

(i) Telephone Numbers and Websites. All transferable telephone numbers, facsimile numbers, email addresses, directory listings, websites and web domains used exclusively in connection with each Restaurant on the applicable Effective Transfer Date of such Restaurant;

(j) Software. All transferable licenses for computer software (including customizations, if any, developed for Seller) used exclusively in connection with the Restaurants other than computer software used to communicate with or report to other Seller locations not associated with the Business, to the extent assignable in accordance with their terms and applicable Law;

(k) Cash. Cash on hand at each Restaurant on the applicable Effective Transfer Date;

(l) Security Deposits. All security deposits and escrow amounts made by the Company that relate to Assumed Leases of each Restaurant on the applicable Effective Transfer Date; provided that such security deposits are exclusively in connection with such Restaurant; and

(m) Prepaid Expenses and Vendor Rebates. Any and all (i) deposits made exclusively in connection with the Assets or the Business, including escrows relating to liquor purchases, (ii) prepaid expenses incurred exclusively in connection with the Business including prepaid utilities and amounts deposited or prepaid with respect to Assumed Contracts, Assumed Leases, Assigned Permits and Assigned Liquor Licenses, and (iii) vendor rebates related to the Transferred Restaurants; and

(n) Insurance. The benefits and proceeds from any insurance contracts on the Restaurants.

All sales and assumptions and assignments of such Assets shall be subject to approval in all respects by the Bankruptcy Court pursuant to Sections 363 and 365 of the Bankruptcy Code.

SECTION 1.02. Excluded Assets. Notwithstanding anything to the contrary contained in this Agreement, the Assets do not include the following assets of Seller (the "Excluded Assets"):

(a) [RESERVED];

(b) All bank accounts and the amounts on deposit therein, including any bank accounts used in connection with the Business, and any cash or cash equivalents related to the Business other than the cash on hand at each of the Restaurants on its applicable Effective Transfer Date;

(c) All Pre-Petition accounts receivable, including accounts receivable generated by each Restaurant for products or services provided Pre-Petition;

(d) [RESERVED];

(e) All Permits related in whole or in part to businesses of any Seller or its Subsidiaries, other than the Business, and all of the Seller's Permits related exclusively to the Business, but not transferable to Purchaser under applicable Law;

(f) [RESERVED];

(g) All rights, privileges and claims under shared Contracts that (i) are not transferable or (ii) relate to businesses other than the Business;

(h) [RESERVED];

(i) All corporate records and other documents, books, records, customer lists and databases not relating exclusively to the Business (except as otherwise provided in Section 1.01(g)), any books and records related to Seller's employees the transfer of which would conflict with any confidentiality or privacy obligation of Seller under applicable Law, and all books and records listed in Section 1.01(g) of the Disclosure Schedule;

(j) All Tax Returns, Tax records and any other Tax related work papers and documentation; provided that copies thereof must be provided to Purchaser on request;

(k) All properties, capital stock, claims, Contracts, goodwill and assets and rights of any nature relating to any extent to any business conducted by the Seller other than the Business;

- (l) All rights of Seller under the Transaction Documents;
- (m) All employee benefit plans and assets relating thereto;
- (n) All Leases other than the Assumed Leases;
- (o) All claims for refunds of Taxes and any other Tax assets;
- (p) All Contracts that are not Assumed Contracts; and
- (q) All Avoidance Actions.

SECTION 1.03. Assumed Liabilities. Except as set forth herein, Purchaser shall not be responsible for any other liabilities, known or unknown, of Seller. Purchaser is not a successor entity to Seller. Purchaser shall assume and thereafter pay, honor and discharge when due and payable only the following liabilities (the "Assumed Liabilities"):

- (a) All Post Petition obligations of the Seller to be performed under each Assumed Lease;
- (b) All obligations of the Seller for those Post-Petition trade payables from the ordinary and customary course of the Business at the Restaurants at a level consistent with Post-Petition trade payables to date;
- (c) All Post Petition obligations of the Seller to be performed under each Assumed Contract;
- (d) Those obligations of Seller to employees hired by Purchaser with respect to unused vacation and personal time accrued Post-Petition and prior to the Effective Transfer Date by such employees in their employment with Seller;
- (e) All Post Petition obligations of the Seller to be performed under each Assigned Liquor License;
- (f) All obligations under (i) the Gift Cards sold Post-Petition, and (ii) all coupons and promotional offers issued Post-Petition for each Transferable Restaurant;
- (g) All obligations for Transfer Taxes under Section 12.06(a); and
- (h) All obligations of Seller for Allowed Administrative Claims.

SECTION 1.04. Excluded Liabilities. Other than the Assumed Liabilities, Purchaser shall not assume or retain, pay, discharge, perform or in any way be responsible or liable for any other liabilities or obligations of the Seller (the "Excluded Liabilities") and the

Seller shall retain or assume, pay, discharge, perform and be responsible and liable for such liabilities and obligations, including, without limitation:

(a) any liabilities or obligations with respect to Taxes other than (i) Transfer Taxes for which Purchaser is responsible under Section 12.06(a) and (ii) any other Taxes allocated to Purchaser under Section 12.06(b);

(b) any accrued bonus associated with any employee benefit plan;

(c) any liability under Leases, Contracts or Permits of Seller that are not validly assumed and assigned to Purchaser or under which Purchaser is not provided benefits;

(d) any debt to a creditor of Seller (other than accounts payable expressly assumed under Section 1.03(b)), or any debt or accounts payable to an affiliate of Seller;

(e) any liability or obligations relating to, resulting from or arising out of occurrences of or claims by current or former employees or third parties for personal or bodily injury or death or property damage (including any workers' compensation claim) incurred prior to the Closing Date;

(f) any liability arising out of or relating to (i) any products manufactured or sold or any services provided by Seller prior to the Closing Date or (ii) the business or operations of Seller prior to the Closing Date, including any warranty, product liability, or other claim;

(g) any liability arising out of or relating to the Excluded Assets;

(h) except as otherwise provided in Section 2.01(a)(iii), any liability for accounts payable of Seller as of the Closing Date;

(i) any other liabilities or amounts owed to employees pursuant to any 401K or other profit sharing, benefit or retirement plans, and any other liability under ERISA;

(j) wages, salaries and claims of employees accruing prior to the Effective Transfer Date, except as specifically described in Section 1.03(d); and

(k) any and all Pre-Petition obligations under (i) Gift Cards, and (ii) all coupons and promotional offers outstanding.

## **ARTICLE II.**

### **PURCHASE PRICE; CLOSING**

#### **SECTION 2.01. Purchase Price.**

(a) Consideration. As consideration for the sale of the Assets to Purchaser, subject to the provisions of Section 2.02(d) and assuming all Restaurants are Transferable Restaurants and the Butler Liquor License is a Transferable license, Purchaser shall pay to Seller a purchase price (the "**Purchase Price**") as follows:

- (i) One Million One Hundred Thousand Dollars (\$1,100,000) payable as a credit against the Secured Indebtedness;
- (ii) Payment in cash in an amount sufficient for Seller to pay off the DIP Loan.;
- (iii) Assumption of Seller's Administrative Costs; and
- (iv) Assumption of Seller's Post Petition liabilities to the extent specifically set forth in Section 1.03.

(b) Inventory and Cash on Hand. On the applicable Effective Transfer Date for each Restaurant, Purchaser and Seller shall conduct a physical inventory of the items of Inventory at that Restaurant (the "Effective Transfer Date Inventory") and count the cash on hand at each Restaurant. Seller and Purchaser shall allocate a portion of the Purchase Price for the applicable Effective Transfer Date Inventory valued at the actual cost paid for such Effective Transfer Date Inventory. Nothing herein shall obligate Purchaser to pay any additional amounts above the Purchase Price for any Inventory or cash on hand.

(c) Allocation of Purchase Price. The Purchase Price includes the payment of Ten Thousand Dollars (\$10,000.00) for the Assigned Intellectual Property. After deduction from the Purchase Price of the amounts attributable to Inventory and Assigned Intellectual Property, the remaining balance shall be allocated among the Restaurants and the Butler Liquor License in proportion to the respective "Restaurant Transfer Amount" set forth for each Restaurant and the Butler Liquor License in Exhibit B.

(d) Leases and Contracts. Seller shall not reject any Assumed Contract or Assumed Lease in any bankruptcy proceeding following the date hereof without Purchaser's prior written consent. The cure amounts, as determined by the Bankruptcy Court, if any (the "Cure Amounts"), necessary to cure all defaults, if any, and to pay all actual or pecuniary losses that have results from such defaults under the Assumed Leases and the Assumed Contracts (other than those Leases and Contracts which have been rejected with Purchaser's prior written consent) shall be paid by Purchaser, and not by Seller, directly to the Contract counterparts to which such amounts are due, and Seller shall have no liability therefor; provided, however, Sections 1.01(c) and 1.01(d) of the Disclosure Schedule will be updated as of the Closing Date to include any Contracts entered into by Seller in the ordinary course of business between the date hereof and the Closing Date which Seller has agreed to assign to Purchaser and Purchaser has agreed to assume the obligations thereunder. At each Effective Transfer Date, and pursuant to Section 365 of the Bankruptcy Code, Seller shall assume and assign to Purchaser, and Purchaser shall accept and assume, the applicable Assumed Leases and the applicable Assumed Contracts.

**SECTION 2.02. Closing; Closing Date; Effective Transfer Date; Payment of Purchase Price.**

(a) As used in this Agreement, the term "Transferable Restaurant" shall mean a Restaurant that satisfies all conditions to the obligations of the Parties to consummate the sale and transfer of such Restaurant or has been granted a waiver of such conditions (other than

conditions with respect to actions the respective Parties shall take at the Final Effective Transfer Date), including, but not limited to, all necessary approvals of the Bankruptcy Court, and counsel to Purchaser having confirmed that all necessary approvals have been given to the assignment of the Liquor License related to that Restaurant; provided in any event that a Restaurant shall not be a Transferable Restaurant prior to the effective date of the assignment of the Liquor License related to that Restaurant, or the effective date upon which Purchaser obtains a new liquor license for that Restaurant.

(i) All the Restaurants that have become Transferable Restaurants on or prior to Initial Closing Date will be labeled as the "First Transferable Restaurants."

(ii) Each Restaurant which qualifies as a Transferable Restaurant, other than the First Transferable Restaurants will be labeled as a "Subsequent Transferable Restaurant".

(iii) Seller and Purchaser will use best efforts to cause all Restaurants to be first Transferable Restaurants.

(iv) The Butler Liquor License shall be defined as a "Transferrable License" when it satisfies all conditions to the obligations of the Parties to consummate the sale and transfer of the Butler Liquor License or has been granted a waiver of such conditions (other than conditions with respect to actions the respective Parties shall take at the Final Effective Transfer Date), including, but not limited to, all necessary approvals of the Bankruptcy Court, and counsel to Purchaser having confirmed that all necessary approvals have been given to the assignment of the Butler Liquor License; provided in any event that the Butler Liquor License shall not be a Transferable License prior to the effective date of its assignment.

(b) As used in this Agreement, the term "Effective Transfer Date" with respect to each Restaurant shall mean the day after such Restaurant is classified as a Transferable Restaurant and with respect to the Butler Liquor License shall mean the day after it is classified as a Transferable License.

(c) The closing of the First Transferable Restaurants and Transferable License, if any (the "Initial Closing", and together with all subsequent closings as provided below, each a "Closing", and collectively, the "Closings") shall take place at the offices of Crowe & Dunlevy, Braniff Building, 324 N. Robinson Ave., Ste. 100, Oklahoma City, OK 73102. The Initial Closing shall be at 9:00 A.M. local time, on a date mutually agreeable to Purchaser and Seller within 15 days following the date that the sum of the Restaurant Transfer Amounts for all Transferable Restaurants equals at least 70% of the total of the Restaurant Transfer Amounts for all Restaurants. A subsequent closing for the remaining Restaurants will occur on or before 15 business days following the Effective Transfer Date of all of the Subsequent Transferable Restaurants (the "Subsequent Closing"); provided that Purchaser may elect to transfer Subsequent Transferable Restaurant within 15 days of its Effective Transfer Date. At the Initial Closing (and each Subsequent Closing), the Parties shall deliver those documents and take such other actions, as to all the Assets, Assumed Contracts, Assumed Leases and Assigned Permits relating to each Restaurant Transferable License for which such Closing is



taking place, the delivery or performance of which are conditions to the other parties' obligations pursuant to Article VIII. The parties contemplate that at or prior to each Effective Transfer Date they may execute all necessary documents to be held in escrow and delivered at each Closing. The date of the first Closing is herein referred to as the "Initial Closing Date," and together with all Subsequent Closings, each a "Closing Date", and collectively, the "Closing Dates."

(d) The Purchaser has deposited the sum of Twelve Thousand Five Hundred Dollars (\$12,500.00) (the "Initial Deposit") with Crowe & Dunlevy, counsel to Seller, to be held in trust and disbursed only in accordance with this Agreement. Following entry of by the Bankruptcy Court of the Bid Procedures Order, Purchaser will deposit an additional \$12,500.00 (the "Additional Deposit") and collectively with the Initial Deposit, the "Deposit") in a segregated debtor-in-possession account. Seller shall have no interest in the Deposit unless and until a Closing occurs, provided that should a Closing not occur as a result of action by the Purchaser constituting a breach of this Agreement, the Deposit shall be dealt with as provided below. In the event that the Closing shall occur, the Deposit shall be paid to Seller at the Closing and applied to the Purchase Price. In the event that this Agreement is terminated in accordance with its terms, provided that the termination does not result from a delay in Closing that is attributable to the Purchaser, the Deposit shall be returned to the Purchaser. If the Closing does not occur due to the fault of the Purchaser, then the Deposit shall be paid to the Seller as liquidated damages and in full satisfaction of any claims which Seller may have hereunder.

(e) The parties acknowledge that on the Initial Closing Date, a percentage of the Purchase Price equal to the aggregate Restaurant Transfer Amounts of the First Transferable Restaurants, will be paid to Seller as consideration for the First Transferable Restaurants, Assigned Intellectual Property and any other Assets transferred on the Initial Closing Date. At each Subsequent Closing, a percentage of the Purchase Price equal to the Restaurant Transfer Amounts of the Subsequent Transferable Restaurants transferred at each such Closing will be paid to Seller as consideration for such Subsequent Transferable Restaurants.

(f) On or before the filing of the Purchaser's application for an Assigned Liquor License or Purchaser's application for a new Liquor License, Purchaser may designate a different Affiliate of Purchaser to take title to each Transferable Restaurant associated with such Assigned Liquor License (or new Liquor License) and the respective Assets, including without limitation the Assumed Lease and the Assigned Liquor License for such Restaurant, and Purchaser shall promptly notify Seller of each such designation.

(g) Seller, with the prior written approval of Purchaser, may sell the Butler Liquor License to a third party at a price acceptable to Purchaser. Should Seller make such a sale of the Butler Liquor License to a third party, the proceeds from that sale shall be utilized by Seller to repay indebtedness under the DIP Loan, and the component of the Purchase Price described in Section 2.01(a)(ii) shall be proportionally reduced.

SECTION 2.03. Alternate Form of Payment. Each of Practical, Fresh Capital and Fiesta are holders of secured debt issued by Seller as more particularly described on Schedule 2.03 (the "Secured Indebtedness"). The total outstanding principal balance for the Secured Indebtedness is \$1,331,845.00. Purchaser shall have the right, but not the obligation, to pay that portion of the Purchase Price described in Section 2.01(a)(i) in cash in lieu of credits against the

Secured Indebtedness on the Initial Closing Date in escrow to a trust account held by Crowe & Dunlevy, counsel to Seller (the "Escrowed Amount"), which Crowe & Dunlevy shall be authorized to be release from escrow, disburse to Seller, and reduce the Escrowed Amount by an amount equal to the applicable Restaurant Transfer Amount upon each Subsequent Closing.

#### SECTION 2.04. Bankruptcy Auction.

(a) This Agreement shall be subject to the consideration of higher or better offers submitted at an auction (the "Auction") to be conducted in accordance with the Bid Procedures Order.

(b) Seller has filed in the Bankruptcy Court the Sale Procedures Motion and the Sale Motion, including all supporting papers, notices and proposed orders, including but not limited to the Sale Approval Order, seeking authorization for Seller to enter into this Agreement, the approval of the Sale Procedures, the scheduling of a hearing under Sections 363 and 365 of the Bankruptcy Code (the "Sale Hearing"), and the approval of the form and manner of notice of the Sale Procedures and the Sale Hearing. The Sale Procedures Motion, the Sale Motion, and all notices, statements, schedules, applications, reports and other papers to be filed by Seller in connection therewith shall be in form and substance reasonably satisfactory to Purchaser and shall be served in compliance with Rules 2002, 6004 and 6006 of the Bankruptcy Rules, Sections 363 and 365 and any other applicable provisions of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure, the Local Rules and any applicable orders of the Bankruptcy Court.

(c) Seller shall schedule hearings to consider the Sale Procedures Motion so as to obtain entry by the Bankruptcy Court of the Bid Procedures Order no later than August 23, 2017, establishment of a deadline for submission of bids no later than September 20, 2017, fixing an Auction by no later than September 25, 2017, and entry by the Bankruptcy Court of the Sale Approval Order no later than October 4, 2017.

(d) [RESERVED]

(e) [RESERVED].

(f) Seller agrees that the Sales Procedures for the Auction shall also include the requirement that the bidding by a third party occur in increments of Twenty Five Thousand Dollars (\$25,000) above the aggregate amount of (i) Purchaser's Purchase Price, plus (ii) a minimum of \$25,000 [i.e., the additional overbid must be in the amount of the sum of \$1,100,000, plus (x) an amount equal to the Allowed Administrative Claims as of the date of the Auction, (y) an amount equal to the outstanding indebtedness of Seller under the DIP Loan as of the date of the Auction, and (z) an amount equal to the Post-Petition obligations of Seller for those trade payables described on Schedule 1.03(b)]. Purchaser shall not have to meet such incremental bid requirements but need only meet a competing bid to be successful.

### **ARTICLE III.** **TRANSITIONAL SUPPORT**

SECTION 3.01. Transition Support Generally. Following Closing, Seller and Purchaser agree (a) to use commercially reasonable efforts to promptly provide the other Party



with information as requested for any tax filing obligations, (b) to execute and deliver such other reasonable instruments of sale, transfer, conveyance, assignment and confirmation, (c) to provide such materials and information and to take such other actions as may reasonably be deemed necessary or desirable in order to more effectively transfer, convey and assign to Purchaser, and to confirm Purchaser's title to, all of the Assets, and, to the full extent permitted by law, to put Purchaser in actual possession and operating control of the Restaurants and Assets upon the applicable Effective Transfer Date of such Restaurant and Assets.

SECTION 3.02. Management Agreements. Subject to the conditions of Closing stated herein, if a Governmental Entity in any state so requires with respect to a Liquor License, Seller agrees to enter into a management or similar agreement, in conformance with such state's laws and regulations, to permit Purchaser to operate under Seller's Liquor License until Purchaser has been approved as a licensee by such Governmental Entity.

SECTION 3.03. Transition of Assigned Liquor Licenses. Subject to the conditions of Closing stated herein, Seller and Purchaser agree to cooperate in identifying those Assigned Liquor Licenses with respect to which a commercially reasonable arrangement may be reached between Seller and Purchaser to permit the transfer of the Restaurant to which such Assigned Liquor License relates and the continued operation of such Restaurant by Purchaser pending approval by the relevant Governmental Entities of the transfer of such Assigned Liquor License to Purchaser, subject to applicable Law.

SECTION 3.04. Sale of Gift Cards. Seller may continue to sell Gift Cards redeemable at any of the Restaurants in the ordinary course of business until the Initial Closing Date, provided that an accounting of all Post-Petition sales thereof shall be provided to Purchaser. After the Initial Closing Date, all Gift Card sales shall be made for the benefit of Purchaser. Purchaser shall have no responsibility for gift cards sold Pre-Petition whatsoever, including any reporting obligations thereon, and expressly disclaims any proceeds therefrom.

#### **ARTICLE IV.**

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

Seller hereby represents and warrants to Purchaser as follows as of the date hereof and as of each Effective Transfer Date:

SECTION 4.01. Organization. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and is in good standing in each jurisdiction where the character of the property owned or leased by it or the nature of its activities makes such qualification necessary, except where the failure to be so qualified or to be in good standing would not reasonably be expected to have a Material Adverse Effect on the Business. Eateries has the corporate power and authority to own the Assets owned by it, and has the corporate power and authority to conduct the business as presently conducted by it, except where the failure to have such power and authority would not reasonably be expected to have a Material Adverse Effect on the Business.

SECTION 4.02. Authorization. Seller, subject to any necessary approvals of the Bankruptcy Court, has full corporate power and authority to execute and deliver all Transaction

Documents to which it is, or will be, a party and to consummate the transactions contemplated hereby and thereby. Seller has taken all corporate action required by its certificate of incorporation and bylaws to authorize the execution and delivery of all Transaction Documents to which Seller is a party and to authorize the consummation of the transactions contemplated hereby and thereby. This Agreement is, and each other Transaction Document upon execution and delivery by Seller will be, a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, subject to any necessary approvals of the Bankruptcy Court and applicable Law.

SECTION 4.03. Brokers and Finders. Except for Hilco Real Estate, LLC, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of Seller. The fees and expenses of Hilco Real Estate, LLC, as approved by the Bankruptcy Court in connection with this transaction, shall be deemed Approved Administrative Expenses of Seller for purposes of this Agreement.

SECTION 4.04. No Other Representations or Warranties. Except as expressly set forth in this Agreement, none of Seller nor any agent or representative of Seller has made, and Seller is not liable for, any other express or implied representations or warranties, guarantees, promises, statements, inducements, representations, or information pertaining to the Business or the Assets. Without limiting the generality of the foregoing, except as expressly set forth herein, Seller is not liable for or bound by, and Purchaser has not relied upon, any oral or written statements, representations or any other information respecting the Business or the Assets furnished by Seller or any agent or representative of Seller, including but not limited to projections, estimates and other forecasts with respect to the Business and the Restaurants that have been provided by Seller in connection with Purchaser's investigation of the Business.

## **ARTICLE V.**

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

Each Purchaser, as to itself only, hereby represents and warrants to Seller as follows as of the date hereof and as of each Effective Transfer Date:

SECTION 5.01. Organization. Practical Investors LLC is a limited liability company duly organized, validly existing and in good standing under the laws of Oklahoma.

(b) Fresh Capital LLC is a limited liability company duly organized, validly existing and in good standing under the laws of Oklahoma.

(c) Fiesta Holdings LLC is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware.

SECTION 5.02. Authorization. Each individual Purchaser has full limited liability company power and authority to execute and deliver this Agreement and all other documents contemplated hereby and to consummate the transactions contemplated hereby and thereby. Each individual Purchaser has taken all company action required by its articles or certificate of organization and its operating or limited liability company agreement to authorize the execution

and delivery of this Agreement and all other documents contemplated hereby and thereby. This Agreement is, and each other Transaction Document (upon execution and delivery by Purchaser) will be, a legal, valid and binding obligation of Purchaser, enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

SECTION 5.03. No Conflicts. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (i) conflict with or violate any provision of the articles or certificate of organization and its operating or limited liability company agreement, as applicable, of Purchaser, (ii) conflict with or violate any Law applicable to Purchaser in respect of its business or by which any of the assets of its business is bound, or (iii) conflict with or result in any breach of or constitute a default (or an event which with notice or lapse of time or both would constitute a default) under any agreement or other instrument to which Purchaser is a party or by which its assets are bound, excluding from the foregoing in clauses (ii) and (iii) above such conflicts, breaches or defaults which, either singly or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

SECTION 5.04. No Brokers and Finders. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of Purchaser.

SECTION 5.05. No Other Representations or Warranties. Purchaser acknowledges and agrees that neither Seller nor any other Person has made any representation or warranty, expressed or implied, as to the Business, the Assets or the accuracy or completeness of any information regarding the Business, the Assets furnished or made available to Purchaser and its representatives, except as expressly set forth in this Agreement, the Disclosure Schedule or the Exhibits hereto. Purchaser has not relied on any representation or warranty from Seller or any other Person in determining to enter into this Agreement, except as expressly set forth in this Agreement, the Disclosure Schedule and the Exhibits hereto.

SECTION 5.06. Ability to Consummate Transaction. Purchaser will have sufficient funds to pay the Purchase Price in full as a credit against the Secured Indebtedness at each Closing, and in cash for all other amounts payable by Purchaser under this Agreement, including any fees and expenses of Purchaser associated with the transactions contemplated hereby.

## **ARTICLE VI. COVENANTS**

The Parties covenant and agree as follows:

SECTION 6.01. Efforts to Complete Transaction. Each Party shall use its commercially reasonable efforts to take all action and to do all reasonable things necessary, proper, or advisable in order to consummate and make effective the transactions contemplated by this Agreement (including satisfaction, but not waiver, of the Closing conditions set forth in Article VIII below).

SECTION 6.02. Consents; Filings. Each Party shall use its commercially reasonable efforts to (i) obtain any consents, approvals or other authorizations required in connection with the transactions contemplated by this Agreement, including necessary Bankruptcy Court approvals (without limiting the foregoing, Seller shall take all commercially reasonable steps legally required of them to make Purchaser's application for the Assigned Liquor License transfer possible and agree to reasonably cooperate with Purchaser's efforts in connection therewith including providing copies of the existing applications and floor plans and assisting with any requirement to document the assignment of the Assumed Leases sufficiently for all alcoholic beverage control Governmental Entities in the States of Alabama, Ohio, Illinois, Mississippi, Pennsylvania and West Virginia having jurisdiction with respect thereto) and (ii) make any necessary filings and notifications, and thereafter make any other submissions either required or deemed appropriate by each Party, in connection with the transactions contemplated by this Agreement and applicable Laws. Notwithstanding the foregoing, nothing herein shall obligate Purchaser to accept what it deems to be reasonably unacceptable conditions for the transfer or assignment of any of the contracts and/or agreements herein being assigned and/or transferred.

SECTION 6.03. Operation of Business. Seller shall continue until each applicable Closing to conduct each Restaurant in substantially the same manner as heretofore conducted, and, without limiting the generality of the foregoing,

(a) shall, unless otherwise provided in this Agreement (including without limitation obtaining the necessary Bankruptcy Court approvals):

(i) perform in all material respects all Contracts in relation to the Business which by their terms require performance by Seller;

(ii) use their commercially reasonable efforts to preserve, in the aggregate and in all material respects, their respective properties and operations related to the Business and relationships of the Business with suppliers, customers and other Persons with whom the Business has material commercial dealings;

(iii) keep all insurance policies with respect to the Business, or comparable replacements, in full force and effect until the underlying Assets are transferred to Seller;

(b) shall not, unless otherwise expressly approved in writing by Purchaser, which approval shall not be unreasonably delayed, conditioned or withheld or otherwise required by the Bankruptcy Court:

(i) remove or sell, or cause to be removed or sold, any Assets, except such personal property as may be consumed or disposed of in the regular course of the Business;

(ii) [RESERVED];

(iii) (A) start litigation or arbitration proceedings related to the Business except in the ordinary course of business; or (B) compromise, settle, release or

discharge any litigation or arbitration proceedings related to the Business other than litigation or arbitration proceedings that are settled or compromised for aggregate payments by the Business that do not exceed \$5,000 individually or \$10,000 in the aggregate, to the extent such payments are not covered by insurance;

(iv) enter into any Contract, written or oral, in relation to the Business potentially binding Purchaser after the transfer of the Assets to it, except usual and ordinary commitments for the purchase of goods and services (which shall not include capital expenditures in excess of \$2,000 individually or in the aggregate);

(v) distribute coupons or promotional offers other than in a manner that is consistent with past practices; or

(vi) agree or commit to take any of the foregoing actions.

SECTION 6.04. Pre-Closing Access to Information. From the date of this Agreement and until the Final Closing Date, Seller shall (a) afford Purchaser and its representatives access to, during normal business hours, in a manner so as not to interfere with the normal business operations and upon reasonable prior written notice, the assets, records and key employees reasonably identified by Purchaser, and (b) furnish Purchaser and its representatives with such additional financial, operating, and other data, access and information as they may reasonably request related to the Assets. In addition, Seller authorizes Purchaser to contact Seller's lenders, lessors, customers, vendors, suppliers, creditors, attorneys, accountants, and other Business partners as to matters relating to the business and operations of Seller and the negotiation, execution and closing of this Agreement and the terms of any arrangements or continued business with such persons, and Seller authorizes such persons to provide information to and cooperate with Purchaser in this process.

SECTION 6.05. Notification of Certain Matters.

(a) Notification of Changes. From the date of this Agreement and until the Final Closing Date, Seller or Purchaser, as the case may be, shall promptly notify the other of (i) its obtaining actual knowledge as to the matters set forth in clauses (x) and (y) below, or (ii) the occurrence, or failure to occur, of any event which occurrence or failure to occur would cause (x) any representation or warranty contained in this Agreement to be untrue or inaccurate in any material respect at any time from the date hereof to the Closing, or (y) any material failure of Seller or Purchaser, as the case may be, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it under this Agreement and shall use commercially reasonable efforts to cure before the Effective Time, any event, transaction or circumstance occurring after the date of this Agreement that causes or will cause any such covenant or agreement under this Agreement to be breached or that renders or will render untrue any such representation or warranty contained in this Agreement; provided, however, that no such notification shall affect the representations or warranties of the Parties or the conditions to the obligations of the Parties hereunder.

(b) Notices from Third Parties. From the date of this Agreement and until the Final Closing Date, Seller or Purchaser, as the case may be, shall promptly notify the other of (i)



any written notice or other communication from any third party alleging that the consent of such third party is or may be required in connection with the transactions contemplated by this Agreement and (ii) any written notice or other communication from any Governmental Entity or any other third party in connection with the transactions contemplated hereby.

SECTION 6.06. [RESERVED].

SECTION 6.07. Licenses and Permits. Purchaser shall use its commercially reasonable efforts, but always in compliance with applicable Law, to secure from the applicable licensing authorities (i) all Licenses other than the Assigned Liquor Licenses required for Purchaser's operation of the Restaurants; (ii) consent to the assignment to Purchaser of the Assigned Liquor Licenses, to the extent necessary and issuance of any necessary temporary or provisional Permits required for the Purchaser's continued operation of the Restaurants pursuant to applicable Law; and (iii) all Permits required for the operation of the Restaurants that are not transferable by Seller. No later than 10 days following the date of the Sale Approval Order, Purchaser shall file all applications with each local issuing authority for purposes of transferring the Assigned Liquor Licenses to the Purchaser. Subject to any requirement by Governmental Entity requiring a later filing date, Purchaser shall file applications for new Liquor Licenses where such Liquor Licenses are not assignable not later than 10 days following the date of the Sale Approval Order. Purchaser shall comply with and carry out any and all reasonable requirements, demands, requests, rules, and regulations of the Governmental Entities, so as to expedite the approval of the issuance or transfer of such Liquor Licenses and Permits. Seller shall use commercially reasonable efforts to cooperate with Purchaser in obtaining the Liquor Licenses and Permits required to operate the Restaurants and will promptly comply with reasonable requests made by any Governmental Entity. Purchaser and Seller shall use best efforts to coordinate the Effective Transfer Dates of obtaining Liquor Licenses and Permits to minimize the number of Closings necessary.

SECTION 6.08. Employees. Purchaser will have the right but not the obligation to hire Seller's employees after they have been terminated by Seller. Purchaser will not assume any obligations or liabilities pertaining to the employees' employment with Seller except as specifically described in Section 1.03(d).

SECTION 6.09. [RESERVED].

SECTION 6.10. Announcements; Confidentiality.

(a) Public Announcements. Each party hereto agrees that no public release or announcement concerning the transactions contemplated by this Agreement shall be issued by any such party without the prior consent of the other parties hereto (which consent shall not be unreasonably withheld or delayed), except (i) press releases by each of Purchaser and Seller regarding the execution of this Agreement and the Closing, (ii) an announcement by Seller to employees of the Business regarding the execution of this Agreement and the Closing and (iii) any other release that may be required by Purchaser pursuant to applicable Laws; provided, however, in the case of each of (i)-(iii) above, the party electing to or required to make the release or announcement shall allow the other parties reasonable time to comment on such

release or announcement in advance of such issuance and will not make any statement if any other party reasonably objects.

(b) Confidentiality.

(i) All information not previously disclosed to the public or generally known to persons engaged in the Business or in any other business of Seller which shall have been or will be furnished by Seller to the Purchaser in connection with the transactions contemplated hereby or as provided pursuant to this Agreement shall be considered confidential information. Purchaser agrees that it will treat in confidence all documents, materials and other information that it shall have obtained regarding Seller during the course of the negotiations leading to the consummation of the transactions contemplated hereby (whether obtained before or after the date of this Agreement), the investigation provided for herein and the preparation of this Agreement and other related documents, and, in the event the transactions contemplated hereby shall not be consummated, at the request of Seller, will return to Seller all copies of nonpublic documents and materials which have been furnished in connection therewith to Purchaser. Such non-public documents, materials and information shall not be communicated to any third Person (other than to Purchaser's representatives subject to the Purchaser's representatives' agreement to keep the same confidential). Purchaser shall not use any confidential information in any manner whatsoever except solely for the purpose of evaluating the proposed purchase and sale of the Assets. The obligation of Purchaser to treat such documents, materials, and other information in confidence shall not apply to any information which (x) is or becomes available to such party from a source other than the disclosing party, (y) is or becomes available to the public other than as a result of disclosure by Purchaser or its Representatives, or (z) is required to be disclosed by the Bankruptcy Court in the Bankruptcy Case, under applicable Law, judicial process, or rule of any national securities exchange or quotation service.

(ii) After the Final Closing Date, Seller shall treat and hold as confidential any information concerning the business and affairs of the Business that is not already generally available to the public (the "**Business Confidential Information**"), refrain from using any of the Business Confidential Information, and (except for any information that this Agreement expressly permits Seller to retain) deliver promptly to the Purchaser, at the request and expense of the Purchaser, all tangible embodiments (and all copies) of the Business Confidential Information which are in its possession or under its control; provided, however, Seller may retain one hard copy (1) as well as electronic copies of Business Confidential Information to comply with applicable Law or regulation or to comply with policies consistent with past practices. If Seller is required to disclose any Business Confidential Information in order to avoid violating any applicable Law, Seller will provide the Purchaser with prompt notice of such requirement. To the extent legally permissible and at the Purchaser's expense, Seller shall provide the Purchaser, in advance of any such disclosure, with copies of any Business Confidential Information that Seller intends to disclose (and, if applicable, the text of the disclosure language itself) and shall cooperate with the Purchaser to the extent the Purchaser may seek to limit such disclosure. If in the absence of a protective order or the receipt of a waiver from the Purchaser after a request in writing therefore is made by Seller, and after complying with

the foregoing, Seller is, on the advice of counsel required by applicable law or legal process to disclose Business Confidential Information, Seller may do so; provided that Seller shall disclose only such portion of the Business Confidential Information as it is required to disclose.

SECTION 6.11. Assumed Leases. Purchaser will pay all "cure" costs under Bankruptcy Code Section 365(b) associated with the Assumed Leases assumed by Purchaser at Closing. With respect to such of the Assumed Leases as Purchaser may designate, Seller will cooperate with Purchaser, at Purchaser's cost and expense, in Purchaser's negotiations with the respective landlord.

SECTION 6.12. Assumed Contracts. Purchaser will pay all "cure" costs under Bankruptcy Code Section 365(b) associated with the Assumed Contracts assumed by Purchaser at Closing.

SECTION 6.13. Employee Restaurant Dining Cards. From and after the Initial Closing Date, Purchaser shall not be obligated to honor any cards provided by Seller to employees of Seller, or their Affiliates, prior to the Initial Closing Date for use in dining at the Restaurants.

SECTION 6.14. PFG Inventory. Purchaser shall purchase, pay for and be entitled to receive all Inventory held by PFG for each Restaurant on its applicable Effective Transfer Date, which Inventory bears any of the Assigned Intellectual Property or is otherwise held for distribution exclusively to a Restaurant operated under an Assigned Lease, and has been acquired in the ordinary course of business.

SECTION 6.15. [RESERVED].

SECTION 6.16. Closing Balance Sheet. Promptly (but in any event within thirty (30) days of the date of such balance sheet) following the Closing of each Restaurant, Seller shall deliver to Purchaser a statement setting forth key balance sheet items of the Business relating to such Restaurant as of the most recently ended fiscal period.

SECTION 6.17. Post-Closing Cooperation; Retransfer. Following each applicable Closing Date, in the event that Purchaser or Seller identifies any asset or other right that (x) was transferred to Purchaser pursuant to this Agreement but that does not constitute an Asset or (y) was not transferred to Purchaser pursuant to this Agreement but constitutes an Asset, Purchaser or Seller, as the case may be, shall and shall cause each of its Affiliates and Subsidiaries, to the extent applicable, to execute agreements to transfer any and all rights in such assets or other rights to Seller or its Affiliates or Purchaser or its Affiliates, as the case may be, for no consideration and take such further actions and execute such further documents as may be necessary or reasonably requested by Seller or Purchaser, as the case may be, in order to effectuate such transfer and to provide Seller or Purchaser, as the case may be, with the benefits of such assets or rights; provided, that nothing in this Section 6.17 shall require Seller to make any expenditure or incur any obligation on its own or on behalf of Purchaser.



SECTION 6.18. Acquired Assets "AS IS"; Purchaser's Acknowledgment Regarding Same. Purchaser agrees, warrants and represents that (a) Purchaser is purchasing the Assets on an "AS IS" and "WITH ALL FAULTS" basis based solely on Purchaser's own investigation of the Assets and Business and (b) except as expressly provided in this Agreement, neither Seller nor any Affiliate of Seller has made any warranties, representations or guarantees, express, implied or statutory, written or oral, respecting the Assets, any part of the Assets, the financial performance of the Assets or the Business, or the physical condition of the Assets. Purchaser further acknowledges that the consideration for the Assets specified in this Agreement has been agreed upon by Seller and Purchaser after good-faith arms-length negotiation in light of Purchaser's agreement to purchase the Assets "AS IS" and "WITH ALL FAULTS" except as provided in this Agreement. Purchaser agrees, warrants and represents that, except as set forth in this Agreement, Purchaser has relied, and shall rely, solely upon its own investigation of all such matters, and that Purchaser assumes all risks with respect thereto. EXCEPT AS SET FORTH IN THIS AGREEMENT, SELLER MAKES NO EXPRESS WARRANTY, NO WARRANTY OF MERCHANTABILITY, NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND NO IMPLIED OR STATUTORY WARRANTY WHATSOEVER WITH RESPECT TO ANY REAL OR PERSONAL PROPERTY OR ANY FIXTURES OR THE ASSETS.

SECTION 6.19. Lease Renewals. Seller will not permit any Lease term or Lease renewal option to expire or renew any lease without first giving Purchaser sufficient notice to review and without the prior written consent of Purchaser.

SECTION 6.20. Seller's Intellectual Property License Agreement. If Seller is to continue to operate one or more Restaurants after the Initial Closing, Purchaser shall execute Seller's Intellectual Property License Agreement concurrently with the transfer of the Assigned Intellectual Property from Seller to Purchaser.

SECTION 6.21. No Financing Condition. For the avoidance of doubt, the obligation of Purchaser to close the transactions contemplated by this Agreement is not conditioned upon the consummation of any financing and, accordingly, the parties hereto agree that a failure of Purchaser to close the transactions contemplated by this Agreement resulting from a failure or inability to consummate a financing constitutes a breach for purposes of this Agreement.

## **ARTICLE VII.**

### **CASUALTY AND CONDEMNATION**

SECTION 7.01. Casualty.

(a) Until the applicable Closing Date, Seller shall maintain the same or substantially the same (the definition of "substantially" herein meaning no material change in coverage) casualty insurance coverage for the Assumed Leases as is currently carried by Seller. If prior to such Closing Date any portion of any of the improvements located on any Leased Real Property is damaged or destroyed by fire or other casualty, then Seller shall (i) promptly deliver written notice to Purchaser of the occurrence of such casualty and of any action by the landlord under such Assumed Lease that has the right to terminate such Assumed Lease as a result of such damage, destruction or other casualty and, in fact, terminates such Assumed Lease within the

time specified in the applicable Assumed Lease and (ii) if such Assumed Lease is not terminated by the landlord under (i) above, commence repairs and protections required under applicable insurance policies and land use requirements to safeguard the property in question. If, as a result of such damage or destruction to Leased Real Property, (x) Seller or a party to such Assumed Lease has a right to terminate such Assumed Lease and Purchaser notifies Seller that it elects to have that termination right exercised which notice is received by Seller in reasonably sufficient time to allow Seller to exercise such right, or (y) the damage to such Leased Real Property is of a substantial nature that cannot reasonably be expected to be repaired within six (6) months, then Purchaser may elect to cause Seller to terminate the Assumed Lease with respect to such Restaurant upon written notice to Seller (the "Casualty Termination Notice"). The Casualty Termination Notice shall be provided to Seller (i) in the case of (x), on the date Purchaser notifies Seller that it elects to have Seller's termination right under an Assumed Lease exercised or (ii) in the case of (y), within ten (10) business days after the later of Purchaser's receipt of Seller's notice of the occurrence of such casualty. With respect to any Assumed Lease terminated in accordance with the foregoing provisions, all of Purchaser's obligations with respect to such Restaurant remain in full force and effect notwithstanding the fact that such Assumed Lease was terminated. Upon the Closing of such Restaurant, the Purchaser will receive the casualty insurance proceeds (including any amounts paid to the extent that such amount has not been expended by Seller in the repair or reconstruction of such property, but subject to any obligation to refund any of such proceeds to the applicable insurer, or any assignment for future amounts owed), the Assigned Liquor License and all other assets of such Restaurant and for the avoidance of doubt, there will be no reduction in the Restaurant Transfer Amount paid by Purchaser to Seller.

(b) With respect to any Leased Real Property that (i) has suffered a casualty prior to its applicable Closing Date, which casualty has not been repaired prior to such Closing Date and (ii) is not removed from the transaction pursuant to Section 7.01(a) above, Seller shall maintain the same or substantially the same (the definition of "substantially" herein meaning no material change in coverage) casualty (including business interruption) insurance as is then carried by Seller immediately prior to the casualty with respect to such Restaurant until such Restaurant has reopened for business. With respect to such a Restaurant, Seller shall take commercially reasonable efforts to preserve rights Seller may have to proceeds under such casualty (including business interruption) insurance policies following a casualty to any such Restaurant so as to allow any proceeds collectible under such policies to be continued to be paid by the applicable insurer to Seller as if Seller continued to operate such Restaurant until the Restaurant has reopened for business. Purchaser shall cooperate with Seller in the filing and adjustment of insurance claims with respect to such Leased Real Property by providing such information and taking such other actions as Seller insurance carrier or any Seller may request. Following the casualty and prior to the applicable Closing Date, Seller will promptly proceed with the repair of the damaged Restaurant pursuant to Contracts entered into by Seller so as to complete the repair or reconstruction of, and reopen, the Restaurant for business as soon as practicable; provided, that Seller shall not enter into a Contract requiring expenditures or obligations (together with any other such expenditures or obligations by Seller) without the prior written consent of Purchaser (such consent not to be unreasonably conditioned, withheld or delayed). To the extent that such repair or reconstruction is not completed at such Closing Date, Seller shall assign to Purchaser and Purchaser shall assume as Assumed Liabilities, all Contracts

entered into pursuant to the preceding sentence to which Seller shall be party with respect to the repair or reconstruction of such Leased Real Property and shall assume all repair and reconstruction of such Leased Real Property. Seller agrees to pay to Purchaser all insurance proceeds received by Seller for casualty to the Leased Real Property, to the extent that such insurance proceeds have not been expended by Seller in the repair or reconstruction of the Leased Real Property, but subject to any obligation to refund any of such proceeds to the applicable insurer. Purchaser shall bear all expenses related to the ownership and operation of the Leased Real Property from and after such Closing Date. Notwithstanding the above, Purchaser may elect not to close on a particular Restaurant until all repairs and reconstruction there are completed (but in any event no later than six (6) months from the date of casualty) and the applicable Leased Real Property is ready for use and occupancy.

SECTION 7.02. Condemnation. If prior to the applicable Closing Date there shall be commenced or instituted against any Leased Real Property any eminent domain or similar condemnation action or proceedings, Seller shall promptly give written notice of such action or proceeding and of any action by the landlord under such Assumed Lease that has the right to terminate such Real Property Lease as a result of such action or proceeding and, in fact, terminates such Assumed Lease within the time in which it may do so to Purchaser. If, as a result of such proceeding against Leased Real Property, (x) Seller as party to such Assumed Lease has a right to terminate the Lease and Purchaser notifies Seller that it elects to have that termination right exercised, which notice is received by Seller in reasonably sufficient time to allow Seller to exercise such right, or (y) if the impact of such action or proceeding on the Leased Real Property is of a nature that substantially impairs the value of the affected Assumed Lease, then Purchaser may elect to cause Seller to terminate the Assumed Lease with respect to such Restaurant upon written notice to Seller (the "Condemnation Termination Notice"). The Condemnation Termination Notice shall be delivered to Seller, (i) in the case of (x), on the date Purchaser notifies Seller that it elects to have a Seller's termination right under a Real Property Lease exercised, or (ii) in the case of (y), within ten (10) business days after Purchaser's receipt of Seller's notice of such proceeding in the event that Purchaser and Seller have not agreed upon the amount of the diminution in value of the affected Assumed Lease. With respect to any Assumed Lease terminated in accordance with the foregoing provisions, the Restaurant associated with such lease would remain eligible to remain as or become a Transferable Restaurant. Upon the Closing of such Restaurant, the Purchaser will receive any eminent domain or condemnation proceeds (including any amounts paid to the extent that such amount has not been expended by Seller in the repair or reconstruction of such property or any assignment for future amounts owed), the Assigned Liquor License and all other assets of such Restaurant and for the avoidance of doubt, there will be no reduction in the Restaurant Transfer Amount paid by Purchaser to Seller.

SECTION 7.03. Supplemental Casualty and Condemnation Disclosures. In the event this Agreement is terminated as to any property subject to a casualty loss or condemnation proceeding, as permitted pursuant to Sections 7.01 and 7.02, and the exclusion of such property from this Agreement would result in the inaccuracy of any representation, warranty or other provision in this Agreement absent an update to the Disclosure Schedule or Exhibits to this Agreement, Seller shall have the right to deliver to Purchaser an update to the Sections of the Disclosure Schedule or Exhibits to this Agreement affected by any such termination (a "Termination Supplement") to reflect changed facts or circumstances directly resulting from

such termination within ten (10) business days after receipt of the applicable Casualty Termination Notice or Condemnation Termination Notice (or the date of delivery of the applicable Condemnation Termination Notice in the event that Seller deliver such notice). Any such Termination Supplement shall be deemed to supplement or amend the Disclosure Schedule or Exhibits to this Agreement, as applicable, for the purpose of determining the accuracy of any covenant, representation or warranty made by Seller in this Agreement. In no event shall Seller be deemed to have breached any representations, warranties or covenants hereunder as a result of any changes in a condition, event, fact or circumstance disclosed in the Disclosure Schedule or Exhibits to this Agreement as a result of a casualty or condemnation for which the subject property is removed from the transaction.

## ARTICLE VIII. CONDITIONS TO CLOSING

SECTION 8.01. Conditions to Obligations of the Parties. The obligation of each Party to consummate the transactions to be performed by such Party in connection with each Closing is subject to satisfaction of the following conditions:

(a) Consents and Approvals. The Parties shall have received all authorizations, consents, and approvals of third parties and Governmental Entities referred to in Section 6.02 and 6.07 for each Restaurant at its applicable Closing Date.

(b) No Injunctions or Restraints. There shall not be any injunction, judgment, order, decree, ruling, or charge in effect preventing the consummation of any of the transactions contemplated by this Agreement.

(c) Sale Approval Order. Prior to the Initial Closing Date, a Sale Approval Order shall have been entered by the Bankruptcy Court, and the effectiveness of the Sale Approval Order shall not have been modified, reversed, vacated, stayed, restrained, dissolved or enjoined.

SECTION 8.02. Conditions to Purchaser's Obligations to Close. The obligation of Purchaser to consummate the transactions contemplated by this Agreement is subject to satisfaction of the following conditions:

(a) Representations and Warranties. The representations and warranties set forth in Article IV above, except to the extent that they expressly relate to an earlier date, shall be true and correct at and as of each Closing Date as it pertains to such Restaurant being transferred, except for such failures of representations and warranties to be true and correct that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Business.

(b) Covenants. Seller shall have performed and complied with all of their covenants hereunder in all material respects for each Restaurant as of its applicable Closing Date.

(c) [RESERVED].

(d) [RESERVED].

(e) FIRPTA. Prior to the Initial Closing Date and if required in connection with the assignment of the Assumed Leases, Seller shall have delivered to Purchaser a tax certificate of non-foreign status in accordance with Treasury Regulation section 1.1445-2(b)(2).

(f) Bill of Sale. Purchaser or its designee shall have received a Bill of Sale executed by Seller, in substantially the form attached hereto as Exhibit C ("Bill of Sale"), transferring to Purchaser the Assets that are tangible Personal Property to Purchaser for each Restaurant as of its applicable Closing Date.

(g) Intellectual Property Assignment. Purchaser shall have received an Assignment of Copyrights in substantially the form attached hereto as Exhibit E and an Assignment of Service Marks in substantially the form attached hereto as Exhibit F, each executed by Seller in the Assigned Intellectual Property.

(h) [RESERVED].

(i) [RESERVED].

(j) [RESERVED].

(k) [RESERVED].

(l) Closing Certificates. Seller shall have delivered to Purchaser a certificate, dated the Initial Closing Date and signed by such Seller's Secretary, certifying that the following documents (which shall be attached) are true and correct copies of such documents and that such documents have not been amended or superseded:

(i) a copy of such Seller's certificate of incorporation, as applicable, certified by the Secretary of State of such entity's jurisdiction of incorporation, and a certificate of good standing from each such entity's jurisdiction of incorporation;

(ii) a copy of the by-laws of Seller, with all amendments thereto; and

(iii) copies of the resolutions duly adopted by the board of directors of Seller authorizing its execution, delivery and performance of this Agreement and the other agreements contemplated hereby to which it is a party, and the consummation of all transactions contemplated hereby and thereby.

(m) Evidence of Tax and Liquor Wholesale Payments. Seller shall provide at the applicable Closing proof and evidence that all taxes, including sales taxes and all amounts payable to alcoholic beverage wholesalers pertaining to the Restaurant being transferred have been paid to date and in full, in each case to the extent due.

(n) Other Real Property Deliverables. For each Restaurant as of its applicable Closing Date, in connection with the Leased Real Property associated therewith, Purchaser shall have received (i) all notifications, registrations and filings to the extent required by, and in



accordance with, all governmental real property disclosure requirements, (ii) an assignment to Purchaser of all of Seller's right, title and interest in security deposits relating to the Assumed Lease of such Restaurant or insurance proceeds of such Restaurant payable to Purchaser pursuant to Section 7.01, if any, and (iii) all keys for such Restaurant.

(o) Sale Approval Order. The Sale Approval Order, containing, among other things, provisions substantially the same as those described in Exhibit D attached hereto or as otherwise to the sole satisfaction of Purchaser, shall have been entered by the Bankruptcy Court and the effectiveness of the Sale Approval Order shall not have been modified, reversed, vacated, stayed, restrained, dissolved or enjoined on or prior to the Initial Closing Date.

(p) Material Adverse Effect. Since the date hereof, there shall have been no Material Adverse Effect.

(q) Leases. Each of the Assumed Leases shall have been assigned to Purchaser or its Affiliate as of the applicable Closing Date of the Restaurant with which such Assumed Lease is associated.

(r) Liquor Licenses. Each of the Assigned Liquor Licenses shall have been assigned to Purchaser or its Affiliate as of the applicable Closing Date of the Restaurant with which such Assigned Liquor License is associated or Purchaser or its Affiliate shall have obtained a temporary permit for sale of alcoholic beverages at such Restaurant in accordance with applicable Law.

SECTION 8.03. Conditions to Seller's Obligations to Close. The obligation of Seller to consummate the transactions contemplated by this Agreement are subject to satisfaction of the following conditions:

(a) Representations and Warranties. The representations and warranties set forth in Article V above, except to the extent that they expressly relate to an earlier date, shall be true and correct at and as of the Closing Date, except for such failures of representations and warranties to be true and correct (without giving effect to any materiality or Material Adverse Effect qualification) that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the transactions contemplated hereby. Purchaser shall have delivered to Seller an officer's certificate, in form and substance reasonably satisfactory to Seller and their counsel, to the effect of the matters stated in Sections 8.03(a) and 8.03(b).

(b) Covenants. Purchaser shall have performed and complied with all of its covenants hereunder in all material respects through the Closing.

(c) Seller Intellectual Property License Agreement. Seller's Intellectual Property License Agreement shall be executed on the Intellectual Property Transfer Date and shall remain in full force and effect for each Closing.

(d) Purchase Price. Seller shall have received payment of the portion of the applicable Purchase Price in accordance with Section 2.02.

**ARTICLE IX.**  
**TERMINATION**

**SECTION 9.01.      Termination of Agreement.**

(a)    Mutual Termination. Purchaser and Seller may terminate this Agreement by mutual written consent at any time. The actual date on which this Agreement is terminated in accordance with this Section 9.01 is referred to herein as the "**Termination Date**".

(b)    Termination by Purchaser. Purchaser may terminate this Agreement by giving written notice to Seller at any time (i) in the event Seller have breached any representation, warranty or covenant contained in this Agreement in any material respect, Purchaser has notified Seller of the breach, and the breach has continued without cure for a period of five (5) business days after the notice of breach, (ii) [RESERVED], (iii) if the Bid Procedures Order shall not have been entered by the Bankruptcy Court on or before August 23, 2017, (iv) if the Initial Closing shall not have occurred on or before October 30, 2017, by reason of the failure of any condition precedent under Article VIII hereof or, (v) after the Termination Deadline, by reason of the failure of any condition precedent under Article VIII hereof or (vi) if the Sale Approval Order, in the form annexed hereto as Exhibit D or as otherwise acceptable in the reasonable discretion of Purchaser, shall not have been entered by the Bankruptcy Court on or before October 4, 2017, except otherwise extended, or if the effectiveness of the Sale Approval Order shall have been modified, reversed, vacated, stayed, restrained, dissolved or enjoined.

(c)    Termination by Seller. Seller may terminate this Agreement by giving written notice to Purchaser at any time (i) in the event Purchaser has breached any representation, warranty or covenant contained in this Agreement in any material respect, Seller have notified Purchaser of the breach, and the breach has continued without cure for a period of five (5) business days after the notice of breach, or (ii) after the Termination Deadline, by reason of the failure of any condition precedent under Article VIII hereof (which failure is caused by Purchaser breaching any representation, warranty, or covenant contained in this Agreement).

(d)    Notwithstanding anything contained herein to the contrary, if by December 31, 2017 (the "**Termination Deadline**") the approval for the transfer to Purchaser of all the Assigned Liquor Licenses and Assumed Leases shall not have been obtained, then this Agreement will terminate with respect to those Restaurants which have not been the subject of a Closing; provided that the Termination Date shall automatically extend for successive 30-day periods if Purchaser is working in good faith to obtain the approval for the transfer of such Assigned Liquor Licenses and Assumed Leases; provided further that at any point following the Termination Deadline, Purchaser may terminate this Agreement and its obligations hereunder in respect of each such Restaurant, by giving written notice to Seller and to Crowe & Dunlevy (as holder of the Escrowed Amount), and upon any such termination Crowe & Dunlevy shall thereupon release from the Escrowed Amount and pay to Purchaser, an amount equal to the Restaurant Transfer Amount with respect to each such terminated Restaurant.

**SECTION 9.02.      Effect of Termination.** If any Party terminates this Agreement pursuant to Section 9.01 above or otherwise, all rights and obligations of the Parties hereunder

shall terminate without any liability of any Party to any other Party (except for any liability of any Party then in breach); provided, that; (a) if this Agreement is terminated as a result of an Alternative Transaction to the extent permitted under Section 9.04, the Deposit shall be paid to Purchaser in accordance with Section 9.02(c); and (b) if this Agreement is terminated by Seller pursuant to Section 9.01(c)(i) or (ii), Seller shall be entitled to receive the Deposit as the sole and exclusive remedy of Seller, and Purchaser and Seller shall promptly instruct the Escrow Agent accordingly; and (c) if this Agreement is terminated by either Party pursuant to Section 9.01, other than if this Agreement is terminated by Seller pursuant to Section 9.01(c)(i) or (ii) Purchaser shall be entitled to receive the remaining Escrowed Amount as its sole and exclusive remedy, and Seller shall promptly instruct the Escrow Agent accordingly.

## **ARTICLE X. NO SURVIVAL**

SECTION 10.01. No Survival of Representations and Warranties. The Parties hereto agree that the representations and warranties contained in this Agreement shall not survive the Final Closing Date hereunder, and none of the Parties shall have any liability to each other after the Final Closing Date for any breach thereof. The Parties hereto agree that the covenants contained in this Agreement to be performed at or after each applicable Closing Date shall survive the Final Closing Date hereunder, and remain enforceable in accordance with their terms; it being understood that other than Seller's obligation to perform such post-Closing obligations, this transaction shall be non-recourse against Seller except in the case of actual fraud.

## **ARTICLE XI. DEFINITIONS; RULES OF CONSTRUCTION**

SECTION 11.01. Definitions. Except as otherwise specified, when used in this Agreement, the Disclosure Schedule or any Exhibits hereto, the following terms shall have the following meanings:

**"Additional Deposit"** has the meaning set forth in Section 2.02(d).

**"Affiliate"** or **"Affiliated"** means, with respect to a specified Person, a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Person specified.

**"Agreement"** has the meaning set forth in the Preamble.

**"Allowed Administrative Claims"** shall mean those Post Petition administrative expense claims approved by the Bankruptcy Court for court costs, lawyers' fees, accountants' fees, fees payable to Hilco Real Estate, LLC, and United States Trustee's fees.

**"Alternative Transaction"** means any sale or transaction relating to the acquisition of the Business or portion thereof, or the Assets (other than the sale of Inventory in the ordinary course of business), by any other party other than Purchaser.

**"Assets"** has the meaning set forth in Section 1.01.



**"Assigned Intellectual Property"** has the meaning set forth in Section 1.01(h).

**"Assigned Liquor Licenses"** has the meaning set forth in Section 1.01(e).

**"Assigned Permits"** has the meaning set forth in Section 1.01(f).

**"Assumed Contracts"** has the meaning set forth in Section 1.01(d).

**"Assumed Leases"** has the meaning set forth in Section 1.01(c).

**"Assumed Liabilities"** has the meaning set forth in Section 1.03.

**"Auction"** has the meaning set forth in Section 2.04.

**"Avoidance Actions"** means all causes of action of Seller's and its estate against any Person arising under any of Bankruptcy Code § 502(d), 544, 545, 547, 548, 549, 550, and/or 553, or under similar or related state or federal statutes and common law, including, without limitation, all preference, fraudulent conveyance, fraudulent transfer, and/or other similar avoidance claims, rights, and causes of action, whether or not litigation has been commenced as of the Initial Closing Date to prosecute such Avoidance Actions.

**"Bankruptcy Case"** has the meaning set forth in the Recitals.

**"Bankruptcy Code"** has the meaning set forth in the Recitals.

**"Bankruptcy Court"** has the meaning set forth in the Recitals.

**"Bankruptcy Rules"** means the Federal Rules of Bankruptcy Procedure.

**"Bid Procedures Order"** means the order to be entered by the Bankruptcy Court approving the procedures for the submission of competing bids for the acquisition of the Assets.

**"Bill of Sale"** has the meaning set forth in Section 8.02(f).

**"Business"** has the meaning set forth in the Recitals.

**"Business Confidential Information"** has the meaning set forth in Section 6.10(b)(ii).

**"Butler Liquor License"** has the meaning set forth in Section 1.01(e).

**"Casualty Termination Notice"** has the meaning set forth in Section 7.01(a).

**"Closing"** and **"Closings"** have the meaning set forth in Section 2.02(c).

**"Closing Date"** and **"Closing Dates"** have the meaning set forth in Section 2.02(c).

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

**"Condemnation Termination Notice"** has the meaning set forth in Section 7.02(a).

"**Contract**" means any written or oral contract, agreement, understanding, arrangement, lease, license, commitment or other obligation, other than a Permit or Liquor License.

"**Cure Amounts**" has the meaning set forth in Section 2.01(d).

"**Declaration**" has the meaning set forth in Section 12.07.

"**Deposit**" has the meaning set forth in Section 2.02(d).

"**DIP Loan**" shall mean the debt obligations of Seller to SpiritBank, as Lender, under that the Loan Facility approved by the Bankruptcy Court.

"**Disclosure Schedule**" means the disclosure document dated the date hereof, which has been prepared by Seller and delivered to Purchaser, and which identifies exceptions to the representations and warranties set forth in Article IV and other disclosure matters contemplated by this Agreement.

"**Effective Time**" 12:01 a.m. Central Standard Time on the Final Closing Date.

"**Effective Transfer Date**" has the meaning set forth in Section 2.02(b).

"**Effective Transfer Date Inventory**" has the meaning set forth in Section 2.01(c).

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

"**Escrowed Amount**" has the meaning set forth in Section 2.03.

"**Excluded Assets**" has the meaning set forth in Section 1.02.

"**Excluded Liabilities**" has the meaning set forth in Section 1.04.

"**Fiesta**" has the meaning set forth in the Preamble.

"**Final Closing Date**" means the Closing of the last Transferable Restaurant prior to termination of the Agreement.

"**Final Effective Transfer Date**" means the Effective Transfer Date of the last Transferable Restaurant.

"**First Transferable Restaurant**" has the meaning set forth in Section 2.02(a)(i).

"**Fresh Capital**" has the meaning set forth in the Preamble.

"**Gift Cards**" means unredeemed gift cards issued prior to the Closing Date that are redeemable at the Restaurants.

"**Governmental Entity**" means any federal, state, provincial or local governmental, regulatory or administrative authority, agency, commission, court, tribunal, arbitral body or self-

regulated entity, whether domestic or foreign, including, without limitation, any local issuing authority with respect to Liquor Licenses.

**"Initial Closing"** has the meaning set forth in Section 2.02(c).

**"Initial Closing Date"** has the meaning set forth in Section 2.02(c).

**"Initial Deposit"** has the meaning set forth in Section 2.02(d).

**"Initial Effective Transfer Date"** means the Effective Transfer Date of the First Transferable Restaurant.

**"Intellectual Property Rights"** means, collectively, (i) trademarks, service marks, trade dress, trade names, logos, slogans, and corporate names (in each case, whether registered or unregistered) and registrations and applications for registration thereof, (ii) patents and patent rights (whether registered or unregistered) and registrations and applications for registration thereof, (iii) copyrights (registered or unregistered) and copyrightable works and registrations and applications for registration thereof, and (iv) websites and domain names.

**"Inventory"** has the meaning set forth in Section 1.01(a).

**"Law"** means any law, statute, ordinance, rule, regulation, code or executive order executed, issued, adopted, promulgated or applied by any Governmental Entity.

**"Leased Real Property"** has the meaning set forth in Section 1.01(c).

**"Leases"** means all leases, subleases, licenses, concessions and other agreements (written or oral), including all amendments, extensions, renewals, guaranties and other agreements with respect thereto to which any Seller is a party.

**"Lien"** means any security interest, pledge, hypothecation, mortgage, lien, charge, claim, interest or encumbrance of any kind or nature.

**"Liquor License"** means a license or permit authorizing the sale of alcoholic beverages.

**"Local Rules"** means the Local Rules for the United States Bankruptcy Court for the Western District of Oklahoma (as the same may be supplemented, modified, and/or amended).

**"Material Adverse Effect"** means any event, fact, condition, change, circumstance or effect that individually or in the aggregate, is materially adverse to the business, operations, assets, liabilities, properties, results of operations or condition (financial or otherwise) of (x) in the case of Seller, the Business, taken as a whole, or on the ability of Seller to consummate the transactions contemplated by this Agreement and (y) in the case of Purchaser, Purchaser's financial condition, taken as a whole, or on the ability of Purchaser to consummate the transactions contemplated by this Agreement; provided, however, that none of the following, either alone or in combination, shall be considered in determining whether there has been a "Material Adverse Effect": (i) events, facts, conditions, changes, circumstances or effects that generally affect the restaurant industry (including changes in Law), except to the extent that the

Business is disproportionately affected; (ii) general economic or political conditions or events, circumstances, changes or effects affecting the financial, or securities markets generally, except to the extent that the Business is disproportionately affected;; (iv) any event, fact, condition, change, circumstance or effect that results from any action required to be taken by a Party pursuant to this Agreement or taken at the request of Purchaser; (v) changes caused by material worsening of current conditions caused by acts of terrorism or war (whether or not declared); and (vi) provided, further, however that in no event shall any damage or destruction to Leased Real Property, any taking pursuant to the exercise of the power of eminent domain or similar condemnation action or proceeding with respect to any portion of any Leased Real Property, either alone or in combination, be considered in determining whether there has been a "Material Adverse Effect".

**"Notification"** has the meaning set forth in Section 12.07.

**"Party"** means any party to this Agreement.

**"Permits"** means any authorizations, grants, licenses, registrations, variances, exceptions, consents, certificates, approvals or other permits of any nature granted by a Governmental Entity, other than Liquor Licenses.

**"Person"** means an individual, a partnership, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or a Governmental Entity (or any department, agency, or political subdivision thereof).

**"PFG"** shall mean Performance Food Group and its affiliates, who have been designated as "critical vendors" in the Bankruptcy Case.

**"Post-Petition"** shall mean after the filing of the Bankruptcy Case.

**"Pre-Petition"** shall mean before the filing of the Bankruptcy Case.

**"Practical"** has the meaning set forth in the Preamble.

**"Purchase Price"** has the meaning set forth in Section 2.0 1(a).

**"Purchaser"** has the meaning set forth in the Preamble.

**"Restaurant"** and **"Restaurants"** have the meaning set forth in the Recitals.

**"Restaurant Transfer Amount"** has the meaning set forth in Section 2.01.

**"Sale Approval Order"** means the order to be entered by the Bankruptcy Court approving this Agreement and the sale by Seller to Purchaser of the Assets in the form set forth in Exhibit D attached hereto.

**"Sale Hearing"** has the meaning set forth in Section 2.04(b).

**"Sale Motion"** means the motion to be filed with the Bankruptcy Court contemporaneously with the Sale Procedures Motion by or on behalf of Seller requesting that the Bankruptcy Court enter the Sale Approval Order.

**"Sale Procedures"** means the procedures for the submission of competing bids for the acquisition of the Assets.

**"Sale Procedures Motion"** means the motion to be filed in the Bankruptcy Court on behalf of Seller for, among other things, approval of the Sale Procedures and entry of the Sale Approval Order.

**"Secured Indebtedness"** has the meaning set forth in Section 2.03.

**"Seller"** has the meaning set forth in the Preamble.

**"Seller's Intellectual Property License Agreement"** has the meaning set forth in Section 1.01(h).

**"Subsequent Closing"** has the meaning set forth in Section 2.02(c).

**"Subsequent Transferable Restaurant"** has the meaning set forth in Section 2.02(a)(ii).

**"Subsidiary"** means with respect to any Person, any corporation or other entity of which such Person has, directly or indirectly, ownership of securities or other interests having the power to elect a majority of such corporation's board of directors (or similar governing body), or otherwise having the power to direct the business and policies of that corporation or other entity other than securities or interests having such power only upon the happening of a contingency that has not occurred.

**"Tax"** means (i) all federal, state, local or non-U.S. taxes, duties, imposts or other similar assessments imposed by any governmental body and (ii) all interest and penalties related to the foregoing.

**"Tax Return"** means any Tax return or other statement required to be filed with any governmental body in respect of any Tax.

**"Termination Date"** has the meaning set forth in Section 9.01(a).

**"Termination Deadline"** has the meaning set forth in Section 9.01(d).

**"Termination Supplement"** has the meaning set forth in Section 7.03.

**"Transferable License"** has the meaning set forth in Section 2.02(a)(iv).

**"Transferable Restaurant"** has the meaning set forth in Section 2.02(a).

**"Transaction Documents"** means this Agreement and all other agreements and instruments to be entered into or delivered by Purchaser or Seller in connection with the transactions contemplated hereby.

**"Transfer Tax"** has the meaning set forth in Section 12.06(a).

SECTION 11.02. Rules of Construction. This Agreement shall be construed in accordance with the following rules of construction:

(a) the terms defined in this Agreement include the plural as well as the singular;

(b) unless otherwise indicated, all references in the Agreement to designated "Articles," "Sections" and other subdivisions are to the designated articles, sections and other subdivisions of the body of this Agreement;

(c) pronouns of either gender or neuter shall include, as appropriate, the other pronoun forms;

(d) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; and

(e) the words "includes" and "including" are not limiting.

## **ARTICLE XII. MISCELLANEOUS**

SECTION 12.01. [RESERVED.]

SECTION 12.02. Entire Agreement; Amendment; Waiver. This Agreement, the Exhibits hereto, the other Transaction Documents and the Disclosure Schedule constitute the entire understanding between the Parties with respect to the subject matter hereof, and supersede all other understandings and negotiations with respect thereto. This Agreement may be amended only in writing signed by all Parties hereto which specifically states an intention to modify this Agreement. Any provision of this Agreement may be waived only in a writing signed by the Party to be charged with such waiver. No course of dealing between the Parties shall be effective to amend or waive any provision of this Agreement.

SECTION 12.03. Further Assurances. As permitted by the Bankruptcy Code, after the date hereof, each Party shall (and shall cause its respective Affiliates to) take such reasonable further actions and execute such further documents as may be necessary or reasonably requested by the other in order to effectuate the intent of this Agreement and to provide such other Parties with the benefits of this Agreement provided, that nothing in this Section 12.03 shall require Seller to make any expenditure or incur any obligation on its own or on behalf of Purchaser.

SECTION 12.04. Notices. Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given (i) upon

receipt if personally delivered (with written confirmation of receipt), (ii) upon receipt if mailed by certified or registered mail, return receipt requested (with written confirmation of receipt), (iii) upon receipt if sent by a nationally recognized guaranteed and receipted courier service (with written confirmation of receipt) or (iv) upon receipt if sent by facsimile (with written confirmation of transmission). Notices or other communications shall be directed to the following addresses:

If to Seller, to:

**Eateries, Inc.**  
14504 Hertz Quail Springs Parkway  
Oklahoma City, OK 73134  
Attention: William C. Liedtke III  
Telephone: (405) 834-8522  
Facsimile: (866) 531-0416

With a copy (which shall not constitute notice) to:

Crowe & Dunlevy  
500 Kennedy Building  
321 South Boston Avenue  
Tulsa, Oklahoma 74103  
Attention: Mark A. Craige, Esq.  
Telephone: (918) 592-9878  
Facsimile: (918) 599-6318

If to Purchaser, to:

**Practical Investors LLC**  
**Fresh Capital LLC**  
**Fiesta Holdings, Inc.**  
14504 Hertz Quail Springs Parkway  
Oklahoma City, OK 73134  
Attention: Bradley L. Grow  
Telephone: (405) 820-5806  
Facsimile: (405) 285-5027

With a copy (which shall not constitute notice) to:

Conner & Winters, LLP  
1700 One Leadership Square  
211 North Robinson  
Oklahoma City, OK 73102-7101  
Attention: Jared D. Giddens, Esq.  
Telephone: (405) 272-5721



Facsimile: (405) 232-2695

Any Party may, by notice given in accordance with this Section 12.04, specify a new address for notices under this Agreement.

SECTION 12.05. Expenses. Except as otherwise provided herein, each Party hereto will pay all fees and expenses incurred by it in connection with this Agreement and the consummation of the transactions contemplated hereby.

SECTION 12.06. Transfer Taxes. Purchaser shall each pay all sales, use, transfer, real property transfer and other similar Taxes arising out of or in connection with the transfer of the Assets and assumption of the Assumed Liabilities effected pursuant to this Agreement (the "Transfer Tax"). If a Seller is required to file any Transfer Tax Return, Purchaser shall pay to such Seller, at least five (5) business days prior to the due date for filing such Transfer Tax Return, the amount of any Transfer Tax due. Each of the parties shall provide the other with any cooperation reasonably requested by the other party in connection with the preparation, execution and filing of Transfer Tax Returns, the securing of any available exemption and any audits or other matters relating to Transfer Tax.

SECTION 12.07. Notification of Sale. Prior to the Initial Closing Date, Purchaser shall (notwithstanding the Sale Approval Order or any subsequent order of the Bankruptcy Court) submit any forms required by the Governmental Entities of the States of Delaware, Alabama, Illinois, Mississippi, Ohio, Pennsylvania or West Virginia relating to notification of sale, transfer or assignments in bulk for the transactions contemplated in this Agreement (the "Notification"). Seller shall cooperate with and provide to Purchaser any information required by Purchaser to complete the Notification. In addition, Seller shall complete any asset transfer tax declaration, if any, as may be required by the States of Delaware, Alabama, Illinois, Mississippi, Ohio, Pennsylvania or West Virginia (the "Declaration") and deliver any such completed Declaration to Purchaser's counsel so that Purchaser's counsel can submit the Declaration at the same time that Purchaser's counsel submits the Notification,

SECTION 12.08. Record Retention and Access. Purchaser shall maintain possession of all books and records transferred to it as Assets until the expiration of all periods during which such books and records are required to be retained under applicable Law or regulation; provided that, thereafter Purchaser shall give Seller not less than sixty (60) days prior written notice of its intention to dispose of any such books and records. After the date hereof, Purchaser and Seller shall each provide the other and its representatives with access to, copies of and excerpts from, such books, records and other materials, and access to such employees and agents, as the other may reasonably request for the purposes of preparing, filing and supporting reports relating to the Business as may be required to be filed.

SECTION 12.09. Dispute Resolution.

(a) Except as otherwise provided in this Agreement, the Parties shall negotiate in good faith to resolve any controversy, dispute or disagreement arising out of or relating to this Agreement, the Transaction Documents or the breach of any provision thereof. The Bankruptcy



Court shall have exclusive jurisdiction to consider any matters or disputes related to this Agreement and the transactions contemplated hereby.

(b) The prevailing Party shall be entitled to recover its attorneys' fees and expenses; provided, however, notwithstanding anything herein to the contrary, a refund of the Deposit shall serve as Purchaser's sole and exclusive remedy and maximum recourse. Similarly, Seller's sole and exclusive remedy hereunder shall be to receive damages in the amount of the Deposit.

SECTION 12.10. Governing Law: Jurisdiction. This Agreement shall be governed in accordance with the Bankruptcy Code and the substantive laws of the State of Oklahoma and any dispute arising under this Agreement shall be resolved in accordance with the laws of the State of Oklahoma. The Parties hereby (a) irrevocably and unconditionally submit, for themselves and their property, to the jurisdiction of the Bankruptcy Court in any action or proceeding related to the enforcement or interpretation of this Agreement and (b) irrevocably waive, and agree not to assert by way of motion, defense, or otherwise, in any action for such purpose, any claim that it is not subject personally to the jurisdiction of the Bankruptcy Court, that its property is exempt or immune from attachment or execution, that any such action, claim or other proceeding is brought in an inconvenient forum, that the venue of the action claim or proceeding is improper, or that this Agreement or the transactions contemplated by this Agreement may not be enforced in or by Bankruptcy Court.

SECTION 12.11. Assignment. This Agreement may not be assigned by any Party without the written consent of the other Parties, except to the successor or assignee of all or substantially all of the assignor's business to which the Agreement relates, provided however that Purchaser may (a) collaterally assign this Agreement or a portion thereof to lenders in connection with the financing of the transactions contemplated hereby (or any amendments, supplements, restatements, or refinancings thereof) and (y) assign this Agreement or a portion thereof to any Subsidiary of the Purchaser, as set forth in Section 2.02(e) or otherwise. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns. No assignment of this Agreement shall relieve any Party of its obligations hereunder.

SECTION 12.12. Captions. The captions in this Agreement are for purposes of reference only and shall not limit or otherwise affect the interpretation hereof

SECTION 12.13. Representation by Counsel; Interpretation. Seller and Purchaser each acknowledge that they have been represented by counsel in connection with this Agreement and the transactions contemplated hereby. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the Party that drafted it has no application and any such right is expressly waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the intent of Seller and Purchaser.

SECTION 12.14. Parties in Interest. This Agreement shall be binding upon and inure solely to the benefit of the Parties hereto and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any other Person any rights, benefits, remedies, obligations or liabilities of any nature whatsoever under or by reason

of this Agreement other than the Parties hereto and their respective successors and permitted assigns.

SECTION 12.15. Severability. In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision or provisions shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without invalidating the remainder of such provision or provisions or the remaining provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein, unless such a construction would be unreasonable.

SECTION 12.16. Counterparts. This Agreement may be executed in two or more counterparts, each of which when executed shall be deemed to be an original but all of which when taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by telecopier, facsimile or other electronic transmission (i.e., a "pdf" or "tiff") shall be effective as delivery of a manually executed counterpart thereof.

**[Signatures on Following Page]**

IN WITNESS WHEREOF, the Parties have executed this Purchase Agreement as of the date first set forth above.

SELLER:

EATERIES, INC., a Delaware corporation

By: 

Name: William C. Liedtke III

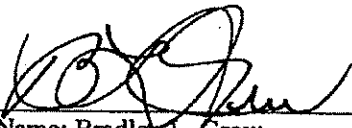
Title: Vice President

[Signatures to the Eateries Inc. Asset Purchase Agreement]

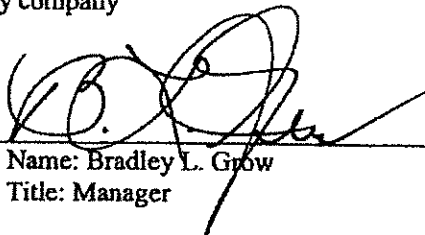
IN WITNESS WHEREOF, the Parties have executed this Purchase Agreement as of the date first set forth above.

PURCHASER:

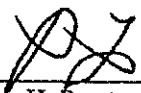
PRACTICAL INVESTORS LLC, an Oklahoma limited liability company

By:   
Name: Bradley L. Grow  
Title: Manager

FRESH CAPITAL LLC, an Oklahoma limited liability company

By:   
Name: Bradley L. Grow  
Title: Manager

FIESTA HOLDINGS, INC., a Delaware corporation

By:   
Name: H. Preston Stockton  
Title: President

[Signatures to the Eateries Inc. Asset Purchase Agreement]

**EXHIBIT A**

**RESTAURANTS**

**S&B's BURGER JOINT-UNIVERSITY MALL**

1237 E. MAIN ST.-STE1030

CARBONDALE, IL 62901

Tenant: Eateries, Inc. dba S&B's Burger Joint

Landlord: University Mall Realty LLC, c/o Namdar Realty Group

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**GARFIELD'S-WA CROWN CENTER**

1500 W. CHESTNUT ST. STE 636

WASHINGTON, PA 15301

Tenant: Eateries, Inc. dba Garfield's

Landlord: Washington Crown Center Realty Holdings LLC

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**GARFIELD'S-NITTANY MALL**

2901 E. COLLEGE AVE STE 624

STATE COLLEGE, PA 16801

Tenant: Eateries, Inc. dba Garfield's

Landlord: Nittany Centre Realty, LLC; Nittany Nassim LLC

---

**GARFIELD'S-SUSQUEHANNA VALLEY**

ONE SUSQUEHANNA VALLEY MALL DRIVE

SPACE 223

SELINGROVE, PA 17870

Tenant: Eateries, Inc. dba Garfield's

Landlord: German American Capital Corporation

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**GARFIELD'S**

300 HIGHWAY 78 E. STE 344

JASPER, AL 35501

Tenant: Eateries, Inc. dba Garfield's

Landlord: Jasper Mall Retail Group, LLC

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**GARFIELD'S- VILLAGE MALL**

2917 N. VERMILION ST.

DANVILLE, IL 61832

Tenant: Eateries, Inc. dba Garfield's

Landlord: T Danville Mall, LLC

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**GARFIELD'S-GREENVILLE MALL**

1651 HIGHWAY 1 SOUTH STE 21

GREENVILLE, MS 38701

Tenant: Eateries, Inc. dba Garfield's

Landlord: Five Properties Holding Company LLC

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**GARFIELD'S-OHIO VALLEY MALL**

67800 MALL RD STE 695

SAINT CLAIRSVILLE, OH 43950

Tenant: Eateries, Inc. dba Garfield's

Landlord: Ohio Valley Mall Company

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**GARFIELD'S-MORGANTOWN MALL**

9801 MALL RD

MORGANTOWN, WV 26501

Tenant: Eateries, Inc. dba Garfield's

Landlord: Morgantown Mall Associates Limited Partnership

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EATERIES INC

**GARFIELD'S-MEADOWBROOK MALL**

2400 MEADOWNBROOK MALL

BRIDGEPORT, WV 26330

Tenant: Eateries, Inc. dba Garfield's

Landlord: Meadowbrook Mall Company (Cafaro)

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**EXHIBIT B**

**RESTAURANT TRANSFERABLE AMOUNTS**

**S&B's BURGER JOINT-UNIVERSITY MALL**

1237 E. MAIN ST.-STE1030  
CARBONDALE, IL 62901  
4.27%

---

**GARFIELD'S-WA CROWN CENTER**

1500 W. CHESTNUT ST. STE 636  
WASHINGTON, PA 15301  
8.57%

---

**GARFIELD'S-NITTANY MALL**

2901 E. COLLEGE AVE STE 624  
STATE COLLEGE, PA 16801  
12.21%

---

**GARFIELD'S-SUSQUEHANNA VALLEY**

ONE SUSQUEHANNA VALLEY MALL DRIVE  
SPACE 223  
SELINGSGROVE, PA 17870  
11.69%

---

**GARFIELD' S**

300 HIGHWAY 78 E. STE 344  
JASPER, AL 35501  
10.59%

---

**GARFIELD'S- VILLAGE MALL**

2917 N. VERMILION ST.  
DANVILLE, IL 61832  
5.87%

---

**GARFIELD'S-GREENVILLE MALL**

1651 HIGHWAY 1 SOUTH STE 21

GREENVILLE, MS 38701

11.67%

---

**GARFIELD'S-OHIO VALLEY MALL**

67800 MALL RD STE 695

SAINT CLAIRSVILLE, OH 43950

9.90%

---

**GARFIELD'S-MORGANTOWN MALL**

9801 MALL RD

MORGANTOWN, WV 26501

4.22%

---

**GARFIELD'S-MEADOWBROOK MALL**

2400 MEADOWNBROOK MALL

BRIDGEPORT, WV 26330

12.68%

---

**BUTLER LIQUOR LICENSE**

8.33%

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**EXHIBIT C**

**FORM OF BILL OF SALE**

**EXHIBIT C**

**BILL OF SALE**

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, EATERIES, INC. a Delaware corporations ("Seller"), does hereby sell, convey, assign, transfer and deliver to \_\_\_\_\_ LLC, a [ ] limited liability company ("Buyer"), all of Seller's right, title and interest in and to all of the following personal property:

All inventory, furniture, fixtures, equipment and other personal property located in the-[Garfield's Restaurant & Pub/S&B's Burger Joint] restaurant located at [ ] (the "Assets"),

specifically including the personal property as described on the attached *Exhibit A*, but expressly excepting and excluding the Excluded Assets.

This Bill of Sale is being executed and delivered by Seller as of the date set forth below pursuant to the terms of that certain Asset Purchase Agreement of dated as of August 9, 2017 between Practical Investors LLC, an Oklahoma limited liability company; Fresh Capital LLC, an Oklahoma limited liability company; and Fiesta Holdings, Inc., a Delaware corporation, collectively as the "Purchaser" therein and Seller (the "Asset Purchase Agreement"). All defined terms used in this Bill of Sale but not defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement.

SELLER HEREBY WARRANTS TO BUYER THAT SELLER IS THE LAWFUL OWNER OF THE ASSETS AND THE ASSETS ARE FREE FROM THE RIGHTS AND CLAIMS OF OTHERS, BUT MAKES NO OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE ASSETS, EXCEPT TO THE EXTENT SET FORTH IN THE ASSET PURCHASE AGREEMENT. EXCEPT TO THE EXTENT SET FORTH IN THE ASSET PURCHASE AGREEMENT, (A) SELLER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE WITH RESPECT TO THE ASSETS, AND THE SAME IS SOLD IN AN "AS IS, WHERE IS" CONDITION, WITH ALL FAULTS; AND (B) THERE ARE NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED.

TO HAVE AND TO HOLD the Assets unto the Buyer, its successors and assigns forever.

Nothing in this Bill of Sale shall be deemed to supersede or modify any of the provisions of the Asset Purchase Agreement, all of which survive the execution and delivery of this Bill of Sale as provided and subject to the provisions and limitations in the Asset Purchase Agreement. In the event of any conflict between the terms of this Bill of Sale and the terms of the Asset Purchase Agreement, the terms of the Asset Purchase Agreement shall govern and control.

In the event further acts are required from Seller or Buyer, such party agrees to execute whatever additional documents may be necessary or convenient to implement the assignment herein made.

This Bill of Sale may be executed in any number of counterparts and by Seller and Buyer on separate counterparts. Each such counterpart shall be deemed to be an original and all counterparts shall constitute one agreement and shall be binding upon, inure to the benefit of, and be enforceable by, Seller and Buyer, and their respective successors and assigns.

This instrument shall be governed by, and construed in accordance with, the laws of the State of [ ].

Executed this \_\_ day of \_\_\_\_, 2017.

**SELLER:**

**EATERIES, INC.,** a Delaware corporation

\_\_\_\_\_  
Name: William C. Liedtke III

Title: Vice President

**BUYER:**

\_\_\_\_\_  
liability company LLC, a [ ] limited

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

Title: Manager

# Exhibit D

## Proposed Sale Order

The attached Sale Approval Order is intended as a proposed form of order only and is subject to the ruling and adjudication by the Court on the Sale Motion filed July 13, 2017 [Doc. 141] that is presently set for hearing on September 27, 2017. This proposed order is not intended to be preclusive as to any issue, ruling, adjudication or otherwise by any party or the Court. The U.S. Trustee has advised that it does not approve this proposed order in its current form.

**EXHIBIT D: "PROPOSED SALE ORDER"**

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF OKLAHOMA**

_____	)	
	)	Chapter 11
In re:	)	
	)	Case No. 17-11444-SAH
EATERIES, INC., <i>et al.</i> <sup>1</sup>	)	
	)	Jointly Administered
Debtors.	)	
_____	)	

**ORDER (A) AUTHORIZING AND APPROVING (I) THE ASSET PURCHASE AGREEMENT; (II) THE SALE OF THE DEBTOR'S ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS; AND (III) THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (B) GRANTING RELATED RELIEF**

**[This Order Relates to the Motion at Docket No. 141]**

Upon the motion (the "Motion")<sup>2</sup> filed July 13, 2017 [Doc. 141] of Eateries, Inc. ("Eateries") and GRP of Zanesville, LLC ("Zanesville"), debtors and debtors-in-possession in the above-captioned cases (collectively, "Debtor") in the above-captioned case ("Debtor's Chapter

<sup>1</sup> The affiliated Debtors are Eateries, Inc. and GRP of Zanesville, LLC, Case No. 17-11445-SAH. Although there are multiple Debtors in this case, for ease of reference the term "Debtor" used in this pleading shall refer to all of the affiliated Debtor entities.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Asset Purchase Agreement (as defined below) or, if not defined in the Asset Purchase Agreement, the Motion.

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11 Case"), requesting entry of an order (this "Sale Order") (a) approving the Sale of the Purchased Assets (as defined in the APA) free and clear of all liens, claims, encumbrances and interests of any kind to the Winning Bidder and (b) authorizing the assumption and assignment of certain executory contracts and unexpired leases (the "Assigned Contracts") of the Debtor that are to be assumed and assigned to the Winning Bidder in connection with the Sale; and the Court having entered an order approving, among other things, the Bidding Procedures (the "Bidding Procedures Order") [Docket No. \_\_\_\_\_] and the Auction having been held in accordance with the Bidding Procedures Order; and at the conclusion of the Auction, \_\_\_\_\_ (the "Purchaser") having been chosen as the Winning Bidder for the Purchased Assets; and upon the Purchaser and Debtor having entered into that certain Asset Purchase Agreement, dated \_\_\_\_\_, 2017 (together with all ancillary documents, as may be amended, modified or supplemented, the "APA"); and the Court having conducted the Sale Hearing on September 27, 2017; and all parties in interest having been heard or having had the opportunity to be heard regarding the APA; and it appearing that adequate and proper notice of the Motion has been given and that no other or further notice need be given; and the Sale Hearing having been held to consider the relief requested in the Motion; and upon the record of the Sale Hearing and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtor, its estate, its creditors and all other parties in interest; and that the legal and factual bases set forth in the Motion, the Declarations of William Liedtke and David R. Payne, and the testimony adduced at the Sale Hearing establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

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**IT IS HEREBY FOUND AND DETERMINED THAT:<sup>3</sup>**

A. Jurisdiction. The Court has jurisdiction to hear and determine the Motion and to grant the relief requested in the Motion pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(b).

B. Venue. Venue of Debtor's Chapter 11 Case and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

C. Statutory Predicates. The statutory and legal predicates for the relief requested in the Motion are sections 105, 363 and 365 of title 11 of the United States Code, 11 U.S.C. §§101, et. seq. (the "Bankruptcy Code"), and Rules 2002, 6004, 6006, 9006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

D. Notice. Notice of the Motion and the Sale Hearing has been provided to: (i) all parties that expressed interest in the possible purchase of any of the Purchased Assets; (ii) counsel for the Office of the United States Trustee for this district (the "United States Trustee");; (iii) counsel for the Stalking Horse Bidder; (iv) all entities known by the Debtors to have filed a notice of appearance or a request for receipt of Chapter 11 notices and pleadings filed in the Debtors' Chapter 11 Cases as of the date hereof; (v) all federal, state and local regulatory and taxing authorities and recording offices which have a known interest in the relief requested in the Motion; (vi) all other parties on the Debtor's Master Service List [Doc. 90]; (vii) any entity known or reasonably believed to have asserted a security interest in or lien against any of the Purchased Assets (and their counsel, if known); (x) all counterparties to any contract being assigned as set forth in the APA; and (xix) such other entities as may have been reasonably re-

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<sup>3</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact to the fullest extent of the law. *See* Fed. R. Bankr. P. 7052.

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quested by the Stalking Horse Bidder (collectively, the "Notice Parties"), all in accordance with and as provided by the Bidding Procedures Order.

E. Notice Sufficient. Based upon the Certificates of service previously filed with the Court and the evidence presented at the Sale Hearing, adequate and sufficient notice of the Motion, Auction, Sale Hearing, the Sale, and the transactions contemplated thereby, including without limitation, the assumption and assignment of any assigned contracts (the "Assigned Contracts") to the Purchaser, has been provided in accordance with the Bidding Procedures Order, sections 105(a), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006 and 9006. Such notice provided a reasonable opportunity to object and be heard with respect to the Sale, the Motion and the relief requested therein, including the assumption and assignment of the Assigned Contracts to the Purchaser and the amounts necessary under section 365(b) of the Bankruptcy Code to cure defaults thereunder, as such amounts have been transmitted pursuant to a written notice delivered to the applicable counterparty including the Notice Parties.

F. Assets Property of the Estate. The Purchased Assets sought to be transferred and/or assigned by the Debtor to the Purchaser pursuant to the APA are property of the Debtor's estate and title thereto is vested in the Debtor's estate.

G. Sufficiency of Marketing. The Debtor and its professionals marketed the Purchased Assets and conducted the marketing and sale process as set forth in and in accordance with the Motion and the Bidding Procedures. Based upon the record of these proceedings, all creditors and other parties in interest and all prospective purchasers have been afforded a reasonable and fair opportunity to bid for the Purchased Assets.



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H. Stalking Horse APA. On \_\_\_\_\_, 2017, the Debtor entered in to the Stalking Horse APA, subject to higher or better offers. In accordance with the Bidding Procedures Order, the transactions contemplated by the Stalking Horse APA were deemed a Qualifying Bid and the Stalking Horse Purchaser was eligible to, and did, participate in the Auction.

I. Bidding Procedures. The Bidding Procedures were substantively and procedurally fair to all parties and all potential bidders and afforded notice and a full, fair and reasonable opportunity for any person to make a higher or otherwise better offer to purchase the Purchased Assets. The Debtor conducted the sale process (including the Auction) without collusion and in accordance with the Bidding Procedures.

J. Auction. After the conclusion of the Auction held on September 25, 2017, the Debtor determined in a valid and sound exercise of its business judgment that (i) the highest and best Qualifying Bid in the amount of \$ \_\_\_\_\_ (the "Winning Bid") for the Purchased Assets was that of Purchaser who is approved as the Winning Bidder as such term is defined in the Bid Procedures, for the Purchased Assets on the terms set forth in the APA of the Winning Bidder that has been or will be filed on the dockets of the Debtor's Chapter 11 Case; and (ii) that the second highest or best Qualified Bid in the amount of \$ \_\_\_\_\_ (the "Next Highest Bid") was that of \_\_\_\_\_ who is approved as the Next Highest Bidder as such term is defined in the Bid Procedures, for the Purchased Assets on the terms set forth in the Modified Agreement of the Next Highest Bidder.

K. The Auction conducted by the Debtor, including the methodology for determination of the highest and best offers and the back-up bids, was conducted in a manner that

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was reasonably calculated to achieve the highest and best offers for the Purchased Assets. The Auction was conducted in a non-collusive, fair and good faith manner and a reasonable opportunity has been given to any interested party to make a higher or otherwise better offer for the Purchased Assets.

L. Corporate Authority. Subject to the entry of this Sale Order, the Debtor: (i) has full power and authority to execute the APA and all other documents contemplated thereby; (ii) has all of the power and authority necessary to consummate the transactions contemplated by the APA (collectively, the "Transactions"), and (iii) has taken all company action necessary to authorize and approve the APA and the sale of the Purchased Assets, and any actions required to be performed by the Debtor in order to consummate the Transactions contemplated in the APA. No consents or approvals, other than those expressly provided for in the APA or this Sale Order, are required for the Debtor to consummate the Sale.

M. Arm's-Length Sale and Purchaser's Good Faith. The APA was negotiated and is undertaken by the Debtor and the Purchaser at arm's length without collusion or fraud, and in good faith within the meaning of section 363(m) of the Bankruptcy Code. The Purchaser (i) recognized that the Debtor was free to deal with any other party interested in acquiring the Purchased Assets, (ii) complied with the Bidding Procedures Order and (iii) willingly subjected its bid to the competitive Bidding Procedures approved in the Bidding Procedures Order. All payments to be made by the Purchaser and other agreements or arrangements entered into by the Purchaser in connection with the Sale have been disclosed, the Purchaser has not violated section 363(n) of the Bankruptcy Code by any action or inaction, and no common identity of directors or controlling stockholders exists between the Purchaser and the Debtor. As a result of the foregoing, the Purchaser is a "good faith purchaser" within the meaning of section 363(m) of the Bank-

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ruptcy Code, and as such, is entitled to all of the protections afforded thereby, including in the event this Sale Order or any portion thereof is reversed or modified on appeal, and otherwise has proceeded in good faith in all respects in connection with the Sale specifically and these Debtors' Chapter 11 Cases generally.

N. Sale Highest or Best Offer. The total consideration provided by the Purchaser for the Purchased Assets as reflected in the APA is the highest and best offer for the Purchased Assets. No other person or entity or group of persons or entities has offered to purchase the Purchased Assets for an amount that would provide greater value to the Debtor than the Purchaser. The Court's approval of the Motion, the APA, and the Transactions maximizes the Debtor's recovery for the Purchased Assets, and, thus, is in the best interests of the Debtor and its estate, creditors and all other parties in interest.

O. No Fraudulent Transfer. The Purchase Price constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act and any other applicable law, and may not be avoided under section 363(n) of the Bankruptcy Code. The APA was not entered into, and the Sale is not being consummated, for the purpose of hindering, delaying or defrauding creditors of the Debtor under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia, or any other applicable law. Neither the Debtor nor the Purchaser has entered into the APA or is consummating the Sale with any fraudulent or otherwise improper purpose.

P. No Liability under Section 363(n). Neither the Debtor nor the Purchaser engaged in any conduct that would cause or permit the APA or the consummation of the Sale to be voided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code.

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Q. Transfer of Purchased Assets Free and Clear. The Debtor is the sole and lawful owner of the Purchased Assets. Subject to section 363(f) of the Bankruptcy Code, and except as otherwise provided in the APA, the transfer of each of the Purchased Assets to the Purchaser will be, as of the Closing Date which shall occur on or prior to \_\_\_\_\_ (the "Closing Date"), a legal, valid, and effective transfer of the Purchased Assets, which transfer vests or will vest the Purchaser with all right, title, and interest of the Debtor to the Purchased Assets free and clear of, among other things, (i) all liens, claims, encumbrances and interests, (ii) all debts arising under, relating to, or in connection with any act or omission of the Debtor and all claims (as that term is defined in section 101(5) of the Bankruptcy Code), liabilities, obligations, demands, guaranties, options, rights, contractual commitments, restrictions, interests and matters of any kind and nature, whether arising prior to or subsequent to the commencement of the Debtor's Chapter 11 Case, and whether imposed by agreement, understanding, statute, law, equity or otherwise (including, without limitation, rights and remedies with respect to claims, liens, encumbrances, and interests (x) that purport to give to any party rights of setoff or recoupment, rights or options to effect any forfeiture, modification, or restriction, profit sharing interests, rights and options of first refusal, rights and options to purchase or repurchase or terminate the Debtor's or the Purchaser's interests in the Purchased Assets, or any similar rights, or (y) in respect of taxes and charges of any kind or nature, if any, including, without limitation, any restriction on use, transfer, receipt of income or other exercise of any attributes of ownership) relating to, accruing or arising any time prior to or on the Closing Date (collectively with subsections (i) and (ii) above, the "Interests").

R. Free and Clear Findings Required by Purchaser. The Purchaser would not have entered into the APA and would not consummate the transactions contemplated thereby if

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the Sale of the Purchased Assets to the Purchaser were not free and clear from any and all Interests pursuant to section 363(f) of the Bankruptcy Code, or if the Purchaser or the Purchased Assets would, or in the future could, be liable for any of such Interests. Effective upon the Closing Date, the Purchaser and the Purchased Assets shall not be responsible for any Interests, including in respect of the following: (i) any labor or employment agreements; (ii) all mortgages, deeds of trust, security interests and liens; (iii) any intercompany loans and receivables between the Debtor and any non-Debtor affiliate; (iv) any pension, welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitation, any pension plan of any Debtor, any affiliate of any Debtor, or any member of the Debtor's "control group;" (v) any other employee, worker's compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to (a) the Employee Retirement Income Security Act of 1974, as amended, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (g) the Americans with Disabilities Act of 1990, (h) the Consolidated Omnibus Budget Reconciliation Act of 1985, (i) state discrimination laws, (j) state unemployment compensation laws or any other similar state laws, (k) the Worker Adjustment and Retraining Notification Act, 29 U.S.C §§ 2101 et. seq., or (l) any other state or federal benefits or claims relating to any employment with the Debtor or any of their predecessors; (vi) Interests arising under any Environmental, Health and Safety Laws with respect to any assets owned or operated by Debtor or any corporate predecessor at any time prior to the Closing Date and any liabilities of the Debtor; (vii) any bulk sales or similar law; (viii) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as

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amended, and any taxes arising under or out of, in connection with, or in any way relating to the operation of the Purchased Assets prior to Closing, including; (ix) any excise taxes or stamp taxes assessed by any applicable taxing authority; and (x) any and all Interests arising out of violations, or other non-compliance with any law(s), regulation(s), standard(s), guideline(s), enforcement order(s), or any other authority or requirement enforced by, or under the supervision of the Occupational Safety and Health Administration; and (x) any theories of successor liability or causes of action related thereto. A sale of the Purchased Assets other than one free and clear of all Interests would yield substantially less value for the Debtor's estate, with less certainty, than the Sale as contemplated. Therefore, the Sale contemplated by the APA maximizes the Debtor's recovery on the Purchased Assets, and, thus, is in the best interests of the Debtor and its estate, creditors and all other parties in interest.

S. Satisfaction of Section 363(f) Standards. The Debtor may sell the Purchased Assets free and clear of all Interests because, with respect to each creditor or other person or entity asserting an Interest, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Interests who did not object (or who ultimately withdrew their objections, if any) to the Sale or the Motion are deemed to have consented to the Motion and Sale pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Interests who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code.

T. No Successor Liability. The conveyance of the Purchased Assets does not amount to a consolidation, merger or *de facto* merger of the Purchaser and the Debtor and/or Debtor's estate, there is not substantial continuity between the Purchaser and the Debtor, there is no continuity of enterprise between the Debtor and the Purchaser, the Purchaser is not a mere

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continuation of the Debtor or its estate, and the Purchaser does not constitute a successor to the Debtor or its estate. The Purchaser's acquisition of the Purchased Assets shall be free and clear of any "successor liability" claims of any nature whatsoever, whether known or unknown and whether asserted or unasserted as of the Closing. The Purchaser's operations shall not be deemed a continuation of the Debtor's business as a result of the acquisition of the Purchased Assets. The Purchaser would not have acquired the Purchased Assets but for the foregoing protections against potential claims based upon "successor liability" theories.

U. Assigned Contracts. Each and every provision of the Assigned Contracts or applicable non-bankruptcy law that purports to prohibit, restrict, or condition, or could be construed as prohibiting, restricting, or conditioning assignment of any Assigned Contract has been satisfied or is otherwise unenforceable under section 365 of the Bankruptcy Code. All counterparties of the Assigned Contracts who did not or do not timely file an objection to the assumption and assignment of the Assigned Contract(s) to which they are counterparty are deemed to consent to the assumption by the Debtor of their respective Assigned Contract(s) and the assignment thereof to the Purchaser, and the Purchaser shall enjoy all of the rights and benefits under each such Assigned Contract as of the applicable date of assumption and assignment without the necessity of obtaining such non-debtor party's written consent to the assumption or assignment thereof. Upon the assignment and sale to the Purchaser, the Assigned Contracts shall be deemed valid and binding, in full force and effect in accordance with their terms, subject to the provisions of this Sale Order, and shall be assigned and transferred to the Purchaser, notwithstanding any provision in the Assigned Contracts prohibiting or otherwise restricting assignment or transfer. The Debtor has demonstrated that it is an exercise of its sound business judgment to assume and assign the Assigned Contracts to the Purchaser in connection with the consummation of the

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Sale of the Purchased Assets, and the assumption and assignment of the Assigned Contracts is in the best interests of the Debtor, its estate and creditors, and other parties in interest. The Assigned Contracts being assigned to the Purchaser are an integral part of the Sale of the Purchased Assets and, accordingly, their assumption and assignment are reasonable and an enhancement to the value of the Debtor's estate.

V. Cure/Adequate Assurance. Pursuant to the APA and the notices sent to the counterparties to the Assigned Contracts, the aggregate Cure Costs, The Purchaser has demonstrated adequate assurance of future performance of all Assigned Contracts within the meaning of section 365 of the Bankruptcy Code, including its promise to perform the Debtor's obligations under the Assigned Contracts for periods on and after the Closing. The Cure Costs are deemed the amounts necessary to "cure" (within the meaning of section 365(b)(1) of the Bankruptcy Code) all "defaults" (within the meaning of section 365(b) of the Bankruptcy Code) under such Assigned Contracts. Any objections to the Cure Costs, to the extent not otherwise resolved, are hereby overruled. To the extent that any counterparty failed to timely object to its Cure Cost or to raise any other alleged default or breach of contract, such counterparty is deemed to have consented to such Cure Cost and to the assignment of its respective Assigned Contract(s) to the Purchaser and to have waived any other defaults or breaches. The Court finds that with respect to all such Assigned Contracts, the payment of the Cure Costs as provided in the APA is appropriate and is deemed to fully satisfy the Debtor's obligations under sections 365(b) and 365(f) of the Bankruptcy Code. Accordingly, all of the requirements of sections 365(b) and 365(f) of the Bankruptcy Code have been satisfied for the assumption by the Debtor, and the assignment by the Debtor to the Purchaser, of each of the Assigned Contracts to be assumed and assigned to the Purchaser as of Closing. To the extent any Assigned Contract is not an executory



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contract within the meaning of section 365 of the Bankruptcy Code, it shall be transferred to the Purchaser in accordance with the terms of this Sale Order that are applicable to the Purchased Assets, and the Purchaser shall have no liability or obligation for any (a) defaults or breaches under such agreement that relate to acts or omissions that occurred in the period, or otherwise arose, prior to the date of the entry of this Sale Order, and (b) claims, counterclaims, offsets, or defenses (whether contractual or otherwise, including without limitation, any right of recoupment) with respect to such Assigned Contract, that relate to any acts or omissions that arose or occurred prior to the date of the entry of this Sale Order.

W. Assets Assignable. Each and every provision of the documents governing the Purchased Assets or applicable non-bankruptcy law that purports to prohibit, restrict, or condition, or could be construed as prohibiting, restricting, or conditioning assignment of any of the Purchased Assets, if any, have been satisfied or are otherwise unenforceable under section 365 of the Bankruptcy Code.

X. Sale as Exercise of Business Judgment. Entry into and consummation of the APA constitute the exercise by the Debtor of sound business judgments, and such acts are in the best interests of the Debtor, its estate and creditors, and all parties in interest. The Court finds that the Debtor has articulated good and sufficient business reasons justifying the Sale of the Purchased Assets to the Purchaser. Additionally: (i) the APA constitutes the highest and best offer for the Purchased Assets; (ii) the APA and the closing thereon presents the best opportunity to realize the maximum value of the Purchased Assets and avoid a decline and devaluation of the Purchased Assets; (iii) there is risk of deterioration of the value of the Purchased Assets if the Sale is not consummated promptly; and (iv) the APA and the closing thereon will provide a greater recovery for the Debtor's creditors than would be provided by any other presently availa-

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ble alternative. The Debtor has demonstrated compelling circumstances and a good, sufficient and sound business purpose and justification for the Sale prior to, and outside of, a plan of reorganization. Because the entry into and consummation of the APA constitutes the exercise by the Debtor of sound business judgment, the Debtor, its respective members, officers, directors, employees, advisors, professionals or agents, shall have or incur no liability to the estate or any holder of a Claim or Equity Interest for any act or omission in connection with, related to, or arising out of the negotiations of the APA or the consummation of the transactions contemplated thereunder, other than liability arising out of or relating to any act or omission that constitutes a breach of the APA, willful misconduct, fraud or gross negligence, in each case as determined by a court of competent jurisdiction.

Y. Compelling Reasons for an Immediate Sale. Good and sufficient reasons for approval of the APA have been articulated by the Debtor. The Debtor has demonstrated compelling circumstances for the Sale outside: (a) the ordinary course of business, pursuant to section 363(b) of the Bankruptcy Code; and (b) a plan of reorganization, in that, among other things, the immediate consummation of the Sale to the Purchaser is necessary and appropriate to preserve and to maximize the value of the Debtor's estate. To maximize the value of the Purchased Assets and preserve the viability of the businesses to which the Purchased Assets relate, it is essential that the Sale occur promptly. Time is of the essence in consummating the Sale in order to preserve the value of the Purchased Assets.

Z. No Sub Rosa Plan. The Sale does not constitute a *sub rosa* Chapter 11 plan. The Sale neither impermissibly restructures the rights of the Debtor's creditors nor impermissibly dictates a liquidating plan of reorganization for the Debtor.

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AA. Final Order. This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds that there is no just reason for delay in the implementation of this Sale Order and expressly directs entry of judgment as set forth herein.

BB. Title to Purchased Assets. The Debtor's rights, title, and interests in, to and under each of the Purchased Assets are not subject to cancellation or termination, and have not been adversely affected, as a result of any pre-Closing non-payment of royalties, working interest owners, taxes, or any other amounts.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:**

1. Motion Granted. The relief requested in the Motion is GRANTED and the Sale is approved, all as set forth in this Sale Order.
2. Objections Overruled. All objections, if any, with regard to the relief sought in the Motion that have not been withdrawn, waived, settled or otherwise dealt with as expressly provided herein or on the record at the Sale Hearing are hereby overruled on the merits, with prejudice.
3. Approval. Pursuant to sections 105, 363 and 365 of the Bankruptcy Code, the APA, the assumption and assignment of the Assigned Contracts to the Purchaser as of the Closing Date and the Sale of the Purchased Assets and the other Transactions are hereby approved and the Debtor is hereby authorized and directed to consummate, and shall be deemed for all purposes to have consummated, the Sale, including the sale, transfer and assignment of all of the Debtor's right, title and interest in the Purchased Assets to the Purchaser free and clear of any and all Interests in accordance with the terms of the APA. Pursuant to sections 105, 363 and 365 of the Bankruptcy Code, the Debtor and the Purchaser are each hereby authorized and di-

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rected to take any and all actions necessary or appropriate to: (a) consummate the Sale of the Purchased Assets to the Purchaser and the Closing of the Sale, the APA and this Sale Order, (b) assume and assign the Assigned Contracts to be assumed and assigned to the Purchaser as of the Closing Date, and (c) perform, consummate, implement and close fully the APA together with any and all additional instruments and documents that may be reasonably necessary or desirable to implement the APA. The Debtor is hereby authorized and directed to perform each of its respective covenants and undertakings as provided in the APA prior to or after the Closing of the Sale without further order of the Court. The Purchaser and the Debtor shall have no obligation to close the Sale except as is contemplated and provided for in the APA. The Purchaser shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code to enforce any of its remedies under the APA or any other sale-related document. The automatic stay imposed by section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the provisions of this Sale Order.

4. Transfer Free and Clear. Pursuant to sections 105, 363 and 365 of the Bankruptcy Code, upon the Closing, neither the Purchaser, its respective successors and assigns, nor the Purchased Assets shall have any liability for any Interest, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, whether as a successor, vicariously or otherwise, of any kind, nature or character whatsoever, including for any Interests arising under, without limitation: (i) any labor or employment agreements; (ii) all mortgages, deeds of trust, security interests, or other liens; (iii) any pension, welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitation, any pension plan of any Debtor, any affiliate of any Debtor, or any member of the Debtor's "control group;" (v) any other employee, worker's compensation, occupational disease

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or unemployment or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to (a) the Employee Retirement Income Security Act of 1974, as amended, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (g) the Americans with Disabilities Act of 1990, (h) the Consolidated Omnibus Budget Reconciliation Act of 1985, (i) state discrimination laws, (j) state unemployment compensation laws or any other similar state laws, (k) the Worker Adjustment and Retraining Notification Act, 29 U.S.C §§ 2101 et. seq., or (l) any other state or federal benefits or claims relating to any employment with the Debtor or any of their predecessors; (vi) Interests arising under any Environmental, Health and Safety Laws with respect to any assets owned or operated by Debtor or any corporate predecessor at any time prior to the Closing Date and any liabilities of the Debtor other than the Assumed Liabilities; (vii) any bulk sales or similar law; (viii) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, and any taxes arising under or out of, in connection with, or in any way relating to the operation of the Purchased Assets prior to Closing, (ix) excise taxes, or stamp taxes assessed by any applicable taxing authority; and (x) any and all Interests arising out of violations, or other non-compliance with any law(s), regulation(s), standard(s), guideline(s), enforcement order(s), or any other authority or requirement enforced by, or under the supervision of the Occupational Safety and Health Administration; and (x) any theories of successor liability or causes of action related thereto.

5. Surrender of Possession. Any and all Purchased Assets in the possession or control of any person or entity, including any vendor, supplier or employee of the Debtor shall be

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transferred to the Purchaser free and clear of all Interests and shall be delivered to the Purchaser and deemed delivered at the time of Closing (or such other time as provided in the APA).

6. Valid Transfer. Effective upon the Closing, the transfer to the Purchaser of the Debtor's right, title and interest in the Purchased Assets pursuant to the APA shall be, and hereby is deemed to be, a legal, valid and effective transfer of the Debtor's right, title and interest in the Purchased Assets, and vests with or will vest in the Purchaser all right, title and interest of the Debtor in the Purchased Assets, free and clear of all Interests.

7. Exculpation and Release. None of the Purchaser, or its affiliates, successors, assigns and advisors shall have or incur any liability to, or be subject to any action by the Debtor, its estate or any of their predecessors, successors or assigns, arising out of the negotiation, investigation, preparation, execution or delivery of the APA, and the entry into and consummation of the Sale. Because the entry into and consummation of the APA constitutes the exercise by the Debtor of sound business judgment, the Debtor, its respective members, officers, directors, employees, advisors, professionals or agents, shall have or incur no liability to the estate or any holder of a Claim or Equity Interest for any act or omission in connection with, related to, or arising out of the negotiations of the APA or the consummation of the transactions contemplated thereunder, other than liability arising out of or relating to any act or omission that constitutes a breach of the APA, willful misconduct, fraud or gross negligence, in each case as finally determined by a court of competent jurisdiction.

8. Injunction. Except as expressly provided in the APA or by this Sale Order, effective upon the Closing all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, vendors, suppliers, employees, trade creditors, litigation claimants and other persons holding Interests

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against or in the Debtor or the Debtor's interests in the Purchased Assets (whether known or unknown, legal or equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or subsequent to the commencement of this Chapter 11 Case, whether imposed by agreement, understanding, statute, law, equity or otherwise), shall be and hereby are forever barred, estopped and permanently enjoined from asserting, prosecuting or otherwise pursuing such Interests against the Purchaser, or its affiliates, agents, advisors, representatives, officers, successors and assigns, the Purchased Assets, or the interests of the Debtor or the Purchaser in such Purchased Assets, including, without limitation, taking any of the following actions with respect to an Interest : (a) commencing or continuing in any manner, any action or other proceeding against the Purchaser, or its affiliates, agents, advisors, representatives, officers, successors, assigns, assets or properties, including the Purchased Assets; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Purchaser, or its affiliates, agents, advisors, representatives, officers, successors, assigns, assets or properties, including the Purchased Assets; (c) creating, perfecting or enforcing any liens, claims, encumbrances or other interests against the Purchaser, or its affiliates, agents, advisors, representatives, officers, successors, assigns, assets or properties, including the Purchased Assets; (d) asserting a claim as a setoff, right of subrogation or recoupment of any kind against any obligation due the Purchaser or its affiliates, agents, advisors, representatives, officers, successors or assigns; or (e) commencing or continuing any action in any manner or place that does not comply, or is inconsistent, with the provisions of this Sale Order or the agreements or actions contemplated or taken in respect thereof. All persons are hereby enjoined from taking any action that would interfere with or adversely affect the ability of the Debtor to transfer the Purchased Assets in accordance with the terms of the APA and this Sale Order. Fol-

**EXHIBIT D: "PROPOSED SALE ORDER"**

lowing the Closing, no holder of an Interest (including as such term is used in section 363(f)) against the Debtor or the Purchased Assets shall interfere with the Purchaser's title to or use and enjoyment of the Purchased Assets.

9. Good Faith Purchaser. The APA has been entered into by the Purchaser in good faith and the Purchaser is a good faith purchaser of the Purchased Assets as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein of the Sale shall neither affect the validity of this Sale nor the transfer of the Purchased Assets to Purchaser, free and clear of Interests, unless such authorization is duly stayed before the Closing pending such appeal. The Purchaser is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

10. No Bulk Sales. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the transactions contemplated by the APA, the Motion and this Sale Order.

11. Fair and Equivalent Value. The consideration provided by the Purchaser for the Purchased Assets under the APA shall be deemed for all purposes to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law, and the Sale may not be avoided, or costs or damages imposed or awarded under section 363(n) or any other provision of the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act or any other similar state laws.

12. Right to Transfer and Receive Marketable Title. Upon the Closing, this Sale Order shall be construed and shall constitute for any and all purposes approval for Debtor to transfer and for the Purchaser to receive a full and complete general assignment, conveyance, and/or bill of sale to transfer of all of the Debtor's marketable right, title and interest in the Purchased



**EXHIBIT D: "PROPOSED SALE ORDER"**

Assets to the Purchaser at the Closing pursuant to the terms of the APA, free and clear of all Interests.

13. No Successor Liability. The consummation of the Sale does not amount to a consolidation, merger or *de facto* merger of the Purchaser and the Debtor and/or its estate, there is not substantial continuity between the Purchaser and the Debtor, there is no continuity of enterprise between the Debtor and the Purchaser, the Purchaser is not a mere continuation of the Debtor or its estate, and the Purchaser does not constitute a successor to the Debtor or its estate. Upon the Closing, the Purchaser's acquisition of the Purchased Assets shall be free and clear of any "successor liability" claims of any nature whatsoever, whether known or unknown and whether asserted or unasserted as of the time of the Closing. The Purchaser's operations shall not be deemed a continuation of the Debtor's business as a result of the acquisition of the Purchased Assets purchased.

14. Authorization to Assign. Notwithstanding any provision of any contract governing the Purchased Assets or any Assigned Contract to be assumed and assigned to the Purchaser as of the Closing Date, pursuant to section 365(f) of the Bankruptcy Code or applicable non-bankruptcy law that prohibits, restricts, or conditions the assignment of the Purchased Assets or the Assigned Contracts, the Debtor is authorized to (a) assign the Purchased Assets to the Purchaser and (b) assume and assign the Assigned Contracts to the Purchaser as of the Closing Date, in each case, which assignments shall take place on and be effective as of the Closing Date unless the Debtor and the Buyer shall mutually agree to an earlier date for the transaction to be made effective for accounting purposes so long as such date is after \_\_\_\_\_, 2017 and before \_\_\_\_\_, 2017 (the "Effective Date"), or as otherwise provided by a separate order of this Court.

**EXHIBIT D: "PROPOSED SALE ORDER"**

a. There shall be no accelerations, assignment fees (other than general recording fees), increases, or any other fees charged to the Purchaser or the Debtor as a result of the assumption and assignment of the Purchased Assets and the Assigned Contracts.

b. The Debtor has met all of the requirements of section 365(b) of the Bankruptcy Code for each of the Assigned Contracts to be assumed and assigned to the Purchaser as of Closing. Notwithstanding the foregoing, unless required by the Purchaser under the APA, the Debtor shall not be required by the Court to assume and assign any Assigned Contracts, and, if no such assumption and assignment occurs, no Cure Costs shall be due and no adequate assurance of future performance shall be required.

c. The Debtor's assumption of the Assigned Contracts is subject to the consummation of the Sale of the Purchased Assets to the Purchaser. To the extent that an objection by a counterparty to any Assigned Contract, including an objection related to the applicable Cure Cost, is not resolved prior to the Closing, the Purchaser, may, without any further approval of the Court or notice to any party, elect to (i) not have the Debtor assume and assign such Assigned Contract to it or (ii) have the Debtor postpone the assumption of such Assigned Contract until the resolution of such objection; provided that the Debtor, the Purchaser, and the relevant non-debtor counterparty under each Assigned Contract shall have authority to compromise, settle or otherwise resolve any objections to proposed Cure Costs without further order of the Bankruptcy Court, with any such agreed upon Cure Costs being paid to the appropriate counterparty as a condition subsequent to such assumption and assignment of the relevant Assigned Contract.

**EXHIBIT D: "PROPOSED SALE ORDER"**

15. Assigned Contracts. At the Closing, subject to the provisions of this Sale Order, the Purchaser shall succeed to the entirety of the Debtor's rights and obligations in the Assigned Contracts to be assumed and assigned to the Purchaser first arising and attributable to the time period occurring on or after the Effective Date and shall have all rights thereunder.

a. Upon Closing, (i) all pre-Effective Date defaults (monetary and non-monetary) under the Assigned Contracts shall be deemed cured and satisfied in full through the payment of the Cure Costs, (ii) no other amounts will be owed by the Debtor, its estate or the Purchaser with respect to amounts first arising or accruing during, or attributable or related to, the period prior to the Effective Date with respect to the Assigned Contracts and (iii) any and all persons or entities shall be forever barred and estopped from asserting a claim against the Debtor, its estate, or the Purchaser or the Purchased Assets that any additional amounts are due or defaults exist under the Assigned Contracts that arose or accrued, or relate to or are attributable to the period before the Effective Date. The obligations pursuant to the terms of the APA to pay the Cure Costs and Purchaser's promise to perform the Debtor's obligations under the Assigned Contracts for the period on or after the Effective Date shall constitute adequate assurance of its future performance under the Assigned Contracts being assigned to it at the Closing within the meaning of sections 365(b)(1)(C) and (f)(2)(B) of the Bankruptcy Code.

b. Upon assumption of those Assigned Contracts to be assumed by the Debtor and assigned to the Purchaser as of Closing, such Assigned Contracts shall be deemed valid and binding, in full force and effect in accordance with their terms, subject to the provisions of this Sale Order, and shall be assigned and transferred to the Purchaser, notwithstanding any provision in such Assigned Contracts or other restrictions prohibiting

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assignment or transfer. To the extent any executory contract or unexpired lease is assumed and assigned to the Purchaser under this Sale Order, such assumption and assignment will not take effect until the Closing. Furthermore, other than Assigned Contracts, no other contract shall be deemed assumed by the Debtor and assigned to the Purchaser pursuant to section 365 of the Bankruptcy Code. The failure of the Debtor or the Purchaser to enforce at any time one or more terms or conditions of any Assigned Contract shall not be a waiver of such terms or conditions, or of the Debtor's and the Purchaser's rights to enforce every term and condition of such Assigned Contract.

c. All counterparties to the Assigned Contracts to be assumed and assigned to Purchaser at the Closing shall cooperate and expeditiously execute and deliver, upon the reasonable request of the Purchaser, and shall not charge the Debtor or the Purchaser for, any instruments, applications, consents, or other documents which may be required or requested by any public or quasi-public authority or other party or entity to effectuate the applicable transfers in connection with the Transactions.

d. Notwithstanding the foregoing, in accordance with and pursuant to the terms and conditions of Section 1(k) of the APA, the Debtor may, at the Purchaser's sole discretion and direction, amend the list of Assigned Contracts to delete any such contract in which case such designated contract shall not be an Assigned Contract and shall be excluded from the Sale.

16. Governmental Authorization to Effectuate Sale and Assignments. Each and every federal, state and governmental agency or department, and any other person or entity, is hereby authorized to accept any and all documents and instruments in connection with or necessary to consummate the transactions contemplated by the APA. No governmental unit may revoke or

**EXHIBIT D: "PROPOSED SALE ORDER"**

suspend any lawful right, license, trademark or other permission relating to the use of the Purchased Assets sold, transferred or conveyed to the Purchaser on account of the filing or pendency of Debtor's Chapter 11 Case or the consummation of the Transactions. For the avoidance of doubt, the Sale of the Purchased Assets authorized herein shall be of full force and effect, regardless of whether the Debtor or any of their affiliates lack good standing in any jurisdiction in which such entity is formed or is authorized to transact business.

17. Inconsistencies with Prior Orders, Pleadings or Agreements. To the extent this Sale Order is materially inconsistent with any prior order or pleading with respect to the Motion in Debtor's Chapter 11 Case, the terms of this Order shall govern. To the extent there is material inconsistency between the terms of this Order and the terms of the APA (including all ancillary documents executed in connection therewith), the terms of this Sale Order shall govern.

18. Subsequent Orders and Plan Provisions. This Sale Order shall not be modified by any Chapter 11 plan confirmed in Debtor's Chapter 11 Case or any subsequent order(s) of this Court.

19. Binding Effect of Sale Order. This Sale Order and the APA shall be binding in all respects upon the Debtor, its estate, and all parties in interest to Debtor's Chapter 11 Case, including, but not limited to, all creditors of, and holders of equity interests in, the Debtor, any holders of liens, claims, encumbrances or other Interests in, against or on all or any portion of the Purchased Assets (whether known or unknown), the Purchaser and all successors and assigns of the Purchaser, the Purchased Assets and any trustees, examiners, "responsible persons" or other fiduciaries appointed in Debtor's Chapter 11 Case or upon a conversion to Chapter 7 under the Bankruptcy Code, and the APA shall not be subject to rejection or avoidance under any circumstances. If any order under section 1112 of the Bankruptcy Code is entered, such order shall

**EXHIBIT D: "PROPOSED SALE ORDER"**

provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that this Sale Order, including the rights granted to the Purchaser hereunder, shall remain effective and, notwithstanding such dismissal, shall remain binding on parties in interest.

20. Failure to Specify Provisions. The failure specifically to include or make reference to any particular provisions of the APA or any related ancillary document in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the APA and all related ancillary documents are authorized and approved in their entirety.

21. Retention of Jurisdiction. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Sale Order, including, without limitation, the authority to: (i) interpret, implement and enforce the terms and provisions of this Sale Order (including the exculpation, release and injunctive provisions in this Sale Order) and the terms of the APA, all amendments thereto and any waivers and consents thereunder; (ii) protect the Purchaser, or the Purchased Assets, from and against any Interests; (iii) compel delivery of all Purchased Assets to the Purchaser; (iv) compel the Debtor and the Purchaser to perform all of their respective obligations under the APA; and (v) resolve any disputes arising under or related to the APA or the Sale.

22. No Material Modifications. The APA and any related agreements, documents or other instruments may be modified, amended, or supplemented through a written document signed by the parties thereto in accordance with the terms thereof without further order of the Court; provided, however, that any such modification, amendment or supplement is neither material nor materially changes the economic substance of the transactions contemplated hereby.

23. Immediate Effect. This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding any provision in the Bankruptcy Rules to the contrary, the

**EXHIBIT D: "PROPOSED SALE ORDER"**

Court expressly finds there is no reason for delay in the implementation of this Sale Order and, accordingly: (i) the terms of this Sale Order shall be immediately effective and enforceable upon its entry; (ii) the Debtor are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Sale Order; and (iii) the Debtor may, in their discretion and without further delay, take any action and perform any act authorized under this Sale Order.

24. Provisions Non-Severable. The provisions of this Sale Order are non-severable and mutually dependent; provided, however the Purchaser may, in its sole discretion, waive any provision determined to be unenforceable in whole or in part.

25. Next Highest Bidder. \_\_\_\_\_ is hereby declared the Next Highest Bidder (as defined in the Bidding Procedures) for the Purchased Assets under the terms of the Modified Agreement. Subject to, and in accordance with, the terms of this Sale Order, the Debtor is authorized to consummate, complete and close the sale of the Purchased Assets and the assumption and assignment of the Assigned Contracts to the Next Highest Bidder in the event that the sale to the Purchaser as contemplated by the APA does not close for any reason whatsoever, without further order of this Court.

26. The proceeds from the sale of the Purchased Assets (net only of those amounts set forth below) shall be paid indefeasibly into a segregated account of the Debtor (the "Sale Proceeds Account") subject to further order of this Court and net only of the following amounts that the Debtors are authorized to pay at Closing:

- a. To the DIP Lender, payment in full in cash of the DIP Facility including all DIP Obligations.
- b. To holders of prior liens, if any, that are set forth and disclosed in the closing statements in the amount of the value of any prior liens in the Assets being sold that is

**EXHIBIT D: "PROPOSED SALE ORDER"**

agreed upon by the holder of the prior lien and the Debtor, subject to the written consent of the Lender, or, failing such agreement, such disputed amount shall be retained by the Debtors in the Sale Proceeds Accounts or escrow with the title company for determination by the Court of the extent, priority, validity, and/or value of such asserted prior lien; and

c. If the Stalking Horse Bidder is not the Winning Bidder, it shall be entitled to seek the allowance of an administrative claim upon the filing of a motion pursuant to 11 U.S.C. § 503(b).

27. Satisfaction of Conditions Precedent. Neither the Purchaser nor the Debtor shall have an obligation to close the Transactions until all conditions precedent in the APA to each of their respective obligations to close the Transactions have been met, satisfied, or waived in accordance with the terms of the APA.

# # #

Approved for Entry:

**CROWE & DUNLEVY**

/s/

Mark A. Craige, OBA No. 1992  
500 Kennedy Building  
321 South Boston Avenue



**EXHIBIT D: "PROPOSED SALE ORDER"**

Tulsa, Oklahoma 74103-3313  
918.592.9800  
918.592.9801 (Facsimile)  
mark.craige@crowedunlevy.com

-and-

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***Counsel for Debtor***

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***Counsel for Stalking Horse Bidder***

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(405) 231-4393/231-5958 [fax]  
marjorie.creasey@usdoj.gov

***Counsel for the United States Trustee***

**EXHIBIT E**

**ASSIGNMENT OF COPYRIGHTS**

**EXHIBIT E****COPYRIGHT ASSIGNMENT**

KNOW ALL MEN BY THESE PRESENTS, that, effective [ ], 2017, the undersigned, EATERIES, INC., a Delaware corporation, ("Assignor"), for good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby sell, assign, transfer and set over unto GRP ASSETS MANAGEMENT LLC, an Oklahoma limited liability company ("Assignee") one hundred percent (100%) of Assignor's right, title and interest of any and every kind whatsoever in and to all copyrights owned by Assignor and used in connection with the Business, including, but not limited to, in connection with the websites known as eateriesinc.com, and garfields.net, materials and designs created for and owned by Assignor for use exclusively in the Business, including, without limitation, the following: 1) all right, title and interest which the Assignor owns in and to any and all of the copyrights used in connection with the Business, including in connection with the websites referenced above, and including all right, title and interest in and to written and online works, including menus, brochures, advertisements, logos, photographs, and other materials; and 2) all right, title and interest in and to all copyrights referenced herein, including, but not limited to, the right to apply for copyrights, registrations and renewals thereof, together with the goodwill of the Business connected with and symbolized by such copyrights, as well as all rights to damages or profits, due or accrued, arising out of past infringement of such copyrights or injury to said goodwill and the right to sue and pursue all actions for and recover the same in Assignee's own name. Unless otherwise defined herein, all capitalized terms used herein shall have the same meanings as set forth in that certain Asset Purchase Agreement dated as of August 9, 2017, between Practical Investors LLC, an Oklahoma limited liability company; Fresh Capital LLC, an Oklahoma limited liability company; and Fiesta Holdings, Inc., a Delaware corporation, collectively as the "Purchaser" therein and Assignor as "Seller" pursuant to which, among other things, Assignor has agreed to transfer and assign all copyrights used in the Business to Assignee. This Assignment shall be governed by and construed under and in accordance with the laws of Oklahoma.

*[Remainder of page intentionally blank, signatures on following page]*

IN WITNESS WHEREOF, the undersigned have executed this Assignment this [ ] day of [ ], 2017

ASSIGNOR:

EATERIES, INC.

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

Name: William C. Liedtke, III

Title: Vice President

ASSIGNEE:

GRP ASSET MANAGEMENT LLC

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

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

Title: Manager

**EXHIBIT F**

**ASSIGNMENT OF SERVICE MARKS**

**EXHIBIT F**

**ASSIGNMENT OF SERVICE MARKS**

This Assignment of Service Marks is made and entered into this [ ] day of [ ], 2017 ("Effective Date") by and between Eateries, Inc., a Delaware corporation, with its principal place of business at 14504 Hertz Quail Springs Parkway, Oklahoma City, OK 73134 ("Assignor") and GRP Assets Management LLC, an Oklahoma limited liability company with its principal place of business at 14504 Hertz Quail Springs Parkway, Oklahoma City, OK 73134 ("Assignee").

WHEREAS, Assignor is the owner of the service marks GARFIELD'S and GARFIELD'S RESTAURANT PUB for bar and restaurant services (the "Marks"), the federal service mark registrations for the Marks identified in Exhibit A (the "Registrations"), and state service mark registrations of the Marks, and common law right in the Marks;

WHEREAS, Assignee wishes to acquire all right, title and interest Assignor has or may have in and to the Marks and the Registrations and the good will associated therewith including the right to sue for past infringement.

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor hereby assigns, transfers and conveys to Assignee all right, title and interest Assignor has or may have in and to the Marks and the Registrations, together with the good will of the business which is symbolized by the Marks and the Registrations and with the right to recover for damages and profits and all other remedies for past infringements thereof as of the Effective Date. Assignor further agrees to execute and deliver to Assignee, its successors and assigns, such other and further assignments, instruments and documents as Assignee reasonably may request from time to time for the purpose of establishing, registering, evidencing, enforcing, or defending Assignee's ownership of all rights, titles and interest of every kind and nature whatsoever in and to the Marks and the Registrations as of the Effective Date.

IN WITNESS WHEREOF, Assignor and Assignee have each caused this Assignment of Service Marks to be executed and affixed their seals as of this [ ] day of [ ], 2017.

EATERIES, INC.

GRP ASSET MANAGEMENT LLC

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

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


Name: William C. Liedtke, III

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

Title: Vice President

Title: Manager

**EXHIBIT A TO SERVICE MARK ASSIGNMENT**

<u>Mark</u>	<u>Registration</u>
<b>GARFIELD'S</b>	U.S. Registration No. 86831999
GARFIELD'S RESTAURANT PUB Logo 	U.S. Registration No. 86831994

All state registrations of the Marks

All common law rights in and to the Marks and associated goodwill

**DISCLOSURE SCHEDULE**  
**TO**  
**ASSET PURCHASE AGREEMENT**  
**BETWEEN AND AMONG**  
**EATERIES, INC. ("SELLER")**  
**AND**  
**PRACTICAL INVESTORS LLC, FRESH CAPITAL LLC,**  
**AND FIESTA HOLDINGS, INC (COLLECTIVELY, "PURCHASER")**

**AUGUST 9, 2017**



**DISCLOSURE SCHEDULE  
TO  
ASSET PURCHASE AGREEMENT**

The following constitutes the Disclosure Schedule to that certain Asset Purchase Agreement of dated as of August 9, 2017 between Practical Investors LLC, an Oklahoma limited liability company; Fresh Capital LLC, an Oklahoma limited liability company; and Fiesta Holdings, Inc., a Delaware corporation, collectively as the "Purchaser" and Eateries, Inc. as "Seller" (the "Asset Purchase Agreement"). Capitalized terms used in this Disclosure Schedule without definition have the respective meanings given to them in the Asset Purchase Agreement.

This Disclosure Schedule is an integral part of the Asset Purchase Agreement. The representations and warranties made by Purchaser and Seller in the Asset Purchase Agreement are qualified by, and subject to the exceptions noted in, the information set forth in this Disclosure Schedule. This Disclosure Schedule is arranged in sections corresponding to the sections contained in the Asset Purchase Agreement and the disclosures in any section of this Contribution Schedule shall qualify sections of the Asset Purchase Agreement to the extent such disclosure is applicable to such sections.

Nothing in this Disclosure Schedule constitutes an admission of any liability or obligation of Purchaser or Seller to any third party, nor an admission of any liability or obligation to any third party against the interest of any Purchaser or Seller.

**Section 1.01(b)**  
**Assigned Equipment**

The following standard package of furniture, fixtures and equipment located at each of the following Restaurants.

**Kitchen and Bar Equipment**

- 2 72" Roll Top sandwich unit
  - 1 60" Roll Top sandwich unit
  - 1 2 door work top freezer under counter
  - 1 2 door pass through salad stand up refr unit
  - 3 Reach in refrigerator stand up one door
  - 1 60" ref equipment stand
  - 1 48" ref equipment stand
  - 2 2 door under counter ref 800 each
  - 3 1 door under counter ref 500 each
  - 1 Manitowoc ice machine 1800 lb
  - 1 bin and leg
  - 1 Bar sink
  - 1 ice cream freezer 7.4 cu feet
  - 1 48" charrill
  - 1 60" burner stove w/ oven
  - 3 fryer 800 each
  - 1 6 burner stove w/ oven
  - 1 3 door bottle cooler
  - 2 36 salamander
  - 1 steam table 5 pan
  - 1 Steamer
  - 1 Walk-in cooler
  - 3 warmer drawer two stock (burn warmer)
  - 1 Walk-in freezer
  - 2 Microwave
  - 2 18x24" under box ice bin w/ cold plate
  - 1 4 camp bar sink
  - 1 124" 3 camp s.s sink
  - 2 2 camp s.s prep sink 450
  - 1 18x36" ice bin w/ bth holder
  - 1 remote Draught System
  - 6 ss hand sinks 150
  - 1 s.s speedbar with sink and rack
  - 3 3' prep table w/ under shelf
  - 5 6' prep table w/ under shelf 175
-

### **Tables and Chairs**

- 31 4 top booths
  - 6 6 top booths
  - 6 4 top tables
  - 1 6 top table
  - 35 dining room chairs
  - 5 5 person high top bar tables
  - 1 8 person high top bar table
  - 45 bar stools
  - 6 50 inch TV's and mounts
  - 2 high speed blenders
  - 1 6 foot beer bottle display case
  - 1 10 foot beer walk in cooler
- 

### **Miscellaneous**

- 1 14 foot kitchen hood and exhaust fan
  - 15 metro shelving 3 shelve systems
  - Assorted plate ware and Kitchen smallwares
  - 1 Point of Sale System
  - 1 Back office computer / Sales Key
  - Office furniture package
  - 10 stainless Tables
  - 1 security camera system
  - Audio Visual Package (televisions and screens)
- 

Excluding all equipment leased from third parties

**Section 1.01(c)**  
**Assumed Leases**

<b>LESSOR</b>	<b>Description</b>	<b>Location</b>
Ohio Valley Mall Co	Lease for 4,339 square feet in retail shopping mall (Ohio Valley Mall, St. Clairsville, OH) for Garfield's location.	67800 Mall Rd Ste 695, Saint Clairsville, OH 43950
Meadowbrook Mall Co	Lease for 4,658 square feet in retail shopping mall (Meadowbrook Mall, Bridgeport, WV) for Garfield's location.	2400 Meadowbrook Mall, Bridgeport, WV 26330
Jasper Mall Retail Group, LLC	Lease for 4,750 square feet in retail shopping mall (Jasper Mall, Jasper, AL) for Garfield's location.	300 Highway 78 E, Ste 344
Washington Crown Center	Lease for 4,750 square feet in retail shopping mall (Washington Crown Center, Washington, PA) for Garfield's location.	Realty Holdings LLC, 1500 W Chestnut St
Nittany Centre Realty LLC	Lease for 4,832 square feet in retail shopping mall (Nittany Mall, State College, PA) for Garfield's location.	Nittany Nassim LLC, 2901 E College Ave Ste 62
Five Properties Holding Co., LLC	Lease for 4,879 square feet in retail shopping mall (Greenville Mall, Greenville, MS) for Garfield's location.	1651 Highway 1 South, Ste 21
German American Capital Corp	Lease for 4,903 square feet in retail shopping mall (Susquehanna Valley Mall, Selinsgrove, PA) for Garfield's location.	One Susquehanna Valley, Mall Drive Space 223
University Mall Realty LL	Lease for 5,054 square feet in retail shopping mall (University Mall, Carbondale, IL) for S&B's Burger location.	c/o Namdar Realty Group, 1237 E Main St Ste 1030
T Danville Mall LLC	Lease for 6,143 square feet in retail shopping mall (Village Mall, Danville, IL) for Garfield's location.	2917 N Vermilion St, Danville, IL 61832
Morgantown Mall Assoc., LP	Lease for 6,824 square feet in retail shopping mall (Morgantown Mall, Morgantown, WV) for Garfield's location.	Ltd Partnership, 9801 Mall Road


**Section 1.01(d)**  
**Assumed Contracts**

	<b>Description</b>	<b>Vendor</b>	<b>Address</b>	<b>Term</b>
1	Contract for primary distributor of all food service and related products.	Performance Food Group, Inc.	12500 West Creek Parkway, Richmond, VA 23238	Expiration date of 09/02/2020
2	Contract to provide consulting, technical and administrative services, including accounting, human resources, purchasing and information technology services.	Abacus System Solutions, LLC	27 E. Sheridan Ave., Oklahoma City, OK 73104	3 years from July 1, 2016

**Section 1.01(e)**  
**Assigned Liquor Licenses**

<b><u>Store</u></b>	<b><u>Issuing State Agency</u></b>	<b><u>License #</u></b>
Butler	Pennsylvania Liquor Control Board	R21358 - Exp 6/30
Selinsgrove	Pennsylvania Liquor Control Board	R21121 - Exp 2/28
State College	Pennsylvania Liquor Control Board	R16006 - Exp 1/31
Washington	Pennsylvania Liquor Control Board	R13080 - Exp 6/30

**Section 1.01(h)**  
**Assigned Intellectual Property**

<u>Mark</u>	<u>Registration</u>
<b>GARFIELD'S</b>	U.S. Registration No. 86831999
GARFIELD'S RESTAURANT PUB Logo  	U.S. Registration No. 86831994

All state registrations of the Marks

All common law rights in and to the Marks and associated goodwill

Websites – **eateriesinc.com** and **garfields.net**

**Section 2.03**  
**Secured Indebtedness**

Type	Holder	Date	Original Principal	Current Outstanding Principal	Maturity
Replacement Promissory Note (Note 1)	Fresh Capital LLC	4/1/2016	\$ 273,806.75	\$ 194,596.45	3/31/2017
Replacement Promissory Note (Note 2)	Fresh Capital LLC	4/1/2016	\$ 387,506.30	\$ 275,403.55	3/31/2017
Secured Promissory Note (Note 3)	Fresh Capital LLC	10/3/2016	\$ 231,000.00	\$ 231,000.00	4/4/2017
Secured Promissory Note (Note 4)	Fresh Capital LLC	1/13/2017	\$ 60,000.00	\$ 60,000.00	4/13/2017
Promissory Note	Fiesta Holdings, Inc.	10/1/2014	\$ 155,000.00	\$ 155,000.00	3/31/2015
Secured, Open Ended Credit Arrangement	Fiesta Holdings, Inc.	N/A	N/A	\$ 270,845.00	N/A
Secured Promissory Note	Practical Investors, LLC	4/17/2015	\$ 673,672.72	\$ 145,000.00	12/31/2023
<b>TOTAL</b>				<b>\$ 1,331,845.00</b>	