

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS  
TAKEN IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS EASTERN DIVISION  
WITH RESPECT TO THE COMPANIES LISTED ON  
SCHEDULE "A" HERETO (THE "ELEPHANT & CASTLE GROUP" OR THE "CHAPTER 11  
DEBTORS")

APPLICATION OF  
MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC.

UNDER SECTION 46 OF THE  
COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED

FIRST REPORT OF THE INFORMATION OFFICER

November 29, 2011

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## EXECUTIVE SUMMARY

1. The Elephant & Castle Group (“**E&C**”) owns, operates and franchises, full service British style restaurant pubs in the United States and Canada. Specifically, E&C, through its affiliates, has established a total of twenty two locations. There are ten company-owned locations and two franchised locations in the United States. In Canada, there are nine company-owned locations and one franchised location. E&C’s headquarters and corporate offices are located in Boston, Massachusetts.
2. As a result of the recession which commenced in 2009, E&C has been impacted by a downturn of sales in all of E&C’s restaurants in North America. E&C’s management responded by cutting costs at the corporate level, reviewed operations to reduce costs at the restaurant level and invested approximately US\$5 million dollars into E&C.
3. E&C’s management advise that the cash flow available for debt service has been significantly reduced by the impact of economic conditions on sales and restaurant-level profits, as well as capital expenditures required for certain locations, and operating losses associated with certain locations. Available cash resources have been used to pay critical vendors (to ensure the supply of products and services), landlords (to cure defaults and prevent lease terminations), and municipal tax authorities (to prevent closure and loss of required operating licenses).
4. On June 28, 2011 (the “**Petition Date**”), E&C filed voluntary petitions pursuant to Chapter 11 of the US Bankruptcy Code in the United States Bankruptcy Court (the “**US Court**”) for the District of Massachusetts Eastern Division (the “**Chapter 11 Proceedings**”).
5. On June 29, 2011, Massachusetts Elephant & Castle Group Inc. as the foreign representative of E&C, commenced proceedings before this Honourable Court. As part of the proceedings, the foreign representative applied for and received an Order of this Honourable Court dated June 29, 2011 under Part IV of the *Companies’ Creditors Arrangement Act*, and BDO Canada Limited (“**BDO**” or the “**Information Officer**”) was appointed as the Information Officer of E&C.
6. As at June 28, 2011, GE Canada Equipment Financing G.P. (“**GE Canada**”), the principal lender to E&C, has a secured claim of approximately US\$15.9 million and CDN \$2.5 million. E&C is presently unable to make the required debt service payments to GE Canada. In addition, as at the Petition Date, E&C also owes

approximately \$5 million to unsecured creditors in the United States and Canada.

7. In order to prevent the shutdown of operations, the loss of jobs of more than 1,000 E&C employees, and to protect the interests of their creditors and landlords, E&C instituted the Chapter 11 Proceedings.
8. E&C has both assets and creditors in Canada. However, E&C's Canadian operations are fully integrated with E&C's US operations and the integrated North American operation is controlled and managed by E&C's management, which is located in Boston. Accordingly, E&C's "centre of main interest" is in the United States.
9. This First Report of the Information Officer is intended to provide a summary of the activities relating to the Chapter 11 Proceedings to date. There are no unusual issues or matters of concern to bring to this Court's attention at this time. A copy of this First Report is posted on the BDO's website for this matter.
10. To date, the activities of the Information Officer include providing notice of the proceedings to the Canadian creditors of E&C, coordinating responses from E&C to inquiries and requests for information from suppliers, creditors and other stakeholders regarding the Chapter 11 Proceedings.
11. A number of orders issued by the US Court have authorized the Chapter 11 Debtors to continue to operate their businesses as debtors in possession. At the same time, the Chapter 11 Debtors and their advisors have completed an analysis and comparison of restructuring options, including a sale of the assets and a restructuring proposal.
12. A claims bar process has been approved by the US Court. Currently, there is a motion scheduled to be heard by the US Court, on November 29, 2011, to approve a stalking horse sales process and bidding procedures. The approval of the successful bid is expected to take place by mid-January 2012.
13. Further details relating to the Chapter 11 Proceedings and the activities in Canada of the Information Officer will follow in subsequent reports.

## **BACKGROUND**

14. In preparing this First Report, BDO has relied solely on information and documents

provided by the Foreign Representative, the Chapter 11 Debtors, their affiliates and their counsel. BDO has not audited, reviewed or otherwise attempted to independently verify the accuracy or completeness of this information. Accordingly, BDO expresses no opinion or other form of assurance on the information contained herein.

15. Unless otherwise stated, all monetary amounts contained herein are expressed in United States dollars.

16. E&C was founded in 1977. Elephant & Castle Group Inc. (“**E&C Group Inc.**”), one of the Chapter 11 Debtors, is the holding company for the affiliate debtors. E&C Group Inc. became a publicly traded company in 1993. In 1995, E&C Group Inc. established its first location in the United States (Philadelphia, PA). In 2007, Repechage Investments Limited (“**Repechage**”), another one of the Chapter 11 Debtors, acquired and privatized E&C Group Inc. A corporate organization chart reflecting E&C’s corporate structure is attached hereto as Exhibit “**A**”.

17. E&C owns, operates and franchises full service British style restaurant pubs in the United States and Canada. Specifically, E&C, through its affiliates, has established a total of twenty two locations as at the Petition Date. In the United States, there are ten company-owned locations and two franchised locations. In Canada, there are nine company-owned locations (including one location branded as “The Exchange Pub and Restaurant” and another location branded as “Rosie’s on Robson”) and one franchised location (collectively all of the restaurants in the US and Canada are referred to as the “**E&C Restaurants**”). E&C’s headquarters and corporate offices are located in Boston, Massachusetts. The E&C Restaurants’ locations in Canada are as follows:

- (a) Edmonton, AB - 2 locations
- (b) Halifax, NS- franchise<sup>1</sup>
- (c) Ottawa, ON
- (d) Toronto, ON - 2 locations
- (e) Whistler, BC.
- (f) Vancouver, BC - 2 locations
- (g) Winnipeg, MB

18. Each of the E&C Restaurants employs approximately 40 people, 40% of whom work part-time. For fiscal year end 2010, the E&C Restaurants had an average

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<sup>1</sup> As discussed below, in paragraph 48, this location has subsequently been closed and the franchisee is now bankrupt.

restaurant volume in the United States of \$2.9 million and in Canada of \$2.3 million. As of March 2011, E&C employed a total of 1,029 people (530 in the United States and 499 in Canada).

19. The E&C Restaurants compete in the full-service restaurant category, which is comprised of several segments, including lower-end dining, casual dining, and fine dining. The E&C Restaurants are claimed to be unique in that they are the only “pub-themed” restaurant within the casual dining sector. While there are many competitors, which E&C considers to be microbrew or mid-level casual dining concepts, these competitors do not possess what E&C considers to be the distinctive authentic décor or food/beverage offering of the E&C Restaurants. Most of the E&C Restaurants are located in heavily populated downtown locations (i.e. Boston, Chicago and Toronto), near hotels, office buildings, residential apartments, and retail establishments. The E&C Restaurants are known for providing quick food and beverage services to its “on-the-go” customers.
20. E&C functions as an integrated North American business, with its restaurants strategically located to cover its various operating regions. In the United States, each restaurant’s General Manager reports to the E&C U.S. Brand Leader. In addition, three General Managers (“Senior GMs”) have additional regional oversight responsibilities. In Canada, each restaurant’s General Manager reports to the Canadian District Operator (“DO”) who in turn reports to the E&C Canada Brand Leader. The Brand Leaders, DO, and Senior GMs supervise and assist their respective General Managers, with the goal of achieving targeted sales and profitability through the implementation and operation of E&C’s strategic initiatives.
21. The Chapter 11 Debtors’ management team, including the senior management of E&C, are located at the E&C corporate headquarters in Boston, Massachusetts. In addition, all human resources, accounting/finance and other administrative functions associated with E&C and the majority of employees that perform such services are located in the Boston offices. In addition, all IT functions, which, among other things, are used to issue invoices, are provided out of the United States.
22. In summary, while the Chapter 11 Debtors have both assets and creditors in Canada, E&C’s Canadian operations are fully integrated with E&C’s US operations and the integrated North American operation is controlled and managed by E&C’s management, which is located in Boston. Accordingly, the Chapter 11 Debtors’ “centre of main interest” is in the United States.

## THE E&C DEBT STRUCTURE

23. Pursuant to the Loan Agreement dated April 20, 2007 (the “**Original Loan Agreement**”, as amended, restated or otherwise modified from time to time, the “**Loan Agreement**”), GE Canada provided E&C Group Inc. with a non-revolving credit facility in the amount of \$14 million. The remaining Chapter 11 Debtors guaranteed the Loan Agreement debt. The First Amendment to Loan Agreement dated March 18, 2008, provided for an additional tranche of the non-revolving credit facility in a principal amount not exceeding CDN\$1.25 million. The Original Loan Agreement was superseded and replaced by the First Amended and Restated Loan Agreement dated November 21, 2008, the Second Amended and Restated Loan Agreement dated December 29, 2008, the Third Amended and Restated Loan Agreement dated October 16, 2009, and the Fourth Amended and Restated Loan Agreement dated December 18, 2009.
24. The obligations of E&C Group Inc. pursuant to the Loan Agreement are secured by substantially all of its assets, with each of the other Chapter 11 Debtors, along with Mr. David Dobbin (“**Dobbin**”), the Chairman of the Board of the E&C Group Inc. and the President of Repechage, guaranteeing E&C Group Inc.’s obligations thereunder. As at the Petition Date, GE Canada was owed approximately US\$15.9 million and CDN\$2.5 million pursuant to the Loan Agreement.
25. In addition, Fifth Street Finance Corp. (as successor-in-interest to Fifth Street Mezzanine Partners III, L.P. (“**Fifth Street**”)) provided certain facilities to Elephant & Castle, Inc., one of the Chapter 11 Debtors, pursuant to a credit agreement dated April 20, 2007, as amended (the “**Original Fifth Street Credit Agreement**”). The Information Officer understands that the Chapter 11 Debtors, GE Canada and Fifth Street, are parties to an interlender agreement, as amended and restated, which provides that the obligations owing to Fifth Street are subordinate to the obligations owing to GE Canada. The outstanding principal under the Original Fifth Street Credit Agreement was partially repaid, and the remaining outstanding amounts were assigned to Repechage, pursuant to a Credit Agreement dated October 16, 2009. The Information Officer understands that as at the Petition Date, Fifth Street was owed approximately \$4 million by Repechage.
26. In addition, as at the Petition Date, E&C owes a total of approximately \$5 million to unsecured creditors in the United States and Canada.

## EVENTS LEADING TO CHAPTER 11 PROCEEDINGS

27. In its fiscal year ended December 26, 2010, E&C recorded revenue of \$47.5 million and earnings before interest, taxes, depreciation, amortization and gain/loss on foreign exchange of \$3.9 million.
28. As a result of the recession which commenced in 2009, E&C has been impacted by a downturn of sales in all of E&C's restaurants in North America. E&C's management responded by cutting costs at the corporate level and putting in place a review of operations to reduce costs at the restaurant level. In addition, Repechage invested approximately \$5 million dollars into E&C during that period.
29. E&C's management advise that the cash flow available for debt service has been significantly reduced by the impact of economic conditions on sales and restaurant-level profits, as well as capital expenditures required for certain locations, and operating losses associated with certain locations. Available cash resources have been used to pay critical vendors (to ensure the supply of products and services), landlords (to cure defaults and prevent lease terminations), and municipal tax authorities (to prevent closure and loss of required operating licenses).
30. E&C is presently unable to make the required debt service payments to GE Canada. E&C is in default of the GE Loan Agreement. In addition, Repechage is in default of its loan with Fifth Street. In order to prevent the shutdown of operations, the loss of jobs of more than 1,000 E&C employees, and to protect the interests of their creditors and landlords, E&C and Repechage have instituted the Chapter 11 Proceedings.

## CHAPTER 11 AND CCAA PROCEEDINGS

31. On the Petition Date, the Chapter 11 Debtors commenced the Chapter 11 Proceedings before the US Bankruptcy Court.
32. Massachusetts E&C as a foreign representative of the Chapter 11 Debtors (the "**Foreign Representative**"), commenced proceedings (the "**Recognition Proceedings**") before this Honourable Court. As part of the Recognition Proceedings, the Foreign Representative applied for and received an Order dated June 29, 2011 (the "**Interim Initial Order**") under Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**"), granting certain limited interim relief including an interim stay of proceedings until a request for



an Initial Recognition Order and Supplemental Order (as such terms are defined herein) was heard. A copy of the Interim Initial Order is attached hereto as Exhibit “B”.

33. Upon application of the Foreign Representative:

(a) an Order of this Honourable Court dated July 4, 2011 (the “**Initial Recognition Order**”):

(i) recognized the Foreign Representative;

(ii) declared the Chapter 11 Proceedings as “foreign main proceedings” for purposes of the CCAA; and

(iii) stayed any claims, rights, liens, proceedings against or in respect of the Chapter 11 Debtors, the directors and officers of the Chapter 11 Debtors and the property of the Chapter 11 Debtors (the “**Property**”).

(b) an Order of this Honourable Court dated July 4, 2011, (the “**Supplemental Order**”):

(i) recognized in Canada and enforced certain orders of the US Bankruptcy Court made in the Chapter 11 Proceedings on June 30, 2011;

(ii) appointed BDO as Information Officer to:

- provide assistance to the Foreign Representative.
- provide stakeholders with responses to reasonable written requests for information in respect of the business or property of the Chapter 11 Debtors.
- report to this Honourable Court outlining the status of the proceedings, the Chapter 11 Proceedings and such other information as the Information Officer believes to be material.

(iii) authorized payment of a retainer to the Information Officer and its legal counsel for its reasonable fees and disbursements, and granted a super priority charge over the Property in respect of the administrative fees and expenses to a maximum of CDN\$75,000.

34. Copies of the Initial Recognition Order and Supplemental Order are attached as Exhibits “C” and “D” respectively.

35. Pursuant to the Supplemental Order, the Information Officer is to provide an update report every three months on the progress of the restructuring of the Chapter 11 Debtors. Since the latter part of September 2011, the Chapter 11 Debtors have been assessing alternative restructuring options. As a result, the completion of this First Report of the Information Officer (the “**First Report**”) was held back so that the Information Officer could provide more meaningful information regarding the restructuring options, which are described below.

#### **ACTIVITIES OF THE INFORMATION OFFICER**

36. The Information Officer sent notice (the “**Notice**”) of the Chapter 11 Proceedings and the Recognition Proceedings to all known creditors of E&C in Canada on July 7, 2011 and published the Notice in the National Post on July 9, 2011. Copies of the Notice and the published advertisement of the Notice are attached as hereto as Exhibit “**E**”.

37. The Information Officer also established a website at <http://www.bdo.ca/elephantcastle/> (the “**Information Officer’s Website**”) which provides copies of the Orders granted in the Recognition Proceedings as well as other relevant motion materials and reports. In addition, there is a link on the Information Officer’s Website to the Chapter 11 Debtors’ restructuring website, which includes copies of court materials and orders, restructuring notices and information regarding filing of proofs of claim.

38. The Information Officer completed the requisite forms to register the Recognition Proceedings with the Office of the Superintendent of Bankruptcy. Copies of the Acknowledgements of Filing are attached hereto as Exhibit “**F**”.

39. Since its appointment, other activities of the Information Officer include:

- (a) responding to creditor inquiries regarding the Chapter 11 Proceedings;
- (b) coordinating assistance between the Chapter 11 Debtors and ongoing suppliers regarding continuing operations in Canada;
- (c) coordinating information requests between Canada Revenue Agency and the Chapter 11 Debtors;
- (d) providing the names and addresses of Canadian creditors who had not received notice of the Chapter 11 Proceedings, to the Chapter 11 Debtors;
- (e) holding discussions with parties interested in a purchase of the Property in

Canada and directing them to BellMark Partners, LLC (“Bellmark”), the Chapter 11 Debtor’s financial advisor; and

- (f) providing instructions to creditors regarding filing of proofs of claim with the Chapter 11 Debtors.

#### **SUMMARY OF EVENTS SINCE THE PETITION DATE**

40. Since the Petition Date, the Chapter 11 Debtors have continued to operate their businesses and manage the Property as debtors in possession.

41. Each of GE Canada, Fifth Street, Sysco San Diego, Inc, Royal Bank of Canada and Toronto Dominion Bank (collectively the “**Lenders**”) have asserted or may assert a lien against the property of certain of the Debtors and the cash proceeds thereof (the “**Cash Collateral**”).

42. With the consent of the GE Canada and Fifth Street, pursuant to an Order dated June 30, 2011 of the US Court<sup>2</sup>, the Chapter 11 Debtors were authorized to:

- (a) use the Cash Collateral in order to meet the expenses of the operations of the business of the Chapter 11 Debtors in accordance with approved budgets; the ongoing use of the Cash Collateral has been authorized by subsequent Orders of the US Bankruptcy Court including: a Second Interim Order dated August 1, 2011; a Third Interim Order dated August 23, 2011; a Fourth Interim Order dated September 26, 2011; a Fifth Interim Order on October 24, 2011; a Sixth Interim Order dated November 7, 2011; and a Seventh Interim Order dated November 18, 2011;
- (b) pay pre-petition employee obligations including wages and expenses, benefits and payroll withholdings;
- (c) continue use of pre-petition bank accounts, including an existing cash management system in Canada and the United States;
- (d) pay collections of pre-petition sales taxes;
- (e) prohibit utilities from altering, refusing or discontinuing services, assuring utilities of post-petition payment, and establishing procedures to determine requests for additional adequate assurance of payments; and
- (f) pay pre-petition obligations with respect to loyalty payments to customers (e.g. honouring gift cards).

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<sup>2</sup> All Orders are assumed to be issued by the US Court unless otherwise noted.

43. A notice was sent by the Chapter 11 Debtors to all creditors of record (the “**Chapter 11 Notice**”). A copy of the Chapter 11 Notice is attached hereto as Exhibit “**G**”.
44. On July 12, 2011, an Official Committee of Unsecured Creditors (the “**Committee**”) was appointed by the United States Trustee. A copy of the appointment notice of the Committee is attached hereto as Exhibit “**H**”.
45. By an Order dated July 19, 2011, Epiq Bankruptcy Solutions LLC was appointed as claims, noticing and balloting agent for the Chapter 11 Debtors.
46. By an Order dated August 31, 2011, the Chapter 11 Debtors were authorized to retain Bellmark, a provider of investment banking services, as their exclusive financial advisor; Bellmark had been retained by the Chapter 11 Debtors, prior to the Chapter 11 Proceedings to assist the Chapter 11 Debtors in their efforts to locate a new investor and/or market and sell the Property as a going concern.
47. By an Order dated August 31, 2011, the Chapter 11 Debtors were authorized to retain Phoenix Management Services, Inc. (“**Phoenix**”), a provider of turnaround and restructuring services, as their exclusive restructuring advisor.
48. Mast at Dawn Restaurants Ltd., the operator of the franchised operation located in Halifax, Nova Scotia (the “**Halifax Franchise**”) was experiencing financial difficulty and, on August 9, 2011, filed a Notice of intention to make a Proposal pursuant to the *Bankruptcy and Insolvency Act* Canada, and BDO was appointed as the proposal trustee. However, a proposal was not filed, and an extension of time to file the proposal was not obtained within the 30 day stay period, and as a result, the Halifax Franchise was deemed bankrupt on September 9, 2011. BDO was appointed as the bankruptcy trustee (the “**Trustee**”). There are no plans to re-open the Halifax Franchise and the assets will be liquidated by the Trustee. The Chapter 11 Debtors are owed franchise fees by the Halifax Franchise, however the Trustee advises that the estimated realizable value of the assets of the Halifax Franchise are less than the priority and secured claims owing by the Halifax Franchise, and therefore it is unlikely that there will be any recovery for the Chapter 11 Debtors.
49. By an Order dated October 12, 2011, the Chapter 11 Debtors were authorized to retain Hilco Real Estate, LLC as their exclusive real estate consultant and advisor.

## **RESTRUCTURING PROCESS**

50. As described above, by orders of the US Court, the Chapter 11 Debtors were authorized to use the Cash Collateral in the ordinary course of their business in accordance with approved budgets; The Fourth Interim Order, dated September

26, 2011 (and subsequent revisions), approved the use of the Cash Collateral subject to the following pertinent provisions:

- (a) the Chapter 11 Debtors shall use commercially reasonable efforts to pursue in parallel in accordance with the timelines and other provisions set forth below a process (the “**Restructuring Process**”) of either:
  - (i) a sale of all or substantially all of the assets pursuant to Section 363 of the Bankruptcy Code (the “**Stalking Horse Sale Process**”); or
  - (ii) a process to recapitalize and/or reorganize of the Chapter 11 Debtors pursuant to a plan of reorganization (the “**Plan**”) (the “**Plan Process**”).

51. The Restructuring Process is to include the following steps:

- (a) GE Canada shall be entitled, but not obligated, to propose a plan of reorganization or to include a “credit bid” on account of the allowed amount of GE Canada’s pre-petition Debt in connection with any sales process, whether conducted pursuant to the Stalking Horse Sales Process or the Plan Process, which will be subject to confirmation under the US Bankruptcy Code.
- (b) a data room is to be set up to contain financial, operating and other information of the Chapter 11 Debtors and the Property and provide such access and sales Information pursuant to confidentiality arrangements that are in accordance with reasonable industry standards should the Chapter 11 Debtors and Bellmark determine that such confidentiality arrangements are necessary and appropriate.
- (c) the Chapter 11 Debtors (through Bellmark) shall set September 30, 2011 or such other date to which GE Canada and the Committee consents, as the deadline for submission of (i) bids for purchasers that wish to serve as bidders (the “**Stalking Horse Bids**”) that will be subject to a further auction process, and (ii) proposals for a Plan (the “**Plan Proposals**”); Any Stalking Horse Bids must be in the form of a definitive asset purchase agreement containing no due diligence or financing contingencies and must otherwise conform to the instructions to be set forth in a bid solicitation letter from Bellmark, in form and substance reasonably satisfactory to GE Canada and the Committee, and any Plan Proposals must be in the form of a reasonably detailed term sheet.
- (d) no later than November 1, 2011, (i) Bellmark shall have completed its analysis of the Stalking Horse Bids and shall have presented Phoenix and the Chapter 11 Debtors with its recommendation as to the Stalking Horse Bid that represents the highest and best offer; (ii) Phoenix shall have analyzed the Stalking Horse Bids, Bellmark’s recommendations and any timely submitted Plan Proposal, and shall have presented to the Chapter 11 Debtors’ Board of Directors (the “**Board**”) its recommendations as to the Stalking Horse Bid, which is the

highest and best and whether it is in the best interest of creditors for the Chapter 11 Debtors to pursue a Stalking Horse Sale Process or a Plan Process, (iii) the Board shall have made its decision as to whether a Stalking Horse Sale Process or a Plan Process is in the best interests of creditors, and if the Board opts for a Stalking Horse Sales Process, which Stalking Horse Bid represents the highest and best offer, and (iv) the Debtors shall have consulted with GE Canada and the Committee and their respective advisors prior to making its determination, and upon making its decision, the Chapter 11 Debtors shall have advised GE Canada and the Committee of their decision and reasons therefor. If the Chapter 11 Debtors fail by November 1, 2011, or such later date to which each of GE Canada and the Committee consents in writing, to make a decision, then the Chapter 11 Debtors shall be obligated to pursue a Stalking Horse Sales Process based on the Stalking Horse Bid that represents the highest and best offer.

- (e) if the Chapter 11 Debtors elect to pursue a Plan Process, the Plan is to be approved by the Board, and the Plan and related disclosure statement is to be filed no later than December 1, 2011, and the Chapter 11 Debtors shall use commercially reasonable efforts thereafter to (i) obtain an order of the US Bankruptcy Court approving the disclosure statement and related solicitation procedures, and (ii) obtain an order of the US Bankruptcy Court confirming the Plan. Any of these deadlines may be extended with the written consent of GE Canada and the Committee.
- (f) If the Chapter 11 Debtors elect to pursue a Stalking Horse Sale, (i) by November 4, 2011, the Debtors shall use commercially reasonable efforts to have filed a motion with the US Bankruptcy Court to approve the Stalking Horse Bid, subject to higher and better offers, (ii) by November 14, 2011, obtain an order of the US Bankruptcy Court to approve the bidding procedures, (iii) by December 1, 2011, to have concluded the auction process, (iv) by December 6, 2011, obtained an order of the US Bankruptcy Court approving the highest and best offer received at the auction, and (v) by December 23, 2011, the Chapter 11 Debtors shall have completed such sales transaction. Any of these deadlines may be extended with the written consent of GE Canada and the Committee.
- (g) If the Chapter 11 Debtors elect to file the Plan and either or both GE Canada or the Committee do not consent to such Plan, the Chapter 11 Debtors' exclusivity rights under the US Bankruptcy Code shall be immediately terminated such that the non-consenting party(s) will be allowed to file a competing plan of reorganization (the "**Competing Plans**"), which such Competing Plans will be subject to the same confirmation timelines as the Plan and the Court shall determine which plan of reorganization to confirm.
- (h) In both the Stalking Horse Sales Process and the Plan Process, Dobbin, the Chair of the Debtors, shall not participate in:

- (i) Board meetings and discussions concerning any Plan Proposal or Stalking Horse Bid other than a Plan Proposal or Stalking Horse Bid which he or any affiliate has an economic interest or in which the participation of Dobbin or any affiliate is being solicited;
- (ii) the comparative analysis of a Stalking Horse Bid or Plan Proposal in which Dobbin or any affiliate has an economic interest or in which the participation of Dobbin or any affiliate is being solicited;
- (iii) the determination of whether to pursue a Stalking Horse Sales Process or a Plan Process; and
- (iv) discussions with the Chapter 11 Debtors and their professionals or participate in any management presentations, or other meetings, or with any prospective purchaser(s) (unless he advises each prospective purchaser that he is acting in his individual capacity and not on behalf of the Chapter 11 Debtors and that he does not control the Chapter 11 Debtors' decision on this matter) in which Dobbin or any affiliate has an economic interest or in which the participation of Dobbin or any affiliate is being solicited.

52. By an Order dated November 3, 2011 (the “**Claims Bar Order**”), a claims bar date and a process to file proofs of claim and the form and manner of notice thereof was approved as follows:

- (a) a general claims bar date of December 15, 2011, for claims which arose prior to the Petition Date; and
- (b) a claims bar date of January 5, 2012, for the claims of governmental units, which arose prior to the Petition Date.

53. A copy of the Claims Bar Order is attached hereto as Exhibit “I”.

54. Pursuant to a motion dated November 18, 2011 (the “**Stalking Horse Sale Motion**”), the Chapter 11 Debtors will be seeking an order from the US Court to approve:

- (a) an asset purchase agreement dated November 18, 2011, to sell the majority of the assets of the Chapter 11 Debtors to Original Joe’s Acquisition Corporation (the “**Original Joe APA**”);
- (b) the Original Joe APA as a stalking horse bid; and
- (c) bidding procedures relating to the Stalking Horse Sale Process.

55. The summary of the Original Joe APA is as follows:

- (a) Purchase Price - \$22,750,000 less certain adjustments as specified in the Original Joe APA;
- (b) Excluded Assets - the following assets of the Chapter 11 Debtors are excluded:
  - (i) cash in bank
  - (ii) accounts receivable
  - (iii) utility and sales tax deposits
  - (iv) certain refunds due to the Chapter 11 Debtors
  - (v) the assets of Repechage Investments Limited
- (c) Assumed liabilities - includes certain executory contracts and leases to be assigned to the purchaser; and
- (d) Closing Date - later of:
  - (i) two business days following the issuing of an order of the Court approving the sale; and
  - (ii) a date to be determined in January 2012.

56. A copy of the Stalking Horse Sale Motion is attached hereto as Exhibit "J".

57. The Information Officer understands that at the request of GE Canada and the Committee, the Stalking Horse Sale Motion, originally scheduled to be heard on November 29, 2011, will be adjourned until December 8, 2011 in order to coincide with the hearing for the final order regarding the Cash Collateral. The Original Joe APA also requires as a condition precedent a recognition order from this Honourable Court of any sale order that may be granted by the US Court.

58. The Information Officer will provide the results of the Stalking Horse Sale Process in its next report to this Honourable Court.



All of which is respectfully submitted on this 29<sup>th</sup> day of November, 2011.

BDO CANADA LIMITED

In its capacity as Information Officer of the  
Elephant & Castle Group

Per:

A handwritten signature in black ink, appearing to read "Ken Pearl". The signature is fluid and cursive, with the first name "Ken" being more prominent than the last name "Pearl".

Ken Pearl  
Vice President

**SCHEDULE A**  
**CHAPTER 11 DEBTORS**

1. **Massachusetts Elephant & Castle Group, Inc.**
2. **Repechage Investments Limited**
3. **Elephant & Castle Group Inc.**
4. **The Elephant and Castle Canada Inc.**
5. **Elephant & Castle, Inc. (a Texas Corporation)**
6. **Elephant & Castle Inc. (a Washington Corporation)**
7. **Elephant & Castle International, Inc.**
8. **Elephant & Castle of Pennsylvania, Inc.**
9. **E & C Pub, Inc.**
10. **Elephant & Castle East Huron, LLC**
11. **Elephant & Castle Illinois Corporation**
12. **E&C Eye Street, LLC**
13. **E & C Capital, LLC**
14. **Elephant & Castle (Chicago) Corporation**

Exhibit A

To the First Report of the Information Officer, BDO Canada Limited

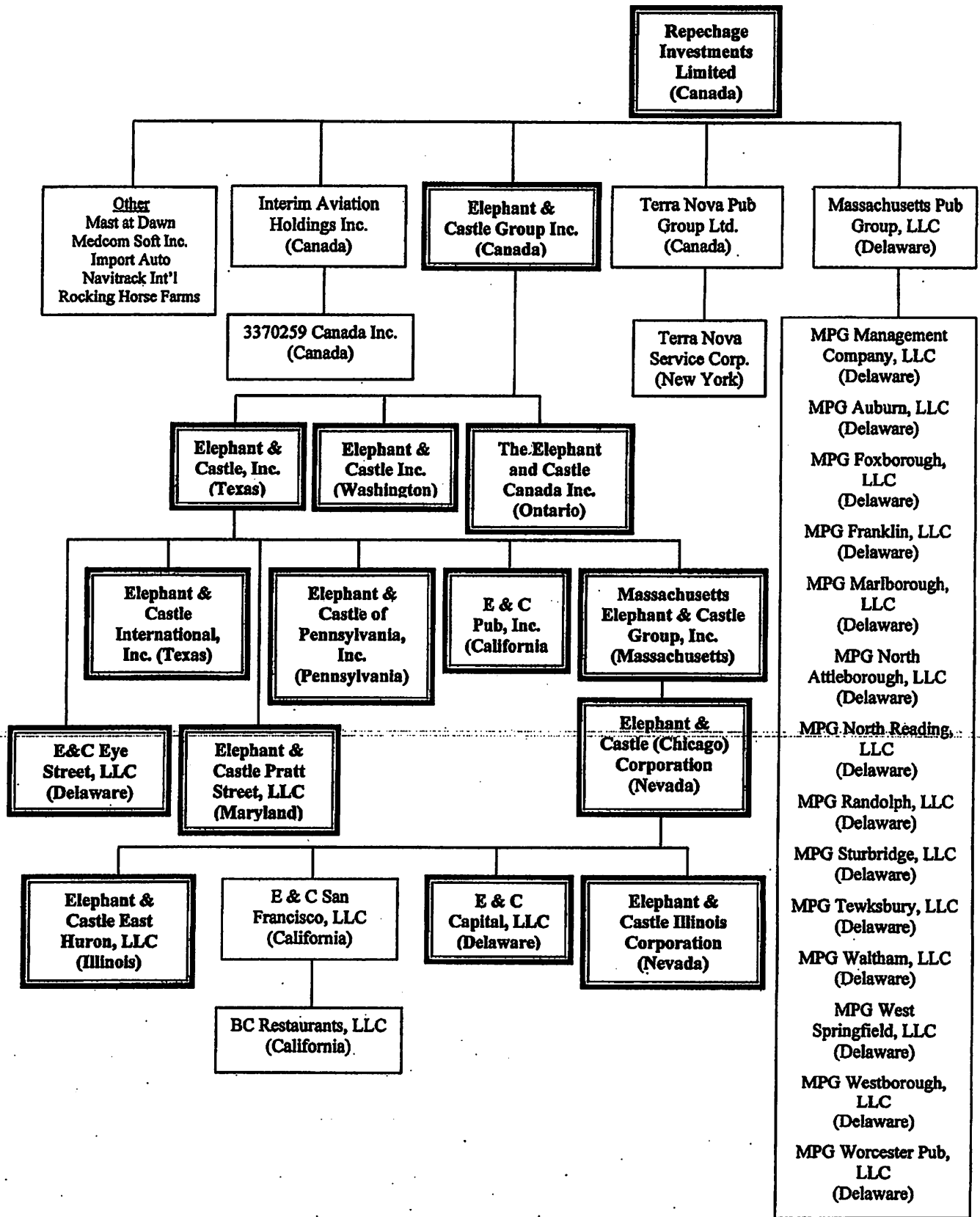
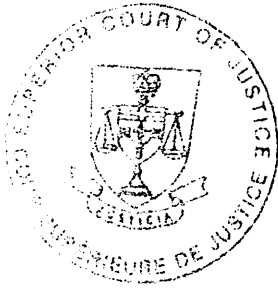


Exhibit "A"

Exhibit B

To the First Report of the Information Officer, BDO Canada Limited



Court File No.: CV-11-9279-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**THE HONOURABLE** ) **WEDNESDAY, THE 29<sup>TH</sup> DAY**  
 )  
**JUSTICE MORAWETZ** ) **OF JUNE, 2011**

**IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF CERTAIN PROCEEDINGS  
TAKEN IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS EASTERN DIVISION  
WITH RESPECT TO THE COMPANIES LISTED ON  
SCHEDULE "A" HERETO (THE "CHAPTER 11 DEBTORS")**

**APPLICATION OF  
MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC.**

**UNDER SECTION 46 OF THE  
COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED**

**INTERIM INITIAL ORDER**

**THIS APPLICATION**, made by Massachusetts Elephant & Castle Group, Inc. (the "Applicant") in its capacity as the proposed foreign representative (the "Foreign Representative") of the Chapter 11 Debtors in the proceedings commenced on June 28, 2011, in the United States Bankruptcy Court for the District of Massachusetts Eastern Division (the "US Court"), under Chapter 11 of Title 11 of the United States Code (the "Chapter 11 Proceeding"), for an Order substantially in the form enclosed in the Application Record of the Applicant was heard on this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Application, filed, the affidavit of Keith Radford, sworn June 28, 2011, filed, the affidavit of Sara-Ann Wilson, sworn June 29, 2011, filed, the

Preliminary Report of BDO Canada Limited ("BDO"), in its capacity as proposed Information Officer (the "Proposed Information Officer"), dated June 28, 2011, filed, the consent of BDO to act as Information Officer, filed, and upon hearing the submissions of counsel for the Foreign Representative, and counsel for GE Canada Equipment Financing G.P. ("GE"), and upon being advised that none of the other persons who might be interested in these proceedings was served with the Notice of Application:

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

### **STAY OF PROCEEDINGS**

2. **THIS COURT ORDERS** that from the date hereof until and unless otherwise ordered by this Court (the "Stay Period"), no proceeding or enforcement process in any court or tribunal in Canada (each, a "Proceeding" and collectively, "Proceedings") including, without limitation, a Proceeding taken or that might be taken against the Chapter 11 Debtors under the *Bankruptcy and Insolvency Act*, R.S.C., 1985 c. B-3, as amended, or the *Winding-up and Restructuring Act*, R.S.C. 1985, c. W-11, as amended, shall be commenced or continued against or in respect of the Chapter 11 Debtors or affecting their business in Canada (the "Business") or their current and future assets undertakings and properties of every nature and kind whatsoever, and wheresoever situate, including all proceeds thereof, of any of the Chapter 11 Debtors in Canada that relates to the Business (collectively, the "Property"), except with the written consent of the relevant Chapter 11 Debtor(s), or with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Chapter 11 Debtors or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

### **EXERCISE OF RIGHTS OR REMEDIES**

3. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies in Canada of any individual, firm, corporation, agency, governmental or quasi-governmental body, or other entity (all of the forgoing, collectively being "Persons" and each being a "Person") in respect of

or affecting the Chapter 11 Debtors' Business or the Property, are hereby stayed and suspended except with the written consent of the relevant Chapter 11 Debtor(s) or leave of this Court, provided that nothing in this Order shall: (i) empower any of the Chapter 11 Debtor(s) to carry on any business in Canada that the Chapter 11 Debtor(s) are not lawfully entitled to carry on; (ii) empower the Chapter 11 Debtors to sell or otherwise dispose of, outside the ordinary course of business, any Property in Canada that relates to the Business or empower the Chapter 11 Debtors to sell or otherwise dispose of any of its other property in Canada, provided however, that nothing herein shall limit the Chapter 11 Debtors' right to seek approval in the Chapter 11 Proceedings or from this Court to sell or otherwise dispose of any of their Property; (iii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the *Companies' Creditors Arrangement Act*, R.S.C. c. C-36, as amended (the "CCAA"); (iv) prevent the filing of any registration to preserve or perfect a security interest; or (v) prevent the registration of a claim for lien. Subject to any order that the US Court may make in the Chapter 11 Proceeding, nothing in this Order shall impact on the Consent, Authorization and Acknowledgement, dated June 21, 2011, and granted by the Chapter 11 Debtors in favour of GE, McCarthy Tetrault LLP, and Alvarez & Marsal Canada ULC.

#### **NO INTERFERENCE WITH RIGHTS**

4. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, license or permit in favour of or held by any of the Chapter 11 Debtors in respect of or affecting the Property or Business, except with the written consent of the relevant Chapter 11 Debtor(s) or with leave of this Court.

#### **CONTINUATION OF SERVICES**

5. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Chapter 11 Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation logistics services, customs broker services, utility or other services provided in respect of the Property or Business or the Chapter 11 Debtors, are hereby restrained until further Order of this



Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Chapter 11 Debtors, and that the Chapter 11 Debtors shall be entitled to the continued use in Canada of, among other things, their current premises, telephone numbers, facsimile numbers, internet (addresses and domain names) provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Chapter 11 Debtors in accordance with normal payment practices of the Chapter 11 Debtors or such other practices as may be agreed upon by the supplier or service provider, the Information Officer, the Foreign Representative and the relevant Chapter 11 Debtor(s), or as may be ordered by this Court.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

6. **THIS COURT ORDERS** that during the Stay Period and except as permitted by Section 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of any of the Chapter 11 Debtors with respect to any claim against such directors or officers that arose before the date hereof and that relates to any obligations of any of the Chapter 11 Debtors whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations or unless otherwise ordered by this Court.

#### **SERVICE OF COURT MATERIALS AND PUBLICATIONS OF NOTICE**

7. **THIS COURT ORDERS** that the Applicant and its agents, or, if so requested by the Applicant, the Proposed Information Officer, are at liberty to serve this Order, any other orders in this proceeding, notices and documents by prepaid ordinary mail, courier, personal delivery or electronic transmission to any interested party of the Chapter 11 Debtors at their addresses as last shown on the records of the Chapter 11 Debtors and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding, or if sent by ordinary mail, on the fifth calendar day after mailing.

8. **THIS COURT ORDERS** that any party to these proceedings may serve any court materials in these proceedings (including, without limitation, the Application Record, any motion

records, factums and orders) on any person electronically by emailing a PDF or other electronic copy of such materials to parties' email addresses as recorded on the service list.

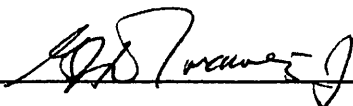
#### **AID AND ASSISTANCE OF OTHER COURTS**

9. **THIS COURT HEREBY ORDERS AND REQUESTS** that aid and recognition of any court, tribunal, regulatory, governmental or administrative body having jurisdiction in Canada the United States or elsewhere, to give effect to this Order and to assist the Chapter 11 Debtors, the Proposed Information Officer and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory, governmental and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Chapter 11 Debtors, the Proposed Information Officer and their respective agents, as may be necessary or desirable to give effect to this Order or to assist the Chapter 11 Debtors, the Proposed Information Officer and their respective agents in carrying out the terms of this Order.

#### **MISCELLANEOUS**


10. **THIS COURT ORDERS** that, notwithstanding anything else contained in this Order, any of the Chapter 11 Debtors may, by written consent of their counsel of record, agree to waive any of the Chapter 11 Debtors' protections provided in this Order.

11. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, any interested person may apply to this Court to vary or rescind this Order or seek other relief upon seven (7) days notice to Chapter 11 Debtor(s), the Proposed Information Officer and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

  
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ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

JUN 29 2011

PER/PAR: 

**SCHEDULE "A"**

1. Massachusetts Elephant & Castle Group, Inc.
2. Repechage Investments Limited
3. Elephant & Castle Group Inc.
4. The Elephant and Castle Canada Inc.
5. Elephant & Castle, Inc. (a Texas Corporation)
6. Elephant & Castle Inc. (a Washington Corporation)
7. Elephant & Castle International, Inc.
8. Elephant & Castle of Pennsylvania, Inc.
9. E & C Pub, Inc.
10. Elephant & Castle East Huron, LLC
11. Elephant & Castle Illinois Corporation
12. E&C Eye Street, LLC
13. E & C Capital, LLC
14. Elephant & Castle (Chicago) Corporation

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT FOR  
THE DISTRICT OF MASSACHUSETTS EASTERN DIVISION WITH RESPECT TO THE COMPANIES LISTED ON  
SCHEDULE "A" HERETO (THE "CHAPTER 11 DEBTORS")**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**INTERIM INITIAL ORDER**

**HEENAN BLAIKIE LLP**

Lawyers

Suite 2900, 333 Bay Street

Bay Adelaide Centre

Toronto, ON M5H 2T4

**Kenneth D. Kraft LSUC# 31919P**

**John J. Salmas LSUC #42336B**

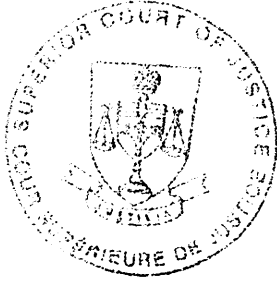
Tel: 416.643.6822 / 416.360.3570

Fax: 416.360.8425

Lawyers for Massachusetts Elephant & Castle  
Group, Inc.

Exhibit C

To the First Report of the Information Officer, BDO Canada Limited



Court File No.: CV-11-9279-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**THE HONOURABLE MR ) MONDAY, THE 4<sup>th</sup> DAY  
JUSTICE MORAWETZ ) OF JULY, 2011**

**IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF CERTAIN PROCEEDINGS  
TAKEN IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS EASTERN DIVISION  
WITH RESPECT TO THE COMPANIES LISTED ON  
SCHEDULE "A" HERETO (THE "CHAPTER 11 DEBTORS")**

**APPLICATION OF  
MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC.**

**UNDER SECTION 46 OF THE  
COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED**

**INITIAL RECOGNITION ORDER**

**THIS APPLICATION**, made by Massachusetts Elephant & Castle Group, Inc. ("MECG" or the "Applicant") in its capacity as the proposed foreign representative (the "Foreign Representative") of the Chapter 11 Debtors in the proceedings commenced on June 28, 2011, in the United States Bankruptcy Court for the District of Massachusetts Eastern Division, under Chapter 11 of Title 11 of the United States Code (the "Chapter 11 Proceeding"), for an Order substantially in the form enclosed in the Application Record of the Applicant was heard on this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Application, filed, the affidavit of Keith Radford, sworn June 28, 2011, filed, the Preliminary Report of BDO Canada Limited ("BDO"), in its capacity as

proposed Information Officer (the "Proposed Information Officer"), dated June 28, 2011, filed, the consent of BDO to act as Information Officer, filed, the Affidavits of Sara-Ann Wilson sworn June 29, 2011 and June 30, 2011, filed, and upon being provided with copies of the documents required by Section 46 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), and upon hearing the submissions of counsel for the Foreign Representative, ~~counsel for the Proposed Information Officer~~, and counsel for GE Canada Equipment Financing G.P., no one appearing for any other person on the service list, although properly served as appears from the Affidavits of Ingrid Rowe, sworn June 29, 2011 and June 30, 2011, filed, and upon being advised that no other persons were served with the Notice of Application:

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

### **APPOINTMENT OF THE FOREIGN REPRESENTATIVE**

2. **THIS COURT ORDERS AND DECLARES** that MECG is the foreign representative under Section 45 of the CCAA in respect of the Chapter 11 Proceeding and the Chapter 11 Debtors and is entitled to bring this application pursuant to Section 46 of the CCAA.

### **RECOGNITION OF THE U.S. BANKRUPTCY PROCEEDINGS**

3. **THIS COURT ORDERS AND DECLARES** that the Chapter 11 Proceeding in respect of the Chapter 11 Debtors is hereby recognized and given full force and effect in all provinces and territories of Canada as a "foreign main proceeding" as defined in Section 45, and for the purposes of Sections 47 and 48 of the CCAA.

### **STAY OF PROCEEDINGS**

4. **THIS COURT ORDERS** that from the date hereof until and unless otherwise ordered by this Court (the "Stay Period"), no proceeding or enforcement process in any court or tribunal in Canada (each, a "Proceeding" and collectively, "Proceedings") including, without limitation, a

Proceeding taken or that might be taken against Chapter 11 Debtors under the *Bankruptcy and Insolvency Act*, R.S.C., 1985 c. B-3, as amended, or the *Winding-up and Restructuring Act*, R.S.C. 1985, c. W-11, as amended, shall be commenced or continued against or in respect of the Chapter 11 Debtors or affecting their business in Canada (the "Business") or their current and future assets undertakings and properties of every nature and kind whatsoever, and wheresoever situate, including all proceeds thereof, of any of the Chapter 11 Debtors in Canada that relates to the Business (collectively, the "Property"), except with the written consent of the relevant Chapter 11 Debtor(s), or with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Chapter 11 Debtors or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **EXERCISE OF RIGHTS OR REMEDIES**

5. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies in Canada of any individual, firm, corporation, agency, governmental or quasi-governmental body, or other entity (all of the forgoing, collectively being "Persons" and each being a "Person") in respect of or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the relevant Chapter 11 Debtor(s) or leave of this Court, provided that nothing in this Order shall: (i) empower any of the Chapter 11 Debtor(s) to carry on any business in Canada that the Chapter 11 Debtor(s) are not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a security interest; or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

6. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, license or permit in favour of or held by any of the Chapter 11 Debtors in respect of or affecting the Property or Business, except with the written consent of the relevant Chapter 11 Debtor(s) or with leave of this Court.



### **CONTINUATION OF SERVICES**

7. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Chapter 11 Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation logistics services, customs broker services, utility or other services provided in respect of the Property or Business or the Chapter 11 Debtors, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Chapter 11 Debtors, and that the Chapter 11 Debtors shall be entitled to the continued use in Canada of, among other things, their current premises, telephone numbers, facsimile numbers, internet (addresses and domain names) provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Chapter 11 Debtors in accordance with normal payment practices of the Chapter 11 Debtors or such other practices as may be agreed upon by the supplier or service provider, the Proposed Information Officer, the Foreign Representative and the relevant Chapter 11 Debtor(s), or as may be ordered by this Court.

### **NO DEROGATION OF RIGHTS**

8. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Chapter 11 Debtors. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

9. **THIS COURT ORDERS** that, during the Stay Period, and except as permitted by Section 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Chapter 11 Debtors with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Chapter 11 Debtors whereby the directors or officers are alleged under any law

to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a plan of compromise, arrangement or reorganization in respect of the Chapter 11 Debtors, if one is filed in the Chapter 11 Proceeding, is recognized by this Court and becomes effective in accordance with its terms or unless otherwise ordered by this Court.

#### **SERVICE OF COURT MATERIALS**

10. **THIS COURT ORDERS** that the Applicant and its agents, or, if so requested by the Applicant, the Proposed Information Officer, are at liberty to serve this Order, any other orders in this proceeding, and all other proceedings, notices and documents by prepaid ordinary mail, courier, personal delivery or electronic transmission to any interested party of the Applicant at their addresses as last shown on the records of the Chapter 11 Debtors and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding, or if sent by ordinary mail, on the fifth calendar day after mailing.

11. **THIS COURT ORDERS** that any party to these proceedings may serve any court materials in these proceedings (including, without limitation, the Application Record, any motion records, factums and orders) on any person electronically by emailing an PDF or other electronic copy of such materials to parties' email addresses as recorded on the service list.

#### **AID AND ASSISTANCE OF OTHER COURTS**

12. **THIS COURT HEREBY ORDERS AND REQUESTS** that aid and recognition of any court, tribunal, regulatory, governmental or administrative body having jurisdiction in Canada the United States or elsewhere, to give effect to this Order and to assist the Chapter 11 Debtors, the Proposed Information Officer and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory, governmental and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Chapter 11 Debtors, the Proposed Information Officer and their respective agents, as may be necessary or desirable to give effect to this Order or to assist the Chapter 11 Debtors, the Proposed Information Officer and their respective agents in carrying out the terms of this Order.

**MISCELLANEOUS**

13. **THIS COURT ORDERS** that, notwithstanding anything else contained in this Order, any of the Chapter 11 Debtors may, by written consent of their counsel of record, agree to waive any of the Chapter 11 Debtors' protections provided in this Order.

14. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, any interested person may apply to this Court to vary or rescind this Order, other than paragraphs 2 and 3 hereof, or seek other relief upon seven (7) days notice to Chapter 11 Debtor(s), the Proposed Information Officer and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

(  
Horkawetz J  
)  
\_\_\_\_\_

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

JUL 04 2011

PER/PAR: 

**SCHEDULE "A"**

1. Massachusetts Elephant & Castle Group, Inc.
2. Repechage Investments Limited
3. Elephant & Castle Group Inc.
4. The Elephant and Castle Canada Inc.
5. Elephant & Castle, Inc. (a Texas Corporation)
6. Elephant & Castle Inc. (a Washington Corporation)
7. Elephant & Castle International, Inc.
8. Elephant & Castle of Pennsylvania, Inc.
9. E & C Pub, Inc.
10. Elephant & Castle East Huron, LLC
11. Elephant & Castle Illinois Corporation
12. E&C Eye Street, LLC
13. E & C Capital, LLC
14. Elephant & Castle (Chicago) Corporation

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT FOR  
THE DISTRICT OF MASSACHUSETTS EASTERN DIVISION WITH RESPECT TO THE COMPANIES LISTED ON  
SCHEDULE "A" HERETO (THE "CHAPTER 11 DEBTORS")**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**INITIAL RECOGNITION ORDER**

**HEENAN BLAIKIE LLP**

Lawyers

Suite 2900, 333 Bay Street

Bay Adelaide Centre

Toronto, ON M5H 2T4

**Kenneth D. Kraft LSUC# 31919P**

**John J. Salmas LSUC #42336B**

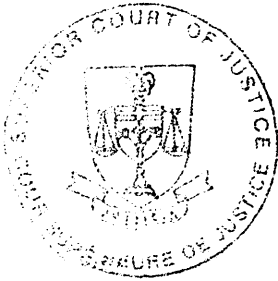
Tel: 416.643.6822 / 416.360.3570

Fax: 416.360.8425

Lawyers for Massachusetts Elephant & Castle  
Group, Inc.

Exhibit D

To the First Report of the Information Officer, BDO Canada Limited



Court File No: CV-11-9279-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**THE HONOURABLE MR. ) MONDAY, THE 4<sup>TH</sup> DAY  
JUSTICE MORAWETZ ) OF JULY, 2011**

**IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF CERTAIN PROCEEDINGS  
TAKEN IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS EASTERN DIVISION  
WITH RESPECT TO THE COMPANIES LISTED ON  
SCHEDULE "A" HERETO (THE "CHAPTER 11 DEBTORS")**

**APPLICATION OF  
MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC.**

**UNDER SECTION 46 OF THE  
COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED**

**SUPPLEMENTAL ORDER**

**THIS APPLICATION**, made by Massachusetts Elephant & Castle Group, Inc. (the "**Applicant**") in its capacity as the foreign representative (the "**Foreign Representative**") of the Chapter 11 Debtors in the proceedings commenced on June 28, 2011, in the United States Bankruptcy Court District of Massachusetts Eastern Division (the "**U.S. Court**"), under Chapter 11 of Title 11 of the United States Code (the "**Chapter 11 Proceeding**") for an Order substantially in the form enclosed in the Application Record of the Applicant was heard on this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application, filed, the Affidavit of Keith Radford sworn June 28, 2011 (the "**Radford Affidavit**"), filed, the Preliminary Report of BDO Canada Limited ("**BDO**"), in its capacity as proposed information officer (the "**Information Officer**"), dated June 28, 2011, filed, the consent of BDO to act as Information Officer, filed, the Affidavit of Sara-Ann Wilson sworn June 30, 2011 (the "**Wilson Affidavit**"), and upon being provided with copies of the documents required by Section 46 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), and the related orders of the U.S. Court dated June 30, 2011 in respect of the Chapter 11 Proceeding for each of the Foreign Representative and the other Chapter 11 Debtors, including the order of the U.S. Court authorizing the Applicant to act in the capacity of a Foreign Representative on behalf of the Chapter 11 Debtors (the "**Foreign Representative Order**"), and upon hearing the submissions of ~~counsel for the Foreign Representative, counsel for the proposed Information Officer,~~ and counsel for GE Canada Equipment Financing G.P., no one appearing for any other person on the service list, although properly served as appears from the Affidavits of Ingrid Rowe, sworn June 29, 2011 and June 30, 2011, filed, and upon being advised that no other persons were served with the Notice of Application:

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that any capitalized terms not otherwise defined herein shall have the meaning given to such terms in the Initial Recognition Order dated July 4, 2011, made by this Honourable Court in these proceedings (the "**IRO**").

3. **THIS COURT ORDERS AND DECLARES** that <sup>subject to paragraph 4 (SD)</sup> the terms of this Supplemental Order shall not amend the IRO or in any way limit the force and effect of the IRO.



## RECOGNITION OF THE CHAPTER 11 ORDERS

4. **THIS COURT ORDERS AND DECLARES** that the following orders of the U.S. Court in the Chapter 11 Proceeding, attached as Schedules "B" to "I" hereto (collectively, the "**Chapter 11 Orders**"), be and are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to Section 49 of the CCAA:

- (a) the Foreign Representative Order;
- (b) the U.S. Cash Collateral Order;
- (c) the U.S. Prepetition Wages Order;
- (d) the U.S. Prepetition Taxes Order;
- (e) the U.S. Utilities Order;
- (f) the U.S. Cash Management Order;
- (g) the U.S. Customer Obligations Order; and
- (h) the List of Creditors Order;

(each, as defined in the Wilson Affidavit),

provided, however, that in the event of any inconsistency between the terms of the Chapter 11 Orders and the IRO and this Order, the terms of the IRO and this Order shall govern with respect to the Property.) *except the provisions of the U.S*

## INFORMATION OFFICER

5. **THIS COURT ORDERS** that:

- (a) BDO be and is hereby appointed as Information Officer (in such capacity, the "**Information Officer**"), as an officer of this Court;
- (b) The Information Officer be and is hereby authorized and empowered, but not obligated, to provide such assistance to the Foreign

*(B) Cash collateral Order which shall prevail over the terms of the IRO and this Order*

Representative in the performance of its duties as the Foreign Representative may request;

- (e) The Information Officer shall be granted unrestricted access to the books and records of the Chapter 11 Debtors, as may be required by the Information Officer, in order to carry out its mandate as required by the terms of this Order and the Chapter 11 Debtors shall cooperate with the Information Officer in order to provide all such information and documentation as may be requested by the Information Officer; and
- (d) The Information Officer shall deliver to the Court a report at least once every three (3) months outlining the status of these proceedings, the Chapter 11 Proceeding and such other information as the Information Officer believes to be material.

6. **THIS COURT ORDERS** that the Information Officer be and is hereby authorized and empowered to provide any stakeholder of the Chapter 11 Debtors with information obtained from the Chapter 11 Debtors in response to reasonable requests for information in respect of the Business or Property, made in writing by such stakeholder addressed to the Information Officer. The Information Officer shall not have any responsibility or liability with respect to information disseminated by it pursuant to this paragraph. In the case of information that the Information Officer has been advised by the Chapter 11 Debtors is confidential, the Information Officer shall not provide such information to any stakeholder unless otherwise directed by this Court or on such terms and conditions as the Information Officer, the Foreign Representative and the relevant Chapter 11 Debtor(s) may agree.

7. **THIS COURT ORDERS** that the Information Officer shall not employ any employees of the Chapter 11 Debtors, shall not take possession or control of the Property or the Business, and shall take no part whatsoever in the management or supervision of the Chapter 11 Debtors and shall not, by fulfilling its obligations under this Order, be deemed to have taken or maintained possession, occupation, care or control of the Chapter 11 Debtors, or the Business or Property, or any part thereof, including, but not limited to, any Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or

contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation, or rehabilitation of the environment or relating to the disposal of waste or other contamination, including, but not limited to, the *Canadian Environmental Protection Act* or similar other federal or provincial legislation (collectively, the "Environmental Legislation"); provided, however, that nothing herein shall exempt the Information Officer from any duty to report or make disclosure imposed by applicable Environmental Legislation.

8. **THIS COURT ORDERS** that the appointment of the Information Officer shall not constitute the Information Officer to be an employer or a successor employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or any other statute, regulation or rule of law or equity for any purpose whatsoever and, further, that the Information Officer shall be deemed not to be an owner or in possession, care, control, or management of the Property or Business whether pursuant to Environmental Legislation, or any other statute, regulation or rule of law or equity under any federal, provincial or other jurisdiction for any purpose whatsoever.

9. **THIS COURT ORDERS** that the Information Officer and counsel to the Information Officer shall each be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Foreign Representative as part of the costs of these proceedings. The Foreign Representative is authorized to pay the accounts of the Information Officer and counsel for the Information Officer on a bi-weekly basis or such other period as the Foreign Representative and the Information Officer and its counsel may agree, and the fees and expenses of the Information Officer and its counsel shall be subject to the passing of accounts by this Court, and the Information Officer and its counsel shall not be required to pass their accounts in the Chapter 11 Proceeding, or in any other foreign proceeding. Any payments made to the Information Officer and its counsel in respect of their accounts shall not be subject to approval in the Chapter 11 Proceeding, or in any other foreign proceeding. In addition, the Foreign Representative is authorized to pay the Information Officer a retainer of \$50,000 to be held by the Information Officer as security for payment of its fees and disbursements outstanding from time to time and to pay to the Information Officer's counsel a retainer of \$25,000, to be held by the Information Officer's counsel as security for payment of their respective fees and

disbursements outstanding from time to time.

10. **THIS COURT ORDERS** that the Information Officer and its counsel, as security for the professional fees and disbursements incurred in respect of the within proceedings both before and after the granting of this Order, shall be entitled to the benefit of and are hereby granted a first-ranking charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$75,000.

11. **THIS COURT ORDERS** that the Information Officer shall have the benefit of all of the rights and protections afforded to a Monitor under the CCAA, or as an officer of this Court, and the Information Officer shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or willful misconduct on its part as determined by final order of this Court.

12. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against the Foreign Representative, the other Chapter 11 Debtors, or the Information Officer in any court or other tribunal as a result of or relating in any way to the appointment of the Information Officer, the fulfillment of the duties of the Information Officer or the carrying out of this or any other orders of this Court, unless the leave of this Court is first obtained on motion on at least seven (7) days' prior notice to the Information Officer, the Foreign Representative, the Chapter 11 Debtors, and the parties on the service list.

#### **VALIDITY AND PRIORITY OF CHARGES**

13. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge in Canada shall not be required, and that the Administration Charge is and shall be valid and enforceable against the Property for all purposes in Canada and shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise, including, but without limitation, any and all deemed trusts whether existing as of the date hereof or arising in the future and any and all claims in respect of breaches of fiduciary duties (collectively, "**Encumbrances**").

14. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be ordered by this Court, the Chapter 11 Debtors shall not grant any Encumbrances

over any Property that rank in priority to, or *pari passu* with the Administration Charge, unless the Chapter 11 Debtors also obtain the prior written consent of the chargees entitled to the benefit of the Administration Charge (collectively, the "**Chargees**") or further Order of this Court.

15. **THIS COURT ORDERS** that the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not be limited or impaired in any way by: (a) the pendency of these proceedings and any declarations of insolvency made in these proceedings; (b) any application(s) for bankruptcy order(s) issued pursuant to the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), or any bankruptcy orders made pursuant to such application(s); (c) any proceeding taken or that might be taken against the Chapter 11 Debtors under the BIA or the *Winding-Up and Restructuring Act*, R.S.C. 1985, c. W-11, as amended; (d) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (e) the provisions of any federal or provincial statutes; or (f) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of any Encumbrances contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Chapter 11 Debtors.

16. **THIS COURT ORDERS** that notwithstanding any provision to the contrary in any such Agreement or otherwise:

(i) the creation of the Administration Charge shall not create or be deemed to constitute a breach by the Chapter 11 Debtors of any Agreement to which they are party;

(ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Administration Charge; and

(iii) the payments made by the Chapter 11 Debtors pursuant to this Order and the granting of the Administration Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive

conduct, or other challengeable or voidable transactions under any applicable law.

17. **THIS COURT ORDERS** that the Administration Charge shall attach to the Property (including, without limitation, any lease, sub-lease, offer to lease, license, permit or other contract), notwithstanding any requirement for the consent of the lessor or other party to any such lease, license, permit or contract or any other person or the failure to comply with any other condition precedent.

18. **THIS COURT ORDERS** that the Administration Charge created by this Order over leases of real property in Canada shall only attach to the Chapter 11 Debtors' interest in such real property leases

#### **AID AND ASSISTANCE OF OTHER COURTS**

19. **THIS COURT HEREBY ORDERS AND REQUESTS** the aid and recognition of any court, tribunal, regulatory, governmental or administrative body having jurisdiction in Canada, the United States or elsewhere, to give effect to this Order and to assist the Foreign Representatives, the Chapter 11 Debtors, the Information Officer and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory, governmental and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Chapter 11 Debtors, the Foreign Representative, the Information Officer and their respective agents, as may be necessary or desirable to give effect to this Order or to assist the Chapter 11 Debtors, the Foreign Representative, the Information Officer and their respective agents in carrying out the terms of this Order.

#### **NOTICE OF PROCEEDINGS**

20. **THIS COURT ORDERS** that within 3 business days from the date of this Order, or as soon as practicable thereafter, the Information Officer shall publish a notice as required by subsection 53(b) of the CCAA substantially in the form attached to this Order as Schedule "J" in The Globe and Mail (National Edition) or the National Post for one (1) day in two (2) consecutive weeks without delay following the issuance of this Order.

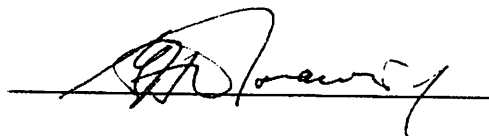
## GENERAL PROVISIONS

21. **THIS COURT ORDERS** that the Information Officer or the Foreign Representative may, from time to time, apply to this Court for advice, directions, or for such further or other relief as they may advise in connection with the proper execution of this Order or the IRO, the discharge or variation of their respective powers and duties under this Order, and the recognition in Canada of subsequent orders of the U.S. Court made in the Chapter 11 Proceeding.

22. **THIS COURT ORDERS** that nothing in this Order shall prevent the Information Officer from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Chapter 11 Debtors, or in respect of the Business or the Property, upon further order of the Court.

23. **THIS COURT ORDERS** that each of the Foreign Representative, the Chapter 11 Debtors and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order or the IRO.

24. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, and except with respect to paragraph 4 of this Order, any interested person may apply to this Court to vary or rescind this Order or seek other relief upon seven (7) days notice to the Foreign Representative, the Chapter 11 Debtors and their counsel, the Information Officer and its counsel and to any other party likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.



ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

JUL 04 2011

PER/PAR: 

**SCHEDULE A**  
**CHAPTER 11 DEBTORS**

1. Massachusetts Elephant & Castle Group, Inc.
2. Repechage Investments Limited
3. Elephant & Castle Group Inc.
4. The Elephant and Castle Canada Inc.
5. Elephant & Castle, Inc. (a Texas Corporation)
6. Elephant & Castle Inc. (a Washington Corporation)
7. Elephant & Castle International, Inc.
8. Elephant & Castle of Pennsylvania, Inc.
9. E & C Pub, Inc.
10. Elephant & Castle East Huron, LLC
11. Elephant & Castle Illinois Corporation
12. E&C Eye Street, LLC
13. E & C Capital, LLC
14. Elephant & Castle (Chicago) Corporation



# SCHEDULE B

## IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF MASSACHUSETTS EASTERN DIVISION

In re: : Chapter 11  
: :  
Massachusetts Elephant & Castle :  
Group, Inc., et al.<sup>1</sup> :: Case No.  
: :  
Debtors : Jointly Administered

### ORDER AUTHORIZING DEBTOR MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC. TO ACT AS FOREIGN REPRESENTATIVE OF THE DEBTORS

Upon the motion (the "Motion") of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), pursuant to section 1505 of title 11 of the United States Code (the "Bankruptcy Code"), for authorization for Debtor, Massachusetts Elephant & Castle Group, Inc.<sup>2</sup> to act as the foreign representative of the Debtors in Canada in order to seek recognition of the Chapter 11 Cases on behalf of the Debtors, and to request that the Ontario Superior Court of Justice (Commercial List) (the "Ontario Court") lend assistance to this Court in protecting the Debtors' property, and to seek any other appropriate relief from the Ontario Court that the Ontario Court deems just and proper, all as more fully described in the Motion, and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. Sections 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. Section 157(b); and venue being

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<sup>1</sup> The debtors in these cases, along with the last four digits of the federal tax identification number for each of the debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

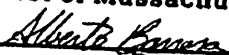
proper before this Court pursuant to 28 U.S.C. Sections 1408 and 1409; and due and proper notice of the Motion having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Debtor, Massachusetts Elephant & Castle Group, Inc. is hereby authorized (a) to act as the "foreign representative" of the Debtors in Canada, as such term is defined in the CCAA, (b) to seek recognition by the Ontario Court of the Chapter 11 Cases and of certain orders made by the Court in the Chapter 11 Cases from time to time, (c) to request that the Ontario Court lend assistance to this Court, and (d) to seek any other appropriate relief from the Ontario Court that the Debtors deem just and proper.
3. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
4. This Court shall retain jurisdiction to interpret and enforce this Order.

Dated: June 30, 2011

  
UNITED STATES BANKRUPTCY JUDGE  
*Henry J. Boroff*



Certified to be a true and correct copy of the original  
James M. Lynch, Clerk  
U.S. Bankruptcy Court  
District of Massachusetts  
By:   
Deputy Clerk

Date: 6/30/11

# SCHEDULE C

## IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF MASSACHUSETTS EASTERN DIVISION

In re: : Chapter 11  
: :  
Massachusetts Elephant & Castle :  
Group, Inc., et al.<sup>1</sup> : Case No. 11-16155  
: :  
Debtors : Jointly Administered

### **INTERIM ORDER (A) AUTHORIZING USE OF CASH COLLATERAL; (B) GRANTING ADEQUATE PROTECTION; (C) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001; AND (D) GRANTING RELATED RELIEF**

This matter having come before the Court on the Motion of the Debtors for an Order Pursuant to Sections 105, 362, 362, and 363 of Bankruptcy Code (A) Authorizing Use of Collateral;' (B) Granting Adequate Protection; (C) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001; and (D) Granting Related Relief (the "Motion") filed by Massachusetts Elephant & Castle Group, Inc. on behalf of itself and affiliated debtors and debtors in possession (collectively the "Debtors"); and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and notice of the Motion and the hearing being and sufficient notice under the circumstances; and it appearing from the record before the Court that sufficient cause exists for the entry of this order; the Court **FINDS AS FOLLOWS:**<sup>2</sup>

A. On June 28,2011 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the

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<sup>1</sup> The debtors in these cases, along with the last four digits of the federal tax identification number for each of the debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

United States Bankruptcy Court for the District of Massachusetts (the "Court"). A Motion for Joint Administration was simultaneously filed therewith.

B. The Debtors continue to operate their businesses and manage their property as debtors in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No official committee of unsecured creditors has been appointed in these cases.

C. This matter is a core proceeding pursuant to 28 U.S.C. 157(b)(2).

D. The Debtors require the use of the cash collateral in order to preserve their operations and the value of their assets. The entry of the relief contained in this Order is in the best interests of the Debtors, their estates, and their creditors.

E. GE Canada Equipment Financing G.P. ("GE CEF"), Fifth Street Finance Corp. ("Fifth Street") Sysco San Diego, Inc. ("Sysco"), Royal Bank of Canada ("Royal Bank") and Toronto Dominion Bank ("TD Bank") (collectively, GE CEF, Fifth Street, Sysco, Royal Bank and TD Bank shall be referred to as "Lenders") have asserted, or may assert, a lien against the property of certain of the Debtors and the cash proceeds thereof (the "Cash Collateral").

F. For avoidance of doubt, the provisions and protections of this Interim Order shall apply to each Lender only with respect to the Debtor(s) against whom such Lender has a prepetition secured claim (in each case, the "Applicable Debtor"), and nothing contained herein shall grant any Lender any rights or claims against any Debtor that is not an Applicable Debtor of such Lender. Similarly, unless otherwise provided, the adequate protection and other obligations of a Debtor under this Interim Order shall only apply to the Lender(s) that hold a prepetition secured claim against such Debtor (in each case, the "Applicable Lender").

G. This Court has not been asked to find and it does not find, that any security interest asserted by any Lender is valid or perfected. Nothing in this order constitutes a limitation on the applicability of Massachusetts Local Bankruptcy Rules. *and subject to the reservation of rights provisions in paragraph 4*

H. Pending a final hearing on the Motion, the replacement liens and other forms of protection set forth below will adequately protect the interests of the Lenders for the purposes of sections 361, 363(e) and 507(b) of the Bankruptcy Code.

I. Due and adequate notice of the hearing has been given, and no further notice of the hearing is required before the entry of the relief provided for in this Order.

**NOW THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The Motion is allowed, on an interim basis, as set forth herein.
2. The Debtors are authorized to use Cash Collateral in the ordinary course of their business substantially in accordance with the budget attached hereto as Exhibit A (the "Budget") for the period (the "Specified Period") from the Petition Date through the date which is the earliest to occur of: (a) an Event of Default (subject to the Debtor's right to obtain further authorization to use Cash Collateral within the Notice Period) or (b) the final hearing on the Motion.
3. The Debtors shall use Cash Collateral during the Specified Period, at the times, in the amounts and solely for the purposes identified in the Budget (as such may be amended with the consent of the Lenders or approval of the Court) provided, however, the Debtors shall be authorized to exceed the expenses in the Budget by no more than ten percent (10%) (on an aggregate basis) (the "Permitted Variance") and to apply any unused portion in one week to any subsequent weekly period.

4. For the purposes of sections 361, 363(e) and 507(b) of the Bankruptcy Code and adequate protection for the Debtors' use of Cash Collateral, the Lenders are hereby granted replacement liens (the "Replacement Liens") in and to all property of the kind presently securing the prepetition obligations of the Debtors to the Lenders, including property purchased or acquired with the Cash Collateral together with any proceeds thereof, but excluding causes of action under chapter 5 of the Bankruptcy Code and proceeds thereof. The Replacement Liens shall only attach to and be enforceable against the same types of property, to the same extent, and in the same order of priority as existed immediately prior to the Petition Date. The Replacement Liens shall be recognized only to the extent of any post-petition diminution in value of the prepetition collateral of each Applicable <sup>Lender</sup> including without limitation as a result of, arising from, or otherwise attributable to the use of of Cash Collateral during these bankruptcy cases, the deterioration, use, sale, lease or other disposition of the prepetition collateral, and the imposition of the automatic stay. *Claims for intercompany transfers will be entitled to priority status under sections 507(a)(2) and 503(b) of the Bankruptcy Code*

5. The Replacement Liens shall not attach to any avoidance powers held by the Debtors or any trustee for the Debtors, including avoidance set forth in sections 544, 545, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code, or to the proceeds of any claims under or actions commenced pursuant such powers.

6. On the third business day of each week following entry of this Order, the Debtors shall furnish to the ~~Applicable~~ Lenders and their counsel (and any official committee of unsecured creditors appointed in this bankruptcy case and its counsel): (i) a weekly cash report setting forth, in comparative form, the actual results achieved against projected for the prior week, including the actual cash receipts and disbursements and the variance of the actual results from those estimated in the Budget; and (ii) such other documents information as may be

reasonably requested. The Debtors shall also furnish copies of their monthly operating reports as filed with the Office of the United States Trustee. Upon reasonable notice by an ~~Applicable~~ Lender, the Debtors shall permit such Lender and any of its agents reasonable access to the Debtors' records and place of business during normal business hours to verify the existence, condition and location of collateral in which the ~~Applicable~~ Lender holds a security interest and to audit the Debtors' cash receipts and disbursements.

7. The Debtors' authority to use Cash Collateral as provided for in this Order shall terminate upon the occurrence of any of the following events, unless waived by the ~~Applicable~~ Lender in writing (collectively, the "Events of Default"):

- (a) the failure by the Debtors to perform, in any material respect, any of the terms, provisions, conditions, covenants, or obligations under this Order;
- (b) a default by the Debtors after the Petition Date in reporting the information specified in paragraph 6 above, if such default will remain uncured for three (3) days following written notice from the ~~Applicable~~ Lender to the Debtors; *which notice shall also be submitted to the United States Trustee and any creditors committee.*
- (c) reversal, vacatur, or modification (without the express prior written consent of the Lenders, each in its sole discretion) of this Order, other than in accordance with the final order approving the Motion; or
- (d) dismissal of the case or conversion of the case to a chapter 7 case, or appointment of a chapter 11 trustee, examiner with enlarged powers, other responsible person.

8. Upon the occurrence of an Event of Default, the Debtors' authority to use Cash Collateral shall cease if the Debtors do not within five (5) days thereof (the "Notice Period") seek an emergency hearing with the Court and obtain the further use of Cash Collateral.

9. This Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the Replacement Liens to the extent set forth in Paragraph 4 without the necessity of filing or recording any financing statement or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking

of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the Replacement Liens, or to entitle the Lenders to the priorities granted herein. The Lenders, in their sole discretion, may file a photocopy of this Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien or similar instrument.

10. Nothing herein affects the validity or enforceability of that certain Interlender Agreement, dated as of October 16, 2009, between GE CEF and Fifth Street, as amended, restated, or otherwise modified.

11. Notwithstanding anything herein to the contrary, the entry of this Order is without prejudice to, and does not constitute a waiver of (a) the Lenders' right to seek any other or supplemental relief in respect of any Applicable Debtor, including the right to seek additional adequate protection (without prejudice to any other person's right to object to or otherwise oppose such additional adequate protection) or oppose the further use of Cash Collateral; (b) any of the rights of any Lender under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of these cases or successor cases, conversion of any of these cases to cases under chapter 7, (iii) request appointment of a chapter 11 trustee or examiner with expanded powers, or (iv) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans.

12. This Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable nunc pro tunc to




the Petition Date immediately upon execution thereof. The Court has and will retain jurisdiction to enforce this Order according to its terms.

13. Nothing in this Order shall constitute a waiver by or restrict the Debtors' right to seek, or Lenders' right to oppose, the further use of Cash Collateral.

14. This Order and the Debtors' use of Cash Collateral as authorized in this Order shall become effective immediately upon entry of this Order by the Court.

15. A continued hearing on the Debtors' Motion shall be held on ~~July~~ <sup>August 1</sup> \_\_\_\_\_, 2011 at 9:30 a.m. in Worcester, Massachusetts

16. A copy of this Order, shall be served by the Debtors via first class mail on or before July 5, 2011 upon: (a) the Office of the United States Trustee; (b) the Lenders, or their counsels; (c) the creditors holding the thirty (30) largest claims against the Debtors; (d) all known taxing authorities that have claims against the Debtor; (e) any party which has filed, prior to the date of entry of this Order, a request for service of pleadings in this case; and (f) counsel for any official committee of unsecured creditors appointed in this case pursuant to section 1102 of the Bankruptcy Code. Service in accordance with this paragraph shall be deemed good and sufficient notice and service of this Order and of the final hearing on the use of Cash Collateral.

  
\_\_\_\_\_  
United States Bankruptcy Judge  
*Henry J. Boroff*

Dated: June 30, 2011



Certified to be a true and correct copy of the original  
James M. Lynch, Clerk  
U.S. Bankruptcy Court  
District of Massachusetts

By: Alberta Brown  
Deputy Clerk

Date: 6/30/11

# SCHEDULE D

IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

_____	:	Chapter 11
In re:	:	
	:	Case No. 11-16155 ( )
MASSACHUSETTS ELEPHANT &	:	
CASTLE GROUP, INC., <i>et al.</i> , <sup>1</sup>	:	Jointly Administered
	:	
Debtors.	:	
_____	:	

**ORDER AUTHORIZING DEBTORS TO PAY WAGES, COMPENSATION,  
EMPLOYEE BENEFITS AND OTHER RELATED OBLIGATIONS**

Upon consideration of the Debtors' Motion for Order (I) Authorizing (A) Payment of Pre-Petition Wages, Salaries, and Employee Benefits, (B) Reimbursement of Employee Business Expenses, and (C) Payment of other Employee Related Amounts; and (II) Authorizing Applicable Banks and Other Financial Institutions To Receive, Process, Honor and Pay All Checks and Drafts Drawn on Debtors' Bank Accounts Relating to the Foregoing (the "Motion"); the Court having reviewed the Motion; the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) venue of these chapter 11 cases in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409 and (d) notice of the Motion was sufficient under the circumstances; the Court determining that the legal and factual bases set forth in the Motion establish just cause

<sup>1</sup> The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The Debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

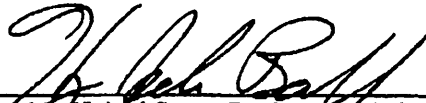
for the relief granted by this Order; and it appearing that the relief requested is in the best interest of the Debtors' estates, their creditors and other parties in interest;

IT IS HEREBY DETERMINED, ORDERED AND ADJOURNED THAT:

- A. The Motion is GRANTED in its entirety.
- B. The Debtors are authorized, in their sole discretion, but not directed, to pay pre-petition employee wages, bonuses, employee insurance benefits premiums or claims, business expenses, deductions, garnishments, withholdings and processing costs accrued but unpaid as of the Petition Date to or for the benefit of its employees.
- C. The amount of payments made by the Debtors pursuant to the terms of this Order shall not exceed \$500,000 for accrued employee wages and salaries.
- D. All applicable banks and financial institutions are authorized and directed, when requested by the Debtors and in the Debtors' sole discretion, to receive, process, honor and pay any and all checks drawn on the Debtors' accounts with respect to pre-petition employee wages, benefits, insurance premiums, business expenses, deductions, garnishments, withholdings and processing costs, whether such checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make such payment.
- E. Nothing in the Motion shall be deemed a request for authority to assume, and nothing in this Order shall be deemed an authorization to assume, any executory contract under 11 U.S.C. § 365, nor shall any provision of the Motion or this Order be deemed to limit the Debtors' right to seek authority to modify or terminate any right or claim to compensation or benefits.

F. The Debtors shall not make any payments pursuant to the terms of this Order in excess of \$11,750.00 to any single employee.

Dated: June 30, 2011

  
\_\_\_\_\_  
Honorable United States Bankruptcy Judge  
*Henry J. Coroff*



**Certified to be a true and  
correct copy of the original  
James M. Lynch, Clerk  
U.S. Bankruptcy Court  
District of Massachusetts**

By: *Alberto Barona*  
Deputy Clerk

Date: 6/30/11

SCHEDULE E

IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

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In re:	:	Chapter 11
	:	
	:	Case No. 11-16155 ( )
MASSACHUSETTS ELEPHANT &	:	
CASTLE GROUP, INC., <i>et al.</i> , <sup>1</sup>	:	Jointly Administered
	:	
Debtors.	:	

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**ORDER GRANTING DEBTORS' MOTION FOR AN ORDER AUTHORIZING (I) THE DEBTORS TO REMIT AND PAY CERTAIN TAXES AND FEES AND (II) FINANCIAL INSTITUTIONS TO PROCESS AND CASH RELATED CHECKS AND TRANSFERS**

Upon consideration of the Debtors' Motion for an Order Authorizing (I) the Debtors to Remit and Pay Certain Taxes and Fees and (II) Financial Institutions to Process and Cash Related Checks and Transfers (the "Motion"); the Court having reviewed the Motion; the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) venue of these chapter 11 cases in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409 and (d) notice of the Motion was sufficient under the circumstances; the Court determining that the legal and factual bases set forth in the Motion establish just cause for the relief granted by this Order; and it appearing that the relief requested is in the best interest of the Debtors' estates, their creditors and other parties in interest;

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<sup>1</sup> The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The Debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

IT IS HEREBY DETERMINED, ORDERED AND ADJOURNED THAT:

- A. The Motion is GRANTED in its entirety, *but the sales and use taxes which may be paid shall not exceed those collected on or after June 1, 2011.*
- B. The Debtors are authorized, ~~but not~~ *and* directed, to pay the Taxes and Fees as set

forth in the Motion.

Dated: June 30, 2011

  
\_\_\_\_\_  
Honorable United States Bankruptcy Judge  
*Henry J. Boroff*



Certified to be a true and correct copy of the original  
James M. Lynch, Clerk  
U.S. Bankruptcy Court  
District of Massachusetts

By:   
Deputy Clerk

Date: 6/30/11

# SCHEDULE F

IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

_____	:	Chapter 11
In re:	:	
	:	Case No. 11-16155 ( )
MASSACHUSETTS ELEPHANT &	:	
CASTLE GROUP, INC., <i>et al.</i> , <sup>1</sup>	:	Jointly Administered
	:	
Debtors.	:	
_____	:	

**FINAL ORDER: (I) PROHIBITING UTILITIES FROM ALTERING, REFUSING OR DISCONTINUING SERVICES FOR PRE-PETITION INVOICES; (II) DETERMINING THAT THE UTILITIES ARE ADEQUATELY ASSURED OF POST-PETITION PAYMENT; AND (III) ESTABLISHING PROCEDURES FOR DETERMINING REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCE**

Upon consideration of the Debtors' Motion Pursuant to Section 366 of the Bankruptcy Code for Entry of an Order: (I) Prohibiting Utilities from Altering, Refusing or Discontinuing Services for Pre-Petition Invoices; (II) Determining that the Utilities are Adequately Assured of Post-Petition Payment; and (III) Establishing Procedures for Determining Requests (the "Motion") for a Final Order; the Court having reviewed the Motion; the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) venue of these chapter 11 cases in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409 and (d) notice of the Motion was sufficient under the circumstances; the Court determining that the legal and factual bases set forth in the Motion establish just cause for the relief granted by this Final Order; and it appearing that the relief

<sup>1</sup> The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The Debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

requested is in the best interest of the Debtors' estates, their creditors and other parties in interest;

IT IS HEREBY DETERMINED, ORDERED AND ADJOURNED THAT:

- A. The Motion is GRANTED and the Debtors' obligations to provide assurance of payment is hereby finalized as set forth in this Final Order.
- B. The Debtors are authorized to pay on a timely basis, in accordance with its pre-petition practices, all undisputed invoices with respect to post-petition utility services rendered by the Utility Companies.
- C. Subject to the procedures described in the Motion and repeated below, absent any further order of this Court, no Utility Company shall alter, refuse, or discontinue service to, or discriminate against the Debtors, solely on the basis of the commencement of these cases, pending the negotiation or determination of adequate assurance of payment pursuant to the Determination Procedures set forth in the Motion.
- D. The following procedures shall be used by the Court to determine, if necessary, whether the requested assurance of payment by a Utility Company is adequate:

(a) The Debtors shall provide each such Utility Company which is not currently holding a security deposit with a security deposit (the "Security Deposit") in an amount equal to the average one month obligation for utility service over the past twelve months prior to the Petition Date for such Utility Company. If the Utility Company currently holds a Security Deposit, the Debtors shall not be required to post an additional deposit.

(b) If a Utility Company asserts that the treatment provided pursuant to paragraph (a) above does not constitute satisfactory assurance of payment, then such Utility Company may request additional adequate assurance (an "Additional Assurance Request") pursuant to section 366(c)(3) of the Bankruptcy Code. Any such Additional Assurance Request must be sent so as to be received within 30 days after the entry of the interim order on this Motion (the "Utility Order"), attached hereto as Exhibit "B", to Massachusetts Elephant & Castle Group, Inc., 50 Congress Street, Suite 900, Boston, MA 02109-4002 (Attn: Keith A. Radford) with a copy to Eckert Seamans Cherin & Mellott, LLC, Two International Place, 16<sup>th</sup> Floor, Boston, MA 02110-2602 (Attn: John G.



Loughnane, Esquire) and shall specify (i) the amount and nature of assurance of payment that would be satisfactory to the Utility Company, (ii) the type of utility services that are provided, (iii) a list of any deposits or other security currently held by such Utility Company and held by such Utility Company immediately prior to the Petition Date on account of the Debtors, (iv) a description of any payment delinquency or irregularity by the Debtors for the post-petition period, and (v) detailed reason(s) why the Security Deposit does not constitute satisfactory assurance of payment.

(c) Without further order of the Court, the Debtors may enter into agreements granting to the Utility Companies any assurance of payment that the Debtors, in their sole discretion, determine is reasonable.

(d) If a Utility Company timely makes an Additional Assurance Request that the Debtors believe is unreasonable, then, upon the written request of the Utility Company and after good faith negotiations by the parties, the Debtors will (i) file a motion seeking to modify the Additional Assurance Request to an amount that the Debtors believe is adequate (a "Determination Motion"), and (ii) schedule the Determination Motion to be heard by the Court at the next regularly-scheduled omnibus hearing in this case that is at least 20 days after the filing of the Determination Motion (a "Determination Hearing"). The Debtors will not be required to file a Determination Motion with respect to any such Utility Company earlier than 40 days after the Petition Date.

(e) The Utility Companies shall be prohibited from altering, refusing, or discontinuing services, and shall be deemed to have adequate assurance of payment, pending negotiation and receipt of assurance of payment pursuant to the Determination Procedures or an order determining adequate assurance following a Determination Hearing.

(f) Any assurance of payment provided by the Debtors to a Utility Company in accordance with the Determination Procedures shall, to the extent not used by the Utility Company to satisfy a post-petition default, be returned to the Debtors within 30 days after the effective date of a chapter 11 plan in this case without further order of the Court.

(g) Any Utility Company that does not timely make a written Additional Assurance Request in accordance with the Determination Procedures shall be deemed to have adequate assurance of payment under section 366(b) of the Bankruptcy Code, without prejudice to such Utility Company's right to seek relief under section 366(c)(3)(A).

E. Any deposits, bonds, letters of credit or other assurances of payment that were in place prior to the Petition Date shall remain in place and shall continue to be held by those Utility Companies holding the same, except upon entry of further order of this Court.


F. Any Utility Company not listed on Exhibit A attached to the Motion, but subsequently identified by the Debtors, shall be served with copies of this Motion and the Interim Order and Final Order approving this Motion (together, the "Notice Package") and be afforded thirty (30) days from the date of such service to request adequate assurance, if any, from the Debtors. Such request must otherwise comply with the requirements set forth above or shall be deemed an invalid adequate assurance request.

G. Substantially contemporaneously with such service, the Debtors shall file with the Court a supplement to Exhibit A attached to the Motion adding the name of any Utility Company(ies) so served and not included on Exhibit A attached to the Motion, and this Final Order shall be deemed to apply to such Utility Company(ies) from the date of such service, subject to a later order of the Court on a motion for determination of adequate assurance, if any.

H. The Debtors shall serve a copy of the Motion and this Final Order upon each of the Utility Companies listed on Exhibit A attached to the Motion, at the addresses listed thereon, by first-class mail, postage prepaid, within five (5) business days of the entry of this Final Order.

I. Nothing in this Final Order shall be deemed to affect any burden of proof that either the Debtors or any Utility Company may have in a Determination Hearing or to confer upon the Utility Companies listed in Exhibit A to the Motion the status of a "utility" within the meaning of section 366 of the Bankruptcy Code.

Dated: June 30, 2011

  
Honorable United States Bankruptcy Judge  
Henry J. Coroff



Certified to be a true and correct copy of the original  
James M. Lynch, Clerk  
U.S. Bankruptcy Court  
District of Massachusetts

By: Alberto Barona  
Deputy Clerk

Date: 6/30/11

SCHEDULE G

IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

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In re:	:	Chapter 11
	:	
MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC., <i>et al.</i> , <sup>1</sup>	:	Case No. 11-16155 (HJB)
	:	
Debtors.	:	Jointly Administered

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**INTERIM ORDER GRANTING DEBTORS' MOTION FOR ENTRY OF ORDER  
GRANTING (i) AUTHORITY TO CONTINUE TO USE CERTAIN PRE-PETITION  
BANK ACCOUNTS, CHECK STOCK AND EXISTING BUSINESS  
FORMS, AND (ii) WAIVER OF COMPLIANCE WITH BANKRUPTCY CODE  
SECTION 345(b) INVESTMENT GUIDELINES**

Upon consideration of the Debtors' Motion for Entry of an Order Granting (i) Authority to Continue to Use Certain Pre-Petition Bank Accounts, Check Stock and Existing Business Forms, and (ii) Waiver of Compliance with Bankruptcy Code Section 345(b) Investment Guidelines (the "Motion"); the Court having reviewed the Motion; the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) venue of these chapter 11 cases in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409 and (d) notice of the Motion was sufficient under the circumstances; the Court determining that the legal and factual bases set forth in the Motion establish just cause for the relief granted by this Interim Order; and it appearing that the relief

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<sup>1</sup> The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The Debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

requested is in the best interest of the Debtors' estates, their creditors and other parties in interest;

IT IS HEREBY DETERMINED, ORDERED AND ADJOURNED THAT:

A. The Motion is GRANTED on an INTERIM basis.

B. A final hearing shall be held on the Motion on August 1, 2011 at 9:30 a.m. <sup>in Worcester, Massachusetts</sup> Objections to the Motion shall be due by 4:00 p.m. on July 27, 2011.

C. The Debtors are authorized to continue to (i) use the Accounts, (ii) deposit funds in and withdraw funds from such Accounts by all usual means, (iii) use their existing check stock and business forms without the necessity of opening new debtor-in-possession bank accounts and obtaining new business forms, and (iv) treat the Accounts as debtor-in-possession bank accounts for all purposes, provided only that once the existing stock is exhausted, the Debtors will imprint the legend "DIP" or "Debtor in Possession" and the case number for the Debtors' consolidated chapter 11 cases on any new stock of correspondence and business forms acquired other than for payroll.

D. The Debtors' banks are not authorized to process, honor or pay any checks drawn in payment of any pre-petition obligations unless authorized by a separate order of this Court.

E. All financial institutions and banks at which the Debtors' Accounts are maintained are prohibited from offsetting, freezing or otherwise impeding the use or transfer of, or access to, any funds deposited in such Accounts on or subsequent to the Petition Date on account of any claim such financial institution or bank may have against the Debtors that arose before the Petition Date.



**Certified to be a true and correct copy of the original James M. Lynch, Clerk U.S. Bankruptcy Court District of Massachusetts**

By: Alberto Barrios  
**Deputy Clerk**

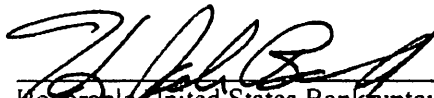
Date: 6/30/11

F. The Debtors are authorized to continue to make intercompany transfers in the ordinary course of business. The Debtors will record all post-petition intercompany transfers in their books and records. ~~Claims for intercompany transfers will be entitled to priority status under sections 507(a)(2) and 503(b) of the Bankruptcy Code.~~

G. The requirements of section 345 of the Bankruptcy Code are hereby waived for a period of 60 days as to the Accounts. To the extent that the Debtors seek a further waiver of such requirements, they will file a separate motion with the Court.

H. This Interim Order is without prejudice to the Debtors' right to (i) close any of the Accounts or (ii) to open or close new accounts at any banking institution. The Debtor shall promptly notify the Office of the United States Trustee and counsel for any statutory committee if an account is closed or an account is opened.

Dated: June 30, 2011

  
\_\_\_\_\_  
Honorable United States Bankruptcy Judge  
Henry J. Boroff

# SCHEDULE H

IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

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In re:	:	Chapter 11
	:	
MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC., <i>et al.</i> , <sup>1</sup>	:	Case No. 11-16155 ( )
	:	
Debtors.	:	Jointly Administered
	:	

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**ORDER (I) AUTHORIZING THE DEBTOR TO HONOR OR PAY CERTAIN PRE-PETITION OBLIGATIONS TO ITS CUSTOMERS IN THE ORDINARY COURSE OF BUSINESS AND (II) GRANTING CERTAIN RELATED RELIEF**

Upon consideration of the Debtors' Motion for Entry of an Order Authorizing the Debtors to Honor Certain Pre-Petition Obligations to Customers and to Otherwise Continue Customer Practices and Programs in the Ordinary Courts of Business (the "Motion"); the Court having reviewed the Motion; the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) venue of these chapter 11 cases in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409 and (d) notice of the Motion was sufficient under the circumstances; the Court determining that the legal and factual bases set forth in the Motion establish just cause for the relief granted by this Order; and it appearing that the relief requested is in the best interest of the Debtors' estates, their creditors and other parties in interest;


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<sup>1</sup> The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The Debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

IT IS HEREBY DETERMINED, ORDERED AND ADJOURNED THAT:

- A. The Motion is GRANTED in its entirety.
- B. The Debtors are authorized to continue, in their sole discretion, the Customer Programs in the ordinary course of business.
- C. The Debtors are authorized to continue, renew, modify, terminate or replace, in their discretion, their Customer Programs without further order of the Court.

Dated: June 30, 2011

  
\_\_\_\_\_  
Honorable United States Bankruptcy Judge  
Henry J. Boroff



Certified to be a true and correct copy of the original  
James M. Lynch, Clerk  
U.S. Bankruptcy Court  
District of Massachusetts

By: Alberta Berman  
Deputy Clerk

Date: 6/30/11

# SCHEDULE I

IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

_____	:	Chapter 11
In re:	:	
	:	Case No. 11-16155 ( )
MASSACHUSETTS ELEPHANT &	:	
CASTLE GROUP, INC., <i>et al.</i> , <sup>1</sup>	:	Jointly Administered
	:	
Debtors.	:	
_____	:	

**ORDER (I) AUTHORIZING THE DEBTORS TO PREPARE  
(A) A CONSOLIDATED LIST OF CREDITORS AND  
(B) A CONSOLIDATED LIST OF THE DEBTORS' THIRTY  
LARGEST UNSECURED CREDITORS AND (II) APPROVING THE  
FORM AND MANNER OF THE NOTICE OF COMMENCEMENT**

Upon consideration of the Debtors' Motion for an Order (I) Authorizing the Debtors to Prepare (A) a Consolidated List of Creditors and (B) a Consolidated List of the Debtors' Thirty Largest Unsecured Creditors and (II) Approving the Form and Manner of the Notice of Commencement (the "Motion"); the Court having reviewed the Motion; the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) venue of these chapter 11 cases in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409 and (d) notice of the Motion was sufficient under the circumstances; the Court determining that the legal and factual bases set forth in the Motion establish just cause for the relief granted by this Order; and it appearing that

<sup>1</sup> The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The Debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.




the relief requested is in the best interest of the Debtors' estates, their creditors and other parties in interest;

IT IS HEREBY DETERMINED, ORDERED AND ADJOURNED THAT:

- A. The Motion is GRANTED in its entirety.
- B. The Debtors are authorized to file a single consolidated matrix in lieu of separate creditor matrices for each of the Debtors.
- C. The Debtors are authorized to file a single consolidated list of their combined 30 largest unsecured creditors in lieu of Top 20 Lists for each Debtor.
- D. The Debtors are authorized to file one declaration under Bankruptcy Rule 1008 in connection with the consolidated list of creditors and the consolidated list of the combined 30 largest unsecured creditors.
- E. The form of notice of the commencement of these chapter 11 cases and the Section 341 Meeting, substantially in the form attached hereto as Exhibit A (the "Commencement Notice"), hereby is approved.
- F. The Claims Agent is authorized and directed to serve the Commencement Notice, with such revisions as agreed to by the Clerk, within five business days after the Debtors receive written notice of the time and place of the Section 341 Meeting. The Claims Agent will serve the Commencement Notice by regular mail, postage prepaid, on those entities entitled to receive the Commencement Notice pursuant to Bankruptcy Rule 2002. Service of the Commencement Notice in accordance with this paragraph is approved in all respects and is

deemed sufficient notice of the commencement of these chapter 11 cases and Section 341 Meeting under the Bankruptcy Code, the Bankruptcy Rules, and the MLBR.

Dated: June 30, 2011

  
Honorable United States Bankruptcy Judge  
Henry J. Boroff



Certified to be a true and correct copy of the original  
James M. Lynch, Clerk  
U.S. Bankruptcy Court  
District of Massachusetts

By: Albert P. Barone  
Deputy Clerk

Date: 6/30/11

# SCHEDULE J

Court File No. CV-11-9279-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF CERTAIN PROCEEDINGS  
TAKEN IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS EASTERN DIVISION  
WITH RESPECT TO THE CHAPTER 11 DEBTORS (AS DEFINED BELOW)**

**APPLICATION OF  
MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC.  
UNDER SECTION 46 OF THE  
COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED**

## **NOTICE OF RECOGNITION ORDERS**

**PLEASE BE ADVISED** that this Notice is being published pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "**Canadian Court**"), granted on July 4, 2011.

**PLEASE TAKE NOTICE** that, on June 28, 2011, Massachusetts Elephant & Castle Group, Inc., (the "**Applicant**"), Repechage Investments Limited, Elephant & Castle Group Inc., The Elephant and Castle Canada Inc., Elephant & Castle, Inc. (a Texas Corporation), Elephant & Castle Inc. (a Washington Corporation), Elephant & Castle International, Inc., Elephant & Castle of Pennsylvania, Inc., E & C Pub, Inc., Elephant & Castle East Huron, LLC, Elephant & Castle Illinois Corporation, E&C Eye Street, LLC, E & C Capital, LLC, Elephant & Castle (Chicago) Corporation (collectively, the "**Chapter 11 Debtors**") each filed voluntary petitions under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Massachusetts Eastern Division (collectively, the "**Chapter 11 Proceedings**"). In connection with the Chapter 11 Proceedings, the Chapter 11 Debtors have appointed the Applicant as their foreign representative (the "**Foreign Representative**").

**PLEASE TAKE FURTHER NOTICE** that an Initial Recognition Order and a Supplemental Order (together, the "**Recognition Orders**") have been issued by the Canadian Court under Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, that, among other things: (i) recognize the Chapter 11 Proceedings as a foreign main proceeding; (ii) recognize the Applicant as the Foreign Representative of

the Chapter 11 Debtors; (iii) recognize certain orders granted by the United States Bankruptcy Court in the Chapter 11 Proceedings; (iv) stay all proceedings against the Chapter 11 Debtors and their directors and officers; and (v) appoint BDO Canada Limited as the Information Officer with respect to the Chapter 11 Proceeding.

**PLEASE TAKE FURTHER NOTICE** that persons who wish to receive a copy of the Recognition Orders or obtain any further information in respect thereof or in respect of the matters set forth in this Notice, should contact the Information Officer at the address below:

**BDO CANADA LIMITED**

123 Front Street West  
Suite 1200  
Toronto, Ontario  
M5J 2M2  
Attention: Ken Pearl

Phone: (416) 369-3063  
Fax: (416) 865-0904  
Email: [kpearl@bdo.ca](mailto:kpearl@bdo.ca)

**PLEASE FINALLY NOTE** that the Recognition Orders, and any other orders that may be granted by the Canadian Court, can be viewed at [www.bdo.ca/elephantcastle/](http://www.bdo.ca/elephantcastle/).

DATED AT TORONTO, ONTARIO this     day of July, 2011.

**BDO CANADA LIMITED**

(solely in its capacity as Information Officer)

Court File No. CV-11-9279-00CL

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT FOR  
THE DISTRICT OF MASSACHUSETTS EASTERN DIVISION WITH RESPECT TO THE COMPANIES LISTED ON  
SCHEDULE "A" HERETO (THE "CHAPTER 11 DEBTORS")**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**SUPPLEMENTAL ORDER**

**HEENAN BLAIKIE LLP**

Lawyers

Suite 2900, 333 Bay Street

Bay Adelaide Centre

Toronto, ON M5H 2T4

**Kenneth D. Kraft LSUC# 31919P**

**John J. Salmas LSUC #42336B**

Tel: 416.643.6822 / 416.360.3570

Fax: 416.360.8425

Lawyers for Massachusetts Elephant & Castle  
Group, Inc.

Exhibit E

To the First Report of the Information Officer, BDO Canada Limited



Tel: 416 865 0210  
Fax: 416 865 0904  
www.bdo.ca

BDO Canada Limited  
123 Front Street W, Suite 1200  
Toronto ON M5J 2M2 Canada

Court File No. CV-11-9279-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF CERTAIN PROCEEDINGS  
TAKEN IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS EASTERN DIVISION  
WITH RESPECT TO THE CHAPTER 11 DEBTORS (AS DEFINED BELOW)**

**APPLICATION OF  
MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC.  
UNDER SECTION 46 OF THE  
COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED**

**NOTICE OF RECOGNITION ORDERS**

**PLEASE BE ADVISED** that this Notice is being published pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "**Canadian Court**"), granted on July 4, 2011.

**PLEASE TAKE NOTICE** that, on June 28, 2011, Massachusetts Elephant & Castle Group, Inc., (the "**Applicant**"), Repechage Investments Limited, Elephant & Castle Group Inc., The Elephant and Castle Canada Inc., Elephant & Castle, Inc. (a Texas Corporation), Elephant & Castle Inc. (a Washington Corporation), Elephant & Castle International, Inc., Elephant & Castle of Pennsylvania, Inc., E & C Pub, Inc., Elephant & Castle East Huron, LLC, Elephant & Castle Illinois Corporation, E&C Eye Street, LLC, E & C Capital, LLC, Elephant & Castle (Chicago) Corporation (collectively, the "**Chapter 11 Debtors**") each filed voluntary petitions under *Chapter 11 of Title 11 of the United States Code* in the United States Bankruptcy Court for the District of Massachusetts Eastern Division (collectively, the "**Chapter 11 Proceedings**"). In connection with the Chapter 11 Proceedings, the Chapter 11 Debtors have appointed the Applicant as their foreign representative (the "**Foreign Representative**").

**PLEASE TAKE FURTHER NOTICE** that an Initial Recognition Order and a Supplemental Order (together, the "**Recognition Orders**") have been issued by the Canadian Court under Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, that, among other things: (i) recognize the Chapter 11 Proceedings as a



“foreign main proceeding”; (ii) recognize the Applicant as the Foreign Representative of the Chapter 11 Debtors; (iii) recognize certain orders granted by the United States Bankruptcy Court in the Chapter 11 Proceedings; (iv) stay all proceedings against the Chapter 11 Debtors and their directors and officers; and (v) appoint BDO Canada Limited as the Information Officer with respect to the Chapter 11 Proceedings.

**PLEASE TAKE FURTHER NOTICE** that persons who wish to receive a copy of the Recognition Orders or obtain any further information in respect thereof or in respect of the matters set forth in this Notice, should contact the Information Officer at the address below:

**BDO CANADA LIMITED**  
123 Front Street West, Suite 1200  
Toronto, Ontario M5J 2M2  
Attention: Ken Pearl

Phone: (416) 369-3063  
Fax: (416) 865-0904  
Email: [kpearl@bdo.ca](mailto:kpearl@bdo.ca)

**PLEASE FINALLY NOTE** that the Recognition Orders, and any other orders that may be granted by the Canadian Court, can be viewed at [www.bdo.ca/elephantcastle/](http://www.bdo.ca/elephantcastle/)

DATED AT TORONTO, ONTARIO this 4<sup>th</sup> day of July, 2011.

**BDO CANADA LIMITED**  
(solely in its capacity as Information Officer)



## NOTICE

For ad info: T: 416.386.2648  
1.800.668.5617 | F: 416.386.2663

Court File No. CV-11-9279-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN  
THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT  
OF MASSACHUSETTS EASTERN DIVISION WITH RESPECT TO  
THE CHAPTER 11 DEBTORS (AS DEFINED BELOW)

APPLICATION OF MASSACHUSETTS ELEPHANT & CASTLE  
GROUP, INC. UNDER SECTION 46 OF THE COMPANIES'  
CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

### NOTICE OF RECOGNITION ORDERS

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**PLEASE TAKE FURTHER NOTICE** that an Initial Recognition Order and a Supplemental Order (together, the "Recognition Orders") have been issued by the Canadian Court under Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, that, among other things: (i) recognize the Chapter 11 Proceedings as a "foreign main proceeding"; (ii) recognize the Applicant as the Foreign Representative of the Chapter 11 Debtors; (iii) recognize certain orders granted by the United States Bankruptcy Court in the Chapter 11 Proceedings; (iv) stay all proceedings against the Chapter 11 Debtors and their directors and officers; and (v) appoint BDO Canada Limited as the Information Officer with respect to the Chapter 11 Proceedings.

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#### BDO CANADA LIMITED

177 Front Street West, Suite 1200  
Toronto, Ontario M5J 2M2  
Attention: Ken Pearl

Phone: (416) 369-3063  
Fax: (416) 865-0904  
Email: [kpearl@bdo.ca](mailto:kpearl@bdo.ca)

**PLEASE FINALLY NOTE** that the Recognition Orders, and any other orders that may be granted by the Canadian Court, can be viewed at [www.bdo.ca/elephantcastle](http://www.bdo.ca/elephantcastle)

DATED AT TORONTO, ONTARIO this 4th day of July, 2011



BDO CANADA LIMITED  
(solely in its capacity as Information Officer)

Exhibit F

To the First Report of the Information Officer, BDO Canada Limited



Office of the Superintendent  
of Bankruptcy Canada

An Agency of  
Industry Canada

Bureau du surintendant  
des faillites Canada

Un organisme  
d'Industrie Canada

District of **Ontario**  
File Number: **0000069-2011-ON**

In the Matter of the *Companies' Creditors Arrangement Act* proceedings of:

**Massachusetts Elephant & Castle Group, Inc. et al**

Debtor

**BDO Canada Limited**

Information Officer

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Date of the Interim Initial Order: June 29, 2011  
Documents Filing Date: July 18, 2011

---

**ACKNOWLEDGEMENT OF FILING – Initial Application**

This is to acknowledge receipt of the initial application filed in respect of the aforementioned debtor.

Acknowledgement issued on: July 19, 2011.

---



Office of the Superintendent  
of Bankruptcy Canada

An Agency of  
Industry Canada

Bureau du surintendant  
des faillites Canada

Un organisme  
d'Industrie Canada

District of **Ontario**  
File Number: **0000069-2011-ON**

In the Matter of the *Companies' Creditors Arrangement Act* proceedings of:

**Massachusetts Elephant & Castle Group, Inc. et al**

Debtor

**BDO Canada Limited**

Information Officer

---

Date of the Interim Initial Order: June 29, 2011  
Document Filing Date: July 13, 2011

---

**ACKNOWLEDGEMENT OF FILING - FORM 2**

This is to acknowledge receipt of the prescribed Form 2 of the schedule, entitled "Debtor Company Information Summary (Commencement of Proceedings)", in respect of the aforementioned debtor, pursuant to the provisions of paragraph 23(1)(f) of the *Companies' Creditors Arrangement Act*.

The aforementioned information officer is requested:

- to file with the Superintendent of Bankruptcy, the prescribed Form 3 of the schedule, entitled "Debtor Company Information Summary (Following the Order Discharging the Information Officer)", within five business days after the day on which the court makes an order discharging the information officer.

Acknowledgement issued on:

July 22, 2011



Office of the Superintendent  
of Bankruptcy Canada

An Agency of  
Industry Canada

Bureau du surintendant  
des faillites Canada

Un organisme  
d'Industrie Canada

District of **Ontario**  
File Number: **0000069-2011-ON**

In the Matter of the *Companies' Creditors Arrangement Act* proceedings of:

**Massachusetts Elephant & Castle Group, Inc. et al**

Debtor

**BDO Canada Limited**

Information Officer

---

Date of the Interim Initial Order: June 29, 2011  
Documents Filing Date: July 18, 2011

---

**ACKNOWLEDGEMENT OF FILING – Initial Application**

This is to acknowledge receipt of the initial application filed in respect of the aforementioned debtor.

Acknowledgement issued on: July 19, 2011.

---

Exhibit G

To the First Report of the Information Officer, BDO Canada Limited

UNITED STATES BANKRUPTCY COURT District of Massachusetts

**Notice of  
Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines**

A chapter 11 bankruptcy case concerning the debtor(s) listed below was filed on 6/28/11.

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.

**NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.**

**See Reverse Side For Important Explanations**

Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):

Massachusetts Elephant & Castle Group, Inc.  
c/o 50 Congress Street  
Suite 900  
Boston, MA 02109

Case Number:  
11-16155

Social Security / Individual Taxpayer ID / Employer Tax ID / Other  
nos:

Attorney for Debtor(s) (name and address):

John G. Loughnane  
Eckert Seamans  
Two International Place  
16th Floor  
Boston, MA 02110-2602  
Telephone number: 617-342-6885

**Meeting of Creditors**

Date: August 3, 2011

Time: 01:00 PM

Location: Suite 1055, U.S. Trustee's Office, John W. McCormack Federal Building, 5 Post Office Square, 10th Floor, Boston, MA 02109-3934

**Deadline to File a Proof of Claim**

Proof of claim must be *received* by the bankruptcy clerk's office by the following deadline:

Notice of deadline will be sent at a later time.

**Creditor with a Foreign Address:**

A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

**Deadline to File a Complaint to Determine Dischargeability of Certain Debts:**

**Creditors May Not Take Certain Actions:**

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

**Address of the Bankruptcy Clerk's Office:**

U. S. Bankruptcy Court  
J.W. McCormack Post Office & Court House  
5 Post Office Square, Suite 1150  
Boston, MA 02109-3945  
Telephone number: 617-748-5300

**For the Court:**

Clerk of the Bankruptcy Court:  
James M. Lynch

Hours Open: Monday - Friday 8:30 AM - 5:00 PM

Date: 7/6/11

**EXPLANATIONS**

B9F (Official Form 9F) (12/08)

Filing of Chapter 11 Bankruptcy Case	A bankruptcy case under Chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is <i>not</i> listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you filed a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all <i>or</i> if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim or you might not be paid any money on your claim and may be unable to vote on the plan. The court has not yet set a deadline to file a Proof of Claim. If a deadline is set, you will be sent another notice. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Creditor with a Foreign Address:</b> The deadlines for filing claims will be set in a later court order and will apply to all creditors unless the order provides otherwise. If notice of the order setting the deadline is sent to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
Discharge of Debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See Bankruptcy Code § 1141(d). A discharge means that you may never try to collect the debt from the debtor, except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 1141(d)(6)(A), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that Deadline.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.
Refer to Other Side for Important Deadlines and Notices	



**UNITED STATES BANKRUPTCY COURT, DISTRICT OF MASSACHUSETTS EASTERN DIVISION**

**In re:**  
**Massachusetts Elephant & Castle Group, Inc., et al.,**  
**Debtors.**

**Chapter 11**  
**Case No. 11-16155 (HJB)**  
**Jointly Administered**

**NOTICE OF CHAPTER 11 BANKRUPTCY CASE, MEETING OF CREDITORS, & DEADLINES**

A chapter 11 bankruptcy case concerning each of the debtors listed below was filed on June 28, 2011. You may be a creditor of the Debtors. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. **You are not being sued or forced into bankruptcy.** All documents filed with the Bankruptcy Court, including lists of the Debtors' assets and liabilities, will be available for inspection at the Office of the Clerk of the Bankruptcy Court or by accessing the Bankruptcy Court's website, [www.mab.uscourts.gov](http://www.mab.uscourts.gov) as well as (A) by written request to the Debtors' noticing and claims agent, at Massachusetts Elephant & Castle Group, Inc., c/o Epiq Bankruptcy Solutions, LLC, 757 Third Avenue, Third Floor, New York, NY 10017 or (B) by accessing the case website at <http://dm.epiq11.com/massele>. Note that you need a PACER password and login to access documents on the Bankruptcy Court's website (a PACER password is obtained by accessing the PACER website, <http://pacer.psc.uscourts.gov>). NOTE: The staff of the Bankruptcy Court Clerk's Office, the United States Trustee, and the Debtors' notice and claims agent cannot give legal advice.

Debtor	Case Number	Tax Id number (last 4 digits)
Massachusetts Elephant & Castle Group, Inc.	No. 11-16155(HJB)	5090
E & C Capital, LLC	No. 11-16157(HJB)	4895
E & C Pub, Inc.	No. 11-16158(HJB)	4001
Elephant & Castle (Chicago) Corporation	No. 11-16160(HJB)	5254
Elephant & Castle East Huron, LLC	No. 11-16161(HJB)	8642
Elephant & Castle Illinois Corporation	No. 11-16162(HJB)	2811
Elephant & Castle Inc.	No. 11-16164(HJB)	3988
Elephant & Castle International, Inc.	No. 11-16166(HJB)	5294
Elephant and Castle of Pennsylvania, Inc.	No. 11-16167(HJB)	9152
Elephant & Castle Pratt Street, LLC	No. 11-16168(HJB)	7898
Elephant & Castle, Inc.	No. 11-16169(HJB)	No U.S. Tax ID number
E & C Eye Street, LLC	No. 11-16170(HJB)	1803
Elephant & Castle Group, Inc.	No. 11-16171(HJB)	No U.S. Tax ID number
Repechage Investments Limited	No. 11-16173(HJB)	No U.S. Tax ID number
The Elephant and Castle Canada Inc.	No. 11-16174(HJB)	No U.S. Tax ID number

All other names used by the Debtor(s) in the last 8 years (include trade names):

Attorney for Debtor(s) (name and address):  
**John G. Loughnane (BBO No. 557599)**  
**Eckert, Seamans, Cherin & Mellott, LLC**  
**Two International Place, 16<sup>th</sup> Floor**  
**Boston, MA 02110-2602**  
**Tel: (617) 342-6800**  
**Fax: (617) 342-6899**  
**Email: [jloughnane@eckertseamans.com](mailto:jloughnane@eckertseamans.com)**

**Meeting of Creditors**

**Date: August 3, 2011 Time: 1:00 P.M. (EST) Location: Suite 1055, U.S. Trustee's Office, John W. McCormack Federal Building, 5 Post Office Square, 10th Floor, Boston, MA 02109-3934**

**Deadline to File a Proof of Claim**  
 Notice of deadline will be sent at a later time.

**Deadline to File a Complaint to Determine Dischargeability of Certain Debts:**  
 Notice of deadline will be sent at a later time.

**Creditors May Not Take Certain Actions:**

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the Debtors and the Debtors' property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the Debtors can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Common examples of prohibited actions by creditors are contacting the Debtors to demand repayment, taking action against the Debtors to collect money owed to creditors or to take property of the Debtors and starting or continuing collection actions, foreclosure actions or repossessions. Consult a lawyer to determine your rights in this case.

**Address of the Bankruptcy Clerk's Office:**  
 Clerk of the Bankruptcy Court  
 John W. McCormack Post Office and Court House  
 5 Post Office Square, Suite 1150  
 Boston, MA 02190-3945

**For the Court:**  
 United States Bankruptcy Court for the District of Massachusetts

Telephone number: (617) 748-5300

Hours Open: 8:30 a.m. to 5:00 p.m.

Date: July 7, 2011

<p><b>Filing of Chapter 11 Bankruptcy Case</b></p>	<p>A bankruptcy case under chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the Debtor(s) listed above, and an order for relief has been entered. Chapter 11 allows the Debtors to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the Debtors will remain in possession of the Debtors' property and may continue to operate any business.</p>
<p><b>Legal Advice</b></p>	<p>The staff of the Bankruptcy Clerk's Office, the Office of the United States Trustee and the Debtors' notice and claims agent cannot give legal advice. Consult a lawyer to determine your rights in this case.</p>
<p><b>Creditors Generally May Not Take Certain Actions</b></p>	<p>Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the Debtors by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the Debtors; repossessing the Debtors' property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the Debtors can request the court to extend or impose a stay.</p>
<p><b>Meeting of Creditors</b></p>	<p>A meeting of creditors is scheduled for the date, time, and location listed above. <i>The Debtors' representative must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.</p>
<p><b>Notice</b></p>	<p>You will not receive notice of all documents filed in these chapter 11 cases. However, parties can obtain a copy of all documents filed electronically with the Court in these cases, including lists of the Debtors' property and debts, by (i) contacting the Clerk of the Court at John W. McCormack Post Office and Court House, 5 Post Office Square, Suite 1150, Boston, MA 02190-3945; (ii) accessing the Court's website at <a href="http://www.mab.uscourts.gov">www.mab.uscourts.gov</a> (note that a PACER <a href="http://www.pacer.psc.uscourts.gov">http://www.pacer.psc.uscourts.gov</a>) password and login are needed to access documents on the Court's website); or (iii) accessing the Debtors' notice and claims agent's website at <a href="http://dm.epiq11.com/massele">http://dm.epiq11.com/massele</a></p>
<p><b>Claims</b></p>	<p>A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office or by contacting the Debtors' notice and claims agent, Epiq Bankruptcy Solutions, LLC, at 757 Third Avenue, Third Floor, New York, N.Y. 10017 or <a href="http://dm.epiq11.com/massele">http://dm.epiq11.com/massele</a>. You may look at the schedules at the bankruptcy clerk's office. If your claim is scheduled and is <i>not</i> listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you filed a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all <i>or</i> if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim or you might not be paid any money on your claim and may be unable to vote on a plan. The court has not yet set a deadline to file a Proof of Claim. If a deadline is set, you will be sent another notice. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial.</p>
<p><b>Discharge of Debts</b></p>	<p>Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. <i>See</i> Bankruptcy Code § 1141 (d). A discharge means that you may never try to collect the debt from the debtors, except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 1141 (d) (6) (A), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that deadline.</p>
<p><b>Bankruptcy Clerk's Office</b></p>	<p>Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.</p>
<p><b>Creditor with a Foreign Address</b></p>	<p>Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.</p>

Exhibit H

To the First Report of the Information Officer, BDO Canada Limited

In re: )  
)  
ELEPHANT & CASTLE GROUP, INC. )  
ET AL., ) Chapter 11  
) Case No. 11-16155-HJB  
Debtors. ) (Jointly Administered)

**APPOINTMENT OF AN OFFICIAL COMMITTEE  
OF UNSECURED CREDITORS**

Pursuant to 28 U.S.C. § 586(a)(3), 11 U.S.C. § 1102 and Fed. R. Bankr. P. 2007, the United States Trustee appoints the following holders of unsecured claims to the Official Committee of Unsecured Creditors in the above-referenced case:

1. GFS Canada Company, Inc.  
Attn: Aaron Mockridge  
420 50<sup>th</sup> Street SW  
Grand Rapids, MI 49501  
Tel: (800) 905-3017  
Fax: (616) 717-9183  
E-mail: [aaron.mockridge@gfs.com](mailto:aaron.mockridge@gfs.com)  
  
Repr. By  
Joe Sgroi, Esq.  
Hanigman, Miller, Schwartz & Cohn  
660 Woodward Ave.  
Detroit, MI 48226  
Tel: (313) 465-7000  
Fax: (313) 465-8000  
Email: [jsgroi@hanigman.com](mailto:jsgroi@hanigman.com)
2. U.S. Foodservice, Inc.<sup>1</sup>  
Attn: Dorothy Capers, Esq.  
9399 W. Higgins Rd., Suite 600  
Rosemont, IL 60018  
Tel: (847) 720-2376  
Fax: (480) 293-2688  
E-mail: [Dorothy.capers@usfood.com](mailto:Dorothy.capers@usfood.com)

---

<sup>1</sup> Interim Chairperson

Repr. By

Jeffrey Hampton, Esq.  
Saul Ewing LLP  
1500 Market Street, 28<sup>th</sup> Floor  
Philadelphia, PA 19102  
Tel: (215) 972-7118  
Fax: (215) 982-1848  
Email: [jhampton@saul.com](mailto:jhampton@saul.com)

3. Club Quarters  
Attn: Charles Kacherski, Esq.  
49 West 45<sup>th</sup> Street, 8<sup>th</sup> Floor  
New York, NY 10036  
Tel: (646) 223-3223  
Fax: (212) 944-9374  
E-mail: [ckacherski@masertworksdev.com](mailto:ckacherski@masertworksdev.com)

Respectfully submitted,

WILLIAM K. HARRINGTON,

United States Trustee

By: /s/ Jennifer L. Hertz  
Jennifer L. Hertz BBO#645081  
United States Department of Justice  
John W. McCormack Post Office and Courthouse  
5 Post Office Square, Suite 1000  
Boston, MA 02109  
PHONE: (617) 788-0412  
FAX: (617) 565-6368  
[Jennifer.L.Hertz@usdoj.gov](mailto:Jennifer.L.Hertz@usdoj.gov)

Dated: July 12, 2011

Exhibit I

To the First Report of the Information Officer, BDO Canada Limited

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

In re: : Chapter 11  
: :  
Massachusetts Elephant & Castle :  
Group, Inc., et al.<sup>1</sup> : Case No. 11-16155 (HJB)  
: :  
Debtors : Jointly Administered

**ORDER ESTABLISHING BAR DATE FOR FILING PROOFS OF CLAIM  
AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF**

Upon the motion (the “Motion”) of Massachusetts Elephant & Castle Group, Inc. (collectively the “Debtors”), as debtors and debtors in possession in the above-captioned chapter 11 case, for an order establishing a bar date for filing proofs of claim and approving form and manner of notice thereof; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors’ estates, creditors, and other parties in interest; and it appearing that proper and adequate notice has been given, no objection having been filed, and good cause having been shown, it is hereby

ORDERED that:

1. The Bar Date of **December 15, 2011** is set for all persons and entities (each as defined in Sections 101(41) and 101(15), respectively, of the Bankruptcy Code) with Claims against the Debtors’ estate (whether secured, priority or unsecured) which arose prior to the Petition Date.

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<sup>1</sup> The debtors in these cases, along with the last four digits of the federal tax identification number for each of the debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The debtors’ corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

2. The Bar Date of **January 5, 2012** is set for all governmental units (each as defined in Section 101(27) of the Bankruptcy Code) with Claims against the Debtors' estate (whether secured, priority or unsecured) which arose prior to the Petition Date.

3. These deadlines include the following:

- (a) Any person, entity, or governmental unit whose Claim is listed as disputed, contingent, or unliquidated and that desires to participate in this chapter 11 case or share in any distribution in this chapter 11 case;
- (b) Any person, entity, or governmental unit whose Claim is improperly classified in the Schedules or is listed in an incorrect amount and that desires to have its Claim allowed in a classification or amount other than set forth in the Schedules; and
- (c) Any person, entity, or governmental unit whose Claim against the Debtors' estate is not listed in the Debtors' Schedules.

4. For any proof of claim form to be validly and properly filed, a signed original of the completed proof of claim form, together with accompanying documentation, must be filed through the Courts' CM/ECF system or delivered to the Court at the following address, so as to be received no later than **4:00 p.m., Eastern Standard Time, on the respective Bar Date or Government Bar Date:**

**If by Hand Delivery or Overnight mail:**

Epiq Bankruptcy Solutions, LLC  
Attn: Massachusetts Elephant & Castle Claims Processing  
757 Third Avenue, 3rd Floor  
New York, NY 10017

**If by US Mail:**

Massachusetts Elephant & Castle Claims Processing  
P.O. Box 5268  
FDR Station  
New York, NY 10150-5268

5. Claimants shall submit proofs of claim in person, by courier service, by hand delivery, by mail, or through the Courts' CM/ECF system. Facsimile or email submissions will



not be accepted. Proofs of claim shall be deemed filed only when actually received and time stamped by the Clerk of the United States Bankruptcy Court at the above address or by the Court's electronic system.

6. Claimants shall file one proof of claim against each Debtor against which they have a Claim. Unless otherwise noted on the Proof of Claim Form, all Claims shall be presumed to be in U.S. Dollars.

7. Proofs of claim are not required, at this time, to be filed by any person, entity, or governmental unit asserting a Claim of any of the types set forth below:

- (a) Any person, entity, or governmental unit (a) that agrees with the nature, classification, and amount of such Claim set forth in the Schedules and (b) whose Claim against the estate is not listed as disputed, contingent, or unliquidated in the Debtors' Schedules;
- (b) Any person, entity, or governmental unit that has already properly filed a proof of claim against the Debtor;
- (c) Any person, entity, or governmental unit whose Claim against the estate previously has been allowed by, or paid pursuant to, an order of this Court; and
- (d) Any person, entity, or governmental unit asserting a Claim allowable under Sections 503(b) and 507(a)(1) of the Bankruptcy Code as an administrative expense of the Debtor's chapter 11 case.

8. Notwithstanding anything in this Order to the contrary, if the Debtors amend their schedules of assets and liabilities or statement of financial affairs (the Schedules ) to reduce the undisputed, noncontingent, and liquidated amounts or to change the nature or classification of a Claim against the Debtors reflected therein, then the affected claimant shall have until the later of (a) the Bar Date (or Government Bar Date if applicable) or (b) 30 days after a claimant is served with notice that the Debtors have amended the Schedules reducing, deleting, or changing the status of a scheduled claim of such claimant, as the bar date for filing a proof of claim in respect

of such amended scheduled claim or to amend any previously filed proof of claim in respect of such amended scheduled Claim. Notwithstanding the foregoing, nothing set forth herein will preclude the Debtors from objecting to any Claim, whether scheduled or filed, on any grounds.

7. Notwithstanding anything in this Order to the contrary, with respect to any Claim arising from the recovery of property under Sections 522, 550, or 553 of the Bankruptcy Code that is approved by an order of the Court, unless otherwise provided for in such order, the bar date for filing any such Claim shall be the later of (a) the Bar Date or (b) 30 days after the effective date of any order avoiding such transfer.

8. Notwithstanding anything in this Order to the contrary, with respect to any Claim that arose after June 28, 2011 for a tax entitled to priority under Section 507(a)(8) of the Bankruptcy Code that is approved by an order of the Court, unless otherwise stated in the order, the bar date for filing any such Claim shall be the later of (a) the Bar Date (or Government Bar Date if applicable) or (b) 30 days after the date such type of claim arises.

9. Any person, entity, or governmental unit that is required to file a proof of claim in this chapter 11 case but that fails to do so in a timely manner shall be forever barred, estopped, and enjoined from: (a) asserting any Claim against the Debtors that such person, entity, or governmental unit has a claim that (i) is in an amount that exceeds the amount, if any, that is set forth in the Schedules, or (ii) is of a different nature or in a different classification (any such Claim referred to as an *Unscheduled Claim*); and (b) voting upon, or receiving distributions under, any plan of liquidation in this chapter 11 case with respect to such *Unscheduled Claim*.

10. Notwithstanding anything in this Order to the contrary, the Debtor shall retain the right to: (a) dispute, or assert offsets or defenses against, any filed Claim or any Claim listed or reflected in the Schedules as to nature, amount, liability, classification, or otherwise; or (b)

subsequently designate any Claim as disputed, contingent, or unliquidated.

11. The form of Bar Date Notice substantially in the form attached to the Motion as **Exhibit B**, and the manner of providing notice of the Bar Date, or where applicable the Alternative Bar Dates, proposed in the Motion are approved.

12. The Debtors shall serve a copy of the Bar Date Notice upon all creditors listed in the Schedules, and all parties who filed or entered their appearance in this case, within five (5) days after the entry of this Order. Service of the Bar Date Notice shall constitute effective notice of the Bar Date, or where applicable the Government Bar Date or Alternative Bar Dates. The Debtor shall promptly file a certificate of service with this Court.

Dated: \_\_\_\_\_, 2011



11/03/2011

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Honorable Henry J. Boroff  
United States Bankruptcy Judge

Exhibit J

To the First Report of the Information Officer, BDO Canada Limited

IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS

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In re:	:	Chapter 11
	:	
	:	Case No. 11-16155 (HJB)
MASSACHUSETTS ELEPHANT &	:	
CASTLE GROUP, INC., <i>et al.</i> , <sup>1</sup>	:	Jointly Administered
	:	
Debtors.	:	

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**DEBTORS' MOTION FOR AN ORDER (A) AUTHORIZING AND APPROVING BID PROCEDURES; (B) SCHEDULING A HEARING TO CONSIDER THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS; (C) PRESCRIBING THE MANNER AND NOTICE OF THE SALE HEARING; (D) AUTHORIZING THE SALE OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS; (E) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS; AND (F) GRANTING OTHER RELATED RELIEF**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE

Massachusetts Elephant & Castle Group, Inc., on behalf of itself and affiliated debtors and debtors in possession (collectively, the "Debtors"), hereby submits this motion for an order (a) authorizing and approving bidding procedures (the "Bid Procedures"); (b) scheduling a hearing (the "Sale Hearing") to consider the sale (the "Sale") of substantially all of the Debtors' assets<sup>2</sup> (the "Assets") to Original Joe's Acquisition Corporation (together with any designees, the "Stalking Horse Bidder") or another bidder submitting a higher or better offer at a proposed auction (the "Auction"); (c) prescribing the manner and notice of the Sale Hearing; (d)

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<sup>1</sup> The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The Debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

<sup>2</sup> The assets to be sold consist of assets of each Debtor other than Repechage Investments Limited.

authorizing the sale of the Debtors' assets pursuant to that certain Asset Purchase Agreement between the Debtors and the Stalking Horse Bidder dated November 18, 2011 (the "APA") attached hereto as Exhibit A free and clear of all Liens (as that term is defined in the APA); (e) authorizing the assumption and assignment of Designated Contracts (as that term is defined in the APA); and (f) granting other related relief (the "Motion"). In support of the Motion, the Debtors respectfully represent as follows:

### **Jurisdiction and Venue**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicates for the relief requested herein are sections 105(a), 363 and 365 of the United States Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code"), Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rules 6004-1 and 6006-1 of the Local Rules for the United States Bankruptcy Court for the District of Massachusetts ("MLRB").

### **Background**

2. On June 28, 2011 (the "Petition Date"), each of the Debtors filed a voluntary petition with this Court for relief under chapter 11 of the Bankruptcy Code. The Debtors' cases are being jointly administered.

3. The Debtors continue to operate their business and to manage their property as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. The Official Committee of Unsecured Creditors was appointed on July 12, 2011. No trustee or examiner has been requested or appointed in these cases.

5. The Debtors also commenced an ancillary proceeding (“Ancillary Proceeding”) under Part IV of the Companies’ Creditors Arrangement Act in the Ontario Superior Court of Justice (Commercial List). Debtor Massachusetts Elephant & Castle Group, Inc., the foreign representative for the Debtors in the Ancillary Proceeding, has sought and obtained recognition of the chapter 11 cases and certain orders entered in the cases. BDO Canada Limited is the court appointed Information Officer in the Ancillary Proceeding.

6. Debtor, Elephant and Castle Group, Inc. (“E&C” or the “Company”) operates and franchises authentic, full service British style restaurant pubs in the United States and Canada. Specifically, the Company, through its affiliate Debtors, has established nine debtor-owned locations and one franchised location in the United States<sup>3</sup>, in addition to nine company-owned locations and one franchised location in Canada.<sup>4</sup> The Debtors’ headquarters and corporate offices are located in Boston, Massachusetts.

7. Additional information regarding the Debtors’ business, capital structure and the circumstances leading up to these chapter 11 cases is contained in the Declaration of Keith Radford in Support of First Day Motions and Declaration of David Dobbin in Support of First Day Motions (together, the “Declarations”) filed on June 28, 2011.

**The Debtors’ Sales and Marketing Efforts**

8. Prior to the bankruptcy cases, the Debtors retained Bellmark Partners LLC (“Bellmark”) as their investment bankers to assist the Debtors in their efforts to locate a new investor and/or market and sell substantially all of the Debtors’ assets as a going concern. Bellmark worked closely with the Debtors’ senior management and counsel to, among other

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<sup>3</sup> One Debtor (Elephant & Castle (Chicago) Corporation), has a subsidiary that has a joint venture interest in an entity that operates the Elephant & Castle Restaurant in San Francisco. Neither that subsidiary nor the joint venture are debtors.

<sup>4</sup> Since the Petition Date, the franchised location in Canada has ceased operating.

things, (i) model the Debtors' restaurant rationalization and strategic turnaround plan, (ii) prepare historical and projected financials that would reflect the impact of management's strategic plan, (iii) prepare a confidential information memorandum (the "CIM") that would describe the strategic plan, historical operations and pro forma projections in more detail, and (iv) identify a list of financial investors who Bellmark, management and counsel reasonably believed would have the interest and ability to acquire the Debtors' business within the necessary time constraints.

9. On June 29, 2011, the Debtors filed the Motion of the Debtors for an Order Pursuant to Sections 105, 361, 362, and 363 of the Bankruptcy Code (A) Authorizing Use of Cash Collateral; (B) Granting Adequate Protection; (C) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001; and (D) Granting Related Relief (the "Cash Collateral Motion"). The Court has approved a series of Orders approving of the Debtors' use of cash collateral on an interim basis.

10. As part of this process, Bellmark contacted potential buyers. Bellmark provided any party interested in learning about this opportunity with a copy of the CIM after it executed a confidentiality agreement. In addition, Bellmark established an electronic data room (the "Data Room") containing due diligence materials for prospective purchasers/investors.

11. After continued negotiations with these potential purchasers and consideration of their indications of interest, as well as more definitive offers in the form of marked up asset purchase agreements, the Debtors determined, with the advice of Bellmark and their counsel, that the highest and best offer to date was the one submitted by the Stalking Horse Bidder, subject to higher or better offers and this Court's approval. On or about November 18, 2011, the Debtors executed the Asset Purchase Agreement.



12. As more fully described below, in consideration for agreeing to act as the Stalking Horse Bidder, the Stalking Horse Bidder insisted that the APA include certain bidding protections. In particular, subject to Court approval as part of the Bid Procedures Order, in the event that the Court approves the bid of a competing bidder, the Stalking Horse Bidder, if it is then not in default under the APA, will be entitled to receive a payment equal to the sum of 2% of the total cash purchase price plus an expense reimbursement of up to \$250,000 (the "Break-Up Fee and Expense Reimbursement").

13. In order to increase the opportunity for the Debtors to receive competitive bids, and to ensure that the Debtors' receive the maximum value for their assets, the Debtors will continue to engage in a full and robust marketing process with their financial advisor, Bellmark. The Debtors further believe that a public sale, as opposed to a private sale, will result in the most value for the Assets.

#### **Summary of the Asset Purchase Agreement<sup>5</sup>**

14. The pertinent terms of the APA are as follows:

- **Purchase Price:** The purchase price for the Assets to be paid in cash at the closing under the APA shall consist of \$22,750,000 less certain adjustments for Cure Contributions, Customer Credit Obligations and Tax Obligations (each as defined in the APA).
- **Acquired Assets:** The Stalking Horse Bidder shall acquire substantially all of the assets of the Debtors, excluding those of Repechage Investments Limited, along with the assumption and assignment of the Debtors' real property leases for each of its restaurant locations.

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<sup>5</sup> The summary of the APA is for descriptive purposes only. To the extent that there are any discrepancies between this summary and the APA, the APA shall control.

- **Excluded Assets:** The Acquired Assets do not include any of the following (the “Excluded Assets”): (a) any accounts receivables, notes receivables, charge card receivables or other receivables, (b) any funds deposited in bank accounts and all other cash or cash equivalents, except for any change funds that will remain at the Purchased Locations as stated herein, (c) all sales tax, utility and other deposits (other than deposits under the Leases), (d) any money due to Debtors with respect to any retirement or 401(k) program and all other rights related to Debtors' employee benefit plans, (e) stock or other equity rights or interests in any company, other than the shares of capital stock or other equity interest of Elephant & Castle (Chicago) Corporation, as a Debtor hereunder, in E&C San Francisco, LLC and its 1/3 equity interest in BC Restaurants, LLC, which operates the Elephant & Castle Restaurant in San Francisco, (f) insurance policies or cash value of any insurance policy, (g) any monies or refunds due from vendors, (h) any monies due Debtors under any co-op arrangement with vendors, (i) any monies due with respect to coupons, (j) any claims or causes of action, including, but not limited to, any and all claims and causes of action arising under sections 544, 545, 547, 548, 549, and 553(b) of the Bankruptcy Code or under comparable state law provisions, (k) the rejected leases, and the contracts other than the Assigned Contracts, and (l) all minute books, stock ledgers, corporate seals and stock certificates of the Debtors.
- **Assumed Obligations:** The Stalking Horse Bidder will assume no liability for the Debtors' debts or expenses of any kind incurred prior to closing under the APA except for the executory obligations and liabilities of Debtors arising out of or relating to the terms of the Assigned Leases and the Assigned Contracts, as well as the Cure Obligations assumed and payable by the Stalking Horse Bidder under the APA, and

Debtors' Customer Credit Obligations.

- Excluded Liabilities: Except for the Assumed Obligations the Stalking Horse Bidder will not assume any liabilities or obligations of the Debtors.
- Contracts: Stalking Horse Bidder shall have the right to direct Debtors to assume and assign to Stalking Horse Bidder at Closing certain of the contracts (which may include, without limitation, the franchise agreements) as indicated in writing by Stalking Horse Bidder to Debtors on or before 5:00 p.m. Eastern time on the date that is two (2) business days prior to the Closing Date. For any contract that Stalking Horse Bidder does not give written notice of acceptance with respect thereto on or before such time and date, Debtors shall file a motion to reject such contracts, such that they are not assigned to or assumed by the Stalking Horse Bidder at Closing
- Closing: The closing of the transaction contemplated hereby will take place on the second business day following the later of (a) entry of the Sale Approval Order, which is not stayed pending an appeal (the "Closing" or "Closing Date"), or (b) satisfaction of all of the conditions set forth in the APA, but in no event later than January \_\_\_\_, 2012.
- Termination Rights: The APA may be terminated as follow:
  - (a) Mutual Agreement. By written agreement of Debtors and the Stalking Horse Bidder at any time.
  - (b) Outside Date. By Stalking Horse Bidder, if the Closing shall not have occurred on or prior to January \_\_\_\_, 2012, or such other date as mutually agreed upon by the parties, for any reason other than Stalking Horse Bidder's breach of this Agreement.

(c) **Breach; Non-Satisfaction of Conditions Precedent.** Any time before the Closing, by Debtors or Stalking Horse Bidder: in the event of a material breach hereof by any non-terminating party if such non-terminating party fails to cure such breach within three (3) business days following notification thereof by the terminating party; or upon notification to the non-terminating party by the terminating party that the satisfaction of any condition to the terminating party's obligations under this Agreement becomes impossible or impracticable with the use of commercially reasonable efforts if the failure of such condition to be satisfied is not caused by a breach hereof by the terminating party.

(d) **Third Party Successful Bidder.** In the event that Stalking Horse Bidder is not the successful bidder at the Auction, then this Agreement shall terminate upon the closing with such successful bidder.

- **Indemnification:** Debtors agree to jointly and severally indemnify and hold harmless Stalking Horse Bidder, its successors and assigns, its managers, members, and employees, from and after the Closing, against all Indemnity Losses (as defined in the APA) arising with respect to the following events: (a) the breach by Debtors of any of their representations and warranties under the APA; (b) the failure by Debtors to perform any of their covenants under the APA which are not cured within two business days after written notice; (c) any third party claim asserted against Stalking Horse Bidder with respect to actions, occurrences, or omissions of Debtors occurring prior to Closing, including, but not limited to, liabilities and obligations in connection with Debtors' employees, employee benefit plans, taxes and environmental laws of any kind, except to the extent that that the same relate to any Assumed Obligations; and (d) any liability or

obligation which relates to or arises out of or results from the Excluded Liabilities.

Debtors' liability shall be limited to the amount of the Purchase Price. Further, Debtors shall not have any liabilities unless Stalking Horse Bidder notifies Debtors in writing on or before sixty (60) days after Closing of any indemnity claim. Stalking Horse Bidder shall not be entitled to obtain indemnity to the extent it would require the Debtors to use funds reserved for payment by the Debtors' bankruptcy estate on account of claims filed by secured lenders, creditors asserting claims under Section 503(b)(9), PACA, cure amounts due to landlords under assumed leases, prepetition taxes (including any amounts paid to Escrow Agent for payment of Tax Obligations), allowed professional fees and any amounts determined to be necessary as administrative expenses for the conclusion of the case.

- Conditions to Closing: The obligation of Stalking Horse Bidder to consummate the transactions contemplated in the APA is subject to the satisfaction, at or before the Closing, of each of the following conditions:

(a) The representations and warranties of Debtors contained in the APA shall be true, correct and complete in all material respects (except for such representations and warranties which are qualified by their terms by a reference to materiality, which representations and warranties as so qualified will be true in all respects) on and as of the Closing Date with the same force and effect as though made on the Closing Date.

(b) Debtors shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by Debtors on or prior to the Closing Date.

(c) Excluding any objections to the entry of the Sale Approval Order, no action, proceeding or investigation (including, without limitation, actions, proceedings or investigations commenced or threatened by a governmental authority) has been commenced or threatened to prevent, or seek damages as a result of, the execution and delivery of the APA or the consummation of any of the transactions contemplated herein (unless such action, proceeding or investigation has been dismissed or otherwise disposed of at least seven days prior to the Closing Date).

(d) Sale Approval Motion. Debtors shall have filed a motion or motions for approval under Section 363 of the Bankruptcy Code of (a) the sale of the Acquired Assets, assumption and assignment of the Assigned Leases and Assigned Contracts and assumption of the Assumed Obligations pursuant to the terms of this Agreement and the transactions hereunder and (b) the form of the APA.

(e) Sale Approval Order. The Bankruptcy Court shall have entered the Sale Approval Order in a form acceptable to Stalking Horse Bidder which approves the Sale Approval Motion and which (a) approves the sale of the Acquired Assets to Stalking Horse Bidder on the terms and conditions set forth in the APA pursuant to Section 363(f) of the Bankruptcy Code and authorizes Debtors to proceed with this transaction, (b) includes a specific finding that Stalking Horse Bidder is a good faith purchaser (pursuant to Section 363(m) of the Bankruptcy Code) of the Acquired Assets, (c) states that the sale of the Acquired Assets to Purchaser shall be free and clear of all liens, claims, interests and encumbrances whatsoever (except for the Assumed Obligations), (d) approves Debtors' assumption and assignment of the Assigned Leases and Assigned Contracts pursuant to Section 365 of the Bankruptcy Code, and (e) contains a finding and

conclusion that Stalking Horse Bidder shall not be a successor to Debtors or any other person or entity for any purpose.

15. The APA is subject to approval by this Court.

**Relief Requested**

16. By this Motion, the Debtors seek entry of the following Orders:

A. Order (I) Approving Bidding Procedures for the Sale of Assets Free and Clear of all Liens, Claims, Interests and Encumbrances Pursuant to Section 363 of the Bankruptcy Code, (II) Approving Certain Bidding Protections, (III) Approving the Form and Manner of Notice of the Sale and Assumption and Assignment of Executory Contracts and Unexpired Lease and (IV) Scheduling an Auction and Sale Hearing (the "Bid Procedures Order") in the form attached hereto as Exhibit B; and

B. Order (A) Approving an Asset Purchase Agreement Between the Debtors and the Successful Bidder, (B) Authorizing the Sale of Assets of the Debtors Free and Clear of all Liens, Claims, Encumbrances, and Interests, and (C) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Lease In Connection Therewith (the "Sale Order") in the form attached hereto as Exhibit C.

**I. The Proposed Bid Procedures**

17. The Debtors believe that the proposed Bid Procedures are fair and reasonable, designed to provide an appropriate framework for selling the Assets and enable the Debtors to review, analyze, and compare all bids received to determine which bid is in the best interests of the Debtors' estates and creditors, and are not likely to dissuade any serious potential bidder from bidding for the Assets.

A. Participation Requirements

18. To participate in the bidding process, each person or entity will be required to deliver (unless previously delivered) to the Debtors, on or before the Bid Deadline (as defined below), a signed confidentiality agreement in form and substance satisfactory to the Debtors (the "Confidentiality Agreement") and upon request of the Debtors, a financial statement or other indicia of financial ability reasonably satisfactory to the Debtors (the "Financials"). Each person

or entity that delivers the Confidentiality Agreement to the Debtors, or upon request of the Debtors the Financials, on or before the Bid Deadline is hereinafter referred to as a "Prospective Bidder." After a Prospective Bidder delivers the Confidentiality Agreement, the Debtors will deliver or make available (unless previously delivered or made available) to each Prospective Bidder certain designated information and financial data with respect to the Assets. Neither the Debtors nor their representatives will be obligated to furnish any information of any kind whatsoever relating to the Assets to any person who is not a Prospective Bidder.

B. Bid Deadline

19. The Debtors request that the Court establish a deadline for the submission of bids (the "Bid Deadline"). On or before the Bid Deadline, a Prospective Bidder that desires to make a bid (a "Competing Offer") is required to deliver written copies of its Competing Offer by facsimile and email to the representatives of the Debtors, the Official Committee of Unsecured Creditors formed in these cases (the "Committee") and GE Canada Equipment Financing, G.P. (the "Secured Lender").

C. Bid Requirements

20. To be considered, all Competing Offers must:

- a) exceed the sum of (i) the cash portion of the Purchase Price set forth in APA, plus (ii) the Break-Up Fee and Expense Reimbursement;
- b) be accompanied by a signed asset purchase agreement in the form of the APA, together with a marked copy showing all changes to the APA, which changes shall not be less favorable to the Debtors and their estates;
- c) not be subject to, or conditioned on, any contingency or condition, including without limitation, the outcome of unperformed due diligence by the bidder or upon any financing contingency;
- d) be irrevocable until the earlier to occur of (i) the Closing Date, or (ii) for sixty (60) days following entry of the Sale Order;



e) be submitted with a cash deposit equal to 10% of the purchase price offered in the Competing Offer (the "Deposit") in the form of a wire transfer or a certified check made payable to the Debtors and sent to the Debtors' counsel, which Deposit shall be non-refundable if the Court approves the sale of the Debtors' assets to such Prospective Bidder;

f) be substantially on the same or better terms and conditions as set forth in the APA; and

g) be submitted with evidence substantially equivalent to that provided by the Stalking Horse Bidder establishing to the satisfaction of the Debtors, in consultation with the Committee and Secured Lender, that such Prospective Bidder or an entity that has executed a written guarantee of such Prospective Bidder's bid has readily available funds sufficient to enable it to timely consummate its Competing Offer and provide all non-debtor parties to those executory contracts and unexpired leases to be assumed and assigned with adequate assurance of future performance as contemplated by section 365 of the Bankruptcy Code.

21. Competing Offers that the Debtors, in consultation with the Committee and Secured Lender, determine satisfy the provisions set forth above shall be deemed "Qualified Bids" and any party submitting such Qualified Bid shall be designated as a "Qualified Bidder." A Qualified Bid will be valued by the Debtors based upon any and all factors that the Debtors deem pertinent, including, among others, (a) the amount of the Qualified Bid, (b) the risks and timing associated with consummating a transaction with the Qualified Bidder, (c) any excluded assets or executory contracts or unexpired leases, and (d) any other factors that the Debtors may deem relevant to the Sale in consultation with the Committee and Secured Lender.

D. Auction

22. In the event that one or more Qualified Bid has been received, the Debtors will conduct the Auction for the sale of the Assets. The Debtors propose that the Auction take place before the Honorable Henry J Boroff in the United States Bankruptcy Court, United States Courthouse, 300 State Street, Springfield, MA 01105. At the Auction, bidding will commence at the amount of the aggregate consideration for the Assets and on the terms proposed in the

Qualified Bid that the Debtors select as the highest and best offer prior to the Auction. Bidding will continue until such time as the highest and best offer is determined by the Debtors in consultation with the Committee and Secured Lender (the "Successful Bid," and the party submitting such Successful Bid being designated the "Successful Bidder").

23. The Debtors, after consultation with the Committee and Secured Lender, may announce at the Auction additional rules or procedures for conducting the Auction. The Debtors reserve the right, after consultation with the Committee and Secured Lender, to (i) determine, at their discretion, which bid, if any, is the highest and best offer, taking into consideration, *inter alia*, that the Break-Up Fee and Expense Reimbursement would be payable if a party other than the Stalking Horse Bidder is the Purchaser, (ii) reject any bid that the Debtors deem to be inadequate, insufficient or otherwise unsatisfactory, and/or (iii) adjourn the Auction by announcing such adjournment at the Auction. The Debtors' presentation to this Court for approval of the selected bid as the Successful Bid does not constitute the Debtors' acceptance of such bid. The Debtors will have accepted a Successful Bid only when such Successful Bid has been approved by the Court at the Sale Hearing.

24. All bidders at the Auction shall be deemed to have consented to the core jurisdiction of the Court and waived any right to jury trial in connection with any disputes relating to the Auction, the sale of the Assets and the construction and enforcement of the APA.

E. Closing with Successful Bidder or Alternate Bidder

25. If, for any reason, the Successful Bidder fails to close on the purchase of the Assets (and assuming the conditions to closing have been satisfied), then: (i) the Successful Bidder shall forfeit the Deposit and be subject to such other rights and remedies as the Debtors may have for such failure; (ii) the Qualified Bidder who, as of the conclusion of the Auction, has

made the next highest and best bid (as determined by the Debtors in consultation with the Committee and Secured Lender) automatically will be deemed to have submitted the Successful Bid without further order of the Court (such bidder, the "Alternate Bidder"); and (iii) the Alternate Bidder will be required to proceed as the purchaser at closing.

**II. Proposed Stalking Horse Bid Protections**

26. As part of the Bid Procedures Order, the Debtors are requesting approval of the provisions of the APA regarding the Break-Up Fee and Expense Reimbursement, on the terms and conditions set forth in the APA. The Debtors submit that the proposed Break-Up Fee and Expense Reimbursement is a necessary inducement for the Stalking Horse Bidder to submit its bid subject to higher and better offers and is a necessary condition to closing the Sale.

**III. Proposed Sale Objection Deadline and Sale Hearing**

27. The Debtors propose that the Court establish a deadline to file and serve objections to the Sale (the "Objection Deadline") and date for the Sale Hearing, at which the Court will consider whether to approve the APA or such other agreement between the Debtors and the Successful Bidder, authorize the Sale of the Assets free and clear of all liens, claims, interests and encumbrances, and authorize the assumption and assignment of executory contracts and unexpired leases in connection with the Sale. However, in the event the Debtors propose to sell the Assets to a Purchaser other than the Stalking Horse Bidder, objections to the Sale may be raised at the Sale Hearing.

28. The Debtors propose that any objections to the Sale must be in writing, set forth with particularity the grounds for such objection, be filed with the Court, and be served upon (a) counsel to the Debtors, (i) Eckert Seamans Cherin & Mellott, Two International Place, 16<sup>th</sup> Floor, Boston, MA 02110-2602 (Attn: John G. Loughnane, Esq.), (b) counsel to the Committee,

Goulston & Storrs, P.C., 400 Atlantic Avenue, Boston, Massachusetts 02110 (Attn: Christine D. Lynch, Esq.); (c) counsel to the Secured Lender, Latham & Watkins, Wacker Drive Suite 5800, Chicago, Illinois 60606 (Attn: Richard Levy, Esq.) and McCarthy Terault, LLP; Suite 3000 421 7th Avenue SW, Calgary AB T2P 4K9 (Attn: Sean Collins, Esq.); (d) counsel to the Stalking Horse Bidder, Rothberger, Johnson & Lyons, LLP, One Tabor Center, Suite 3000, 1200 Seventeenth Street, Denver, Colorado 80202 (Attn: Brent R. Cohen) and Brown Rudnick, LLP, One Financial Center, Boston, MA 02111 (Attn: Jeffrey Jones); and (e) the Office of the United States Trustee for the District of Massachusetts, John W. McCormack Post Office and Courthouse 5 Post Office Square, Suite 1000, Boston, MA 02109 (Attn: Jennifer L. Hertz, Esq.) (the "Interested Parties") so as to be actually received on or before the Objection Deadline.

**IV. Notice of the Bid Procedures, the Auction, and the Sale Hearing**

29. Upon entry of the Bid Procedures Order, the Debtors will serve within two business days copies of the Bid Procedures Order upon: (a) the Office of the United States Trustee for the District of Massachusetts; (b) counsel to the Stalking Horse Bidder; (c) counsel for the Committee; (d) all known secured lenders and their counsel; (e) all known lien-holders and their counsel; (f) all known federal and state taxing authorities which have a reasonably known interest in the relief requested in this Motion; (g) all attorneys who have entered their appearance in these cases; and (h) and any party that has previously expressed an interest in the Assets.

30. The Debtors propose to further serve on these same parties the notice of the Sale pursuant MLBR 6004-1(d)(1)(B) via a Notice of Intended Public Sale of Estate Property ("Sale Notice") substantially similar to MLBR Official Local Form 2B. The proposed Sale Notice is attached as Attachment 2 to the proposed form of Bid Procedures Order (attached hereto as Exhibit B).

31. The Debtors submit that the methods of notice described herein comply fully with Bankruptcy Rule 2002, Bankruptcy Rule 6004 and MLBR 6004-1 and constitute good and adequate notice of the proposed Bid Procedures and the sale of the Assets. Therefore, the Debtors respectfully request that this Court approve the notice procedures proposed above.

**V. Notice of Assumption and Assignment of Executory Contracts and Unexpired Leases**

32. In connection with the Sale, the Debtors will be required to assume and assign the Designated Contracts. Accordingly, the Debtors, seek approval of the Assumption and Assignment Notice, in substantially the form attached hereto as Attachment 3 to the form of Bid Procedures Order (attached hereto as Exhibit B).

33. To provide counterparties to the potential Designated Contracts appropriate notice of the requested relief, upon entry of the Bid Procedures Order, the Debtors will file a schedule of cure obligations (the "Cure Schedule") for all potential Designated Contracts being assumed and assigned to the Purchaser. The Cure Schedule will include a description of each Designated Contract and the amount, if any, the Debtors believe is necessary to cure any defaults under such agreements pursuant to section 365 of the Bankruptcy Code (the "Cure Costs"). A copy of the Cure Schedule, together with the Assumption and Assignment Notice, will be served on each of the non-debtor parties listed on the Cure Schedule.

34. The Assumption and Assignment Notice will provide, among other things, that information concerning the Purchaser's ability to perform under the Designated Contracts as contemplated by section 365(f)(2)(B) of the Bankruptcy Code (the "Adequate Assurance Information") will be provided as soon as practicable upon reasonable request in writing to the undersigned counsel to the Debtors and upon the execution of a mutually acceptable confidentiality agreement. In the event that the Debtors propose to sell the Assets to a Purchaser

who is not the Stalking Horse Bidder, the Adequate Assurance Information will be made available as soon as practicable after the conclusion of the Auction.

35. The Debtors propose that any objections to the assumption and assignment of any executory contract or unexpired lease identified on the Cure Schedule, including, but not limited to, objections relating to adequate assurance of future performance or to the Cure Costs set forth on the Cure Schedule, must be in writing, filed with the Court, and served upon the Interested Parties so as to be actually received on or before the Objection Deadline; provided, however, in the event the Debtors propose to sell the Assets to a Purchaser other than the Stalking Horse Bidder, objections to the assignment of the Designated Contracts to such Purchaser on the basis of adequate assurance of future performance only may be raised at the Sale Hearing.

36. Any objections shall set forth with particularity the grounds for such objection or other statements of position, including, if applicable, the specific monetary amount the objector asserts to be due, and the specific types and dates of alleged defaults, pecuniary losses, the specific adequate assurance of future performance that the Purchaser or Debtors have not provided and other conditions to assignment and support there for.

37. If no objections are timely received, then the Cure Costs set forth in the Cure Schedule will be binding upon the counterparties to the Designated Contracts for all purposes in these chapter 11 cases and will constitute a final determination of the total Cure Costs required to be paid by the Debtors in connection with the assumption and assignment of the Designated Contracts. In addition, all counterparties to the Designated Contracts will (a) be forever barred from asserting any additional cure or other amounts with respect to the Designated Contracts, and the Debtors and the Purchaser will be entitled to rely solely upon the Cure Costs set forth in the Cure Schedule; (b) be deemed to have consented to the assumption and assignment; and (c)

be forever barred and estopped from asserting or claiming against the Debtors or the Purchaser that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied under such Designated Contracts, or that there is any objection or defense to the assumption and assignment of such Designated Contracts.

38. Where a counterparty to an Designated Contract files an objection to the proposed assumption and assignment including asserting a cure cost higher than the proposed Cure Costs, then to the extent that the parties are unable to consensually resolve the objection, such objection will be heard at the Sale Hearing. The Debtors intend to cooperate with counterparties to Designated Contracts to attempt to reconcile any differences in a particular cure cost.

#### **Applicable Authority**

##### **I. The Asset Sale is Within the Debtor's Sound Business Judgment**

39. Section 363(b)(1) of the Bankruptcy Code provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). A debtor in possession is given these rights by section 1107(a) of the Bankruptcy Code. See 11 U.S.C. § 1107(a). Moreover, section 105(a) of the Bankruptcy Code provides that bankruptcy courts "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a).

40. A sale of a debtor's assets should be authorized pursuant to Bankruptcy Code section 363 if a sound business purpose exists for doing so. In re Aerovox, Inc., 269 B.R. 74, 80 (Bankr. D. Mass. 2001); see also In re Martin, 91 F.3d 389, 395 (3d Cir. 1996); In re Lionel Corp., 722 F.2d 1063, 1071-72 (2d Cir. 1983).

41. As this Court has noted, a debtor's business decision should be approved by the

court unless it is shown to be so manifestly unreasonable that it could not be based upon sound business judgment, but only on bad faith, or whim or caprice. In re Aerovox, Inc., 269 B.R. at 80 (citing In re Logical Software, 66 B.R. 683, 686 (Bankr. D. Mass. 1986)). A debtor in possession or a trustee is often obliged to make difficult business decisions that may later be open to serious criticism by obstreperous creditors. DiStefano v. Stern (In re J.F.D. Enterprises, Inc.), 223 B.R. 610, 625 (Bankr. D. Mass. 1998). Nevertheless, such decisions are entitled to "great judicial deference." DiStefano v. Stern (In re J.F.D. Enterprises, Inc.), 215 F. 3d 1312, 2000 WL 560189, at \*5 (1st Cir. 2000) (quoting In re WPRV-TV, Inc., 143 B.R. 315, 319 (D.P.R. 1991), vacated on other grounds, 165 B.R. 1 (D.P.R. 1992)); see also In re Thinking Machs. Corp., 182 B.R. 365, 368 (D. Mass. 1995) (emphasizing "the high degree of deference usually afforded purely economic decisions of trustees"), rev'd on other grounds, 67 F.3d 1021 (1st Cir. 1995). In considering approval of a debtor's business decision, the court does not act as an arbiter of disputes between creditors and the estate but as an "overseer of the wisdom with which the bankruptcy estate's property is being managed by the trustee or debtor-in-possession." In re Aerovox, Inc., 269 B.R. at 80 (quoting In re Orion Pictures Corp., 4 F.3d 1095, 1099 (2d Cir. 1993)).

42. Courts have applied various factors in determining whether a sound business justification exists, including: (i) whether a sound business reason exists for the proposed transaction; (ii) whether fair and reasonable consideration is provided; (iii) whether the transaction has been proposed and negotiated in good faith; and (iv) whether adequate and reasonable notice is provided. See Fulton State Bank v. Schipper (In re Schipper), 933 F.2d. 513, 515 (7th Cir. 1991); see also In re Lionel Corp., 722 F.2d at 1071 (setting forth the "sound



business purpose" test); accord In re Montgomery Ward Holding Corp., 242 B.R. 147, 153-54 (D. Del. 1999).

43. The proposed Sale pursuant to the APA (as may be modified at the Auction) is supported by sound business justifications. The Debtors firmly believe that creditors will receive more value through a prompt sale of the Assets than through continued operations or piecemeal liquidation of the Debtors and that a prompt sale is necessary to maximize the value of the Assets for the estates.

## **II. The Stalking Horse Protections are Warranted**

44. Bidding incentives such as a break-up fee encourage a potential purchaser to invest the requisite time, money, and effort to negotiate with a trustee and perform the necessary due diligence attendant to the acquisition of a debtor's assets, despite the inherent risks and uncertainties of the Chapter 7 process. Historically, bankruptcy courts have approved bidding incentives similar to the Break-Up Fee under the business judgment rule, which prescribes against judicial second-guessing of the actions of a corporation's board of directors taken in good faith and in the exercise of honest judgment. See e.g., In re 995 Fifth Avenue Assocs. L.P., 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1992) (bidding incentives "may be legitimately necessary to convince a white knight to enter the bidding by providing some form of compensation for the risks it is undertaking.") (citation omitted); Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 657 (S.D.N.Y. 1992).

45. Another method for evaluating the appropriate of bidding procedures was established in Calpine Corporation v. O'Brien, Environmental Energy, Inc., 181 F.3d 527 (3d Cir. 1999). In O'Brien, the Third Circuit concluded that "the determination whether break-up fees or expenses are allowable under § 503(b) must be made in reference to general

administrative expense jurisprudence. In other words, [the inquiry] depends upon the requesting party's ability to show that the fees were actually necessary to preserve the value of the estate." O'Brien, 181 F.3d at 535. That same standard was recently reiterated in the Third Circuit's decision in In re Reliant Energy Channelview LP, 594 F.3d 200 (3d Cir. 2010) ("Under O'Brien, we must decide whether an award of a break-up fee was necessary to preserve the value of the Debtors' estate.").

46. The Break-Up Fee and Expense Reimbursement satisfy both the business judgment rule and the *O'Brien* court's more restrictive administrative standard. First, all negotiations between the Debtors and the Stalking Horse Bidder have been conducted in good faith and at arm's length. Second, the Debtors have determined that the Break-Up Fee and Expense Reimbursement is necessary to attract and retain the Stalking Horse Bidder. The Debtors' ability to continue to seek a higher or better offer without the risk of losing the Debtors' current highest and best offer (following a robust marketing effort) will be eliminated if the Debtors cannot secure approval of the Break-Up Fee and Expense Reimbursement. Further, payment of the Break-Up Fee and Expense Reimbursement will not diminish the Debtors' estates. The Debtors will incur the Break-Up Fee and Expense Reimbursement only if an Competing Offer is consummated after the Auction.

47. The Debtors submit that authorization of the Break-Up Fee and Expense Reimbursement will not chill any bidding for the Assets. By ensuring the existence of a "floor" purchase price under the APA, the Break-Up Fee and Expense Reimbursement will induce bids that potentially may have never been made and without which bidding may be limited. The Debtors' ability to provide the Break-Up Fee and Expense Reimbursement enables them to

ensure a sale to a bidder at a price they believe to be fair, while providing the Debtors with the potential of even greater benefit to the estates.

**III. The Sale of the Assets Free and Clear of Liens and Other Interests Is Authorized By Section 363(f)**

48. The Debtors further submit that it is appropriate to sell the Assets free and clear of the Liens pursuant to section 363(f) of the Bankruptcy Code, with any such Liens attaching to the net sale proceeds of the Assets to the extent applicable. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of Liens if:

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

11 U.S.C. § 363(1). This provision is supplemented by section 105(a) of the Bankruptcy Code, 11 U. S.C. § 105(a).

49. Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Assets "free and clear" of Liens. In re Dundee Equity Corp., 1992 Bankr. LEXIS 436, at \*12 (Bankr. S.D.N.Y. March 6, 1992) ("Section 363(1) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met"); In re Bygaph. Inc., 56 B.R. 596, 606 n.8 (Bankr. S.D.N.Y. 1986) (same); Michigan Employment Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.), 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (stating that Bankruptcy Code section 363(f) is written in the disjunctive, and holding

that the court may approve the sale "free and clear" provided at least one of the subsections of Bankruptcy Code section 363(f) is met).

50. The Debtors believe that one or more of the tests of section 363(f) are satisfied with respect to the transfer of the Assets pursuant to the APA. In particular, the Debtors believe that at least section 363(f)(2) will be met in connection with the transactions proposed under the APA because each of the parties holding Liens against the Assets will consent, or absent any objection to this Motion, will be deemed to have consented to, the Sale. Any lien holder also will be adequately protected by having their Liens, if any, in each instance against the Debtors or their estates, attach to the cash proceeds of the Sale ultimately attributable to the Assets in which such creditor alleges an interest, in the same order of priority, with the same validity, force, and effect that such creditor had prior to the Sale, subject to any claims and defenses the Debtors and their estates may possess with respect thereto. Accordingly, section 363(f) authorizes the transfer and conveyance of the Assets free and clear of any such Liens.

51. Under the terms of the APA, the Purchaser will assume and agree to pay, to perform, and to discharge as and when they become due and payable, or are required to be performed, all liabilities which are to be performed on and after consummation of the APA. The Purchaser is not liable for any of the Debtors' liabilities in connection with the sale of the Assets as a successor to the Debtors' business or otherwise. Extensive case law exists providing that claims against the winning bidder are directed to the proceeds of a free and clear sale of property and may not be asserted against a buyer subsequently. See, e.g., The Ninth Ave. Remedial Group v. Allis-Chalmers Corp., 195 B.R. 716, 732 (Bankr. N.D. Ind. 1996); MacArthur Company v. Johns-Manville Corp. (In re Johns-Manville Corp.), 837 F.2d 89, 93094 (2d Cir. 1988); In re Hoffman, 53 B.R. 874, 876 (Bankr. D.R.I. 1985).

**IV. The Purchaser is a Good Faith Purchaser**

52. The Debtors request that the Court find that the Purchaser is entitled to the full protections of section 363(m) of the Bankruptcy Code. Section 363(m) of the Bankruptcy Code protects a good-faith purchaser's interest in property purchased from a debtor in the event that the sale conducted under section 363(b) is reversed or modified on appeal. Section 363(m) of the Bankruptcy Code "fosters the policy of not only affording finality to the judgment of the bankruptcy court, but particularly to give finality to those orders and judgments upon which third parties rely." In re Chateaugay Corp., 1993 U.S. Dist. LEXIS 6130, \*9 (S.D.N.Y. May 10, 1993).

53. The Debtors have presented the proposed Sale in good faith. The Stalking Horse Bidder's identity has been, and the identity of any Successful Bidder will be, fully disclosed to the Court and parties in interest. Furthermore, the Debtors will be prepared to introduce evidence at the Sale Hearing regarding the arm's-length, good faith nature of the marketing and bidding process, the Auction and the negotiation of the asset purchase agreement with the Purchaser.

**V. The Assumption and Assignment of the Assumed Contracts and Leases Should be Authorized**

54. As required by the APA, the Debtors also seek by this Motion authority to assume and assign the Designated Contracts to the Purchaser. The Debtors have made the business decision to sell substantially all of the Debtors' assets pursuant to the APA. The Debtors are party to various executory contracts and unexpired leases that are necessary to the operation of their businesses. The assumption and assignment of the Designated Contracts is therefore an integral term of the APA. If the Debtors are not able to assume and assign the Designated

Contracts, the Sale of the Assets will likely be impaired resulting in reduced proceeds for the benefit of the estates.

55. Section 365(f)(2) of the Bankruptcy Code provides in pertinent part:

The trustee may assign an executory contract or unexpired lease of the debtor only if —

- (A) the trustee assumes such contract or lease in accordance with the provisions of this section; and
- (B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(0)(2).

56. Section 365(b)(1) of the Bankruptcy Code then codifies the requirements for assuming an unexpired lease or executory contract of a debtor. This subsection provides:

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee —

- (A) cures, or provides adequate assurance that the trustee will promptly cure, such default ... ;
- (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
- (C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

57. The Debtors submit that there are no incurable defaults under any of the Designated Contracts. To the extent Cure Costs are due, any such Cure Costs will be paid by the Debtors as part of any assumption and assignment.

58. The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." EBG

Midtown South Corp. v. McLaren/Hart Env. Eng'g Corp. (In re Sanshoe Worldwide Corp.), 139 B.R. 585, 593 (S.D.N.Y. 1992); In re Prime Motor Inns Inc., 166 B.R. 993, 997 (Bankr. S.D. Fla. 1994) ("[a]lthough no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance"); Carlisle Homes, Inc v Azzari (In re Carlisle Homes, Inc.), 103 B.R. 524, 538 (Bankr. D.N.J. 1988).

59. Among other things, adequate assurance may be provided by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. See, e.g., In re Bygaph, Inc., 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when prospective assignee of lease from debtor has financial resources and has expressed willingness to devote sufficient funding to business in order to give it strong likelihood of succeeding).

60. The adequate assurance information that the Debtors anticipate providing may include: (a) the name of the Purchaser; (b) information about the Purchaser's financial condition, such as federal tax returns, a current financial statement, or bank account statements; (c) a description of the intended use of the premises, if applicable, and (d) such additional information regarding the Purchaser as the Debtors may elect to include. This information will provide the Court and other interested parties with the opportunity to evaluate and, if necessary, challenge the ability of the Purchaser to provide adequate assurance of future performance under such agreements, as required under section 365 of the Bankruptcy Code. The Court should therefore authorize the Debtors to assume and assign the Designated Contracts.

**VI. Relief Under Bankruptcy Rules 6004(h) and 6006(d) Is Appropriate**

61. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property ... is stayed until the expiration of 14 days after entry of the order, unless the

court orders otherwise." Additionally, Bankruptcy Rule 6006(d) provides that an "order authorizing the trustee to assign an executory contract or unexpired lease ..is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise." The Debtors request that any order approving the APA be effective immediately by providing that the 14-day stays under Bankruptcy Rules 6004(h) and 6006(d) are waived.

62. The purpose of Bankruptcy Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting party to appeal before an order can be implemented. See Advisory Committee Notes to Fed. R. Bankr. P. 6004(h) and 6006(d). Although Bankruptcy Rules 6004(h) and 6006(d) and the Advisory Committee Notes are silent as to when a court should "order otherwise" and eliminate or reduce the stay period, a noted treatise suggests that the stay period should be eliminated to allow a sale or other transaction to close immediately "where there has been no objection to the procedure." Alan J. Resnick & Henry J. Sommers, 10 Collier On Bankruptcy ¶ 6004.11 (16th ed. 2011). Furthermore, if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. Id.

63. The Debtors hereby request that the Court waive the fourteen-day stay period under Bankruptcy Rules 6004(h) and 6006(d).

#### Notice

64. The Debtors have provided notice of this Motion by to: (a) the Office of the United States Trustee for the District of Massachusetts; (b) counsel for the Committee; (c) all known secured lenders; (d) all known lien-holders and their counsel; (e) all attorneys who have entered their appearance in these cases; (f) all parties specifically referenced in Section 8.3(k) of the APA; and (g) all taxing authorities both U.S. and Canadian. MLBR 6004-1(b). The Debtors respectfully submit that no further notice of this Sale is required.



**No Prior Request**

65. No prior request for relief sought herein has been made by the Debtors to this or any other Court.

WHEREFORE, the Debtors respectfully request that this Court enter the Bid Procedures Order and Sale Order, in substantially the forms attached hereto, and granting the relief requested herein and such other and further relief as the Court deems just.

Dated: November 18, 2011

ECKERT, SEAMANS, CHERIN &  
MELLOTT, LLC

/s/ John G. Loughnane  
John G. Loughnane (BBO No. 557599)  
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COUNSEL TO THE DEBTORS

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (together with the exhibits and schedules hereto, this "Agreement"), is made as of this 18th day of November, 2011 (the "Effective Date"), by and between Original Joe's Acquisition Corp., an Alberta corporation ("Purchaser"), and Massachusetts Elephant & Castle Group, Inc., a Massachusetts corporation, Elephant and Castle of Pennsylvania, Inc., a Pennsylvania corporation, E&C Pub, Inc., a California corporation, Elephant & Castle Inc., a Washington corporation, Elephant & Castle (Chicago) Corporation, a Nevada corporation, Elephant & Castle East Huron, LLC, an Illinois limited liability company, E&C Capital, LLC, a Delaware limited liability company, Elephant & Castle Illinois Corporation, a Nevada corporation, E&C Eye Street, LLC, a Delaware limited liability company, Elephant & Castle International, Inc., a Texas corporation, Elephant & Castle Group Inc., a Canadian corporation, Elephant & Castle Canada Inc., an Ontario corporation, Elephant & Castle, Inc., a Texas corporation, and Elephant & Castle Pratt Street, LLC, a Maryland limited liability company (each a "Seller" and collectively the "Sellers") as Debtors and Debtor-in-Possession. Purchaser and Sellers may be referred to herein individually as a "Party" or collectively as the "Parties".

## INTRODUCTION

WHEREAS, on June 28, 2011, Sellers commenced cases (the "Cases") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") by filing voluntary petitions for relief in the United States Bankruptcy Court for the District of Massachusetts (the "Bankruptcy Court");

WHEREAS, Sellers are engaged in the business of (i) owning, managing, and operating the chain of Seller-owned restaurants operating under the trade name "Elephant and Castle" in the United States and Canada, (ii) franchising the right to operate Elephant and Castle restaurants in the United States and Canada, and (iii) owning, managing and operating restaurants operating under the trade name "The Exchange Pub and Restaurant" and "Rosies's on Robson" (the aforementioned Elephant and Castle, The Exchange Pub and Restaurant and Rosie's on Robson businesses are collectively referred to as the "Business");

WHEREAS, Sellers desire to sell, transfer, convey, assign and deliver to Purchaser, in accordance with Sections 363, 365 and other applicable provisions of the Bankruptcy Code, the Acquired Assets (as defined in Section 2.1), together with the Assumed Obligations (as defined in Section 2.4(b)), of Sellers upon the terms and subject to the conditions set forth in this Agreement;

WHEREAS, the Parties expect that the Acquired Assets will be sold pursuant to a Sale Approval Order of the Bankruptcy Court approving (i) such sale under Section 363, 365 and other applicable provisions of the Bankruptcy Code, and (ii) the terms and conditions of this Agreement, and pursuant to a Recognition Order to be entered by a Canadian court. A proposed copy of the Sale Approval Order is attached hereto as Exhibit A; and

WHEREAS, the transactions contemplated by this Agreement are subject to the approval of the Bankruptcy Court and would be consummated only pursuant to the Sale Approval Order to be entered by the Bankruptcy Court, applicable provisions of the Bankruptcy Code and a Recognition Order to be entered by a Canadian court.

## AGREEMENT

For and in consideration of the representations, warranties, covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

### ARTICLE 1

**1.1 Definitions.** Terms not otherwise defined herein shall have the meaning given them below:

*"Bankruptcy Petitions"* means the voluntary bankruptcy petitions filed by Sellers on June 28, 2011 with the Bankruptcy Court.

*"Closing"* means the closing of the transactions contemplated by this Agreement.

*"Contract"* means any contract, indenture, note, bond, lease, license, purchase or sale order, warranty, commitment, or other written or oral agreements other than a Lease which is related to the Business.

*"Cure Obligations"* means all cure amounts required to be paid by Sellers in respect of any assumption and assignment of the Assigned Leases and/or Assigned Contracts under Section 365 of the Bankruptcy Code.

*"Customer Credit Obligations"* means all of Sellers' obligations to its current or former consumer customers for credit memos, gift certificates and loyalty programs.

*"Data"* means any current and historical textual, statistical, financial, numerical or other information relating in any manner to the operations of the Business or the books and records of the Business (as further described in Section 2.1(n) below), which information is obtained, compiled, generated or stored electronically as part of the point-of-sale system or on any computer hardware or servers, whether in Sellers' possession or in the possession of Terra Nova or any other third party.

*"Designated Contracts"* means collectively the Assigned Leases and Assigned Contracts.

*"Escrow Agent"* means Eckert Seamans Cherin & Mellot, LLC.

*"Revenues"* means and shall include the aggregate amount of all sales of services, products or merchandise of every kind or nature performed, sold from, at or in connection with the operation of the Business or arising out of the operation or conduct of the

Business, whether for sales made at or away from the Locations, and whether for cash, credit, or both but excluding all: (i) federal, state, provincial or municipal sales or service taxes collected from customers and paid to the appropriate taxing authority; and (ii) returns of merchandise. The "Revenues" totals for the Locations shall be based upon and derived from the monthly confirmed Revenues of the Locations based upon rolling weekly amounts.

"Headquarters" means Sellers' offices located at 50 Congress Street, Suite 900, Boston, MA 02109.

"Indemnity Losses" means all losses, damages, liabilities, claims, deficiencies, costs, expenses, and expenditures, including, without limitation, reasonable attorneys' fees and expenses and court and investigation costs.

"Knowledge" (A) An individual will be deemed to have "knowledge" of a particular fact or matter if (i) that individual has actual knowledge of such fact or matter or (ii) a prudent individual could be expected to discover or otherwise become aware of the fact or matter in the course of conducting a reasonably comprehensive investigation regarding the accuracy of any representation or warranty contained in this Agreement, and (B) a Person (other than an individual) will be deemed to have "knowledge" of a particular fact or matter if any executive officer of such entity has actual knowledge of such fact or matter or could be expected to discover or otherwise become aware of the fact or matter in the course of conducting a reasonably comprehensive investigation regarding the accuracy of any representation or warranty contained in this Agreement.

"Leased Real Property" means all leasehold or sub-leasehold estates and other rights to use or occupy any land, buildings, structures, improvements, appurtenances, fixtures or other interests in nonresidential real property held by Sellers.

"Leases" means all leases, subleases, licenses or other agreements, including all amendments, extensions, renewals, guaranties or other agreements with respect thereto, pursuant to which Sellers hold or use any Leased Real Property. The Leases are identified on Exhibit B attached hereto. "Lease" refers to one of the Leases.

"Lessor" means a lessor under a Lease of Leased Real Property.

"Lien" means any lien, security interest, pledge, hypothecation, encumbrance or other interest or claim (including, but not limited to, any and all "claims," as defined in Section 101(5) of the Bankruptcy Code, and any and all rights and claims under any bulk transfer statutes and similar laws) in or with respect to any of the Acquired Assets (including, but not limited to, any options or rights to purchase such Assets and any mechanics' or Tax liens), whether arising by agreement, by statute or otherwise and whether arising prior to, on or after the date of the filing of the Bankruptcy Petition.

"Locations" means all of Sellers' nineteen (19) restaurant locations operated by Sellers as of the date of this Agreement, which include the restaurants operated by the Sellers listed on Schedule I.1 hereto (the "Purchased Locations") and the restaurants

franchised by the Sellers listed on Schedule 1.1 (the "Franchised Locations"). "Location" refers to one of the Locations.

"Material Adverse Effect" " means the occurrence or failure of an event that could reasonably be expected to have a material adverse effect on the business, operations, results of operations, financial position or prospects of Sellers or the value of their properties or assets, including but not limited to: (i) the closing or cessation of business operations, or notice of pending incurable closing or cessation of business operations, of any of the Locations; or (ii) the incurable termination, or notice of pending incurable termination, of any license (including without limitation a liquor license), permit or other requirement by a governmental agency necessary for continuing the historical operations of any of the Locations; provided that in the event that either party shall be delayed or hindered in or prevented from the performance of any covenant, agreement, work, service, or other act required under this Agreement to be performed by such party (a "Required Act") and such delay or hindrance is due to causes entirely beyond its control such as riots, insurrections, martial law, civil commotion, war, fire, flood, earthquake, or other casualty or acts of God, then the performance of such Required Act shall be excused for the period of delay, and the time period for performance of the Required Act shall be extended by the same number of days in the period of delay, and the results of such delay or hindrance shall not be deemed a Material Adverse Effect; and provided further that the parties agree and acknowledge that notice from a government agency of revocation of a permit or license due to administrative issues or other issues which are curable within a reasonable time shall not be deemed a Material Adverse Effect.

"Person" means any individual, corporation, partnership, joint venture, trust, association, limited liability company, unincorporated organization, other entity, or governmental body or subdivision, agency, commission or authority thereof.

"Post-Petition Administrative Rent" means, with respect to a Lease, the post-petition rent and other amounts payable by Sellers to a Lessor with respect to a Leased Real Property and allowable as an administrative expense in the Cases.

"Sale Approval Order" means the entry of an Order of the Bankruptcy Court substantially in the form of Exhibit A attached hereto, *inter alia*, approving the transactions contemplated hereby and the definitive documentation, subject to overbidding, along with a Recognition Order, recognizing, approving and implementing the Sale Approval Order, the transactions contemplated thereby and the definitive documentation in Canada, the form of which is satisfactory to the Purchaser ("Recognition Order").

"Tax" or "Taxes" shall mean any federal, state, provincial, local, or foreign Tax (including any income, profits, franchise, license, severance, premium, windfall profits, environmental (including Taxes under section 59A of the Internal Revenue Code of 1986, as amended, and including all taxes arising under Canadian tax law), customs duties, registration, capital stock, capital gains, estimated, alternative or add-on minimum, gross receipts, value-added, surtax, excise, ad valorem, transfer, stamp, sales, use, property

(real or personal), business, occupation, inventory, occupancy, withholding, social security (or similar), employment, unemployment, disability, payroll or other Tax of any kind whatsoever), levy, assessment, tariff, impost, imposition, toll, duty, whether computed on a separate, combined, unitary, or consolidated basis or any other manner, and including any interest, penalty, or addition thereto, whether disputed or not and including any obligation to indemnify or otherwise assume or succeed to the Tax liability of any other Person.

“Tax Obligations” shall mean the estimated amount determined by Sellers and Purchasers to be owed and payable by Sellers for Taxes related to the Business prior to the Closing Date, which amount will be deposited at Closing with the Escrow Agent and used toward the payment of Sellers’ Taxes in accordance with Section 8.3(d).

“Tax Return” shall mean any return (including any information return), report, claim for refund, statement, declaration, estimate, schedule, notice, notification, form, election, certificate or other document or information that is, has been or may in the future be filed with or submitted to, or required to be filed with or submitted to, any governmental body in connection with the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of or compliance with any legal requirement relating to any Tax, and including any amendment thereof.

“Third Party” means any “person” or “group”, as such terms are defined in Section 13(d) of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder, other than Purchaser or any affiliate of Purchaser.

**1.2 Other Defined Terms.** The following terms are defined on the following pages of this Agreement:

<u>Acquired Assets</u> .....	7
<u>Agreement</u> .....	1
<u>Assigned Contracts</u> .....	7
<u>Assigned Leases</u> .....	22
<u>Assumed Obligations</u> .....	10
<u>Bankruptcy Code</u> .....	1
<u>Bankruptcy Court</u> .....	1
<u>Benefit Plans</u> .....	10
<u>Business</u> .....	1
<u>Cases</u> .....	1
<u>Cash Purchase Price</u> .....	11
<u>Change Funds</u> .....	7
<u>Closing</u> .....	13
<u>Closing Date</u> .....	13
<u>Consumables Inventories</u> .....	7
<u>Deposit</u> .....	11
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<u>Excluded Assets</u> .....	9
<u>Excluded Liabilities</u> .....	10
<u>Hired Employee</u> .....	28
<u>Intellectual Property</u> .....	8
<u>Intellectual Property Schedule</u> .....	18
<u>Liquor Licenses</u> .....	8
<u>Parties</u> .....	1
<u>Party</u> .....	1
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<u>Rejected Contracts</u> .....	23
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## ARTICLE 2

### SALE AND PURCHASE OF ACQUIRED ASSETS

**2.1 Sale and Purchase of Acquired Assets.** On the Closing Date and subject to the terms and conditions set forth in this Agreement, Purchaser shall purchase from Sellers, and Sellers shall sell to Purchaser, all of Sellers' right, title and interest in and to the Acquired Assets, free and clear of any Lien to the fullest extent permitted by Sections 363 and 365 of the Bankruptcy Code. The assets, properties, rights and interests of whatever kind or nature, tangible, intangible or personal, to be sold or assigned hereunder (collectively, the "Acquired Assets") shall include all of Sellers' right, title and interest in and to the following:

(a) Personal Property. All uniforms, menus, dishes, glassware, utensils and other small wares, and all other tangible or intangible personal property located in the Purchased Locations or used in or incidental to the operation of the Business as of the Closing Date, including without limitation any computer hardware and software or point-of-sale systems used at or in connection with the Business (which point-of-sale system shall include all related equipment and licenses to operate the system and all Data stored, generated by and used in connection with the system) (the "Personal Property").

(b) Inventory. All inventories of usable food ingredients, packaging materials, supplies, paper products and other consumables stored in the Purchased Locations (the "Consumables Inventories"), as well as a change fund for each Purchased Location (collectively, the "Change Funds") consisting of cash in drawers and in safes located in such Purchased Location (but excluding any deposits in safes located in such Purchased Location and any amounts in local bank accounts) in an amount and in denominations adequate to do business at such Purchased Location on the morning after the Closing Date (in accordance with and subject to Section 8.1).

(c) FFE. All owned furniture, signs, fixtures, appurtenances, improvements (subject to all rights of the Landlord to such assets in accordance with the Assigned Leases), appliances, cash registers, and equipment on the Closing Date.

(d) Assigned Leases. The Assigned Leases (as determined in accordance with Section 8.2(a)), together with all security deposits related thereto.

(e) Assigned Contracts. The Contracts designated in writing by Purchaser to be assumed by and assigned to Purchaser, as further described in Section 8.2(b) below (to the extent so designated, the "Assigned Contracts").

(f) Franchise Rights. All rights relating to offering, selling, and managing franchises to operate Elephant & Castle restaurants in the United States and Canada, including without limitation all franchise materials and registrations, all franchise disclosure documents, all disclosure receipts from franchisees, all books and records relating to Seller's franchising of any Franchised Locations and relating to Sellers' franchisees and their franchised businesses, the Franchise Agreement for the Franchised



Location in Grove City, Pennsylvania, and any state specific registrations of the disclosure documents (to the extent assignable).

(g) Liquor Licenses. All rights necessary and appropriate under applicable law pertaining to the liquor licenses and permits used by Sellers in connection with the Business for liquor sales at the Purchased Locations ("Liquor Licenses"), which Liquor Licenses are set forth on Schedule 2.1(g).

(h) Permits. Subject to Section 2.1(f), all rights of Sellers under any franchises, approvals, permits, licenses, orders, registrations, certificates, variances, and similar rights obtained from governments and governmental agencies, that are transferable and that are necessary or useful for the operation of the Business and held by Sellers in connection with the operation of the Business or the ownership of the Acquired Assets (in the aggregate the "Permits"), including without limitation those items constituting Permits listed in Schedule 2.1(g).

(i) Supplies. All supplies, including bags, packaging and other materials used in the operation of the Purchased Locations, as the same exists on the Closing Date.

(j) Prepaid Expenses. Prepaid expenses as mutually agreed upon for the Locations as of the Closing Date.

(k) Intellectual Property. All rights of Sellers in and to any copyrights, patents, trademarks, trade names, logos, trade secrets, inventions, knowhow, recipes, confidential information and other intellectual property, if any, utilized or related to the Business owned or licensed by Sellers, including, without limitation, all rights of Sellers in and to the names "Elephant & Castle", "The Exchange Pub and Restaurant" and "Rosie's on Robson" and all goodwill incidental to the Business and the goodwill of Sellers associated with the Business or the Acquired Assets, and the internet web sites and internet domain names, including but not limited to [www.elephantcastle.com](http://www.elephantcastle.com), [www.shop.elephantcastle.com](http://www.shop.elephantcastle.com), and [www.theexpub.com](http://www.theexpub.com) and Sellers' right to use of the URL and the HTML codes and other similar codes and software program language supporting such websites (collectively, "Intellectual Property").

(l) Equity and Joint Venture Interest. All shares of capital stock or other equity interest of Elephant & Castle (Chicago) Corporation, as a Seller hereunder, in E&C San Francisco, LLC, a California limited liability company, which owns a one-third (1/3) equity interest in BC Restaurants, LLC, a California limited liability company, which operates the Elephant & Castle Restaurant in San Francisco, together with all minute books, stock ledgers, corporate seals and stock certificates of E&C San Francisco, LLC and BC Restaurants, LLC, and other books and records relating to the organization and existence of E&C San Francisco, LLC and BC Restaurants, LLC, including tax returns, financial statements and corporate or other entity filings.

(m) Point of Sale System Data. All Data and licenses related to the Sellers' point of sale system, including without limitation all Data residing on servers owned by Terra Nova.

(n) Books and Records. All books, records, manuals, and other materials of Sellers or the Business, including, without limitation, all Data, sales records, customer records, lists, personnel and payroll records, accounting records, purchase records, price lists, supplier lists, correspondence, quality control records, and all research and development files, wherever located other than Sellers' corporate minute book and stock ownership records.

(o) Hired Employee Records. Copies of personnel and payroll records relating solely to the Hired Employees who were employed by Sellers immediately prior to Closing.

(p) Telephone Numbers; Permits. All telephone numbers, licenses, permits, certificates, interim permits, permit applications, franchises, rights, and other authorizations issued to Sellers by any governmental authority and applicable to the Business to the extent assignable.

(q) Goodwill. All goodwill and going concern value of the Business.

**2.2 Terra Nova Assets**. In connection with conducting the Business operations, Sellers are party to a management agreement with Terra Nova Service Corp. ("TNS"), a New York corporation and wholly owned subsidiary of Terra Nova Pub Group Ltd., a Canadian corporation ("TNPG" (together with TNS, "Terra Nova")) and have utilized products and services of Terra Nova, both of which entities are affiliates of Sellers. Purchaser shall have the right to assume the management agreement with Terra Nova for continued management and transition services in connection with Section 8.2(b). In addition to providing services to Sellers in connection with the Business operations, certain Data of the Sellers resides on servers owned by Terra Nova. Sellers shall act in good faith and shall take all reasonable and necessary steps to cause Terra Nova to convey and transfer to Purchaser at Closing all such Data in a medium reasonably acceptable to Purchaser and to cause Terra Nova to assign to Purchaser at Closing any licenses associated with the point of sale system.

**2.3 Excluded Assets**. The Acquired Assets do not include any of the following (the "Excluded Assets"): (a) any accounts receivable, notes receivable, charge card receivables or other receivables, (b) any funds deposited in bank accounts and all other cash or cash equivalents, except for any Change Funds that will remain at the Purchased Locations as stated herein, (c) all sales Tax, utility and other deposits (other than deposits under the Leases), (d) any money due to Sellers with respect to any retirement or 401(k) program and all other rights related to Sellers' employee benefit plans, (e) stock or other equity rights or interests in any company, other than the shares of capital stock or other equity interest of Elephant & Castle (Chicago) Corporation, as a Seller hereunder, in E&C San Francisco, LLC and its 1/3 equity interest in BC Restaurants, LLC, which operates the Elephant & Castle Restaurant in San Francisco, (f) insurance policies or cash value of any insurance policy, (g) any monies or refunds due from vendors, (h) any monies due Sellers under any co-op arrangement with vendors, (i) any monies due with respect to coupons, (j) any claims or causes of action, including, but not limited to, any and all claims and causes of action arising under sections 544, 545, 547, 548, 549, and 553(b) of the Bankruptcy Code or under comparable state law provisions, (k) the Rejected Leases, and the Contracts other than the Assigned Contracts, (l) all minute books, stock ledgers, corporate seals

and stock certificates of the Sellers, and other books and records relating to the organization and existence of the Sellers as legal entities that the Sellers are required by law to retain or that the Sellers determine are reasonably necessary to retain, including tax returns, financial statements and corporate or other entity filings, but excluding documents that are Acquired Assets; provided, that the Sellers shall provide the Purchaser reasonable access, upon the Purchaser's reasonable request and at the Purchaser's sole cost and expense, to any books and records described in this sub-clause, and (m) all rights of the Sellers under this Agreement and all deposits, retainers or on account cash paid to the Sellers' professionals and advisers.

**2.4 Excluded Liabilities; Assumed Obligations.**

(a) Excluded Liabilities. Except as specified in Section 2.4(b), Purchaser shall not assume any liabilities or obligations of Sellers (the "Excluded Liabilities"), including, but not limited to, general liabilities, accounts or notes payable, trade payables, environmental and employment-related liabilities and obligations, and any obligation or liability arising out of any breach, violation or default of or by Sellers, whether known or unknown, disputed or undisputed, contingent or non-contingent, liquidated or unliquidated or otherwise. Purchaser shall further not assume any liability, duty, responsibility, obligation, assessment, cost, expense, expenditure, charge, fee, penalty, fine, contribution, premium, or obligation of any kind of Sellers or as a successor of Sellers (whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and regardless of when sustained, incurred, asserted or when the relevant events occurred or circumstances existed) in connection with any benefit plan of Sellers, whether maintained in the United States or outside of the United States as bonus, incentive, compensation, deferred compensation, equity-based compensation, severance, termination, change of control, pension, savings, profit sharing, retirement, health, dental, disability, hospital or life insurance, loan, vacation, tuition reimbursement, relocation, accidental death and dismemberment, or any other employee benefit plan, policy, program, arrangement or agreement (whether provided on a funded or unfunded basis, or through insurance or otherwise) under which Sellers' employees or former employees (or any beneficiary of either) have any current or future rights to benefits (collectively, the "Benefit Plans"). Purchaser shall not be an adopting or otherwise a successor employer on any such Benefit Plans, nor shall Purchaser have liability for any premiums, contributions, matches, or other payments of any kind thereunder, along with any liabilities or obligations of Sellers accruing, arising out of or related to the employment by Sellers of any current or past employees of Sellers prior to the Closing Date, including, without limitation, any obligation or liability for (i) accrued but unpaid wages, salary, incentive or bonus compensation, vacation benefits and pay, or other compensation, (ii) claims and benefits under any Benefit Plans, and (iii) employee termination obligations.

(b) Assumed Obligations. Sellers will assign to Purchaser, and Purchaser will assume on the Closing Date, the following (collectively, the "Assumed Obligations"):

(i) the executory obligations and liabilities of Sellers arising out of or relating to the terms of the Assigned Leases and the Assigned Contracts, as well as the Cure

Obligations assumed and payable by Purchaser under Sections 8.2(a) through 8.2(d) with respect thereto, and

- (ii) Sellers' Customer Credit Obligations.

### ARTICLE 3

#### PURCHASE PRICE; ALLOCATION

**3.1 Deposit.** In connection with the execution and delivery of this Agreement, Purchaser has tendered a deposit in the amount of \$1,000,000.00 (the "Deposit"), which has been delivered to Rothgerber Johnson & Lyons LLP (Purchaser's counsel in Denver, Colorado) to be held in its trust account. The Deposit shall be paid to Sellers at Closing, or in the event of termination of this Agreement, disbursed in accordance with Section 12.2(b). All amounts and references to consideration or payments stated in this Agreement shall mean and refer to United States Dollars. In the event that the specific Purchaser named under this Agreement becomes the successful bidder at the auction to be undertaken as part of the Sale Approval Motion, then within one (1) business day after becoming such successful bidder, Purchaser shall cause Rothgerber Johnson & Lyons LLP to deliver by wire transfer of funds the entire Deposit to the Escrow Agent, to be held and disbursed pursuant to the terms of this Agreement. Prior to transfer of the Deposit, Sellers, Purchaser and Escrow Agent shall enter into an mutually agreeable Escrow Agreement, the form of which will be negotiated in good faith by the Parties on or before November 29, 2010 and then become attached to this Agreement as Exhibit D.

#### **3.2 Purchase Price and Payment.**

(a) Purchase Price. The "Purchase Price" to be paid at Closing by Purchaser shall consist of Twenty Two Million Seven Hundred Fifty Thousand Dollars (\$22,750,000.00) (the "Cash Purchase Price"), less the following:

- (i) Sellers' Cure Contribution as determined in accordance with Section 8.2(a);
- (ii) the Customer Credit Obligations as determined in accordance with Sections 7.12; and
- (iii) the estimated Tax Obligations as determined in accordance with Section 8.3(d).

(b) Payments at Closing. On the Closing Date:

- (i) Purchaser and Sellers shall jointly instruct Escrow Agent in writing to disburse and pay the Deposit of \$1,000,000 to Sellers.
- (ii) Purchaser shall pay by wire transfer to an account designated by Sellers the balance of the Cash Purchase Price (net of the Deposit), less the amounts for any Sellers' Cure Contribution, Customer Credit Obligations and the Tax Obligations.

(iii) Purchaser shall pay directly to the Escrow Agent at Closing the amount of Sellers' Tax Obligations that were estimated as of the Closing Date, to be held by Escrow Agent and disbursed to pay Sellers' Taxes to the applicable taxing authorities in accordance with and by the time designated in Section 8.3(d).

(iv) Purchaser shall pay to the Lessors of the Assigned Leases and to the third parties to the Assigned Contracts the Sellers' Cure Obligations amounts.

**3.3 Allocation of the Purchase Price.** On or before November 29, 2011, the Parties shall negotiate in good faith and mutually agree on an allocation of the Purchase Price (and all other capitalizable costs) among the Acquired Assets for all purposes (including financial accounting and Tax purposes), which allocation will then become attached to this Agreement as Exhibit E. Such allocation shall be used by the parties in completing Internal Revenue Service Form 8594 and in satisfying any and all other reporting requirements of the Internal Revenue Service and the Canada Revenue Agency.

**3.4 Prorations.** Liability for real and personal property, ad valorem and other Taxes, utility charges and deposits, rents, prepaid expenses, security services and any and all other expenses relating to the Acquired Assets and which are not treated elsewhere herein, will be allocated and prorated between Purchaser and Sellers through the Closing Date to reflect the principle that Sellers shall be responsible for all expenses arising prior to the Closing Date, and Purchaser shall be responsible for all expenses arising on or after the Closing Date. To the extent that any of the items listed below in this Section 3.4 are paid by Sellers prior to the Closing or are payable by Purchaser or Sellers after the Closing Date, such items shall be apportioned as of the Closing Date, such that Sellers shall be liable for (and shall reimburse Purchaser to the extent that Purchaser shall pay) that portion of any such item relating or attributable to periods prior to the Closing Date (except to the extent that such item is an Assumed Obligation), and Purchaser shall be liable for (and shall reimburse Sellers to the extent Sellers shall have paid) that portion of any such item relating or attributable to periods on or after the Closing Date. Such prorated items shall include: (i) personal property, real estate, retail sales, occupancy and water Taxes, if any, on or with respect to the Business, the Acquired Assets and/or Assumed Obligations notwithstanding the date of the assessment of such Taxes; (ii) Taxes, rent and other items paid or payable under any Assigned Lease or Assigned Contract, except as provided otherwise herein; (iii) the amount of sewer rents and charges for water, telephone, electricity and other utilities and fuel; (iv) insurance premiums of any policies acquired by Purchaser at Closing; and (v) any and all other expenses customarily subject to proration in connection with the sale and purchase of assets. Sellers and Purchaser agree to furnish each other with such documents and other records as each party reasonably requests in order to confirm all adjustment and proration calculations made pursuant to this Section 3.4. The pro-ration and adjustment process provided in this Section 3.4 shall also include an adjustment for security and other deposits heretofore paid by Sellers to third parties.

(a) If any amounts to be prorated have not been finally determined on the Closing Date, an estimate of such amounts mutually acceptable to Sellers and Purchaser shall be made for settlement purpose at Closing on the basis of the most recent third party verifiable information, or if such information is not available then upon Sellers' records, and the amount finally determined will be prorated as of the Closing Date, and

appropriate settlement made as soon as practicable after such final determination. If as a result of any such settlement in accordance with the preceding sentence, either party is owed an amount from the other party, then the appropriate party shall make reimbursement for such amounts. Sellers shall provide Purchaser with a proposed schedule of prorations at least five (5) business days prior to the Closing, upon delivery of which Purchaser shall provide comments to Sellers, and the Parties shall work together to finalize such prorations by Closing.

#### **ARTICLE 4**

##### **CLOSING AND BANKRUPTCY COURT APPROVAL**

**4.1 Closing.** The closing of the transaction contemplated hereby will take place on the second business day following the later of (a) entry of the Sale Approval Order and the entry of the Recognition Order, which is not stayed pending an appeal (the "Closing" or "Closing Date"), or (b) satisfaction of all of the conditions set forth in this Agreement, including without limitation those conditions set forth in Article 9 and Article 10, but in no event later than January 6, 2012. The Closing will take place at a location to be mutually agreed upon by Purchaser and Sellers.

**4.2 Court Approval Required.** Sellers and Purchaser acknowledge and agree that the Bankruptcy Court's entry of the Sale Approval Order, and the entry of a Recognition Order by a Canadian court, is required in order for Sellers and Purchaser to consummate the transactions contemplated hereby and that the requirement that the Sale Approval Order and Recognition Order be entered is a condition that cannot be waived by either party.

#### **ARTICLE 5**

##### **DELIVERIES AT CLOSING**

**5.1 Deliveries by Sellers.** At the Closing, Sellers shall deliver or cause to be delivered to Purchaser the following (each in form and substance reasonably satisfactory to Purchaser):

(a) Instruments of Assignment. Duly executed bills of sale, assignments (including without limitation franchise agreements and other Contracts), general trademark assignments, trademark license agreement assignments, name changes or withdrawals, lease assignments, or certificates of title, dated the Closing Date, transferring to Purchaser all right, title and interest in and to the Acquired Assets free and clear of all Liens.

(b) Interim Management Agreement. If required by Purchaser, a duly executed interim management agreement, the form of which will be negotiated in good faith by the Parties on or before November 29, 2010 and then become attached to this Agreement as Exhibit C.

(c) Canadian Tax Election. Sellers that are organized under the laws of jurisdictions in Canada shall execute, jointly with Purchaser, an election in the prescribed

form and containing the prescribed information as specified in and to have subsection 167(1.1) of Part IX of the Excise Tax Act (Canada), as amended from time to time (the "ETA") apply to the sale and purchase of the Acquired Assets acquired from the Canadian organized Sellers hereunder so that no tax is payable in respect of such sale and purchase under Part IX of the ETA. The Purchaser will file such election with the Minister of National Revenue within the time prescribed by the ETA.

(d) Corporate Resignations. Resignations of managers of E&C San Francisco, LLC, and to the extent any managers of BC Restaurants, LLC exist that are representatives of Sellers or their owners, then resignations of such managers and replacement by representatives of Purchaser.

(e) Delivery of Data. All current and historical Data of the Business, whether generated from and stored on the point-of-sale system or otherwise, shall be transferred to a storage device designated by Purchaser.

(f) Court Order. A court order reasonably satisfactory to Purchaser authorizing and approving Purchaser to assume the Assigned Leases and Assigned Contracts. Such Assigned Leases and Assigned Contracts will be assumed by and assigned to Purchaser pursuant to the Sale Approval Order under §§ 363 and 365 of the Bankruptcy Code, along with a Canadian court Recognition Order recognizing and approving the United States Sale Approval Order and the terms of this transaction.

(g) Sale Approval Order; Recognition Order. A certified copy of the Sale Approval Order and the Recognition Order.

(h) Other. Such other instruments or documents as Purchaser may reasonably request to fully effect the transfer of the Acquired Assets and to confer upon Purchaser the benefits contemplated by this Agreement.

**5.2 Deliveries by Purchaser**. At the Closing, Purchaser shall deliver or cause to be delivered to Sellers, the following:

(a) Payments. The payments to be paid on the Closing Date pursuant to Section 3.2(b).

(b) Escrow Agreement Disbursement Instructions. Instructions to the Escrow Agent to disburse the Deposit to Sellers.

(c) Instruments of Assumption. A duly executed assumption of liabilities in form and substance reasonably satisfactory to Sellers, whereby Purchaser will assume and agree to pay, perform and discharge the Assumed Obligations.

(d) Other. Such other instruments or documents as Sellers may reasonably request to fully effect the transfer of the Acquired Assets and assumption of the Assumed Obligations and to otherwise consummate the transactions contemplated by this Agreement.

**ARTICLE 6**

**REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Purchaser hereby represents and warrants to Sellers as follows:

**6.1 Organization, Good Standing and Power.** Purchaser is an entity duly organized, validly existing and in good standing under the laws of the Province of Alberta. Purchaser has all requisite limited liability company or corporate power and authority to own, use and operate its properties and to carry on its business as now being conducted.

**6.2 Authority Relative to this Agreement; Execution and Binding Effect.** The execution, delivery and performance of this Agreement by Purchaser and the consummation of the transactions contemplated hereby have been duly authorized by all requisite limited liability company or corporate authority of Purchaser and, subject to and conditioned upon the entry of the Sale Approval Order and the Recognition Order, no other act or proceeding on the part of Purchaser is necessary to approve the execution and delivery of this Agreement, the performance by Purchaser of its obligations hereunder or the consummation of the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Purchaser and constitutes a legal, valid and binding obligation of Purchaser, enforceable in accordance with its terms.

**6.3 No Breach.** The execution, delivery and performance by Purchaser of this Agreement and the consummation of the transactions contemplated hereby will not: (i) with or without the giving of notice or the lapse of time, or both, conflict with, or result in the breach of or constitute a default under, or result in the modification, cancellation, lapse or termination of, or limitation, or curtailment under, or violate any (x) provision of law, or (y) any agreement, contract, lease, power of attorney, commitment, instrument, insurance policy, arrangement, undertaking, order, decree, ruling or injunction to which Purchaser is subject or a party or by which it is bound (or with respect to which its properties or assets are subject or bound); or (ii) violate the charter documents of Purchaser.

**6.4 Governmental and Other Consents.** Except for the Liquor Licenses, Sale Approval Order, Recognition Order and for Bankruptcy Court approval of the pre-sale terms hereof, no consent, notice, authorization or approval of; or exemption by, any governmental or public body or authority or by any other Person, whether pursuant to contract or otherwise, is required to be obtained by Purchaser in connection with the execution, delivery and performance of this Agreement or any of the instruments or agreements herein referred to or the taking of any action herein or therein contemplated.

**6.5 Financial Ability; Adequate Assurances.** Purchaser has cash available or has existing borrowing facilities or unconditional, binding funding commitments that are sufficient to enable it to consummate the transactions contemplated by this Agreement and to provide adequate assurance of future performance for the Assigned Leases and Assigned Contracts.

**6.6 No Brokers.** Purchaser has not taken any action that would cause Sellers or Purchaser to have any obligation or liability to any person for finders' fees, brokerage fees,



agents' commissions or like payments in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

## ARTICLE 7

### REPRESENTATIONS AND WARRANTIES OF SELLERS

Sellers hereby jointly and severally represent and warrant to Purchaser as follows:

**7.1 Organization, Good Standing, Power and Qualification.** Each Seller is an entity duly organized, validly existing and, except as set forth on Schedule 7.1, in good standing under the laws of the jurisdiction of its incorporation or organization, and is qualified to do business in each jurisdiction where required to do so, except where the failure to so qualify would not have a Material Adverse Effect. Each Seller has all requisite power and authority to own, use and operate its properties and assets (including the Acquired Assets) and to carry on its business as now being conducted. Each Seller is qualified, authorized, registered or licensed to do business as a foreign corporation in all jurisdictions in which the nature of its activities and of its properties make such qualification necessary, except where such qualification would not have a Material Adverse Effect. Schedule 7.1 sets forth each Seller, the jurisdiction of its organization and each foreign jurisdiction in which it is duly authorized to conduct business. Except as set forth in Schedule 7.1, none of the Sellers directly or indirectly control or have any equity participation or similar interest in any entity.

**7.2 Authority.** Subject to entry of the Sale Approval Order by the Bankruptcy Court and the Recognition Order by a Canadian court, each Seller has all requisite corporate right, power and authority to execute, deliver and perform this Agreement and each instrument of conveyance and other document to be executed and delivered by such Seller pursuant to the requirements of this Agreement (all such instruments and documents, the "Seller Ancillary Documents"). The execution, delivery and performance of this Agreement and each Seller Ancillary Document by each Seller has been duly and validly authorized and approved by all necessary action, subject to the approval of the Bankruptcy Court. Subject to the approval of the Bankruptcy Court, this Agreement has been duly and validly executed and delivered, and at the Closing each Seller Ancillary Document will be duly and validly executed and delivered, by each Seller, and (a) this Agreement constitutes the legal, valid and binding obligation of each Seller, enforceable against each Seller in accordance with its terms, and (b) each such Seller Ancillary Document shall constitute the legal, valid and binding obligation of each Seller, enforceable against each Seller in accordance with its terms. Sellers owning and selling Canadian assets that comprise Acquired Assets are registered for GST/HST purposes and will make their business numbers related thereto available to Purchaser as needed.

**7.3 No Conflict or Violations.** The execution, delivery and performance of this Agreement and the Seller Ancillary Documents and the consummation by Sellers of the transactions contemplated hereby or thereby do not and will not:

- (a) conflict with or constitute a violation of the certificate of incorporation, by-laws or resolutions of Sellers, or of the certificate of organization and operating agreement of Sellers, as applicable;

(b) to the Knowledge of each Seller, conflict with or constitute a violation of (with or without the giving of notice or the lapse of time or both) any provision of any law, judgment, order, decree, rule or regulation of any legislative body, court, governmental or regulatory authority or arbitrator which is applicable to or relates to such Seller; or

(c) result in the creation of any Lien upon any of the Acquired Assets.

**7.4 Consents; Notices.** Except as otherwise stated herein, to the Knowledge of Sellers, subject to Bankruptcy Court approval, and except filings with the Federal Trade Commission and the Department of Justice, if any, no material consent, approval, or authorization of, or designation, declaration or filing with, or notice to, any legislative body, court, governmental or regulatory authority or arbitrator under any provision of any law, judgment, order, decree, rule or regulation is required on the part of Sellers in connection with the execution, delivery and performance of this Agreement or any other agreement or document contemplated hereby or with the consummation of the transactions contemplated hereby and thereby.

**7.5 Title.** Sellers have good and marketable title to all of the Acquired Assets, tangible and intangible, subject only to the purported liens of record specified in the schedules to the Bankruptcy Petitions. Upon Sellers' delivery of applicable assignment documents to Purchaser at the Closing, Purchaser will have good and marketable title to the Acquired Assets, tangible and intangible, free and clear of all liabilities, encumbrances and security interests whatsoever, except the Assumed Obligations, to the extent provided in the Sale Approval Order. There are no Liens relating to the Acquired Assets other than those specified and listed in the schedules to the Bankruptcy Petitions. The Acquired Assets comprise all of the assets owned or licensed by Sellers that are used in connection with the Business, and include without limitation the point-of-sale system and equipment at each Location, any licenses to operate the point-of-sale system, and all current and historical Data from the point-of-sale system regarding the Business.

**7.6 Assigned Contracts.** The Assigned Contracts are in full force and effect. The copies of the Contracts to be delivered to Purchaser in accordance with Section 8.3(h) comprise a complete set of all Contracts to which Sellers are a party relating to the Business and the Locations. Except for Sellers' failure to pay amounts owing thereunder or as otherwise disclosed by or on behalf of Sellers in writing when such Contracts are delivered in accordance with Section 8.3(h), neither any Seller nor, to Sellers' Knowledge, any other party is in default under any Assigned Contract, and no event has occurred or condition exists which, with the giving of notice, the passage of time, or both, would constitute a default by a Seller or the other party thereunder. Subject to Bankruptcy Court approval, Sellers have the right to transfer and assign the Assigned Contracts to Purchaser without the consent or approval of the other party thereto or any third party and, upon the assignment of the Assigned Contracts to Purchaser and Purchaser's assumption thereof, Purchaser will be substituted for Seller thereunder and Purchaser will have the same rights and obligations thereunder that Seller had prior to the Closing. Upon payment of the Cure Obligations, (i) all Assigned Contracts will be in full force and effect, (ii) except for breaches and defaults of the type referred to in Section 365(b)(2) of the Bankruptcy Code, Sellers are not, and to the Knowledge of each Seller none of the other parties to the Assigned Contracts are, in material default under, and no event has occurred which, with the passage of time or

giving of notice or both, would result in any Seller, or to the Knowledge of each Seller, any of the other parties to the Assigned Contracts, being in material default under any of the terms of the Assigned Contracts, and (iii) and none of the other parties to the Assigned Contracts has sought relief from the automatic stay to terminate or otherwise affect the Assigned Contracts.

**7.7 Assigned Leases.** Other than payments of rent and other payments owed in connection with the Leases, except as set forth on Schedule 7.7, Seller has no Knowledge of any breaches or defaults under the Leases by Sellers (as tenants) or by any Lessor. Upon payment of any applicable Cure Obligations, all Liens against any leasehold interests will be discharged on or prior to the Closing Date. Seller has no Knowledge of any latent defects with respect to the real property on which the Business is operated at the Purchased Locations. There are no verbal or oral contracts, amendments or other agreements relating to the Assigned Leases. As of and after the date the Bankruptcy Petitions were filed, Sellers are current on paying all Post-Petition Administrative Rent under the Leases, and Seller shall remain current on all such payments up to the Closing Date.

**7.8 Franchise Agreements.** With respect to the Franchised Locations listed on Schedule 1.1, the franchise agreements for such Franchised Locations are in full force and effect, the Sellers have no Knowledge of any breach or alleged breach of the franchise agreement or any other agreement with the franchisee of such Franchised Locations, and the franchisee is current on payment of all royalties and other payments due to Sellers (as franchisor) under such franchise agreements, except as follows: the franchisee at the Grove City, PA Franchised Location is not current with payment of royalties due to Seller and the Sellers and such franchisee are in the process of negotiating an amendment to such franchise agreement. Sellers' have no Knowledge of any violations of any laws, rules or regulations by the franchisees nor that there has been any alleged or actual breach or default under the lease for the Franchised Locations by either the franchisees or their landlords. As of the Closing, the estoppel certificates that have been provided by the franchisees of the Franchised Locations contain true and accurate information, Sellers know of no inaccurate statements made therein, nor do they omit to state a material fact that would have an impact on Purchaser's decision to purchase the Franchised Locations. Sellers have complied with all franchise legislation including without limitation all disclosure requirements of the franchise legislation.

**7.9 Equity Interests.** All use of Seller's Intellectual Property rights by E&C San Francisco, LLC and BC Restaurants, LLC, have been licensed to them under written agreements that will be delivered to Purchaser under Section 8.3(i), and no other verbal or side agreements exist regarding any license or transfer of any of Seller's Intellectual Property rights to BC Restaurants, LLC.

**7.10 Purchased Intellectual Property.** Schedule 7.10 lists the primary items of Intellectual Property owned by any Seller and used in connection with the Business, including both common law property rights and those property rights for which any Seller has received or applied for a registration, including, without limitation, any patent, patent application, copyright registration or application therefor, and trademark, trade name, service mark, domain name registration or application therefor ("Intellectual Property Schedule"). No person or entity which is not a party to this Agreement owns any interest in or has any right to use any of the Intellectual Property, other than rights licensed to E&C San Francisco, LLC and BC Restaurants, LLC in

connection with operating the Location in San Francisco and rights licensed to franchisees under franchise agreements for the Franchised Locations. No claims nor to the Knowledge of any Seller, threat of claims have been asserted by any third party against any Seller related to the use of any Intellectual Property, and to each Seller's Knowledge the use of the Intellectual Property does not infringe, misappropriate, violate or dilute any intellectual property rights of any person or entity. No Seller has granted any licenses or other rights to any of the Intellectual Property, and is under no obligation, contingent or otherwise to do so now or in the future, other than rights licensed to E&C San Francisco, LLC and BC Restaurants, LLC in connection with operating the Location in San Francisco and rights licensed to franchisees under franchise agreements for the Franchised Locations. To Sellers' Knowledge no person or entity has misappropriated or is engaging in any activity that infringes on the Intellectual Property.

**7.11 Financial Statements.** The financial statements and information provided to Purchaser as part of Purchaser's due diligence process are true, correct, and complete in all material respects and accurately reflect the sales of the Business through the point of sale system during the periods reported therein. The Revenues of the Business and of the respective Locations comprising the Business that are generated through the point of sale system are consistent with the actual Revenues that are generated and received at the various Locations.

**7.12 Customer Credit Obligations.** Schedule 7.12 contains a summary of the Customer Credit Obligations under which any Seller has any liability, together with the amount of such liability as of November 1, 2011, which Sellers believe materially overstates the amount that will ultimately be redeemed in the ordinary course of the Business.

**7.13 Employee Plans.** The documents and items listed on Schedule 7.13 are every Benefit Plan as defined in Section 2.4(a) of this Agreement that Sellers currently have in place or have had in place. Except as set forth on Schedule 7.13, no Benefit Plan is a multiemployer plan within the meaning of ERISA Section 4001(a)(3), a single employer plan subject to ERISA Title IV, or an employee benefit plan that is maintained by more than one employer within the meaning of Section 413(c) of the Internal Revenue Code of 1986, as amended.

**7.14 Employees.** To Sellers' knowledge, there are no complaints, claims or charges outstanding, or anticipated, nor are there any orders, decisions, directions or convictions currently registered or outstanding by any tribunal or agency against or in respect of the Sellers under or in respect of any employment legislation. Schedule 7.14 lists all employees who are in receipt of benefits under any U.S. or Canadian Workers' Compensation legislation. The Sellers are in compliance with all employment legislation and, without limiting the generality of the foregoing; (i) there are no appeals pending before a workers' compensation tribunal involving the Sellers; (ii) all levies, assessments and penalties made against the Sellers pursuant to any Canadian or US workers' compensation legislation have been paid by the Sellers; (iii) there has been no change in the rating assessment applicable to the Sellers under any Canadian or US workers' compensation legislation during the past five years, except as described in Schedule 7.14; and (iv) the Sellers' are not aware of any audit currently being performed pursuant to any Canadian or US workers' compensation legislation in respect of the Sellers.

**7.15 Disclosure.** (a) No representation or warranty or other statement made by any Seller in this Agreement, schedules hereto, the certificates delivered pursuant to this Agreement

or otherwise in connection with the transactions contemplated by this Agreement, contains any untrue statement or omits to state a material fact necessary to make any of them, in light of the circumstances in which it was made, not misleading; and (b) no Seller has Knowledge of any fact that has specific application to a Seller (other than general economic or industry conditions) and that may cause a Material Adverse Effect on the Acquired Assets, Business, prospects, financial condition or results of operations of any Seller that has not been set forth in this Agreement or the schedules.

**7.16 Compliance With Laws; Income Tax Act (Canada).** Sellers have received no notice of any violation of any law, municipal ordinance or other governmental requirement affecting the Business or Purchased Locations, and except as set forth on Schedule 7.16, Seller has no Knowledge or reason to believe that any authority contemplates issuing same, or that any violation exists. The Sellers that are selling Canadian assets as part of the Acquired Assets are not non-residents of Canada for purposes of the Income Tax Act (Canada), as amended from time to time.

**7.17 Conduct of Business.** Sellers will conduct and have conducted the Business between the Effective Date of this Agreement and Closing Date in the usual and ordinary course of business, other than for certain payments delayed or not made to vendors and suppliers, and during the same period, Sellers have conducted the Business and Purchased Location operations in accordance with all applicable local, state and federal ordinances, laws, rules and regulations.

**7.18 Pending and Threatened Litigation.** No litigation is pending, nor to the Knowledge of a Seller is any litigation threatened, against any Seller or any of the Acquired Assets, other than as set forth on Schedule 7.18. Sellers will immediately notify Purchaser in the event that any Seller receives notice of the pendency of any such action, or the assertion or existence of any such threat, and will promptly update Purchaser with any material information obtained concerning any matters disclosed on Schedule 7.18.

**7.19 Taxes.** Other than the Taxes that will be addressed in connection with the Tax Obligations and payment of Taxes pursuant to Section 8.3(d) below, Sellers have paid all Taxes due and payable by Sellers in connection with owning the Acquired Assets and conducting the Business operations. There are no actions, suits proceedings, investigations or claims pending or, to the knowledge of Sellers, threatened against Sellers in respect of Taxes, governmental charges or assessments, nor are any matters under discussion with any governmental authority with respect to Taxes, governmental charges or assessments asserted by any such authority.

**7.20 Brokerage Obligations.** Except for the retention of BellMark Partners, LLC as investment banker, Sellers have not incurred liability to any broker or agent with respect to the payment of any commission regarding the consummation of the transaction contemplated hereby. Sellers shall be solely responsible for all commissions and costs payable to BellMark Partners, LLC or otherwise.

**7.21 No Environmental Claims or Hazardous Substances.** No governmental entity has served upon Sellers (nor have Sellers received from Lessors for the Locations or have Knowledge of) any notice claiming any violation of any Environmental Law or relating to any Hazardous Substance or noting the need for any repair, remedy, remediation, construction,

alteration or installation of any Locations with respect to any thereto, or noting that Hazardous Substances from a nearby property have migrated or are migrating toward or under the real property on which the Locations exist. There are no Hazardous Substances on or in the Purchased Locations in violation of any Environmental Laws, and Sellers have no Knowledge of any Hazardous Substances on or in any of the Franchised Locations in violation of any Environmental Laws, whether contained in barrels, tanks, equipment (moveable or fixed) or other containers; deposited or located in land, waters, sumps or on any other part of the Property; incorporated into any structure on the Property; or otherwise existing thereon. The business operations conducted at the Purchased Locations are not in violation of any Environmental Law.

“Hazardous Substance” means (i) any “hazardous substance” as defined in §101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended from time to time (42 U.S.C. §§ 9601 et seq.) (“CERCLA”) or any regulations promulgated thereunder, or the Occupational Safety and Health Act of 1970, as amended from time to time (29 U.S.C. § 651 et seq.), or any regulations promulgated thereunder; (ii) petroleum and petroleum by-products; or (iii) any additional substances or materials that have been or are currently classified or considered to be pollutants, hazardous or toxic under Environmental Requirements.

“Environmental Requirements” means all laws, statutes, rules, regulations, ordinances, guidance documents, judgments, decrees, orders, agreements and other restrictions and requirements (whether now or hereafter in effect) of any governmental authority, including, without limitation, federal, state, provincial and local authorities, relating to the regulation or protection of human health and safety, natural resources, conservation, the environment, or the storage, treatment, disposal, transportation, handling or other management of industrial or solid waste, pollutants or Hazardous Substances, including without limitation: CERCLA (as defined below); the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. 300f et seq.; the Pollution Prevention Act of 1990, 42 U.S.C. §13101 et seq.; and their state and local counterparts and equivalents.

**7.22 “AS IS” Transaction.** PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS ARTICLE 7 OR ELSEWHERE IN THIS AGREEMENT, SELLERS HEREBY DISCLAIM ANY WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AS TO ANY PORTION OF THE ACQUIRED ASSETS, AND SUCH ACQUIRED ASSETS AND ASSUMED OBLIGATIONS ARE ASSIGNED “AS IS.” PURCHASER FURTHER ACKNOWLEDGES THAT PURCHASER HAS CONDUCTED AN INDEPENDENT INSPECTION AND INVESTIGATION OF THE PHYSICAL CONDITION OF THE ACQUIRED ASSETS AS PURCHASER DEEMED NECESSARY OR APPROPRIATE AND THAT IN PROCEEDING WITH ITS ACQUISITION OF THE ACQUIRED ASSETS, EXCEPT FOR ANY REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN ARTICLE 7 OR ELSEWHERE IN THIS AGREEMENT, PURCHASER IS DOING SO BASED SOLELY UPON SUCH INDEPENDENT INSPECTIONS AND INVESTIGATIONS.

## ARTICLE 8

### CERTAIN COVENANTS AND AGREEMENTS

**8.1 Restaurant Inventories and Change Funds.** At the close of business on the Closing Date, Sellers will ensure that each Purchased Location has a minimum of four (4) days worth of Consumable Inventories to permit normal operations in each Purchased Location on and after the Closing. Sellers will also ensure that, at the close of business on the Closing Date, each Purchased Location will have a Change Fund on hand that is sufficient to allow normal operations on and after the Closing, in an amount that will be no less than Four Hundred Dollars (\$400.00) per Purchased Location.

**8.2 Leases and Contracts.**

(a) Negotiations with Lessors. Purchaser and Sellers' designated representatives (which are currently Dan O'Brien of Hilco Real Estate, LLC, and Gary Heller of Terra Nova) shall cooperate and work together to conduct negotiations directly with all Lessors with respect to the terms of assignment and assumption of the Leases for all Purchased Locations, or the terms applicable for new leases by Purchaser or its affiliates, on terms reasonably satisfactory to Purchaser (each such agreement, a "Purchaser-Lessor Agreement"). Purchaser and Purchaser's designated representatives shall not have the authority and shall not be entitled to contact Lessors directly without the involvement of Seller or Seller's representatives after the Effective Date of this Agreement, but shall have the right to contact Lessors and have discussion with Lessors so long as a designated representative of Seller is involved in such discussion, it being acknowledged by Seller that Seller will make a designated representative of Seller available to participate in calls with Lessors upon request by Purchaser. Sellers' designated representatives shall be entitled to contact Lessors directly and shall promptly inform Purchaser of the details of any such contact. Purchaser shall assume the obligations under Seller's agreement with Hilco Real Estate, LLC at Closing and shall be responsible for paying Hilco Real Estate, LLC for work performed by Hilco pursuant to such agreement.

(i) Sellers' shall assume and assign to Purchaser at Closing all of the Leases for all Purchased Locations other than the Rejected Leases (the "Assigned Leases").

(ii) Purchaser shall have the right to direct Sellers to file a motion to reject any or all of the Leases as indicated in writing by Purchaser to Sellers on or before 5:00 p.m. Eastern time on the date that is two (2) business days prior to the Closing Date (the "Rejected Leases"); provided, however, that a Lease designated to be a Rejected Lease by such date and time may thereafter be deemed to be an Assigned Lease with the written consent of both Sellers and Purchaser.

(b) Assigned Contracts. Purchaser shall have the right (without exclusion of the right of any other person or entity) to conduct negotiations with all parties to the Contracts who are not Sellers so long as a designated representative of Sellers is involved in such negotiations and conversations (it being acknowledged by Seller that Seller will

make a designated representative of Seller available to participate in such calls upon request by Purchaser), with respect to the terms of assignment and assumption of the Contracts that will be applicable to Purchaser as of Closing, or the terms applicable for new contracts by Purchaser or its affiliates, on terms reasonably satisfactory to Purchaser (each such agreement, a "Purchaser-Vendor Agreement").

(i) Assigned Contracts. Purchaser shall have the right to direct Sellers to assume and assign to Purchaser at Closing certain of the Contracts (which may include, without limitation, the franchise agreements for the Franchised Locations) as indicated in writing by Purchaser to Sellers on or before 5:00 p.m. Eastern time on the date that is two (2) business days prior to the Closing Date, which shall comprise the Assigned Contracts; provided, however, that a Contract designated to be accepted by such date and time thereafter may be deemed to be a Rejected Contract with the written consent of both Sellers and Purchaser.

(ii) Rejected Contracts. For any Contract that Purchaser does not give written notice of acceptance with respect thereto under Section 8.2(b)(i) on or before such time and date set forth therein, Seller shall file a motion to reject such Contracts, such that they are not assigned to or assumed by Purchaser at Closing ("Rejected Contracts"), provided, however, that a Contract designated to be rejected may be deemed to be an Assigned Contract at Closing with the written consent of both Sellers and Purchaser.

(a) Seller's Cure Contribution. Prior to Closing, Purchaser and Sellers shall agree on the total amount of the Cure Obligations after taking into account the Purchaser-Lessor Agreements and the Purchaser-Vendor Agreements applicable thereto. "Sellers' Cure Contribution" means the total Cure Obligations so agreed with respect to the Assigned Leases as well as the total Cure Obligations so agreed with respect to the Assigned Contracts. At Closing, the Cash Purchase Price shall be reduced by the amount of Sellers' Cure Contribution.

(b) Payment of Cure Contribution. Within ten days after Closing, unless otherwise provided in the applicable Purchaser-Lessor Agreement or Purchaser-Vendor Agreement, Purchaser shall pay to Lessors with respect to each Assigned Leases and the third party with respect to each Assigned Contract the Sellers' Cure Contribution applicable thereto, after taking into account the Purchaser-Lessor Agreements and Purchaser-Vendor Agreements applicable thereto.

### **8.3 Certain Pre-Closing Covenants and Agreements.**

(a) Access. Until the Closing, Purchaser and its representatives (including counsel, financial advisors, and auditors) will have access to Sellers' employees, premises, books and records (including, but not limited to, leases, purchase orders, contracts, price lists/schedules and mark down schedules) maintained by Sellers with respect to the Acquired Assets during normal business hours, which are located at Sellers' Headquarters. Sellers will permit Purchaser to make such inspections as Purchaser may reasonably require, and will cause Sellers' officers or representatives to furnish Purchaser with such financial and operating data and such other information in



respect to Sellers' business, properties, and personnel as Purchaser may from time to time request.

(b) Conduct of Business. From the Effective Date until the Closing Date, Sellers will conduct the Business in the ordinary course, consistent with past practice, without mark-downs or promotional sales and with no less diligence and effort than would have been applied in the absence of this Agreement. Sellers will use commercially reasonable efforts to preserve intact its current business organization, preserve its relationship with suppliers and others having business dealings with it, and preserve its good will. From the Effective Date until the Closing Date, Sellers will remain current on paying all Post-Petition Administrative Rent. Without limiting the generality of the foregoing, Sellers will not, without the prior written consent of Purchaser: (a) mortgage, pledge, or encumber any of its material assets, tangible or intangible, or create or suffer to exist any new Lien thereon other than the purported liens of record as referenced in Section 7.5; (b) acquire, sell, lease, transfer, or dispose of any assets other than sales of inventory in the ordinary course of business; (c) enter into any material contract or agreement or modify any existing material contract or agreement related to the Business (excluding Contracts related to the Cases or the administration thereof); (d) cause or enable any Material Adverse Effect to take place or occur, or fail to comply with any law which would have a Material Adverse Effect on Sellers or the Business; (e) take, propose to take, or agree in writing or otherwise to take any of the actions described in clauses (a) through (d) above. In addition, Sellers will take all actions necessary to ensure that all Assigned Leases and Assigned Contracts remain in full force and effect in accordance with their terms without any default on the part of Sellers thereunder, other than defaults arising from Sellers' failure to pay amounts owing thereunder. Sellers will use commercially reasonable efforts to take all actions necessary so that all of its representations and warranties contained herein remain true, correct and complete as of the Closing, subject to obtaining any required approvals from the Bankruptcy Court.

(c) Liquor Licenses and Permits. Sellers shall take such steps as are necessary and appropriate under applicable law for a seller of a liquor license and permit to take in order to cause the prompt transfer to Purchaser of Sellers' Liquor Licenses and Permits for all of the Purchased Locations. Purchaser and Sellers shall cooperate to ensure Purchaser's ability to continue uninterrupted business operations and alcoholic beverage sales at the Purchased Locations post-Closing. In that regard, if Purchaser deems it necessary, pending transfer of Sellers' Liquor Licenses and Permits or new issuance by the applicable governing agencies, Sellers' and Purchaser shall enter into an interim management agreement at Closing in the form to become attached hereto as Exhibit C as contemplated by Section 5.1(b), that will, among other matters, enable Purchaser to operate the Acquired Assets under Sellers' Liquor Licenses and Permits, in Purchaser's discretion, at Purchaser's expense, and for Purchaser's benefit, and, to the extent necessary, provide for the funding of an extended budget for such interim operations.

(d) Tax Obligations. After the Effective Date and prior to Closing, Sellers and Purchaser shall work together to determine the amount of Tax Obligations that are owed, and if actual amounts are not yet known, that are estimated to be owed by Sellers

up to and including the Closing Date, whether then due and payable, or to be due and payable at a later date, for all periods up to the Closing Date. Sellers shall provide access and authority for Purchaser to contact taxing authorities on Sellers' behalf to obtain statements of the taxes that will be owed prior to and through the Closing Date. The total amount of Tax Obligations to be utilized for Closing under this Agreement shall comprise (i) the actual amounts owed and payable or to become payable by Sellers for Taxes related to the Business prior to the Closing Date, plus (ii) 100% of the amounts estimated as of the Closing Date to be owed and payable or to become payable by Sellers for Taxes related to the Business prior to the Closing Date. As part of the Closing, Purchaser shall pay to the Escrow Agent the amount of the Tax Obligations (as deducted from the Cash Purchase Price in accordance with Section 3.2). The Escrow Agent shall hold the funds in the amount of the Tax Obligations for payment of the Taxes to the applicable taxing authorities after the claims bar date as determined by the Bankruptcy Court pursuant to the Cases. Within ten (10) days after such claims bar date, Escrow Agent shall (A) use the designated funds comprising the Tax Obligations to pay any and all Taxes due or accruing prior to the Closing Date directly to the applicable taxing authorities, and (B) deliver detailed documentation to Purchaser demonstrating that such payments were made and the amounts paid to each taxing authority in accordance with this Section 8.3(d). To the extent the Tax Obligations are not sufficient for the Escrow Agent to pay all Taxes due or accruing prior to the Closing Date, then within ten (10) days after such claims bar date, Sellers shall pay any additional Taxes that accrued prior to the Closing Date directly to the applicable taxing authorities, and Sellers shall deliver detailed documentation to Purchaser demonstrating that such payments were made and the amounts paid to each taxing authority in accordance with this Section 8.3(d). This provision is intended to segregate and designate a portion of the Purchase Price to pay and achieve a complete (or at least nearly complete) reduction of Taxes owed by Sellers as of Closing. Sellers are and will remain obligated to pay for all Taxes due or accruing prior to the Closing Date, including without limitation for any Taxes that were not included in the calculation of Tax Obligations used for Closing. All obligations for the payment of Taxes and all liability for the accuracy of the estimate of the Tax Obligations shall remain the sole responsibility and obligation of Sellers after Closing.

(e) Franchisees. Prior to Closing, Sellers shall provide to Purchaser an estoppel certificate, in a form approved by and acceptable to Purchaser, executed by each franchisee under which the franchisee certifies that the applicable franchise agreement is in full force and effect, that there are no defaults or events of default under the franchise agreement by either franchisor or franchisee, and that there are no claims or potential claims that franchisee has against franchisor as of or prior to the Closing.

(f) Notifications of Certain Matters. From the Effective Date until the Closing, (i) Sellers shall give prompt notice to Purchaser of the occurrence or non-occurrence of any event of which such Seller has Knowledge that could reasonably be likely to cause, directly or indirectly, any Material Adverse Effect; or (ii) a party shall give prompt written notice to the other party any material failure of such party to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder.

(g) Risk of Loss. The risk of loss with respect to any Acquired Asset will remain with Sellers unless and until the Closing has been consummated in accordance with the terms of this Agreement.

(h) Personal Property Leases; Other Contracts. Within five (5) days after execution of this Agreement, Sellers will deliver to Purchaser complete copies of all personal property leases and other Contracts to which Sellers are a party, together with written documentation detailing Sellers' disclosure of any defaults by Sellers or the third party thereunder. Purchaser shall have the right to review any and all personal property leases and other Contracts to which Sellers are a party and Purchaser will have the right to designate in accordance with Section 8.2(b) which personal property leases and other Contracts it will assume in its sole discretion. Prior to the Closing, pursuant to Section 8.2(b), Purchaser will notify Sellers in writing of those personal property leases and other Contracts it desires to assume and those will become part of the Assigned Contracts under this Agreement.

(i) Equity and Joint Venture Interest. Within five (5) days after execution of this Agreement, Seller, Elephant & Castle (Chicago) Corporation, shall deliver to Purchaser copies of all minute books, ownership interest ledgers, and governing documents of E & C San Francisco, LLC and BC Restaurants, LLC, and all tax returns, financial statements and corporate or other entity filings for such entities. In addition, Sellers shall make all other books and records relating to E&C San Francisco, LLC and BC Restaurants, LLC available to Purchaser and its representatives. Within five (5) days after execution of this Agreement, Seller, Elephant & Castle (Chicago) Corporation, shall deliver to Purchaser copies of all licenses and agreements regarding the ability of those entities to use the Intellectual Property of Sellers, and namely, the license rights for the San Francisco restaurant to use the "Elephant & Castle" and related trademarks and trade names.

(j) Purchaser as Successful Bidder at the Auction. If Purchaser is the successful bidder at the auction to be undertaken as part of the Sale Approval Motion, and Purchaser's successful bid is on terms different than those set forth herein, Purchaser agrees on the day of such auction to enter into an appropriate amendment to this Agreement as reasonably requested by Sellers to reflect such revised terms.

(k) Notice to Employees and Franchisees. Prior to Closing, Sellers shall have taken best efforts to provide notice of the sale of the Business to all current and former employees who have worked for the Business during any time after July 1, 2010, and to all former and current franchisees at the address for such employees and franchisees currently on file with the Sellers.

**8.4 Sale Approval Order; Recognition Order**. The Bankruptcy Court shall have entered the Sale Approval Order in the form attached hereto as Exhibit A, or such other form reasonably satisfactory to Purchaser; which Sale Approval Order shall provide that any restriction on use of the premises under any Assigned Lease, or any other provisions that operate to limit assignment or alienation of any such Lease in contravention of the Bankruptcy Code, are either unenforceable, or are limited in scope and effectiveness to an extent reasonably

satisfactory to Purchaser. A Recognition Order recognizing and approving the United States Sale Approval Order and the terms of this transaction shall have entered in a Canadian court. The form of the Recognition Order will be negotiated in good faith by the Parties on or before November 29, 2010 and then become attached to this Agreement as Exhibit F.

**8.5 Certain Taxes; Transaction Expenses.**

(a) Certain Taxes. Unless exempt under Section 1146(c) of the Bankruptcy Code, Sellers shall pay any and all sales, transfer or transaction Taxes imposed by any taxing authority, including without limitation, any state, county, municipality or other subdivision thereof, in connection with the consummation of the transactions contemplated by this Agreement. Sellers and Purchaser will file a joint election under Section 167 of the Excise Tax Act (Form GST 44) as application to the Canadian portion of the Acquired Assets.

(b) Transaction Expenses. Except as expressly provided for in this Agreement, each party shall pay all fees, costs and expenses incurred by it with respect to this Agreement, whether or not the transactions contemplated hereby are consummated.

**8.6 Certain Post-Closing Agreements.**

(a) Further Assurances. Purchaser and Sellers shall, from time to time after the Closing, without further consideration, execute and deliver such instruments and take such further actions as may be reasonably necessary or desirable to carry out the provisions hereof and the transactions contemplated hereby including the assignment by Sellers of such additional contracts and leases of Sellers as Purchaser shall reasonably request. If Sellers or their agents collect receivables or other funds properly belonging to Purchaser after the Closing Date, Sellers shall (and shall cause its agents to) promptly forward such collections or funds to Purchaser, and if Purchaser or its agents collects receivables or other funds properly belonging to Sellers after the Closing, Purchaser shall (and shall cause its agents to) promptly forward such collections or funds to Sellers.

(b) Access to Records and Properties. Purchaser acknowledges that Seller is in Chapter 11 bankruptcy proceedings and the estate will be liquidated following Closing. Purchaser shall have the right to contact the Sellers' liquidating agent for access to such books and records and those of the Business, as well as the properties related to the Business to (a) complete any financial statements or audits thereof or Tax Returns, (b) defend any Tax disputes or claims or respond to any requests in connection with any Tax audits, (c) comply with any legal request or order, (d) defend any disputes, claims, prosecution or litigation including any enforcement of rights against third parties in the Bankruptcy Court or (e) for any other reasonable purpose. Sellers shall only be granted access to the books and records relating to Purchaser's business operations involving the Acquired Assets after the Closing upon Purchaser's prior written consent, which may be withheld in Purchaser's sole discretion.

(c) Certain Tax Matters. Sellers shall use commercially reasonable efforts to file, within sixty (60) days after Closing, its 2010 federal Income Tax Return.

(d) Survival. The terms and conditions of this Section 8.6 shall survive the Closing and not be merged with or into the conveyance documents.

**8.7 Customer Credit Obligations**. Following Closing, Purchaser shall honor, in accordance with the applicable terms, the Customer Credit Obligations.

**8.8 Sellers' Employees**. Sellers agree that, from and after the date hereof, Purchaser may offer employment, effective as of the Closing, to any persons employed by Sellers at the Purchased Locations, which employment will become effective as of the Closing Date and only if the Closing occurs. Only if the Closing occurs, any person who accepts such an offer of employment with Purchaser shall be a "Hired Employee" and shall be employed by Purchaser on such terms and conditions as Purchaser and each such Hired Employee may mutually agree. Upon request of Purchaser, Sellers shall provide Purchaser reasonable access to data (including computer data) regarding the ages, dates of hire, compensation, benefits and job descriptions of the Hired Employees. Purchaser and Sellers agree that they will encourage Sellers' existing employees to submit applications for employment with Purchaser. Purchaser will evaluate such applications based on its own criteria and intends to employ a significant number of Sellers' employees; however, Purchaser shall be under no obligation to hire any of Sellers' employees. To the extent Purchaser hires Sellers' employees, the terms of such employment will be as determined between Purchaser and the individual employees. Purchaser assumes all claims of the Hired Employees relating to employment by Purchaser arising after the Closing Date.

Unless otherwise agreed before Closing, with respect to any of Sellers' employees, Sellers will terminate the employment of those employees at the close of business on the Closing Date. Sellers will directly pay all of the Hired Employees for earned and unused vacation, in accordance with each Seller's normal policies. All claims of the employees arising out of their employment with Sellers before the Closing Date will be the sole liability of Sellers. Sellers will comply with all notification or other requirements of the Worker Adjustment and Retraining Notification Act of 1988, as amended, and each comparable law of any state and all Canadian employment legislation, with respect to the terminated employees.

## ARTICLE 9

### CONDITIONS PRECEDENT TO THE OBLIGATIONS OF PURCHASER

The obligation of Purchaser to consummate the transactions contemplated herein is subject to the satisfaction, at or before the Closing, of each of the following conditions (any of which conditions may, subject to Section 4.2, be waived by Purchaser in its sole discretion):

**9.1 Representations, Warranties and Covenants**. The representations and warranties of Sellers contained in this Agreement shall be true, correct and complete in all material respects (except for such representations and warranties which are qualified by their terms by a reference to materiality, which representations and warranties as so qualified will be true in all respects) on and as of the Closing Date with the same force and effect as though made on the Closing Date. Sellers shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by Sellers on or prior to the Closing Date (except for such covenants and agreements which are

qualified by their terms by a reference to materiality, which covenants and agreements as so qualified will have been performed or complied with in all respects). Excluding any objections to the entry of the Sale Approval Order, no action, proceeding or investigation (including, without limitation, actions, proceedings or investigations commenced or threatened by a governmental authority) has been commenced or threatened to prevent, or seek damages as a result of, the execution and delivery of this Agreement or the consummation of any of the transactions contemplated herein (unless such action, proceeding or investigation has been dismissed or otherwise disposed of at least seven days prior to the Closing Date).

**9.2 Sale Approval Motion.** Sellers shall have filed a motion or motions for approval (the "Sale Approval Motion") under Section 363 of the Bankruptcy Code of (a) the sale of the Acquired Assets, assumption and assignment of the Assigned Leases and Assigned Contracts and assumption of the Assumed Obligations pursuant to the terms of this Agreement and the transactions hereunder and (b) the form of this Agreement.

**9.3 Sale Approval Order; Recognition Order.** The Bankruptcy Court shall have entered the Sale Approval Order in a form acceptable to Purchaser which approves the Sale Approval Motion and which (a) approves the sale of the Acquired Assets to Purchaser on the terms and conditions set forth in this Agreement pursuant to Section 363(f) of the Bankruptcy Code and authorizes Sellers to proceed with this transaction, (b) includes a specific finding that Purchaser is a good faith purchaser (pursuant to Section 363(m) of the Bankruptcy Code) of the Acquired Assets, (c) states that the sale of the Acquired Assets to Purchaser shall be free and clear of all liens, claims, interests and encumbrances whatsoever (except for the Assumed Obligations) to the extent provided in the Sale Approval Order attached hereto as Exhibit A, (d) approves Sellers' assumption and assignment of the Assigned Leases and Assigned Contracts pursuant to Section 365 of the Bankruptcy Code, and (e) contains a finding and conclusion that Purchaser shall not be a successor to Sellers or any other person or entity for any purpose. A Recognition Order recognizing and approving the United States Sale Approval Order and the terms of this transaction shall have entered in a Canadian court.

**9.4 Deliveries at Closing.** Purchaser shall have received all documents and other items to be delivered by Sellers pursuant to Section 5.1. Sellers shall have assigned to Purchaser the Assigned Contracts and the Assigned Leases.

**9.5 Proceedings and Instruments Satisfactory.** All proceedings, corporate or otherwise, required to be taken by Sellers prior to or at Closing in connection with the performance of this Agreement, and all documents incident thereto, shall be complete to the reasonable satisfaction of Purchaser and its counsel.

**9.6 No Material Adverse Effect.** Between the Effective Date and the Closing, there shall have been no Material Adverse Effect.

**9.7 Absence of Proceedings.** No claim, suit, action or other proceeding shall be pending or threatened before or by any court, governmental agency, arbitrator or other entity against any of the parties to this Agreement with respect to the transactions contemplated by this Agreement or the Acquired Assets or Business, except for the proceedings conducted in the Bankruptcy Court related to and arising out of the Bankruptcy Petition.

**9.8 Certain Court Orders.** No court order shall have been entered in any action or proceeding instituted by any person that enjoins, restrains, or prohibits the consummation of the transactions contemplated hereby.

## **ARTICLE 10**

### **CONDITIONS PRECEDENT TO THE OBLIGATIONS OF SELLERS**

The obligation of Sellers to consummate the transactions contemplated herein is subject to the satisfaction, at or before the Closing, of each of the following conditions (any of which conditions, subject to Section 4.2, may be waived by Sellers in their sole discretion):

**10.1 Representations, Warranties and Covenants.** The representations and warranties of Purchaser contained in this Agreement shall be true, correct and complete in all material respects (except for such representations and warranties which are qualified by their terms by a reference to materiality, which representations and warranties as so qualified will be true in all respects) on and as of the Closing Date with the same force and effect as though made on the Closing Date. Purchaser shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by Purchaser on or before the Closing Date (except for such covenants and agreements which are qualified by their terms by a reference to materiality, which covenants and agreements as so qualified will have been performed or complied with in all respects).

**10.2 Sale Approval Order; Recognition Order.** The Bankruptcy Court shall have entered the Sale Approval Order. The Recognition Order shall have entered in a Canadian court.

**10.3 Deliveries at Closing.** Sellers shall have received all documents and other items to be delivered by Purchaser pursuant to Section 5.2. Purchaser shall have assumed the Assigned Contracts and the Assigned Leases.

**10.4 Certain Court Orders.** No court order shall have been entered in any action or proceeding instituted by any person that enjoins, restrains, or prohibits the consummation of the transactions contemplated hereby.

## **ARTICLE 11**

### **INDEMNITY**

**11.1 Indemnification by Purchaser.** Purchaser agrees to indemnify and hold harmless Sellers, their successors and assigns, their officers, directors, owners, managers, members, and employees, from and after the Closing, against all Indemnity Losses arising with respect to the following events: (a) the breach by Purchaser of any of its representations and warranties under this Agreement; (b) the failure by Purchaser to perform any of its covenants under this Agreement which are not cured within two business days after written notice; (c) any third party claim asserted against Sellers with respect to actions, occurrences, or omissions of Purchaser occurring after Closing, including, but not limited to, liabilities and obligations in connection with Purchaser's employees, employee benefit plans, and environmental laws of any

kind, except to the extent that that the same relate to any Excluded Liability; and (d) any liability or obligation which relate to or arise out of or result from the Assumed Obligations. Other than Purchaser's obligation to pay the Purchase Price and assume the Assumed Obligations, Purchaser's liability under this Section 11.1 shall be limited to the amount of the \$100,000.00. Further, other than Purchaser's obligation to pay the Purchase Price and assume the Assumed Obligations, Purchaser shall not have any liabilities under this Section 11.1 unless Sellers notify Purchaser in writing on or before sixty (60) days after Closing of any indemnity claim under this Section 11.1, which written notice shall specify in reasonable detail the basis therefor.

**11.2 Indemnification by Sellers.** Sellers agrees to jointly and severally indemnify and hold harmless Purchaser, its successors and assigns, its officers, directors, owners, managers, members, and employees, from and after the Closing, against all Indemnity Losses arising with respect to the following events: (a) the breach by Sellers of any of their representations and warranties under this Agreement; (b) the failure by Sellers to perform any of their covenants under this Agreement which are not cured within two business days after written notice; (c) any third party claim asserted against Purchaser with respect to actions, occurrences, or omissions of Sellers occurring prior to Closing, including, but not limited to, liabilities and obligations in connection with Sellers' employees, employee benefit plans, Taxes and environmental laws of any kind, except to the extent that that the same relate to any Assumed Obligations; and (d) any liability or obligation which relate to or arise out of or result from the Excluded Liabilities. Sellers' liability under this Section 11.2 shall be limited to the amount of the Purchase Price. Further, Sellers shall not have any liabilities under this Section 11.2 unless Purchaser notifies Sellers in writing on or before sixty (60) days after Closing of any indemnity claim under this Section 11.2, which written notice shall specify in reasonable detail the basis therefor. Any disputes regarding the any indemnity obligations of Sellers hereunder shall be resolved by the Bankruptcy Court. Notwithstanding any other provision of this Section 11.2, Purchaser shall not be entitled to obtain indemnity pursuant to this Section 11.2 to the extent it would require the Sellers to use funds reserved for payment by the Sellers' bankruptcy estate on account of claims filed by secured lenders, creditors asserting claims under Section 503(b)(9), PACA, cure amounts due to landlords under assumed leases, prepetition taxes, any amounts paid to Escrow Agent for payment of Tax Obligations, allowed professional fees and any amounts determined to be necessary as administrative expenses for the conclusion of the case.

## ARTICLE 12

### TERMINATION; EFFECT OF TERMINATION

**12.1 Termination of Agreement.** This Agreement may be terminated only as follows:

(a) Mutual Agreement. By written agreement of Sellers and Purchaser at any time.

(b) Outside Date. By Purchaser, if the Closing shall not have occurred on or prior to January 6, 2012, or such other date as mutually agreed upon by the parties, for any reason other than Purchaser's breach of this Agreement.



(c) Breach; Non-Satisfaction of Conditions Precedent. Any time before the Closing, by Sellers or Purchaser:

(i) in the event of a material breach hereof by any non-terminating party if such non-terminating party fails to cure such breach within three (3) business days following notification thereof by the terminating party; or

(ii) upon notification to the non-terminating party by the terminating party that the satisfaction of any condition to the terminating party's obligations under this Agreement becomes impossible or impracticable with the use of commercially reasonable efforts if the failure of such condition to be satisfied is not caused by a breach hereof by the terminating party.

(d) Third Party Successful Bidder. In the event that Purchaser is not the successful bidder at the auction for a sale of Sellers' assets to be held by the Bankruptcy Court, then this Agreement shall terminate upon the closing with such successful bidder.

(e) Certain Events – Purchaser's Termination Rights. As set forth below, if Purchaser gives written notice of its intent to terminate under Section 12.1(e)(i), Purchaser agrees to negotiate in good faith with Sellers for at least one business day after such notice, with respect to any changes to this Agreement mutually agreeable to Purchaser and Sellers to avoid any such termination. If Purchaser and Sellers are not able to agree on such terms after such one business day, Purchaser may terminate this Agreement under this Section 12.1(e) on written notice to Sellers given after such one business day of negotiations.

(i) If prior to Closing, Purchaser gives Sellers written notice of Purchaser's intention to terminate this Agreement pursuant to one or more of the sections under Article 9 as a result of the conditions precedent to the obligations of Purchaser not being met to Purchaser's reasonable satisfaction.

(f) Certain Events – Sellers' Termination Rights. As set forth below, if Sellers give written notice of their intent to terminate under Section 12.1(f)(i), Sellers agree to negotiate in good faith with Purchaser for at least one business day after such notice, with respect to any changes to this Agreement mutually agreeable to Purchaser and Sellers to avoid any such termination. If Purchaser and Sellers are not able to agree on such terms after such one business day, Sellers may terminate this Agreement under this Section 12.1(f) on written notice to Purchaser given after such one business day of negotiations.

(i) If prior to Closing, Sellers give Purchaser written notice of Sellers' intention to terminate this Agreement pursuant to one or more of the sections under Article 10 as a result of the conditions precedent to the obligations of Sellers not being met to Sellers' reasonable satisfaction.

**12.2 Effect of Termination.**

(a) Termination: Survival. If this Agreement is terminated pursuant to this Article 12 and the transactions contemplated hereby are not consummated, this Agreement shall become null and void and have no further force or effect and no liability shall attach to either of the parties. Notwithstanding anything in this Agreement to the contrary, the provisions of Section 8.5(b) (transaction expenses), this Section 12.2 (effect of termination), and the provisions under Article 13 (miscellaneous) shall survive any termination of this Agreement.

(b) Deposit.

(i) Except as set forth in Section 12.2(b)(ii) below, in the event that this Agreement is terminated, the Deposit shall be returned to Purchaser within two (2) business days of such termination.

(ii) In the event that this Agreement is terminated by Sellers pursuant to Section 12.1(c)(i) (material breach by Purchaser), or pursuant to Section 12.1(f)(i) (conditions precedent under Article 10), but only with respect to Sellers' conditions set forth in Sections 10.1 (representations, warranties and covenants) or Section 10.3 (deliveries by Purchaser), Sellers shall be entitled to the Deposit.

(c) Purchaser's Break-Up Fee. In the event that this Agreement is terminated pursuant to Section 12.1(d) (Third Party successful bidder), Purchaser will be entitled to a break-up fee equal to no less than two percent (2%) of the total Cash Purchase Price, plus a reimbursement of expenses in an amount of up to \$250,000, payable out of the sale proceeds paid by the successful Third Party, which amounts shall be payable by Sellers to Purchaser within five (5) business days of the closing with the successful Third Party, provided, however, that such break-up fee shall be payable only if the Bankruptcy Court has approved such break-up fee and the closing with such successful Third Party occurs.

**ARTICLE 13**

**MISCELLANEOUS**

**13.1 Purchaser as a Good Faith Purchaser.** The parties agree that the Sale Approval Order shall contain findings that: (a) Purchaser is a "good faith Purchaser" within the meaning of Section 363(m) of the Bankruptcy Code and is thereby entitled to the protection afforded a good faith, arms'-length Purchaser; (b) the Purchase Price is fair and reasonable; (c) this Agreement was negotiated at arms'-length; (d) Sellers do not have any interest in Purchaser or in any party affiliated with Purchaser; and (e) the sale of the Acquired Assets hereunder was conducted in a "non-collusive manner" within the meaning of Section 363(n) of the Bankruptcy Code.

**13.2 Termination of Sellers' Representations and Warranties.** The representations and warranties of Sellers and Purchaser shall survive the Closing for a period of sixty (60) days after the Closing.

**13.3 Jurisdiction.** The parties agree that the Bankruptcy Court shall retain exclusive jurisdiction to resolve any controversy or claim arising out of or relating to this Agreement or the implementation or the breach hereof.

**13.4 Notices.** All notices, consents or other communications required or permitted hereunder shall be given in writing and hand delivered or addressed and sent by Federal Express or other recognized overnight courier, or by certified or registered mail, postage prepaid, and return receipt requested, as follows:

If to Sellers:           Elephant & Castle  
                                  50 Congress Street, Suite 900  
                                  Boston, MA 02109

With a copy to:       Eckert Seamans Cherin & Mellott, LLC  
                                  Two International Place  
                                  16<sup>th</sup> Floor  
                                  Boston, MA 02110  
                                  Attn: John G. Loughnane  
                                  Tel: (617) 342 - 6885  
                                  Fax: (617) 342-6899  
                                  Email: jloughnane@eckertseamans.com

If to Purchaser:       Original Joe's Acquisition Corp.  
                                  200, 6001 1A Street SW  
                                  Calgary, Alberta  
                                  CANADA T2H 0G5  
                                  Attn: Derek Doke  
                                  Tel: (403) 263-4323  
                                  Fax: (403) 263-0849  
                                  Email: info@franworks.com

With a copy to:       Rothgerber Johnson & Lyons LLP  
                                  1200 Seventeenth Street  
                                  One Tabor Center, Suite 3000  
                                  Denver, CO 80202  
                                  Attn: Brent Cohen  
                                  Tel: (303) 623-9000  
                                  Fax: (303) 623-9222  
                                  Email: bcohen@rothgerber.com

or to such other address as may hereafter be designated by any party by the giving of notices in accordance with this Section 13.4. All notices, consents or other communications shall be deemed given when actually delivered (in the case of hand delivery by Federal Express or other

**IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS**

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In re:	:	Chapter 11
	:	
	:	Case No. 11-16155 (HJB)
MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC., <i>et al.</i> , <sup>1</sup>	:	
	:	Jointly Administered
	:	
Debtors.	:	

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**ORDER (I) APPROVING BIDDING PROCEDURES FOR THE SALE OF ASSETS  
FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES  
PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE, (II) APPROVING  
CERTAIN BIDDING PROTECTIONS, (III) APPROVING THE FORM AND MANNER  
OF NOTICE OF THE SALE AND ASSUMPTION AND ASSIGNMENT OF  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES  
AND (IV) SCHEDULING AN AUCTION AND SALE HEARING**

Upon the motion (the "Motion")<sup>2</sup> of Massachusetts Elephant & Castle Group, Inc. and its debtor affiliates (collectively, the "Debtors"), for the entry of an order (the "Order") pursuant to sections 105, 363, 365 and 503 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code") and Rules 2002, 6004, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") (i) approving bidding procedures for the sale of assets free and clear of all liens, claims, interests and encumbrances pursuant to section 363 of the Bankruptcy Code ("Bid Procedures"), (ii) approving certain bidding protections, (iii) approving the form and manner of notice of the sale and assumption and assignment of executory contracts

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<sup>1</sup> The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The Debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed such terms in the Motion.

and unexpired leases, (iv) scheduling an auction and sale hearing and (v) approving such sale; and any objections to entry of an order approving the Bid Procedures, the bidding protections and form and manner of notice of sale and scheduling an auction and sale hearing having been resolved, withdrawn or overruled; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that the Motion is a core proceeding pursuant to 28 U.S. C. § 157; and adequate notice of the Motion and opportunity for objection having been given; and it appearing that no other or further notice need be given; and it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors, and other parties-in-interest;

NOW THEREFORE IT IS HEREBY FOUND, CONCLUDED AND DETERMINED  
THAT:

A. Notice of the hearing on the Motion and the Bid Procedures was provided to all necessary parties in interest and is otherwise adequate and appropriate in the circumstances.

B. In the exercise of their business judgment, the Debtors have determined that the best method for maximizing the return to their creditors is, among other things, through a sale of substantially all of the Debtors' assets and the assumption and assignment of certain executory contracts and unexpired leases of the Business.

C. In the exercise of their business judgment, the Debtors have agreed to sell certain of their assets (the "Assets") to the Stalking Horse Bidder pursuant to the Asset Purchase Agreement (the "APA"), a copy of which is attached to the Motion, subject to higher and better offers.

D. The Asset Purchase Agreement and its terms were negotiated by the Debtors and the Stalking Horse Bidder in good faith and at arms' length.

E. The Debtors will maximize the sale price of the Assets by seeking competitive bidders and holding an auction thereof (the "Auction") in accordance with the Bidding Procedures attached hereto as Exhibit 1.

F. The Bidding Procedures are reasonably designed to maximize the value to be achieved for the Assets and are in the best interests of the Debtors, their estates, creditors and other parties in interest.

G. The Debtors have demonstrated a compelling and sound business justification for the authorization to pay the Break-Up Fee and Expense Reimbursement under the terms and conditions set forth in the Asset Purchase Agreement.

H. The Debtors' granting of the Break-Up Fee and Expense Reimbursement to the Stalking Horse Bidder is (i) an actual and necessary cost and expense of preserving the Debtors' estates within the meaning of section 503(b) of the Bankruptcy Code, (ii) of substantial benefit to the Debtors' estates, and (iii) fair, reasonable and appropriate in light of, among other things, (a) the size and nature of the proposed sale of the Assets, (b) the substantial efforts that have been expended by the Stalking Horse Bidder and (c) the benefits the Stalking Horse Bidder has provided to the Debtors' estates and creditors and all parties-in-interest herein.

I. All other findings made by the Court during the Bid Procedures hearing are incorporated herein by reference.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. The Bid Procedures attached hereto as Exhibit 1 are hereby approved, and the terms of the Bidding Procedures are incorporated by reference as if fully set forth herein. The Debtors are hereby authorized to obtain the highest and best bids for the Assets in accordance with the Bid Procedures. The failure to specifically include or reference any particular

provision, section or article of the Bid Procedures in this Order shall not diminish or impair the effectiveness of such Bid Procedures, it being the intent of this Court that the Bid Procedures be authorized and approved in their entirety.

2. The Sale Notice substantially in the form attached hereto as Exhibit 2 is hereby approved. Upon entry of the Bid Procedures Order, the Debtors will serve within two business days copies of the Bid Procedures Order and Sale Notice (as defined below) upon: (a) the Office of the United States Trustee for the District of Massachusetts; (b) counsel to the Stalking Horse Bidder; (c) counsel for the Committee; (d) all known secured lenders and their counsel; (e) all known lien-holders and their counsel; (f) all known federal and state taxing authorities which have a reasonably known interest in the relief requested in this Motion; (g) all attorneys who have entered their appearance in these cases; (h) and any party that has previously expressed an interest in the Assets; and (i) all parties specifically referenced in Section 8.3(k) of the APA.

3. Debtors shall serve within two business days a copy of the Sale Notice upon all other creditors and other persons entitled to notice under Bankruptcy Rule 2002(a).

4. The methods of notice described herein comply fully with Bankruptcy Rule 2002, Bankruptcy Rule 6004 and MLBR 6004-1 and constitute good and adequate notice of the proposed Bid Procedures and the sale of the Assets.

5. A Prospective Bidder that desires to make a Competing Offer is required to deliver written copies of its Competing Offer by facsimile and email to (a) counsel to the Debtors, (i) Eckert Seamans Cherin & Mellott, Two International Place, 16<sup>th</sup> Floor, Boston, MA 02110-2602 (Attn: John G. Loughnane, Esq.), (b) counsel to the Official Committee of Unsecured Creditors, Goulston & Storrs, P.C., 400 Atlantic Avenue, Boston, Massachusetts 02110 (Attn: Douglas B. Rosner, Esq. and Christine D. Lynch, Esq.); (c) counsel to the Secured

Lender, Latham & Watkins, Wacker Drive Suite 5800, Chicago, Illinois 60606 (Attn: Richard Levy, Esq.) and McCarthy Terault, LLP; Suite 3000 421 7th Avenue SW, Calgary AB T2P 4K9 (Attn: Sean Collins, Esq.); (d) counsel to the Stalking Horse Bidder, Rothberger, Johnson & Lyons, LLP, One Tabor Center, Suite 3000, 1200 Seventeenth Street, Denver, Colorado 80202 (Attn: Brent R. Cohen) and Brown Rudnick, LLP, One Financial Center, Boston, MA 02111 (Attn: Jeffrey Jones); and (e) the Office of the United States Trustee for the District of Massachusetts John W. McCormack Post Office and Courthouse 5 Post Office Square, Suite 1000, Boston, MA 02109 (Attn: Jennifer L. Hertz, Esq.) (collectively, the "Notice Parties") no later than \_\_\_\_\_ (EST) on \_\_\_\_\_, 2011 (the "Bid Deadline").

6. If a Qualified Bid (as defined in the Bid Procedures) is received by the Debtors, the Auction will be conducted on \_\_\_\_\_ at \_\_\_\_\_ (EST) before the Honorable Henry J Boroff in the United States Bankruptcy Court, United States Bankruptcy Court, United States Courthouse, 300 State Street, Springfield, MA 01105 (the "Court"). If no Qualified Bids other than the bid by the Stalking Horse Bidder are received prior to the Bid Deadline, then, at the discretion of the Debtors, the Auction will be cancelled. The Stalking Horse Bidder is deemed to be a Qualified Bidder (as defined in the Bid Procedures).

7. Each Qualified Bidder participating in the Auction shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale.

8. A hearing to consider approval of the results of the Auction, or, if no Auction is held, the sale of the Assets to the Stalking Horse Bidder (the "Sale Hearing") will be held in the Court on \_\_\_\_\_ at \_\_\_\_\_ (EST). In the event there are no other Qualifying Bids, the Debtors shall accept the Stalking Horse Bidder's bid pursuant to the Asset Purchase Agreement.



9. In accordance with the APA, if (a) the Court approves a Competing Transaction (as defined in the APA) and (b) the Debtors consummate such Competing Transaction, then the Debtors shall pay to the Stalking Horse Bidder the sum of 2% of the cash portion of the purchase price for the Assets plus an expense reimbursement of up to \$250,000 as a combined break-up fee and expense reimbursement (the "Break-up Fee and Expense Reimbursement"), provided that the Stalking Horse Bidder is not then in default under the APA. If applicable, the Debtors shall pay the Break-Up Fee and Expense Reimbursement to the Stalking Horse Bidder immediately upon the consummation of the Competing Transaction.

10. Except as otherwise provided herein, any objection to the Motion shall be filed with the Court and served upon the Notice Parties so as to be received no later than \_\_\_\_\_ (EST) on \_\_\_\_\_, 2011 (the "Objection Deadline"). An objection shall set forth with particularity the grounds for such objection or other statements of position.

11. The Assumption and Assignment Notice substantially in the form attached hereto as Exhibit 3, is hereby approved.

12. As soon as practicable after entry of this Order, but no later than \_\_\_\_\_, the Debtors shall file a schedule of cure obligations (the "Cure Schedule") for all Designated Contracts (as defined in the APA), which will include a description of the executory contract or unexpired lease, and set forth the cure cost (the "Cure Cost(s)") the Debtors believe is owed under each Designated Contract. The Debtors will serve the Assumption and Assignment Notice, together with the Cure Schedule, on each of the non-debtor parties listed on the Cure Schedule on the date that the Cure Schedule is filed with the Court, but not later than two business days after the entry of this Order.

13. Information concerning the Stalking Horse Bidder's ability to comply with the

requirements of adequate assurance of future performance under section 365(f)(2)(B) of the Bankruptcy Code will be provided to the non-debtor parties to the Designated Contracts upon written request to the Debtors' counsel and upon execution of a mutually acceptable confidentiality agreement. In the event that the Debtors propose to sell the Assets to a Purchaser who is not the Stalking Horse Bidder, adequate assurance information will be made available as soon as practicable after the conclusion of the Auction.

14. Any objection to the assumption and assignment of a Designated Contract (including, but not limited to, any objection relating to adequate assurance of future performance or to the Cure Costs set forth on the Cure Schedule) shall be in writing, filed with the Court and served on the Notice Parties so as to be actually received no later than the Objection Deadline; provided, however, that in the event that Auction results in a Successful Bidder other than the Stalking Horse Bidder, objections to the assignment of the Designated Contracts to the Successful Bidder on the basis of adequate assurance of future performance may only be raised at the Sale Hearing. An objection shall set forth with particularity the grounds for such objection or other statements of position, including, if applicable, the cure cost the objector asserts to be due, any pecuniary losses and the specific types and dates of alleged defaults.

15. If a non-debtor party to a Designated Contract fails to object to the Assumption and Assignment Notice in a timely manner and timely serve such objection, such party shall be forever barred from (i) contesting the assumption and assignment of such Designated Contract, (ii) asserting or claiming against the Debtors or the Successful Bidder that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied under such Designated Contracts, or that there is any objection or defense to the assumption and assignment of such Designated Contracts, and (iii) disputing or otherwise asserting any cure cost

other than as set forth in the Cure Notice, and the payment of the Cure Cost set forth in the Assumption and Assignment Notice shall be deemed to satisfy fully and completely the requirements of cure and compensation requisite to the Debtors' assumption and assignment of such Designated Contract.

16. If a non-debtor party to a Designated Contract files an objection to the proposed assumption and assignment, including an objection disputing the proposed Cure Cost, then to the extent that the parties are unable to consensually resolve the objection prior to the Sale Hearing, such objection will be determined at the Sale Hearing.

17. This Order shall be binding on the Debtors, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the estates of the Debtors.

18. This Order shall constitute findings of fact and conclusions of law and shall take immediate effect upon execution hereof.

19. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d), 7062, 9014, or otherwise, this Court, for good cause shown, orders that the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

20. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: \_\_\_\_\_, 2011

\_\_\_\_\_  
Honorable United States Bankruptcy Judge

**EXHIBIT 1**

**Bidding Procedures**

### **BIDDING PROCEDURES**

On November 18, 2011, Massachusetts Elephant & Castle Group, Inc., Elephant and Castle of Pennsylvania, Inc., E&C Pub, Inc., Elephant & Castle Inc. (Washington), Elephant & Castle (Chicago) Corporation, Elephant & Castle East Huron, LLC, E&C Capital, LLC, Elephant & Castle Illinois Corporation, E&C Eye Street, LLC, Elephant & Castle International, Inc., Elephant & Castle Pratt Street, LLC, Elephant & Castle Group Inc., Elephant & Castle Canada Inc. and Repechage Investments Limited, Elephant & Castle, Inc. (Texas) (collectively, the "Debtors"), filed a motion (the "Motion") for orders (i) approving bidding procedures for the sale of assets free and clear of all liens, claims, interests and encumbrances pursuant to section 363 of the Bankruptcy Code ("Bid Procedures"), (ii) approving certain bidding protections, (iii) approving the form and manner of notice of the sale and assumption and assignment of executory contracts and unexpired leases, (iv) scheduling an auction and sale hearing and (v) approving such sale. The Debtors have agreed to sell substantially all of their assets to the Stalking Horse Bidder pursuant to the terms of a certain Asset Purchase Agreement dated as of November 18, 2011 (the "APA"),<sup>3</sup> subject to Bankruptcy Court approval and subject to higher and better offers. A copy of the APA is available on claims agent's website at [www.epiq11.com](http://www.epiq11.com).<sup>4</sup>

The following procedures (the "Bid Procedures") shall govern the auction process by which the Debtors will accept and consider higher and better offers for the Purchased Assets (as defined in the APA). Nothing in these Bid Procedures shall constitute the consent of the Committee or GE Canada Equipment Financing, G.P. (the "Secured Lender") to any bid:

1. Any party desiring to become a prospective bidder ("Prospective Bidder") for the Purchased Assets shall deliver (unless previously delivered) to the Debtors, on or before \_\_\_\_\_, 2011 (the "Bid Deadline"), a signed confidentiality agreement in form and substance satisfactory to the Debtors (the "Confidentiality Agreement") and, upon request of the Debtors, a financial statement or other indicia of financial ability reasonably satisfactory to the Debtors (the "Financials").
2. After a Prospective Bidder delivers the Confidentiality Agreement and, upon request of the Financials, the Debtors will deliver or make available (unless previously delivered or made available) to each Prospective Bidder certain designated information and financial data with respect to the Assets.
3. A Prospective Bidder that submits a bid in compliance with the requirements of paragraph 4 below (a "Competing Offer") shall be designated a Qualified Bidder. The Stalking Horse Bidder is a Qualified Bidder.
4. To be considered, a Competing Offer shall:
  - a) be in writing and delivered by facsimile and email to: (a) counsel to the Debtors, (i) Eckert Seamans Cherin & Mellott, Two International Place, 16<sup>th</sup> Floor, Boston, MA

<sup>3</sup> Capitalized terms used but not defined herein shall have the meanings set forth in the APA.

<sup>4</sup> No assets of Repechage are included in the APA.

02110-2602 (Attn: John G. Loughnane, Esq.), (b) counsel to the Official Committee of Unsecured Creditors, Goulston & Storrs, P.C., 400 Atlantic Avenue, Boston, Massachusetts 02110 (Attn: Christine D. Lynch, Esq.); and (c) counsel to the Secured Lender, Latham & Watkins, Wacker Drive Suite 5800, Chicago, Illinois 60606 (Attn: Richard Levy, Esq.) and McCarthy Terault, LLP; Suite 3000 421 7th Avenue SW, Calgary AB T2P 4K9 (Attn: Sean Collins, Esq.);

b) exceed the sum of (i) the Purchase Price, plus (ii) the Break-Up Fee and Expense Reimbursement;

c) be accompanied by a signed asset purchase agreement in the form of the APA, together with a marked copy showing all changes to the APA, which changes shall not be less favorable to the Debtors and their estates;

d) not be subject to, or conditioned on, any contingency or condition, including without limitation, the outcome of unperformed due diligence by the bidder or upon any financing contingency;

(e) be irrevocable until the earlier to occur of (i) the Closing Date, or (ii) for sixty (60) days following entry of the Sale Order;

(f) be submitted with a cash deposit equal to 10% of the purchase price offered in the Competing Offer (the "Deposit") in the form of a wire transfer or a certified check made payable to the Debtors and sent to the Debtors' counsel, which Deposit shall be non-refundable if the Court approves the sale of the Debtors' assets to such Prospective Bidder;

(g) be substantially on the same or better terms and conditions as set forth in the APA; and

(h) be submitted with evidence substantially equivalent to that provided by the Stalking Horse Bidder establishing to the satisfaction of the Debtors, in consultation with the Committee and Secured Lender, that such Prospective Bidder or an entity that has executed a written guarantee of such Prospective Bidder's bid has readily available funds sufficient to enable it to timely consummate its Competing Offer and provide all non-debtor parties to those executory contracts and unexpired leases to be assumed and assigned with adequate assurance of future performance as contemplated by section 365 of the Bankruptcy Code.

5. Competing Offers that the Debtors, in consultation with the Committee and Secured Lender, determine satisfy the provisions set forth above shall be deemed "Qualified Bids" and any party submitting such Qualified Bid shall be designated as a "Qualified Bidder." A Qualified Bid will be valued by the Debtors based upon any and all factors that the Debtors deem pertinent, including, among others, (a) the amount of the Qualified Bid, (b) the risks and timing associated with consummating a transaction with the Qualified Bidder, (c) any excluded assets or

executory contracts or unexpired leases, and (d) any other factors that the Debtors may deem relevant to the Sale in consultation with the Committee and Secured Lender.

6. If no Qualified Bids other than the bid by the Stalking Horse Bidder are received, the Debtors will report the same to the Court, and the Debtors shall proceed to seek court approval of the APA with the Stalking Horse Bidder.

7. In the event that one or more Qualified Bid has been received, the Debtors will conduct the Auction for the sale of the Assets. The Auction will take place on \_\_\_\_\_ before the Honorable Henry J Boroff in the United States Bankruptcy Court, United States Bankruptcy Court, United States Courthouse, 300 State Street, Springfield, MA 01105. Only representatives of the Stalking Horse Bidder, Qualified Bidders, the Debtors, the Committee and the Secured Lender will be entitled to attend the Auction. Only the Stalking Horse Bidder, Qualified Bidders and the Secured Lender are eligible to participate and make any subsequent bids at the Auction. At the Auction, bidding will commence at the amount of the aggregate consideration for the Assets and on the terms proposed in the Qualified Bid that the Debtors select as the highest and best offer prior to the Auction. Bidding will continue until such time as the highest and best offer is determined by the Debtors in consultation with the Committee and Secured Lender (the "Successful Bid," and the party submitting such Successful Bid being designated the "Successful Bidder").

8. The Debtors, after consultation with the Committee and Secured Lender, may announce at the Auction additional rules or procedures for conducting the Auction so long as such rules are not inconsistent with the Bid Procedures including without limitation the addition of minimum bid increments.

9. The Debtors reserve the right, after consultation with the Committee and Secured Lender, to (i) determine, at their discretion, which bid, if any, is the highest and best offer, taking into consideration, *inter alia*, that the Break-Up Fee and Expense Reimbursement would be payable if a party other than the Stalking Horse Bidder is the Purchaser, (ii) reject any bid that the Debtors deem to be inadequate, insufficient or otherwise unsatisfactory, and/or (iii) adjourn the Auction by announcing such adjournment at the Auction. The Debtors' presentation to this Court for approval of the selected bid as the Successful Bid does not constitute the Debtors' acceptance of such bid. The Debtors will have accepted a Successful Bid only when such Successful Bid has been approved by the Court at the Sale Hearing.

10. All bidders shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and to have waived any right to a jury trial in connection with any disputes relating to the Auction and the sale of the Purchased Assets.

11. If, for any reason, the Successful Bidder fails to close on the purchase of the Purchased Assets (and assuming that the conditions to closing have been satisfied), then: (i) the Successful Bidder shall forfeit the Deposit and be subject to such other rights and remedies as the Debtors may have for such failure; (ii) the Qualified Bidder who, as of the conclusion of the Auction, has made the second and the next highest and best bid (as

determined by the Debtors in consultation with the Committee and Secured Lender) automatically will be deemed to have submitted the highest and best bid without further order of the Bankruptcy Court (such bidder, the "Alternate Bidder"); and (iii) the Alternate Bidder will be required to proceed as the purchaser at closing and its bid will be treated as the Successful Bid without further order of the Bankruptcy Court.



**EXHIBIT 2**

**Sale Notice**

**IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS**

	:	Chapter 11
In re:	:	
	:	Case No. 11-16155 (HJB)
MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC., <i>et al.</i> , <sup>5</sup>	:	
	:	Jointly Administered
	:	
Debtors.	:	
	:	

**NOTICE OF INTENDED PUBLIC SALE OF ESTATE PROPERTY**

\_\_\_\_\_ **IS THE DATE OF THE PROPOSED SALE**

\_\_\_\_\_ **IS THE DATE BY WHICH OBJECTIONS MUST BE MADE**

\_\_\_\_\_ **IS THE DEADLINE TO SUBMIT A BID FOR THE  
PROPERTY (A "COMPETING OFFER")**

**NOTICE** is hereby given, pursuant to 11 U.S.C. § 363, Fed. R. Bankr. P. 2002(a)(2) and 6004, and MLBR Rule 2002-5 and 6004-1, that the Debtors intend to sell at public sale the Debtors' right, title and interest in substantially all of the property of the estate consisting of:

**PROPERTY TO BE SOLD:** Substantially all of the personal property, leased real estate, equipment, contracts, licenses, permits and intellectual property associated with the operation of certain restaurants commonly known as Elephant & Castle.<sup>6</sup>

**QUALIFIED BIDS:** Competing Offers must be submitted according to the Bid Procedures Order entered by the Bankruptcy Court on November 29, 2011 in order to be considered a Qualified Bid. A copy of the Bid Procedures Order is available at no charge upon request from the undersigned or on the website of the court: [www.mab.uscourts.gov](http://www.mab.uscourts.gov).

**THE AUCTION:** In the event that one or more Qualified Bids are received, an auction will be conducted by the Honorable Henry J Boroff, United States Bankruptcy Judge, United States

<sup>5</sup> The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The Debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

<sup>6</sup> The assets to be sold consist of assets of each Debtor other than Repechage International Limited.

Bankruptcy Court, United States Bankruptcy Court, United States Courthouse, 300 State Street,  
Springfield, MA 01105 (the "Bankruptcy Court") on \_\_\_\_\_ at \_\_\_\_\_.  
(Date) (Time)

The proposed sale procedures are more particularly described in the Debtors' Motion for an Order (A) Authorizing and Approving Bidding Procedures; (B) Scheduling a Hearing to Consider the Sale of Substantially All of the Debtors' Assets; (C) Prescribing the Manner and Notice of the Sale Hearing; (D) Authorizing the Sale of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances and Other Interests; (E) Authorizing the Assumption and Assignment of Certain Executory Contracts; and (F) Granting Other Related Relief (the "Sale Motion"), a copy of which is available at no charge upon request from the undersigned or on the website of the court: [www.mab.uscourts.gov](http://www.mab.uscourts.gov).

**SALE FREE AND CLEAR OF LIENS:** The property will be sold free and clear of all liens, claims and encumbrances. Any perfected, enforceable valid liens shall attach to the proceeds of the sale according to priorities established under applicable law.

**OBJECTIONS:** Any objections to the sale must be filed in writing with the Clerk of the Bankruptcy Court on or before \_\_\_\_\_ at \_\_\_\_\_m. A copy of any objection also shall be served upon the undersigned and additional parties as set forth in the Bid Procedures Order. Any objection to the sale must state with particularity the grounds for the objection and why the intended sale should not be authorized. Any objection to the sale shall be governed by Fed. R. Bankr. P. 9014.

**HEARING:** A hearing on objections and the Sale Motion is scheduled to take place before the Honorable Henry J Boroff at the Bankruptcy Court on \_\_\_\_\_ at \_\_\_\_\_ . Further terms and conditions of the sale may be determined at the hearing. Any party who has filed an objection is expected to be present at the hearing, failing which the objection may be overruled. Evidence may be taken at the hearing to resolve issues of fact. If no objection to the Sale Motion is timely filed, the Bankruptcy Court, in its discretion, may cancel the scheduled hearing and approve the sale without a hearing.

Respectfully submitted,

Dated: November \_\_, 2011

ECKERT, SEAMANS, CHERIN &  
MELLOTT, LLC

/s/ John G. Loughnane  
John G. Loughnane (BBO No. 557599)  
Two International Place, 16<sup>th</sup> Floor  
Boston, MA 02110-2602  
Tel: (617) 342-6800  
Fax: (617) 342-6899  
Email: [jloughnane@eckertseamans.com](mailto:jloughnane@eckertseamans.com)

COUNSEL TO THE DEBTORS

**EXHIBIT 2**

**Assumption and Assignment Notice**

IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS

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	:	Chapter 11
In re:	:	
	:	Case No. 11-16155 (HJB)
MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC., <i>et al.</i> , <sup>7</sup>	:	
	:	Jointly Administered
Debtors.	:	
	:	

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**NOTICE OF PROPOSED ASSUMPTION AND  
ASSIGNMENT OF EXECUTORY CONTRACTS**

**PLEASE TAKE NOTICE** that on \_\_\_\_\_, 2011, the above captioned debtors (the "Debtors"), filed the:

Debtors' Motion for an Order (A) Authorizing and Approving Bidding Procedures; (B) Scheduling a Hearing to Consider the Sale of Substantially All of the Debtors' Assets; (C) Prescribing the Manner and Notice of the Sale Hearing; (D) Authorizing the Sale of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances and Other Interests; (E) Authorizing the Assumption and Assignment of Certain Executory Contracts; and (F) Granting Other Related Relief (the "Motion").

**PLEASE TAKE FURTHER NOTICE** that, among other things, the Motion seeks approval of the Asset Purchase Agreement between the Debtors and Original Joe's Acquisition Corporation ("Original Joe's") dated November 18, 2011 (the "APA"), pursuant to which the Debtors propose to sell all of their right, title and interest in substantially all of their assets, including personal property, leased real estate, equipment, contracts, licenses, permits and intellectual property associated with the operation of certain restaurants commonly known as Elephant & Castle (collectively, the "Assets")<sup>8</sup>, and to assume and assign certain executory contracts and unexpired leases (the "Designated Contracts") to Original Joe's or an alternative successful bidder free and clear of all liens, claims, encumbrances and interests, all as more fully set forth in the APA, subject to higher and better offers in accordance with the Bid Procedures Order and Bankruptcy Court approval. The Motion, APA and Bid Procedures Order are available upon request from the undersigned.

<sup>7</sup> The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The Debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

<sup>8</sup> The term "Assets" does not include any assets or any other interests of Repechage Investments Limited.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Motion, the APA and the Bid Procedures Order, the Debtors hereby provide notice of their intent to assume and assign the Designated Contracts identified on Exhibit A hereto, and to assign such Designated Contracts to Original Joe's in connection with the proposed sale and in accordance with the terms of the APA. Pursuant to the APA, Original Joe's shall pay any cure costs associated with the Designated Contracts, which are to be assumed and assigned as a condition of the closing of the APA.

**PLEASE TAKE FURTHER NOTICE** that objections ("Cure Objection"), if any, to the proposed assumption and assignment of any Designated Contract to Original Joe's or another bidder providing a higher or otherwise better offer, or to the amount of the cure amount determined by the Debtors, as set forth on Exhibit A hereto, or to otherwise assert that any amounts, defaults, conditions or pecuniary losses must be cured or satisfied under any of the Designated Contracts as of \_\_\_\_\_, 2011 or thereafter (including accrued but not yet due obligations) in order for such contract to be assumed and/or assigned must be made in writing, filed with Clerk, United States Bankruptcy Court, John W. McCormack Post Office and Court House, 5 Post Office Square, Suite 1150, Boston, MA 02190-3945, must be served, so as to be received no later than \_\_\_\_\_ (EST) (the "Objection Deadline") upon (a) counsel to the Debtors, (i) Eckert Seamans Cherin & Mellott, Two International Place, 16<sup>th</sup> Floor, Boston, MA 02110-2602 (Attn: John G. Loughnane, Esq.), (b) counsel to the Official Committee of Unsecured Creditors, Goulston & Storrs, P.C., 400 Atlantic Avenue, Boston, Massachusetts 02110 (Attn: Christine D. Lynch, Esq.); (c) counsel to the Secured Lender, Latham & Watkins, Wacker Drive Suite 5800, Chicago, Illinois 60606 (Attn: Richard Levy, Esq.) and McCarthy Terault, LLP; Suite 3000 421 7th Avenue SW, Calgary AB T2P 4K9 (Attn: Sean Collins, Esq.); (d) counsel to the Stalking Horse Bidder, Rothberger, Johnson & Lyons, LLP, One Tabor Center, Suite 3000, 1200 Seventeenth Street, Denver, Colorado 80202 (Attn: Brent R. Cohen) and Brown Rudnick, LLP, One Financial Center, Boston, MA 02111 (Attn: Jeffrey Jones); and (e) the Office of the United States Trustee for the District of Massachusetts . All Cure Objections must set forth with specificity any and all cure obligations or conditions which such party asserts must be cured or satisfied with respect to such assigned contract. Cure Objections shall set forth the cure amount that the objector asserts is due, the specific types and dates of the alleged defaults, pecuniary losses and conditions to assignment, and the support therefore and all other objections to assumption and assignment.

**PLEASE TAKE FURTHER NOTICE** that unless a Cure Objection is filed and served by a party to a Designated Contract, or a party interested in a Designated Contract, by the Objection Deadline, all interested parties who have received actual notice of the proposed assumption and assignment of such contract shall be deemed to have waived and released any right to assert a Cure Objection and to have otherwise consented to the assignment, and shall be forever barred and estopped from asserting or claiming against the Debtors, the purchaser or any other assignee of the relevant assigned contract that additional amounts are due or defaults exist, or conditions to assignment must be satisfied, under the Designated Contract for the period prior to \_\_\_\_\_, 2011.

**PLEASE TAKE FURTHER NOTICE** that hearings with respect to Cure Objections will be held during the Sale Hearing on \_\_\_\_\_, 2011 or at such other date as the Court may designate, provided that if the subject Designated Contract is assumed and assigned, the cure amount asserted by the objecting party (or such lower amount as may be fixed by the Court) shall be deposited with and held in a segregated account by the Debtors or such other person as the Court may direct pending further order of the Court or mutual agreement of the parties.

**PLEASE TAKE FURTHER NOTICE** that under certain circumstances as set forth in the APA, Original Joe's may elect not to take assignment of certain contracts and your receipt of this notice shall not be deemed to bind the purchaser to take assignment of the contract to which you are a party. In addition, the Debtors reserve the right to reject any contracts which are not assumed and assigned to the purchaser.

**PLEASE TAKE FURTHER NOTICE** that upon assignment, the Designated Contracts shall be transferred to, and remain in full force and effect for the benefit of the assignee in accordance with their respective terms, notwithstanding any provision in such Designated Contract which prohibits, restricts or conditions such assignment or transfer. Upon assignment, the assignee is assuming all liabilities arising under the Designated Contract on or after the effective date of assignment and the Debtors and their estates shall be relieved from any liability for any breach of any Designated Contract after such assignment to and assumption by the assignee on such date.

Any questions concerning the intended sale shall be addressed to the undersigned.

Dated: November \_\_, 2011

ECKERT, SEAMANS, CHERIN &  
MELLOTT, LLC

/s/ John G. Loughnane  
John G. Loughnane (BBO No. 557599)  
Two International Place  
16<sup>th</sup> Floor  
Boston, MA 02110-2602  
Tel: (617) 342-6800  
Fax: (617) 342-6899  
Email: jloughnane@eckertseamans.com

COUNSEL TO THE DEBTORS

**IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS**

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In re:	:	Chapter 11
	:	
MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC., <i>et al.</i> , <sup>1</sup>	:	Case No. 11-16155 (HJB)
	:	
Debtors.	:	Jointly Administered
	:	

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**ORDER (A) APPROVING ASSET PURCHASE AGREEMENT BETWEEN  
THE DEBTORS AND OJAC; (B) AUTHORIZING THE SALE OF THE ASSETS OF  
THE DEBTORS FREE AND CLEAR OF ALL LIENS, CLAIMS, AND INTERESTS;  
AND (C) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES IN CONNECTION THEREWITH**

Upon the motion (the "Motion") of Massachusetts Elephant & Castle Group, Inc. and its debtor affiliates (collectively, the "Debtors"), for the entry of an order (the "Order") pursuant to Bankruptcy Code sections 105(a), 363, and 365 and Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014 (a) approving an asset purchase agreement (the "APA") between the Debtors and Original Joe's Acquisition Corporation ("OJAC") to acquire Debtors' assets and operations used in the conduct of, or related to, owning, managing, operating, and franchising restaurants operated by Debtors (as defined in the APA, the "Assets")<sup>2</sup>, attached as Exhibit A; (b) authorizing the sale of the Assets free and clear of Liens (as defined in the APA), Claims (as

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<sup>1</sup> The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The Debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

<sup>2</sup> The term "Assets" does not include any assets or any other interests of Repechage Investments Limited.



defined in Section 101(5) of the Bankruptcy Code) and interests; and (c) authorizing the assumption and assignment of executory contracts and unexpired leases (the "Designated Contract(s)", as defined in the Motion) to OJAC; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties-in-interest; and after due deliberation thereon after notice and hearing as appropriate under the circumstances; and good and sufficient cause appearing therefor:

THE COURT HEREBY FINDS THAT:

**Jurisdiction, Final Order, and Statutory Bases**

A. This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue is proper in this District and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no just reason for delay in the implementation of this Order, and expressly directs entry of judgment as set forth herein.

C. The statutory predicates for the relief requested in the Motion are Bankruptcy Code sections 105(a), 363(b), (f), and (m), and 365 and Bankruptcy Rules 2002(a)(2), 6004(a), (b), (c), (e), (f), and (h), 6006(a), (c), and (d), 9007, and 9014.

D. This Court entered the Order (A) Approving Bidding Procedures for the Sale of Assets Free and Clear of All Liens, Claims, Interests and Encumbrances Pursuant to Section 363 of the Bankruptcy Code; (B) Approving Certain Bidding Protections, (C) Approving the Form

and Manner of Notice of the Sale and Assumption and Assignment of Executory Contracts and Unexpired Leases; and (C) Scheduling an Auction and Sale Hearing (the "Bid Procedures Order").

**Notice**

E. Actual written notice of the Sale Hearing, the Auction, the Motion, the sale of the Assets, and a reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all known interested entities, including, but not limited to the following parties:

- (i) the Office of the United States Trustee for the District of Massachusetts;
- (ii) counsel to the Committee;
- (iii) all known secured lenders (the "Secured Lenders");
- (iv) all known lien-holders;
- (v) all known federal and state taxing authorities which have a reasonably known interest in the relief requested in the Motion;
- (vi) any party that has previously expressed an interest in the Assets;
- (vii) all other creditors and other persons entitled to notice under Bankruptcy Rule 2002(a);
- (viii) all current employees of the Debtors and former employees who were employed within the last twenty-four months;
- (ix) all current and former franchisees of the Debtors;
- (x) all parties referenced in Section 8.3(k) of the APA; and
- (xi) all entities who have filed with the Court a request for notice pursuant to Bankruptcy Rule 2002 (collectively, the "Notice Parties").

F. In accordance with the provisions of the Bid Procedures, the Debtors

have served notice upon the counterparties to Designated Contracts: (i) that the Debtors seek to assume and assign certain Designated Contracts on the closing date of the Sale (the "Closing Date"); and (ii) of the relevant Cure Obligations (as defined in the APA). The service of such notice was good, sufficient, and appropriate under the circumstances and no further notice need be given in respect of establishing the Cure Obligations for the Designated Contracts. Each of the counterparties to the Designated Contracts (collectively, the "Contract Counterparties") have had an opportunity to object to the Cure Obligations set forth in the notice.

G. As evidenced by the affidavits of service previously filed with this Court, proper, timely, adequate, and sufficient notice of the Motion, the Auction, the Sale Hearing, and APA has been provided in accordance with Bankruptcy Code sections 102(1), 363, and 365 and Bankruptcy Rules 2002, 6004, 6006, and 9014. The Debtors also have complied with all obligations to provide notice of the Motion, the Auction, the Sale Hearing, and the APA required by the Bid Procedures Order. The notices described above were good, sufficient, and appropriate under the circumstances, and no other or further notice of the Motion, the Auction, the Sale Hearing, or the APA is required.

H. The disclosures made by the Debtors concerning the APA, the Auction and the Sale Hearing were good, complete, and adequate.

**Good Faith of OJAC**

I. OJAC is not an "insider" of any of the Debtors, as defined in Bankruptcy Code section 101(31).

J. OJAC is purchasing the Assets in good faith and is a good faith buyer within the meaning of Bankruptcy Code section 363(m). OJAC is, therefore, entitled to the full protections of section 363(m) and has proceeded in good faith in all respects in connection with this proceeding in that, among other things: (i) OJAC complied with the provisions in the Bid

Procedures Order; (ii) all payments to be made by OJAC and other agreements or arrangements entered into by OJAC in connection with the APA have been disclosed; (iii) OJAC has not violated Bankruptcy Code section 363(n) by any action or inaction; (iv) no common identity of directors or controlling stockholders exists between OJAC and any of the Debtors; and (v) the APA was negotiated at arms'-length and in good faith.

**Highest and Best Offer**

K. The Debtors conducted an auction process in accordance with, and have otherwise complied in all respects with, the Bid Procedures Order. The auction process set forth in the Bid Procedures Order and the Bid Procedures afforded a full and fair-opportunity for any entity to make a higher or otherwise better offer to purchase the Assets. The auction process was duly noticed and 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 and better offer for the Assets.

L. The APA constitutes the highest and best offer for the Assets and will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative. The Debtors' determination that the APA constitutes the highest and best offer for the Assets constitutes a reasonable exercise of the Debtors' business judgment.

M. The APA represents a fair and reasonable offer to purchase the Assets under the circumstances of these chapter 11 cases. No other entity or group of entities has offered to purchase the Assets for greater economic value to the Debtors' estates than OJAC.

N. Approval of the Motion and the APA and the consummation of the transactions contemplated thereby is in the best interests of the Debtors, their creditors, their estates, and all other parties-in-interest.

O. The Debtors have demonstrated compelling circumstances and a good and sufficient business purpose and justification for the Sale.

**No Fraudulent Transfer**

P. The consideration provided by OJAC pursuant to the APA is fair and adequate and constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, and the District of Columbia, along with the law of Canada, where applicable, and any province therein.

Q. OJAC is not a mere continuation of the Debtors or their estates, and there is no continuity between the OJAC and the Debtors. OJAC is not holding itself out to the public as a continuation of the Debtors. OJAC is not a successor to the Debtors or their estates, and the transactions contemplated by the APA do not amount to a consolidation, merger, or de facto merger of OJAC and the Debtors. Except to the extent set forth in the APA, OJAC is not liable as a successor under any theory of successor liability for Liens, Claims, and interests that encumber or relate to the Assets.

**Validity of Transfer**

R. The Debtors have full corporate power and authority to execute and deliver the APA and all other documents contemplated thereby, and no further consents or approvals are required for the Debtors to consummate the transactions contemplated by the APA, except as otherwise set forth in the APA.

S. The transfer of each of the Assets to OJAC will be, as of the Closing Date, a legal, valid, and effective transfer of such assets, and each such transfer vests or will vest OJAC with all right, title, and interest of the Debtors to the Assets free and clear of all Liens, Claims, and interests accruing, arising, or relating thereto any time prior to the Closing Date, except for any Designated Contracts (as defined in APA) under the APA.

**Satisfaction of Section 363(f)**

T. OJAC would not have entered into the APA and would not consummate the transactions contemplated thereby if the sale of the Assets to OJAC, and the assumption, assignment, and sale of the Designated Contracts to OJAC, were not free and clear of all Liens, Claims, and interests of any kind or nature whatsoever (except Designated Contracts) including, but not limited to, (i) any employment or labor agreements; (ii) any pension, welfare, compensation, or other employee benefit plans, agreements, practices, and programs, including, without limitation, any pension plan of the Debtors; (iii) 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 Worker Adjustment and Retraining Act of 1988, (g) the Age Discrimination and Employee Act of 1967, and (h) the Consolidated Omnibus Budget Reconciliation Act of 1986; (iv) environmental Claims or Liens arising from conditions first existing on or prior to the Closing (including, without limitation, the presence of hazardous toxic, polluting, or contaminating substances or waste) that may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* or similar state statute, (v) any bulk sales or similar law; and (vi) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended.

U. The Debtors may sell the Assets free and clear of all Liens, Claims, and interests against the Debtors, their estates, or any of the Assets (except for Designated Contracts) because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy

Code has been satisfied. The Secured Lenders have expressly consented to the sale of the Assets as and to the extent provided in this Order, free and clear of all Liens, Claims, and interests against the Debtors, their estates, or any of the Assets held by, maintained by or otherwise in favor of the Secured Lenders, and the Secured Lenders waive all claims and objections that could be raised now or in the future with respect to the transactions set forth in the APA. Those holders of Liens, Claims, and interests against the Debtors, their estates, or any of the Assets who did not object, or who withdrew their objections, to the APA or the Motion are deemed to have consented thereto pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of such Liens, Claims, and interests who did object fall within one or more of the other subsections of section 363(f) and are adequately protected by having their Liens, Claims, and interests, if any, in each instance against the Debtors, their estates, or any of the Assets, attach to the net cash proceeds of the transactions ultimately attributable to the Assets in which such creditor alleges an interest, in the same order of priority, with the same validity, force, and effect that such creditor had prior to the transactions, and subject to any claims and defenses the Debtors and their estates may possess with respect thereto.

V. The transfer of the Assets to OJAC free and clear of all Liens, Claims, and interests, if any, will not result in any undue burden or prejudice to any holders of any Liens, Claims, and interests, if any, as all such Liens, Claims, and interests of any kind or nature whatsoever shall attach, except as otherwise provided in this Order, to the net proceeds of the sale of the Assets received by the Debtors in the order of their priority, with the same validity, force and effect which they now have as against the Assets and subject to any claims and defenses the Debtors or other parties may possess with respect thereto. All persons having Liens, Claims, and interests of any kind or nature whatsoever against or in any of the Debtors or the Assets shall be forever barred, estopped and permanently enjoined from pursuing or asserting

such Liens, Claims, and interests, if any, against OJAC, any of their assets, property, successors or assigns, or the Assets.

**Assumption and Assignment of Designated Contracts**

W. The assumption and assignment of the Designated Contracts pursuant to the terms of this Order is integral to the APA, is in the best interests of the Debtors and their estates, creditors, and other parties in interest, and represents a reasonable exercise of the Debtors' business judgment.

X. The Cure Obligations set forth on the schedule (the "Cure Schedule") attached to the Notice of Proposed Assumption and Assignment of Executory Contracts with respect to each of the Designated Contracts are the sole amounts necessary under Bankruptcy Code sections 365(b)(1)(A) and (B) and 365(f)(2)(A) to cure all monetary defaults and pay all actual pecuniary losses under the Designated Contracts, subject to OJAC's right to remove any Designated Contracts from the list of Designated Contracts as provided in the APA.

Y. On or before the Closing Date, for all Designated Contracts assumed and assigned to OJAC, the Buyer shall have paid the Cure Obligations set forth on Cure Schedule shall be paid. OJAC has provided adequate assurance of its future performance under such Designated Contracts within the meaning of Bankruptcy Code sections 365(b)(1)(C) and 365(f)(2)(B).

**Compelling Circumstances for Immediate Sale**

Z. To maximize the value of the Assets and preserve the viability of the business to which the Assets relate, it is essential that the closing of the Sale occur within the time constraints set forth in the APA. Time is of the essence in consummating the transactions set forth in the APA.



AA. Given all of the circumstances of these chapter 11 cases and the adequacy and fair value of the purchase price under the APA, the transactions constitute a reasonable exercise of the Debtors' business judgment and should be approved.

BB. The consummation of the Sale is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, Bankruptcy Code sections 105(a), 363(b), 363(f), 363(m), 365(b) and 365(f), and all of the applicable requirements of such sections have been complied with in respect of the transactions.

AND THE COURT HEREBY ORDERS THAT:

**General Provisions**

1. The relief requested in the Motion is GRANTED. The transactions contemplated by the Motion and the APA are approved as set forth in this Order.

2. This Court's findings of fact and conclusions of law in the Bid Procedures Order are incorporated herein by reference.

3. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled as announced to this Court at the Sale Hearing or by stipulation filed with this Court or as otherwise provided in this Order, and all reservations of rights included therein, are hereby overruled on the merits.

**Approval of Purchase Agreement**

4. The APA and all other ancillary documents, and all of the terms and conditions thereof, are hereby approved.

5. Pursuant to section 363(b) and (f) of the Bankruptcy Code, the Debtors are authorized and empowered to take any and all actions necessary or appropriate to (a) consummate the Sale pursuant to and in accordance with the terms and conditions of the APA, (b) close the Sale as contemplated in the APA and this Order, and (c) execute and deliver,

perform under, consummate, implement, and close the APA, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the APA and the transactions contemplated thereby, including any other ancillary documents, or as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by the APA and such other ancillary documents.

6. This Order shall be binding in all respects upon the Debtors and their estates and creditors, all holders of equity interests in any Debtor, all holders of any Claim(s), whether known or unknown, against any Debtor, any holders of Liens, Claims, and interests against or on all or any portion of the Assets, including, but not limited to the Secured Lenders, all Contract Counterparties, OJAC and all successors and assigns of OJAC, and any trustees, examiners, responsible officers, estate representatives, or similar entities for any of the Debtors, if any, subsequently appointed in any of the Debtors' chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code of any of the Debtors' cases. This Order and the APA shall inure to the benefit of the Debtors, their estates and creditors, OJAC, and their respective successors and assigns.

#### **Transfer of Assets**

7. Pursuant to Bankruptcy Code sections 105(a), 363(b), 363(f), 365(b), and 365(f), the Debtors are authorized to transfer the Assets on the Closing Date, and OJAC is directed to pay the Purchase Price to the Debtors as provided in the APA. Except as otherwise provided in the APA, the Assets shall be transferred to OJAC "as is, where is" with all faults in accordance with the APA upon and as of the Closing Date and such transfer shall constitute a legal, valid, binding, and effective transfer of such Assets and, upon the Debtors' receipt of the Purchase Price, shall be free and clear of all Liens, Claims, and interests, except any Designated Contracts. Upon the closing of the Sale, OJAC shall take title to and possession of the Assets, subject only

to any Designated Contracts.

8. All entities that are in possession of some or all of the Assets on the Closing Date are directed to surrender possession of such Assets to OJAC at the closing of the Sale. All entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtors to sell and transfer the Assets to OJAC in accordance with the terms of the APA and this Order.

9. Pursuant to section 363(f) of the Bankruptcy Code, the transfer of title to the Assets shall be free and clear of any and all Liens, Claims, and interests, except for Designated Contracts, including, but not limited to Liens, Claims, and interests held by, maintained by, or otherwise in favor of the Secured Lenders. Except to the extent set forth in the APA, OJAC is not and shall not be liable as a successor under any theory of successor liability for Liens, Claims, and interests that encumber or relate to the Assets. All Liens, Claims, and interests shall attach solely to the proceeds of the Sale with the same validity, priority, force, and effect that they now have as against the Assets, and subject to any claims and defenses the Debtors and their estates may possess with respect thereto.

10. On the Closing Date, each creditor is authorized and directed to execute such documents and take all other actions as may be necessary to release Liens, Claims, and interests (except for Designated Contracts) on the Assets, if any, as provided for herein, as such Liens, Claims, and interests may have been recorded or may otherwise exist.

11. This Order shall be effective as a determination that, as of the Closing Date, all Liens, Claims, and interests of any kind or nature whatsoever existing as to the Assets prior to the Closing have been unconditionally released, discharged and terminated and that the conveyances described herein have been effected with such Liens, Claims, and interests to attach to the Purchase Price received by the Debtors at the Closing in the same priority that existed as

of the Petition Date.

12. If any entity (a "Claim Holder") which has filed statements or other documents or agreements evidencing Liens, Claims, or interests on, or interests in, all or any portion of the Assets shall not have delivered to the Debtors prior to the Closing of the Sale, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of Liens and easements, and any other documents necessary or desirable to OJAC for the purpose of documenting the release of all Liens, Claims, and interests that such Claim Holder has or may assert with respect to all or any portion of the Assets, then (i) the Debtors are authorized to execute and file such statements, instruments, releases, and other documents on behalf of such Claim Holder with respect to the Assets and (ii) OJAC is authorized to file, register, or otherwise record a certified copy of this Order with the appropriate clerk(s) and/or recorder(s), which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all Liens, Claims, and interests in the Assets as of the Closing Date of any kind or nature whatsoever, other than the Designated Contracts; provided, however, that any Liens held by the Secured Lenders shall be released and the authorization set forth herein shall apply to the release of such Liens only upon the receipt by Debtors of the Purchase Price.

13. Except as expressly permitted or otherwise specifically provided by the APA or this Order, all entities holding Liens, Claims, and interests in all or any portion of the Assets (other than Designated Contracts) arising under or out of, in connection with, or in any way relating to the Debtors, the Assets, the operation of the Debtors' business prior to the Closing Date, or the transfer of the Assets to OJAC, are hereby forever prohibited and permanently enjoined from asserting such Liens, Claims, and interests against OJAC, its successors or assigns, their property, or the Assets.

14. Except as otherwise provided by the Sale Documents or this Order, all persons

and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, employees, former employees, tort claimants, litigants, trade and other creditors, holding Liens, Claims, and interests of any kind or nature whatsoever against or in any of the Debtors or the Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Debtors, the Assets, the operation of the Assets prior to the Closing or the Sale, are forever barred, estopped and permanently enjoined from asserting, other than in this Court which shall retain exclusive jurisdiction to hear such controversies, against OJAC, its successors or assigns, its property or the Assets, such persons' or entities' Liens, Claims, and interests.

15. This Order is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease, and each of the foregoing entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA.

**Designated Contracts**

16. Upon the closing of the Sale, the Debtors are authorized to assume and assign each of the Designated Contracts to OJAC free and clear of all Liens, Claims, and interests, as described herein. The payment of the applicable Cure Cost (if any) with regard to the Designated Contracts shall (a) effect a cure of all defaults existing thereunder as of the Closing Date and (b)

compensate for any actual pecuniary loss resulting from such default. The Debtors shall then have assumed the Designated Contracts and assigned them to OJAC and, pursuant to section 365(f) of the Bankruptcy Code, the assignment by the Debtors of the Designated Contracts shall not be a default there under. After the payment of the relevant Cure Cost, if any, neither the Debtors nor OJAC shall have any further liabilities to the Contract Counterparties other than OJAC's obligations under the Designated Contracts that accrue and become due and payable on or after the Closing Date. Nothing in this Order shall affect the rights of OJAC, until the Closing (as defined in the APA), in its sole discretion, to remove any executory contract or unexpired lease of the Debtors to or from the list of Designated Contracts.

17. The Debtors shall cooperate fully with and support OJAC in executing such applications and furnishing such documents as are necessary for OJAC to obtain all Liquor Licenses (as referenced in the APA). All applicable state alcoholic beverage control, law enforcement, and regulatory agencies shall not interrupt any of the Business (as defined in the APA) without first bringing the matter before this Court. Furthermore, the Business shall continue operating under all existing alcoholic beverage and other licenses of the Debtors until such licenses have been changed to OJAC's name, including, but not limited to state alcoholic beverage licenses, state food service licenses, local occupational licenses, and any other licenses needed to operate the Business with no interruption of the Business.

18. Any provisions in any Designated Contracts that prohibit or condition the assignment of such Designated Contracts or allow the party to such Designated Contracts to terminate, recapture, impose any penalty, condition on renewal or extension, or modify any term or condition upon the assignment of such Designated Contract constitute unenforceable anti-assignment provisions that are of no force and effect in connection with the Debtors' assumption and assignment of the Designated Contracts to OJAC. Each Contract Counterparty who failed to

file an objection to the proposed assignment of its contract with the Debtors (a "Contract Assignment Objection"), or by virtue of electing to withdraw such objection, is deemed to consent to the assumption by the Debtors and assignment to OJAC of their Designated Contract. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to OJAC of the Designated Contracts have been satisfied. Upon the closing of the Sale, in accordance with sections 363 and 365 of the Bankruptcy Code, OJAC shall be fully and irrevocably vested with all right, title, and interest of the Debtors under the Designated Contracts, which will remain in full force and effect. In addition, all Contract Counterparties to the Designated Contracts are (a) forever barred from asserting any additional cure or other amounts with respect to the Designated Contracts, and the Debtors and OJAC are entitled to rely solely upon the Cure Obligations set forth on Cure Schedule; (b) deemed to have consented to the assumption and assignment; and (c) forever barred and estopped from asserting or claiming against the Debtors or OJAC that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied under such Designated Contracts, or that there is any objection or defense to the assumption and assignment of such Designated Contracts.

19. Upon the closing of the Sale and payment of the relevant Cure Obligations related to the Designated Contracts, if any, OJAC shall be deemed to be substituted for the Debtors as a party to the applicable Designated Contracts, and the Debtors shall be relieved, pursuant to section 365(k) of the Bankruptcy Code, from any further liability under the Designated Contracts.

20. Upon the payment of the applicable Cure Obligations, if any, the Designated Contracts will remain in full force and effect, and no default shall exist under the Designated Contracts nor shall there exist any event or condition which, with the passage of time or giving

of notice, or both, would constitute such a default.

21. OJAC has provided adequate assurance of future performance under the relevant Designated Contracts within the meaning of Bankruptcy Code sections .365(b)(1)(C) and 365(f)(2)(B).

22. There shall be no rent accelerations, assignment fees, increases, or any other fees charged to OJAC or the Debtors as a result of the assumption and assignment of the Designated Contracts.

23. Pursuant to Bankruptcy Code sections 105(a), 363, and 365, all Contract Counterparties are forever barred and permanently enjoined from raising or asserting against the Debtors or OJAC any assignment fee, default, breach, claim for pecuniary loss, or condition to assignment arising under or related to the Designated Contracts existing as of the Closing Date or arising by reason of the Closing.

#### **Other Provisions**

24. Except for Designated Contracts or as otherwise expressly set forth in this Order or the APA, OJAC shall not have any liability or other obligation of the Debtors arising under or related to any of the Assets. Without limiting the generality of the foregoing, and except as otherwise specifically provided herein or in the APA, OJAC shall not be liable for any Claims against the Debtors or any of their predecessors or affiliates, and OJAC shall have no successor or vicarious liabilities of any kind or character, including, but not limited to, any theory of antitrust, environmental, successor or transferee liability, labor law, de facto merger, substantial continuity, the WARN Act and employee benefit and/or welfare plan(s) (including, without limitation (i) any employment or labor agreements; (ii) any pension, welfare, compensation, or other employee benefit plans, agreements, practices, and programs, including, without limitation, any pension plan of the Debtors (iii) any other employee, workers' 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 Worker Adjustment and Retraining Act of 1988, (g) the Age Discrimination and Employee Act of 1967, and (h) the Consolidated Omnibus Budget Reconciliation Act of 1986; (iv) environmental Claims or Liens arising from conditions first existing on or prior to the Closing (including, without limitation, the presence of hazardous toxic, polluting, or contaminating substances or waste) that may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* or similar state statute, (v) any bulk sales or similar law; and (vi) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether asserted or unasserted, fixed or contingent, or liquidated or unliquidated with respect to the Debtors or any obligations of the Debtors arising prior to the Closing Date.

25. OJAC shall not be liable for any Liens, Claims, and interests of any kind or nature whatsoever in or against the Debtors or any of their predecessors or affiliates, and OJAC shall have no successor or vicarious liabilities of any kind or character including, but not limited to (except as agreed to in the Sale Documents), liabilities on account of any tax arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of any of the Assets prior to the closing of the Sale, and OJAC shall be exonerated of any successor liability to any state or federal taxing authority with regard to any tax, including sales tax.

26. OJAC has given substantial consideration under the Sale Documents for the benefit of Claim Holders. The consideration given by OJAC shall constitute valid and valuable

consideration for the releases of any potential Claims of successor liability of OJAC, releases which the Court holds shall be deemed to have been given in favor of OJAC by all Claim Holders against the Debtors or their respective assets, except as set forth below.

27. Under no circumstances shall OJAC be deemed a successor of or to the Debtors for any Liens, Claims, and interests of any kind or nature whatsoever against or in the Debtors or Assets. The sale, transfer, assignment and delivery of the Assets shall not be subject to any Liens, Claims, and interests of any kind or nature whatsoever, which shall remain with, and continue to be obligations of, the Debtors. All Claim Holders asserting Liens, Claims, and interests of any kind or nature whatsoever against or in the Debtors or the Assets (including, but not limited to, the Debtors and/or their respective successors, including any trustees thereof, creditors, employees, unions, former employees and shareholders, administrative agencies, governmental units, secretaries of state, federal, state and local officials, maintaining any authority relating to any environmental, health and safety laws, and their respective successors or assigns) shall be, and hereby are, forever barred, estopped and permanently enjoined from asserting, prosecuting or otherwise pursuing such Liens, Claims, and interests of any kind or nature whatsoever against OJAC, its property, its successors and assigns, or the Assets, as an alleged successor or otherwise, with respect to any Liens, Claims, and interests of any kind or nature whatsoever such person or entity had, has, or may have against or in the Debtors, the Debtors' estates, their respective officers, directors, shareholders or the Assets. Following the Closing, no Claim Holder shall interfere with OJAC's title to or use and enjoyment of the Assets based on or related to such Lien, Claim or interest, or any actions that the Debtors may take in their Chapter 11 case.

28. The transactions contemplated by the APA are undertaken by OJAC without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code,

and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the transactions contemplated by the APA (including the assumption and assignment of the Designated Contracts), unless such authorization and consummation of such transactions are duly stayed pending such appeal.

OJAC is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code.

29. Nothing contained in any plan of reorganization or liquidation, or order of any type or kind entered in (a) these chapter 11 cases, (b) any subsequent chapter 7 case into which any such chapter 11 cases may be converted, or (c) any related proceeding subsequent to entry of this Order, shall conflict with or derogate from the provisions of the APA or the terms of this Order.

30. Pursuant to Bankruptcy Rules 7062, 9014, 6004(h), and 6006(d), this Order shall be effective immediately upon entry and the Debtors and OJAC are authorized, but are not required, to close the Sale immediately upon entry of this Order, notwithstanding the fourteen-day stay periods in Bankruptcy Rules 6004(h) and 6006(d), which are expressly waived.

31. Except for the fees and expenses of Bellmark (for which the Debtors are solely responsible), the Debtors do not have any obligation to pay any fees, commissions or other similar compensation to any broker, finder, investment banker, financial advisor or other similar person in connection with the Sale.

32. The failure specifically to include any particular provision of the APA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the APA be authorized and approved in its entirety.

33. The APA and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto and in accordance with the terms

thereof, without further order of this Court; provided, that any such modification, amendment, or supplement does not have a material adverse effect on the Debtors' estates.

34. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to any of the transactions under the APA.

35. The transactions authorized herein shall be of full force and effect, regardless of any Debtor's lack of good standing in any, jurisdiction in which such Debtor is formed or authorized to transact business.

36. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

37. To the extent that this Order is inconsistent with any prior order or pleading with respect to the Motion in these chapter 11 cases, the terms of this Order shall govern.

38. To the extent there are any inconsistencies between the terms of this Order and the APA (including all ancillary documents executed in connection therewith), the terms of this Order shall govern.

39. The Debtors are authorized to take all actions necessary to effect the relief granted pursuant to this Order in accordance with the Motion.

40. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby lifted with respect to the Debtors to the extent necessary, without further order of this Court, to (i) allow OJAC to deliver any notice provided for in the APA, and (ii) allow OJAC to take any and all actions permitted under the APA in accordance with the terms and conditions thereof.

41. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the findings of fact set forth herein constitute conclusions of law, they are adopted as such. To the extent any of the

conclusions of law set forth herein constitute findings of fact, they are adopted as such.

42. This Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order and the APA, all amendments thereto and any waivers and consents there under and each of the agreements executed in connection therewith to which the Debtors are a party or which has been assigned by the Debtors to OJAC, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale.

Dated: \_\_\_\_\_, 2011

\_\_\_\_\_  
Honorable United States Bankruptcy Judge