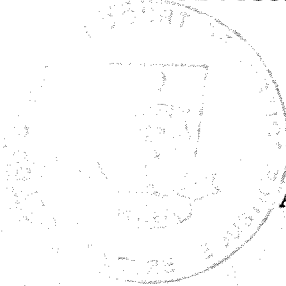


**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

577
30th

THE HONOURABLE)
JUSTICE MORAWETZ)

MONDAY THE ~~30~~ DAY
OF JANUARY, 2012



**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**

**CONFIRMATION
APPROVAL AND VESTING ORDER**

THIS MOTION, made by Massachusetts Elephant & Castle Group, Inc. ("MECG" or the "Applicant") in its capacity as the foreign representative (the "Foreign Representative") of the Chapter 11 Debtors (collectively, the "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 Motion Record of the Applicant was heard on this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, filed, the Second Report of BDO Canada Limited (“BDO”), in its capacity as Information Officer (the “Information Officer”), dated January 26, 2012 (the “Second Report”), the Affidavit of Sara-Ann Wilson sworn January 27, 2012, filed, and the pleadings and proceedings previously filed in this action, and upon hearing the submissions of counsel for the Foreign Representative, counsel for Original Joe’s Acquisition Corp. (the “Purchaser”), counsel for GE Canada Equipment Financing G.P., and counsel for 212 King Street West Holdings Inc., no one appearing for any other person on the service list, although properly served as appears from the Affidavits of Erika Leslie sworn January 27, 2012, filed:

1. **THIS COURT ORDERS AND DECLARES** that service is deemed good and sufficient for all purposes, and service on any party not named in the service list is expressly dispensed with.
2. **THIS COURT ORDERS AND DECLARES** that the 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, granted January 27, 2012, a copy of which is attached hereto as Schedule B, is hereby approved, recognized and given force and effect in Canada.
3. **THIS COURT ORDERS AND DECLARES** that the execution of the Asset Purchase Agreement dated November 18, 2011, attached as Appendix “D” to the Second Report (the “APA”), by the Debtors is hereby authorized and approved, and the transactions set out therein are also approved. The Debtors are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the transaction and for the conveyance of the Assets (as defined in the APA) to the Purchaser.
4. **THIS COURT ORDERS AND DECLARES** that upon Closing, all of the Debtors' right, title and interest in and to the Assets described in the APA shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims,

whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (ii) any Claims registered against any Title affecting the Assets, including those Claims listed on Schedule D hereto (all of which are collectively referred to as the "Encumbrances") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Assets are hereby expunged and discharged as against the Assets.

5. **THIS COURT ORDERS** that Designated Contracts (as defined in the APA, and which include Assigned Leases, which are specifically set out as Schedule C to this Order, and Assigned Contracts) shall vest in the Purchaser subject to the conditions and in accordance with the terms of the APA, and, for certainty, upon so vesting, any and all past defaults shall be deemed to be cured, and each lease shall be in good standing and effective according to its terms as against the landlord and the Purchaser, as tenant.

6. **THIS COURT ORDERS** that upon the registration in the Land Registry Office of a Transfer of Leasehold Interest in the form prescribed by the *Land Registration Reform Act* duly executed by the relevant Debtor, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject Assigned Lease identified in Schedule C, and is hereby directed to delete and expunge from title all of the Claims listed in Schedule D hereto, and any of the subsequent Claims affecting the Assigned Lease. To the extent of its jurisdiction, this Court directs the land registry offices in the Provinces of Alberta, British Columbia, and Manitoba, to register the transfer of Assigned Leases on the same terms, but the parties have leave, but not the obligation, to seek recognition of this Order, or an equivalent Confirmation, Approval and Vesting Order in those jurisdictions, if necessary as it relates to the Assigned Leases, or otherwise.

7. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Assets shall stand in the place and stead of the Purchased Assets, and that from and after Closing all Claims and Encumbrances formerly attaching to the Assigned Leases or the Assets shall attach to the net proceeds from the sale of

the Assets with the same priority as they had with respect to the Assets immediately prior to the sale, as if the Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

8. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the relevant Debtors are authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Debtors' records pertaining to the Debtors' past and current Canadian employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtors.

9. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act (Canada)* in respect of any of the Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of any Debtor;

the vesting of the Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act (Canada)* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

10. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act (Ontario)*.

11. **THIS COURT ORDERS AND DECLARES** that the Debtors or the Purchaser have leave to reapply for further Order or Orders that may be necessary to carry out the terms of the Transaction.

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

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

JAN 30 2012



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

Schedule B
Sale Approval Order

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

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

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")², a copy of which is attached as an exhibit to the Motion; (b) authorizing the sale of the Assets free and clear of Liens (as defined in the APA), Claims (as defined in Section 101(5) of the Bankruptcy Code) and interests; and (c)

¹ 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 term "Assets" does not include any assets or any other interests of Repechage Investments Limited.

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 Hearing³, 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").

³ Undefined, capitalized terms shall have the same meaning as is ascribed in the Motion or APA.

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 by 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.

Q. OJAC is not a mere continuation of the Debtors or their estates, and there is no continuity between 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 (except Designated Contracts related to the Debtors' location in San Diego, California); (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 Sale 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 and subject to the Carve Outs described in paragraph 26 below. 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 Debtors properly served each Counterparty with notice of their Cure Obligation either by way of the Notice of Proposed Assumption and Assignment of Executory Contracts (the "First Cure Notice") or the Supplemental Notice of Proposed Assumption and Assignment of Executory Contracts (the "Second Cure Notice" and together with the First Cure Notice, the "Cure Schedules"). After being served with the Cure Schedules, the following lease Counterparties filed an objection to the assumption and assignment of their lease contract or to the sale, with all such objections being either resolved or overruled as noted in Paragraph 16 below:

- (i) D.C. One Associates filed a Limited Objection to an Order Authorizing the Assumption and Assignment of Certain Executory Contracts;
- (ii) Presidential Plaza, L.P filed a Limited Objection to Adequate Assurance of Future

Performance Pursuant to 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;

(iii) BHR Operations, LLC filed a Limited Objection to: (1) Debtors' Motion to (A) Sell Substantially All Assets Outside the Ordinary Course of Business; And (B) Assume and Assign Certain Executory Contracts and Leases; and (2) Notice of Proposed Assumption and Assignment of Executory Contracts; and

(iv) 212 King West Holdings Inc. filed an Objection to Cure Amount and Limited Objection to Assumption and Assignment of Lease.

Y. The Cure Obligations (or, where applicable, the Cure Obligations as revised below) in the Cure Schedules are the sole amounts necessary under Bankruptcy Code sections 365(b)(1)(A) and (B) and 365(f)(2)(A) or, are the amounts agreed to by certain parties as part of an agreement reached or settlement and compromise as noted below in paragraph 16, 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. Attached as Exhibit A to this Sale Order is a schedule (the "Revised Cure Schedule") comparing both the Cure Obligation originally associated with Debtors' nonresidential real property leases that are being assumed and assigned along with the revised Cure Obligation, where applicable. The revised Cure Obligations were determined after reviewing those objections filed by those Counterparties listed above or after negotiations regarding the Cure Obligation were concluded with certain Counterparties.

Z. On or before the Closing Date, for all Designated Contracts assumed and assigned to OJAC, the Buyer shall have paid the Cure Obligations or revised Cure Obligation, where applicable. OJAC has also 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

AA. 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.

BB. 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.

CC. 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, empowered and ordered 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 or otherwise agreed upon in writing between OJAC and a Contract Counterparty, 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 (except for Designated Contracts) 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 automatically attaching to the proceeds of the Sale in the same priority and perfection that existed immediately prior to the Closing 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, notwithstanding anything to the contrary contained herein, 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 receipt by GE CEF of the proceeds of the Sale.

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 except for Designated Contracts 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. Certain lease Counterparties⁴ agreed to a further extension of the Section 365(d)(4) period by written consent as permitted under Section 365(d)(4)(B)(ii), as was separately approved of by Order of the Court. With respect to these Designated Contracts ~~and any other Designated Contracts which are not nonresidential real property leases~~, the Debtors are authorized to assume each Designated Contract and to assign the Designated Contract to OJAC free and clear of all Liens, Claims, and interests, as described herein, upon the closing of the Sale. In the event that the Debtors do in fact assume and assign any such lease with any party listed in this Footnote 4, then the Debtors shall thereafter file with the Bankruptcy Court a "Notice of Assumption of Additional Designated Contract(s)" and, upon such filing, the lease(s) included in the "Notice of Assumption of Additional Designated Contract(s)" shall thereupon

⁴ These lease Counterparties are as follows: Viking Rideau Corp., Bay Richmond House, Inc. and Manforce Development Ltd., Devonshire Arch Boston, LLC, Clark Adams Associates, LLC, DHM Chicago Hotel, L.P., MDA Master Tenant LLC, LEI AG-Seattle, Superior Property Management Services Ltd., 212 King West Holdings, LLC, Presidential Plaza, L.P. and BHR Operations, L.L.C.

become Designated Contracts under this Sale Order and the APA. With respect to any Designated Contract where the lease Counterparty did not agree to a further extension of the Section 365(d)(4) period, the Debtors are authorized to assume such Designated Contract effective as of January 24, 2012 and thereafter assign it to OJAC free and clear of all Liens, Claims, and interests, as described herein, upon the closing of the Sale. With respect to the Debtors' lease with DC One Associates, the following additional terms shall apply:

The necessary parties to that certain amended lease in the form previously negotiated and deemed satisfactory to such parties shall be executed and delivered immediately upon entry of this Order. The Debtor's assumption of the lease with DC One Associates shall be deemed to include the amended lease, provided however if the scheduled closing with Original Joe's does not occur on or before February 17, 2012 (and D.C. One Associates does not grant in writing an extension of time for the closing of the sale to occur beyond that date or does not consent in writing to an alternative course of action) then (x) the Debtor's execution of the amendment shall be deemed void, (y) the parties hereby consent to an expedited hearing on the issue of whether the original lease was validly terminated pre-petition by D.C. One Associates and (z) the Debtors' use and occupancy of the premises shall continue during such time necessary for the Court to determine the rights of the parties, with the Debtors' making full payments to D.C. One Associates required by the lease during that time. Each party will have an opportunity to submit further briefing on the issue of the termination of the original lease and reserves all rights, including, but not limited to, the actual cure amount that would be necessary under the Bankruptcy Code to cure all monetary defaults and pay all actual pecuniary losses, including reasonable attorneys' fees, in the event this Court determines that the lease was not terminated pre-petition and is therefore subject to assumption or rejection. In connection with the assignment of the amended lease to OJAC at closing, however, payment of \$75,000 shall be made to D.C. One Associates for the Cure Amount with \$20,000 of such amount to be paid by OJAC

With respect to the Debtors' lease with 212 King West Holdings Inc for certain space located in Toronto, Ontario, the following additional terms apply:

The parties shall continue discussions concerning the objection filed by such landlord and shall endeavor to file a Stipulation on or before the close of business on January 26, 2012 resolving such issues. In the event the parties are unable to reach such resolution, the parties will be heard before the Court at a hearing to be held on January 27, 2012 at 2 pm in Springfield, Massachusetts.

at 10:30 am

With respect to the Debtors' lease with Presidential Plaza, L.P. for certain space located at 900 19th Street, NW, Washington, D.C., the following additional terms shall apply:

The parties shall continue discussions concerning the limited objection filed by such landlord and shall endeavor to file a Stipulation on or before the close of business on ~~February 3~~^{January 31}, 2012 resolving such issues. In the event the parties are unable to reach such resolution, the parties will be heard before the Court at a hearing to be held on ~~February 3~~^{January 31}, 2012. Moreover, notwithstanding any provisions of this Order to the contrary, the parties' respective rights and obligations with respect to such landlord's draw upon the letter of credit shall be determined in conjunction with the Debtors' motion seeking an order, *inter alia*, enforcing the Section 363 automatic stay [Docket # 261].

~~EB~~
~~EB~~

17. 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 except as otherwise agreed upon in writing between OJAC and a Contract Counterparty.

18. 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.

19. 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 in accordance with the terms of the APA and Interim Management Agreement at no

cost to the Debtors. 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.

20. 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 or Revised Cure Schedule, where applicable; (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.

21. 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.

22. 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.

23. 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).

24. 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.

25. 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

Payment of Sale Proceeds

26. All consideration paid by OJAC in connection with the Sale shall be paid directly to GE CEF, as agent under the GE CEF Prepetition Credit Agreement (as defined in the *Stipulation and Final Order (A) Authorizing Use of Cash Collateral; (B) Granting Adequate Protection; (C) Authorizing Various Carve-Outs from Lenders Collateral and (D) Granting Related Relief* [Docket No. 246] (the "Cash Collateral Order"), on the Closing Date, except that OJAC shall transfer the following amounts to the two accounts described below pursuant to wire instructions provided by GE CEF (in the event of any inconsistency between this Paragraph 26 and the Cash Collateral Order, the terms of the Cash Collateral Order shall control):

- a. \$3,194,807 shall be funded into a segregated escrow account (the "APA Escrow Account") for use solely in paying applicable (i) post-petition sales taxes, (ii) pre-petition sales taxes, (iii) landlord cure amounts, and (iv) gift card liability, each in accordance with the APA, which items are currently estimated to be \$3,194,807;
- b. an amount equal to \$1,732,618, minus all cash on hand (net of float) of the Debtors on the Closing Date (the "Remaining Cash"), as estimated in good faith by the Debtors (such difference, the "Priority Claim Carve Out"), shall be paid directly to a segregated debtor-in-possession account of the Debtors (the "Carve Out Escrow Account") on the Closing Date to pay the expenses itemized on page 2 of Exhibit B attached hereto;
- c. to pay ~~\$455,000~~ ^{an amount equal to} on account of and in satisfaction of (i) the Transaction Fee (as defined in the Cash Collateral Order), (ii) accrued and unpaid fees and expenses, and (iii) accrued and unpaid monthly fees, in each case due and owing to BellMark Partners LLC ("BellMark") pursuant to the terms of that certain engagement letter, dated April 12, 2011, between BellMark and the Debtors (collectively, the "BellMark Fees"), to the Carve Out Escrow Account on the Closing Date upon which the Debtors shall turnover an amount equal to the BellMark Fees to pay BellMark;
- d. to pay an amount equal to accrued and unpaid fees and expenses of the Debtors' Professionals (as defined in the Cash Collateral Order) incurred prior to the

by the court
subject to approval of an
application,

~~Handwritten signature~~

Closing Date, which amount shall not be greater than 100% of the cumulative amount set forth in the Budget (as defined in the Cash Collateral Order) for such fees and expenses shall be transferred to the Carve Out Escrow Account on the Closing Date upon which the Debtors shall immediately turn over this amount to PMCM 2, LLC (the "Escrow Agent") immediately thereafter, upon which the Escrow Agent shall use this amount to solely pay the Debtors' Professionals in accordance with the terms of the Interim Compensation Order entered by the Court in these Cases;

- e. to pay an amount equal to the sum of (i) \$100,000 plus (ii) up to a maximum of \$75,000, the amount by which (A) the cumulative amounts set forth in the Budget for the payment of fees and expenses of the Debtors' Professionals incurred prior to the Closing Date exceeds (B) the amount actually incurred by and paid to the Debtors' Professionals for services rendered during such period (such sum, the "Debtors' Professionals Post-Closing Carve-Out"), which amount shall be transferred to the Carve Out Escrow Account on the Closing Date upon which the Debtors shall immediately turn over this amount to the Escrow Agent to hold in escrow solely for benefit of the Debtors' Professionals for amounts incurred after the Closing Date which amounts shall be paid to the Debtors' Professionals in accordance with the terms of the Interim Compensation Order entered by the Court in these Cases;
- f. to pay an amount equal to (i) accrued and unpaid fees and expenses of the Committee's Professionals (as defined in the Cash Collateral Order) for services rendered on or before December 21, 2011 (including, without limitation, any and all holdback amounts) which amount shall not be greater than 100% of the cumulative amount for the Committee's Professionals set forth in the Budget (as defined in the Cash Collateral Order) for such fees and expenses, plus (ii) \$120,000 (the "Committee Professional Fee Carve Out") which amount shall be transferred to the Carve Out Escrow Account on the Closing Date upon which the Debtors shall immediately turn over this amount to the Escrow Agent to hold for the benefit of the Committee's Professionals, upon which the Committee Professional Fee Carve Out shall be paid to the Committee's Professionals in accordance with the terms of the Interim Compensation Order entered by the Court in these Cases and/or any further orders of this Court; provided further that the sum remaining after subtracting (x) the amounts paid to the Committee's Professionals on account of services rendered after December 21, 2011 from (y) \$120,000 shall be retained by the Escrow Agent solely for the purpose of paying the Debtors' Professionals in accordance with the terms of the Interim Compensation Order and/or (with respect to up to \$20,000 of such funds) to be used to augment the Claims Servicing Carve-Out as set forth in Section 22(b) of the Cash Collateral Order;
- g. to pay an amount equal to the lesser of (i) \$500,000 and (ii) 10% of all scheduled and timely asserted general unsecured claims (the "Unsecured Creditor Carve-Out"), which amount shall be transferred to the Carve Out Escrow Account on the Closing Date upon which the Debtors shall immediately turn over the amount of

the Unsecured Creditor Carve-Out to Goulston & Storrs, counsel to the Committee, to hold such amount in its client funds account pending further instructions or further order of the Court to turn over such funds to the Claims Servicing Agent (as defined in the Cash Collateral Order);

- h. to pay an amount equal to \$30,000, which amount shall be transferred to the Carve Out Escrow Account on the Closing Date upon which the Debtors shall then turn over the money to Goulston & Storrs, counsel to the Committee, which shall hold such amount in its client funds account pending further instructions or further order of the Court to turn over such funds to the Claims Servicing Agent (as defined in the Cash Collateral Order); and
- i. to pay \$124,000 (the "US Trustee Carve Out") for the fees of the United States Trustee and Clerk of the Bankruptcy Court pursuant to section 1930 of title 28 of the United States Code and the statutory interest payable to the United States Trustee pursuant to section 3717 of title 31 of the United States Code, which amount shall be transferred to the Carve Out Escrow Account on the Closing Date upon which the Debtors shall turn over this amount to the United States Trustee and Clerk of the Bankruptcy Court, as applicable.

27. Any contingent payments under the APA not yet due and payable on the Closing Date shall be paid by OJAC as and when they become due and payable following the Closing Date directly to GE CEF.

28. The Debtors shall turn over to GE CEF any accounts receivable received by the Debtors after Closing including credit card accounts receivables or hotel accounts receivables, as soon as practicable upon receipt.

29. It is hereby acknowledged and agreed that the security interests and liens of GE CEF against the Assets shall attach in the same priority and to the same extent as existed on the Assets immediately prior to the consummation of the Sale to (i) all consideration paid by OJAC in connection with the Sale, (ii) all funds in the Seller Escrow Account, and (iii) Remaining Cash. To the extent ^{any} ~~an~~ amounts (and any interest accrued thereon) remain in the APA Escrow Account or (a) the Carve Out Escrow Account, (b) the Debtors' Professionals Post-Closing Carve-Out, (c) the Committee's Professionals Post-Closing Carve-Out, (d) the Unsecured Creditor Carve-Out, (e) the Claims Servicing Carve-Out, and (f) the US Trustee Carve-Out

(clauses (a) – (f) collectively, the “Carve-Outs” and each, a “Carve-Out”) after final payment of all amounts for which such Carve-Out was designed (as specified herein and in the Cash Collateral Order), any such excess funds shall be paid directly to GE CEF as soon as practicable.

Other Provisions

30. 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, except as otherwise agreed upon in writing between OJAC and a Contract Counterparty. 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 (except Designated Contracts); (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. Notwithstanding anything to the contrary herein, nothing in this Sale Order shall impair, modify or release any rights, claims or recovery any Counterparty to a Designated Contract may be entitled to under policies of insurance previously obtained and maintained by Debtor under the terms of the Designated Contracts, naming the Counterparty as an additional insured, with respect to claims, losses, costs, damages, and expenses resulting from acts or occurrences prior to the Closing but not asserted until thereafter.

31. 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 (except for Designated Contracts), 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.

32. 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.

33. 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 (except for Designated Contracts), 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 (except for Designated Contracts). 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.

34. 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.

35. 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. ✓

36. 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.

37. 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.

38. 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.

39. 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.

40. 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.

41. 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.

42. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

43. 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.

44. 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.

45. The Debtors are authorized, empowered and ordered to take all actions necessary to effect the relief granted pursuant to this Order in accordance with the Motion.

46. 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.

47. 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.

48. 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. To the extent necessary to recognize and give effect to this Order in Canada, this Court hereby *respectfully* requests ~~for~~ and appreciates the previous aid and assistance of the courts in Canada, and specifically the Ontario Superior Court of Justice where the Debtors have obtained orders granting recognition in that court of orders entered by this Court.

Dated: January 27, 2012

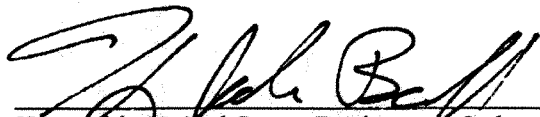

Honorable United States Bankruptcy Judge
Henry J. Boroff

EXHIBIT A

REVISED CURE SCHEDULE

EXHIBIT B

PARAGRAPH 25(b) EXPENSES

**ELEPHANT & CASTLE REVISED CURE SCHEDULE
EXHIBIT A**

<i>Location</i>	<i>Landlord</i>	<i>Original Cure Amount</i>	<i>Revised Cure Amount (if different)</i>
ECC 10020 102 Avenue Edmonton, AB	Oxford Properties Group	\$31,641.00	
MARINE BLDG. 355 Burrard Street Vancouver, BC	OMERS Realty Corp.	\$612.32	
TORONTO YONGE 378 Yonge Street Toronto, ON	Turbo Mac Limited	\$52.25	
WINNIPEG 350 St. Mary's Avenue Winnipeg, MB	Legacy Hotels Corp.	\$9,608.46	
PHILADELPHIA 1800 Market Street Philadelphia, PA	Crowne Plaza Phil. City Center	\$401.11	
WASHINGTON DC I 1201 Pennsylvania Ave. Washington, DC	DC One Associates	\$35,498.54	\$75,000*

*Of this, \$20,000 is being paid directly by Original Joe's Acquisition Corporation.

**Elephant and Castle
363 Sale Proceeds
Sources & Uses**

<u>Sources:</u>		<u>Uses:</u>	
363 Purchase Price Proceeds	22,750,000	Post-Petition Sales Taxes	336,867 ⁽¹⁾
		Pre-Petition Sales Taxes (US)	1,258,426 ⁽²⁾
		Pre-Petition Sales Taxes (Canada)	1,011,689 ⁽²⁾
		Landlord Cure Amounts	537,824 ⁽³⁾
		Gift Card Liability	50,000 ⁽⁴⁾
		Other Contract Cure Amounts	- ⁽⁵⁾
		Total Escrow Amounts by Buyer (Paragraph 26(a))	3,194,807
		Bellmark IB Fee (Paragraph 26(c))	455,000
		Proceeds for Bankruptcy Windup	19,100,193
Total Sources	22,750,000	Total Uses	22,750,000

FOOTNOTES:

- (1) Estimated Sales Taxes owed after sales made for the week ending 2/3 or Closing Date
- (2) Estimated Sales Taxes owed pre-petition, however, claims reconciliation/discussion is needed
- (3) Estimated Landlord cures based on Stalking Horse Cure Schedule, plus adjusted Penn Ave Cure, plus estimated additional cures based on objections
- (4) Estimated and Scheduled on Stalking Horse Cure Schedule
- (5) Stalking Horse has not indicated any Contracts to be assumed

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**Elephant and Castle
Bankruptcy Winddown
Sources & Uses**

Sources:

Proceeds from 363 Transaction 19,100,193
 Est. Cash on Hand 860,822
 Est. Cash Collections for AR 378,873
 *Due from Credit Card Companies (avg 3 days) and Hotels

Uses:

Post-Petition AP 437,214 (1)
 Employee Insurance Claims 75,000 (2)
 Canadian Severance Claims 60,000 (2)
 Vacation Accrual (US&Canada) 64,970 (2)
 Accrued Wages (US&Canada) 288,828 (2)
 503(b)(9) Claims on Pre-Petition AP 424,186 (3)
 PACA Claims 134,000 (4)
 Other 248,420
Total Administrative/Priority Payments (Paragraph 26(b)) 1,732,618

US Trustee Payments (Paragraph 26(i)) 124,000 (5)
 Carve out for Unpaid Professional Fees (Paragraph 26(d/e/f)) 1,190,916 (6)
 Carve Out for Liquidation Agent (Paragraph 26(h)) 30,000
 Carve Out for Debtors Professional (Post Closing) (Paragraph 26(e)) 100,000
 Maximum SPA Carve Out (Unsecureds) (Paragraph 26(a)) 500,000
Total Carve Outs of GE Proceeds 1,944,916
Est. GE Payment on Pre-Petition Secured Debt 16,662,353
Total Sources 20,339,887
Total Uses 20,339,887

FOOTNOTES:

- (1) Estimated for the week ending 2/3 in the final cash collateral order and excludes sales tax, landlords, professional fees
- (2) Estimated amounts for Employees as part of the Stalking Horse bidders APA
- (3) Have unsigned stipulation agreements outstanding w/ Edward Don, US Foods, Gordon Foods for \$408,677.23
- (4) Have unsigned stipulation agreements outstanding w/ Delmores and US Foods for \$81,192.72
- (5) Estimated 2 quarters of payments at \$62,000/quarter
- (6) Includes maximum payment to UCC for unpaid professional fees and based on accrued fee schedule less retainers that can be applied

Schedule C

Canadian Assigned Leases

1. Lease dated August 1, 1997 between 366575 Alberta Ltd., as Landlord, and The Elephant & Castle Canada Inc., as Tenant, covering a portion of the premises located at 10314 Whyte (82nd) Avenue, Edmonton, Alberta, Canada.
2. Lease dated December 15, 2004 between 491100 B.C. Ltd. and Manforce Developments, Ltd., as Landlord, and The Elephant & Castle Canada Inc., as Tenant, covering a portion of the premises located at Strata Lots 282 and 283, District Lot 541 Group 1, New Westminster District Strata Plan LMS 1863 and Sub-Lease dated December 5, 1995, between Rosedale on Robson Suite Hotel Inc., as Landlord, and The Elephant & Castle Canada Inc., as Tenant, covering the same premises and described above.
3. Lease dated November, 1993 between Holiday Inns of Canada Ltd., as Landlord, and The Elephant & Castle Canada Inc., as Tenant, covering a portion of the premises located at 350 St. Mary's Avenue, Winnipeg, Manitoba, Canada, as amended by Lease Amending Agreement dated January 14, 2004, by and between Legacy Hotels Corporation, successor in interest to Holiday Inns of Canada, Ltd. as Landlord, and The Elephant & Castle Canada Inc., as Tenant.
4. Lease of Retail Space dated January 15, 2008, between OMERS Realty Corporation Marine Building Holdings Ltd., as Landlord, and The Elephant & Castle Canada Inc., as Tenant, covering a portion of the premises located at 355 Burrard Street, being Suites Numbered M100, MZ01 and BSMT, Vancouver, B.C., Canada.
5. Lease of Retail Space dated December 1, 2002, between Oxford Properties Group Inc., as Landlord, and The Elephant & Castle Canada Inc., as Tenant, covering a portion of the premises located at Edmonton City Centre West, being Unit #G310, Edmonton, Alberta, Canada, as extended by Lease Extension Agreement dated February 7, 2008, between Oxford Properties Group Inc. and CPP Investment Board Real Estate Holdings, Inc., as Landlord and The Elephant & Castle Canada Inc., as Tenant.
6. Lease dated October 1, 2008, between Turbo-Mac Limited in Trust, as Landlord, and The Elephant & Castle Canada Inc., as Tenant, covering a portion of the premises located at 378 Yonge Street, Toronto, Ontario, Canada, as affected by Addendum to Lease dated June 17, 2008, by and between Turbo-Mac Limited "In Trust", as Landlord, and The Elephant & Castle Canada Inc., as Tenant, with a renewal rate of five (5) year commencing October 1, 2008, and ending September 30, 2013, registered as Instrument No. CA647866, against PIN 21103-0060.
7. Lease dated May 14, 2009, between Viking Rideau Corporation, as Landlord, and The Exchange Restaurant Group Limited, as Tenant, covering a portion of the premises located at the Rideau Centre Building, being Units 101/201, Ottawa, Ontario, Canada, as amended by Amendment Letter dated December 10, 2009, which changes the Tenant's name to The Elephant & Castle Canada Inc.

Schedule D

Claims to be deleted and expunged from title to Real Property

Registration Nos.: OC1090065 and OC1091318 protecting claims set out in Ontario Superior Court of Justice, Court file number 10-48088 *Optimum Mechanical Solutions Inc. v. Viking Rideau Corporation and Terra Nova Pub Group o/a Ottawa Exchange Pub & Restaurant* being a construction lien claim in the amount of \$229,944.97 for work related to labour, materials and equipment for HVAC, electrical, plumbing and sprinkler requirements for the construction of a restaurant/pub at the Rideau Centre complex, registered against PIN 04116-0092 and PIN 04116-0005.

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

CONFIRMATION
APPROVAL AND VESTING ORDER

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