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20 Attorneys for Receiver
21 KRISTA FREITAG

22 UNITED STATES DISTRICT COURT
23 SOUTHERN DISTRICT OF CALIFORNIA

24 SECURITIES AND EXCHANGE
25 COMMISSION,

26 Plaintiff,

27 v.

28 GINA CHAMPION-CAIN and ANI
DEVELOPMENT, LLC,

Defendants,

AMERICAN NATIONAL
INVESTMENTS, INC.,

Relief Defendant.

Case No. 3:19-cv-01628-LAB-AHG

**DECLARATION OF KRISTA L.
FREITAG IN SUPPORT OF
RECEIVER'S MOTION FOR
APPROVAL OF SALE OF
PERSONAL PROPERTY, LIQUOR
LICENSE, AND ASSIGNMENT OF
COMMERCIAL LEASE
ASSOCIATED WITH THE OCEAN
BEACH SURF RIDER
RESTAURANT ("MOTION")**

Date: October 26, 2020

Time: 9:00 a.m.

Courtroom: TBD

Mag. Judge: Hon. Allison H. Goddard

1 I, Krista L. Freitag, declare:

2 1. I am the Court-appointed permanent receiver for Defendant ANI
3 Development, LLC, Relief Defendant American National Investments, Inc., and their
4 subsidiaries and affiliates ("Receivership Entities"). I make this declaration in
5 support of my Motion for Approval of Sale of Personal Property, Liquor License,
6 and Assignment of Commercial Lease Associated with the Ocean Beach Surf Rider
7 Restaurant ("Motion"). I have personal knowledge of the facts stated herein, and if
8 called upon to do so, I could and would personally and competently testify to them.

9 2. The assets that are part of the receivership estate include the leasehold
10 interest and personal property assets associated with the restaurant known as Ocean
11 Beach Surf Rider, which operated at the leased premises located at 2163 Abbott
12 Street, San Diego, California. The assets, which are owned by affiliated receivership
13 entity 2163 Abbott Street, LP, include personal property (furniture, fixtures, and
14 equipment), a liquor license, contracts, and a leasehold interest in the restaurant
15 premises ("Assets").

16 3. After reviewing the financials and other information available to me at
17 appointment, it was determined the Ocean Beach Surf Rider restaurant should
18 continue to operate (with operational guidance from Cohn Restaurant Group) and the
19 Assets prepared for sale in the short-term, along with other restaurant properties
20 included in the receivership estate. Although I have authority to sell personal
21 property assets through licensed auctioneers, after consultation with multiple brokers,
22 it was determined that the net recovery from the Assets would likely be greater if
23 they were sold as a package, including an assignment of the lease for the restaurant
24 premises to a buyer.

25 4. For all of the restaurant-related properties included in the receivership
26 estate, my staff and I interviewed three licensed brokers with experience selling
27 restaurants in San Diego. After considering their experience and qualifications, we
28 decided to use two brokers – Colliers International for stand-alone concept

1 restaurant-related properties owned (a leased parking lot was also included in this
2 grouping) by the Receivership Entities and Next Wave ("Broker") for the Surf Rider
3 Pizza and Bao Beach restaurant concepts operated at leased and owned property
4 locations.

5 5. Broker created individual marketing flyers with professional photos for
6 each restaurant listing. The restaurant listings were sent out via email campaigns to a
7 targeted list of over 6,200 restaurant operators, restaurant buyers, brokers, and
8 investors. Online advertising was placed on key websites that included CoStar,
9 LoopNet, BizBuySell, and Next Wave Commercial, which produced over 150,000 ad
10 views. Press releases were distributed to the predominant news publications that
11 included The San Diego Union Tribune, San Diego Business Journal, Eater San
12 Diego, among others. Broker's efforts produced 43 signed confidentiality
13 agreements and a total of nine (9) initial offers for the properties and restaurant assets
14 marketed.

15 6. In preparation for the sales, and as requested by Broker, I ordered
16 various reports and provided relevant internal documents to create a typical due
17 diligence package specific to each asset. Prior to the COVID-19 pandemic, I also set
18 a "Call for Offers" deadline of February 3, 2020. For that process, the Broker used
19 an online-based document hosting website to host the due diligence materials for the
20 properties, prepared an offering memorandum summarizing various marketing points
21 about the properties and detailing the Court sale process, and provided a form of
22 Purchase and Sale Agreement and Joint Escrow Instructions ("Form PSA") prepared
23 in advance by me, with assistance from counsel. The Form PSA had all
24 contingencies removed and provided for the overbid, public auction, and Court
25 approval process. Prospective purchasers were instructed to complete their due
26 diligence and submit their executed Form PSA by the Call for Offers deadline.

27 7. After the Call for Offers deadline, the three offers received prior to the
28 deadline were subsequently withdrawn, likely due to the uncertainties of the COVID-

1 19 pandemic. Through Broker, I continued to market the Assets without a specific
2 deadline. Since March 2020, multiple interested parties have shown interest in the
3 Assets, however the highest accepted offer received resulted in a Purchase and Sale
4 Agreement and Joint Escrow Instructions ("Agreement") from G Boys Holdings LLC
5 ("Buyer") in the amount of \$85,000. The Agreement allowed the Buyer to perform
6 their requested due diligence and provided for the overbid, public auction and Court
7 approval process. Through counsel, I finalized and then countersigned the
8 Agreement.

9 8. Because Buyer has its own broker, Broker's commission pursuant to the
10 listing agreement is 10% of the sale price, or \$8,500, which amount will be split with
11 Buyer's broker. The costs of sale, including escrow, title and recording fees are
12 anticipated to be approximately \$1,000. There is one UCC security interest on the
13 Assets in favor of a food supplier, Jacmar Foodservice Distribution, resolution of
14 which is likely to be approximately \$27,500. While exact amounts will be
15 determined at closing, after all of the aforementioned amounts are paid out of
16 escrow, the net sale proceeds for the receivership estate are estimated to be in the
17 neighborhood of approximately \$48,000. The sale of the Assets will not close until
18 the California Department of Alcoholic Beverage Control has approved the transfer
19 of the liquor license (estimated to take three to six months).

20 9. I believe the proposed sale to Buyer pursuant to the Agreement is in the
21 best interests of the receivership estate. The Assets were broadly advertised and
22 marketed to prospective purchasers by Broker, multiple offers were received, and the
23 highest accepted Agreement was signed by both parties. The purchase price
24 therefore reflects the market value for the Assets.

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1 I declare under penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct.

3 Executed this 16th day of September 2020, at Los Angeles, California.

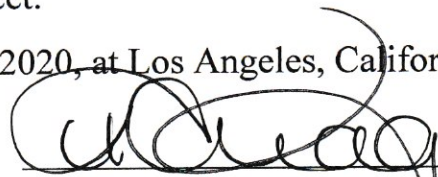
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5 KRISTA L. FREITAG
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EXHIBIT INDEX

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EXHIBIT A

EXHIBIT A

PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (the "**Agreement**") is entered into as of ~~July~~ ^{August 25, 2020}, 2020 (the "**Effective Date**") by and between G BOYS HOLDINGS LLC, a California limited liability company ("**Buyer**"), and 2163 ABBOTT STREET, LP, a California limited partnership ("**Seller**"), by and through Krista L. Freitag, solely in her capacity as Receiver ("**Receiver**") in the case entitled *Securities and Exchange Commission v. Gina Champion-Cain, ANI Development, LLC, and American National Investments, Inc.*, United States District Court for the Southern District of California, Case No. 3:19-CV-01628-LAB-AHG (the "**Receivership Action**").

1.

PURCHASE AND SALE

1.1. Agreement of Purchase and Sale. Pursuant to that certain Order Granting The Parties' Joint Motion and Stipulated Request by All Parties for a Preliminary Junction Order and Order (1) Freezing Assets; (2) Requiring Accountings; (3) Prohibiting the Destruction of Documents; and (4) Appointing a Permanent Receiver (the "**Order**") entered on September 3, 2019 by the Court with respect to the Receivership Action, Receiver was appointed permanent receiver for the Seller and certain other entities, as "Defendants," and their subsidiaries and affiliates as "Relief Defendants" (collectively, the "**Receivership Entities**"). Seller, as one of the Receivership Entities, agrees to sell the Purchased Assets (as defined below) comprising the Business (as defined below) to Buyer, and Buyer agrees to purchase the Purchased Assets comprising the Business from Seller, subject to the terms and conditions set forth in this Agreement.

1.2. The Lease. Pursuant to that certain Commercial Lease Agreement dated January 1, 2016, as amended and assigned (as so amended and assigned, collectively, the "**Lease**"), by and between Palace Enterprises, LLC, a California limited liability company, as "Landlord" ("**Landlord**") and Seller, as "Tenant" (as the successor-in-interest in the Lease to Kidult Creative LLC, a California limited liability company, and Hilary A. Rossi, the originally named "Tenant"), Seller leases from Landlord, and Landlord leases to Seller, certain premises located at 2163 Abbott Street, San Diego, California 92107 (the "**Premises**"), which Lease documents are further described in Exhibit "A" attached hereto.

1.3. The Business. Seller conducts the business of owning and/or operating a restaurant located at the Premises, which is commonly known as "Surf Rider Pizza Co." (the "**Business**"), and pursuant to the terms and conditions of this Agreement, Seller desires to sell its interest in the Lease and the Business, including all assets, tangible and intangible (except as provided herein to the contrary), used in connection with the operation of the Business.

1.4. Purchased Assets. With respect to such interests of Seller in the Lease and the Business, for purposes of this Agreement, the "**Purchased Assets**" shall mean and include in its present "AS-IS", "WHERE IS" condition, all of Seller's right, title and interest in and to the following:

(i) all of Seller's rights under the Lease as the "Tenant" for the Premises and any title of Seller to property under the Lease as the "Tenant," including, without limitation, Seller's rights (if any) to the tenant improvements to the Premises and related furniture, fixtures and equipment located at the Premises in their current state and condition, but only to the extent such improvements, furniture, fixtures and equipment are the property of Seller as the "Tenant" pursuant to the terms and conditions of the Lease (collectively, the "**Leasehold Interest**"), which Leasehold Interest shall be transferred to Buyer pursuant to the terms and conditions of an Assignment, Consent to Assignment and Third Amendment to Lease by and among Landlord, as the "Landlord," Seller, as the "Original Tenant" and assignor of the Leasehold Interest, and Buyer, as the "Tenant" and assignee of the Leasehold Interest (the "**Lease Assignment and Amendment**");

(ii) any and all apparatus, equipment, furniture, appliances, food, beverage items or other inventory or tangible items of personal property owned by Seller and located in the Premises, as such items are described on Exhibit "B" attached hereto and incorporated herein by this reference (the "**Tangible Assets**");

(iii) all goodwill relating to the Business;

(iv) all accounts receivables which become due and payable after the Closing (defined below) (the "**Post-Closing Receivables**");

(v) all rights of Seller under equipment leases, service contracts, utility contracts, water agreements, equipment leases, purchase orders, maintenance, service and similar contracts, which relate to the ownership, management, maintenance, construction or repair and/or operation of the Leasehold Interest and any of the other Purchased Assets (to the extent applicable to the Premises and the interest of "Tenant" in the Lease) and other similar agreements affecting the use and operation of the Business at the Premises in effect as of the Effective Date that relate in any way to Seller's operation of the Business at the Premises, which contracts are listed on Exhibit "C" attached hereto and incorporated herein by this reference (the "**Contracts**");

(vi) all permits, licenses, registrations, certificates, variances, consents, authorizations, governmental approvals and other entitlements necessary for the use, operation or maintenance of the Premises or otherwise for the Leasehold Interest, including, without limitation, that certain Type 41 license for the Premises and that certain Type 58 liquor license No. 566776 (collectively, the "**Liquor License**") issued to Seller by the California Department of Alcoholic Beverage Control (the "**ABC**") effective

as of May 19, 2016, for the sale of alcoholic beverages at the premises of the Business, which Liquor License shall be transferred to Buyer pursuant to the terms and conditions of a separate agreement by and between Seller, as the transferor of all right, title and interest in the Liquor License, and Buyer, as the transferee of such right, title and interest in the Liquor License (the "**Permits**"), provided that such Permits shall only be included with the Purchased Assets and transferred to Buyer to the extent such Permits are transferrable under applicable law;

(vii) any warranty or guaranty rights of Seller relating to the Premises or the Tangible Assets and assignable by Seller as the "Tenant" pursuant to the terms of the Lease (the "**Warranties**"); and

(viii) any intangible personal property owned by Seller and/or used in or related to the use, operating or maintenance of the Premises (the "**Intangible Assets**"); provided, however, that in no event shall such Intangible Assets include Seller's trademark or trade name rights, rights to the name "Surf Rider Pizza," or any other names used, or any title or interest in or to any intellectual property which relates to the Business or the Purchased Assets. As used herein, "Purchased Assets" does not include any of Seller's liabilities of any kind whatsoever (other than those specifically listed) including but not limited to: Seller's liabilities and obligations arising out of or resulting from the ownership of any of the Leasehold Interest, the Business or any of the other Purchased Assets before the Closing, including without limitation, all trade accounts payable incurred in the course of Seller's business prior to the Closing; Seller's liabilities and obligations for prorated taxes for the period prior to the Closing; Seller's liabilities and obligations arising out of or resulting from any failure by Seller to comply with any applicable law, judgment, or order; Seller's liabilities and obligations arising out of or resulting from any legal proceeding; Seller's liabilities and obligations to any of Seller's employees or consultants through the close of business on the Closing Date, whether or not the employee or consultants are hired by Buyer; Seller's liabilities and obligations to any current or former partner or officer of Seller or of any affiliate of Seller; Seller's liabilities and obligations under this Agreement; and Seller's liabilities and obligations arising out of or resulting from any act or omission of Seller after the Closing.

1.5. Opening of Escrow. Buyer and Seller have opened an escrow with Heritage Escrow, Attention: Debbie Howe (the "**Escrow Holder**") under Escrow No. _____ ("**Escrow**"). Escrow Holder shall execute the Escrow Holder Signature Page attached hereto and return one fully executed original of this Agreement, the Escrow Holder Signature Page, the Seller's Broker Signature Page and the Buyer's Broker Signature Page to each of Seller and Buyer. The purchase and sale of the Purchased Assets shall be consummated through the Escrow in accordance with the instructions contained in this Agreement.

1.6. Closing Date. The closing of the purchase and sale of the Purchased Assets (the "**Closing**" or "**Close of Escrow**") shall occur on or before ten (10) days following date

upon which both the Court Approval Date (as defined below) and the Liquor License Approval Date (as defined below) have occurred (the "**Closing Date**"). On the Closing Date, TIME SHALL BE DEEMED OF THE ESSENCE with respect to Buyer's obligation to close. For purposes hereof, the "**Court Approval Date**" shall be the date the Court enters an order approving this Agreement with respect to the Purchased Assets. For purposes hereof, the "**Liquor License Approval Date**" shall be the date that the ABC approves the transfer of the Liquor License from Seller to Buyer.

2.

PURCHASE PRICE

2.1. Purchase Price. The purchase price for the Purchased Assets shall be Eighty-Five Thousand and No/100 Dollars (\$85,000.00) (the "**Purchase Price**") of which the amount of Fifteen Thousand and No/100 Dollars (\$15,000.00) shall be allocated to the Liquor License ("**Liquor License Allocation**"), with the remaining Seventy Thousand and No/100 Dollars (\$70,000.00) being allocated as consideration for all of the other Purchased Assets (*i.e.*, such other Purchased Assets consist of the value of the Business, the Leasehold Interest, the Tangible Assets, the Intangible Assets and certain other items related thereto, as further described in Section 1.4, above).

2.2. Payment of the Purchase Price. Buyer shall pay the Purchase Price to Seller as follows:

(a) No later than three (3) days after the Effective Date, Buyer shall deposit with Escrow Holder, in cash, certified or bank cashier's check made payable to Escrow Holder, or by a confirmed Federal Reserve wire transfer of funds (hereinafter referred to as "**Immediately Available Funds**"), the sum of Fifteen Thousand and No/100 Dollars (\$15,000.00) (with all interest earned thereon, the "**Earnest Money Deposit**") into Escrow, of which Five Thousand Dollars (\$5,000.00) shall be allocated to the value of the Liquor License and Ten Thousand Dollars (\$10,000.00) shall be allocated to the value of the other Purchased Assets. The Earnest Money Deposit shall be nonrefundable to Buyer except in the event: (i) of Seller's default under this Agreement, as set forth in Section 12.2 below; (ii) Buyer is not the High Bidder (as defined in below); (iii) of Buyer's timely termination or deemed termination of this Agreement on or prior to the Contingency Date as set forth in Article 4 below; or (iv) the Court otherwise fails to approve the sale of the Purchased Assets to Buyer. Escrow Holder shall invest the Earnest Money Deposit in an interest-bearing account pursuant to the provisions of Section 2.3(a) below.

(b) In the event the Closing under this Agreement occurs, then the Earnest Money Deposit shall be credited against the Purchase Price at Closing. In the event the Closing under this Agreement shall fail to occur, then the Earnest Money Deposit shall be nonrefundable except as expressly set forth Section 2.2(a) in above.

(c) At least one (1) business day prior to the Closing Date, Buyer shall deposit or cause to be deposited with Escrow Holder, in Immediately Available Funds, the balance of the Purchase Price and all other amounts payable by Buyer pursuant to this Agreement into Escrow.

2.3. Escrow Provisions Regarding Earnest Money Deposit.

(a) Escrow Holder shall hold the Earnest Money Deposit and make delivery of the Earnest Money Deposit to the party entitled thereto under the terms of this Agreement. Escrow Holder shall invest the Earnest Money Deposit in an interest-bearing account maintained at a federally insured bank or savings and loan association as approved by Seller and Buyer, and all interest and income thereon shall become part of the Earnest Money Deposit and shall be remitted to the party entitled to the Earnest Money Deposit pursuant to this Agreement.

(b) Escrow Holder shall hold the Earnest Money Deposit until the earlier occurrence of (i) the Closing Date, at which time the Earnest Money Deposit shall be applied against the Purchase Price, (ii) Buyer's failure to close the transaction contemplated hereby or breach of its obligations hereunder, in which event Seller may terminate this Agreement and Escrow Holder shall disburse the Earnest Money Deposit to Seller, plus accrued interest thereon, upon Escrow Holder's receipt of written notice from Seller confirming such failure to close or breach by Buyer, (iii) Seller's default as set forth in Section 12.2, (iv) in the event Buyer is not the High Bidder, or (v) the Court otherwise fails to approve the sale of the Purchased Assets to Buyer. The tax identification numbers of the parties shall be furnished to Escrow Holder upon request.

(c) The parties acknowledge that Escrow Holder is acting solely as a stakeholder at their request and for their convenience, and that Escrow Holder shall not be deemed to be the agent of either of the parties for any act or omission on its part unless taken or suffered in bad faith in willful disregard of this Agreement or involving gross negligence. Seller and Buyer jointly and severally release Escrow Holder from any and all liability for costs, claims and expenses, including reasonable attorney's fees, incurred in connection with the performance of Escrow Holder's duties hereunder, except with respect to actions or omissions taken or suffered by Escrow Holder in bad faith, in willful disregard of this Agreement or involving gross negligence on the part of the Escrow Holder.

(d) The parties shall deliver to Escrow Holder an executed copy of this Agreement, which shall constitute the sole instructions to Escrow Holder. Escrow Holder shall execute the signature page for Escrow Holder attached hereto with respect to the provisions of this section; provided, however, that (i) Escrow Holder's signature hereon shall not be a prerequisite to the binding nature of this Agreement on Buyer and Seller, and the same shall become fully effective upon execution by Buyer and Seller, and

(ii) the signature of Escrow Holder will not be necessary to amend any provision of this Agreement other than this section.

(e) Escrow Holder, as the person responsible for closing the transaction within the meaning of Section 6045(e)(2)(A) of the Internal Revenue Code of 1986, as amended (the "**Code**"), shall file all necessary information, reports, returns, and statements regarding the transaction required by the Code including, but not limited to, the tax reports required pursuant to Section 6045 of the Code. Further, Escrow Holder agrees to indemnify and hold Buyer, Seller, and their respective attorneys and brokers and Broker (as defined below) harmless from and against any losses resulting from Escrow Holder's failure to file the reports Escrow Holder is required to file pursuant to this section.

(f) The provisions of this section shall survive the termination of this Agreement, and if not so terminated, the Closing.

3.

BUYER'S DUE DILIGENCE AND RESTAURANT OPERATIONS; PRE-CLOSING OBLIGATIONS

3.1. Due Diligence Investigations.

(a) **Contingency Date.** Buyer's obligations under this Agreement are subject to Buyer's approval or disapproval provided to Seller by written notice within fourteen (14) days after the date of this Agreement (the "**Contingency Date**") of the condition of the Purchased Assets. In connection with Buyer's approval or disapproval of the condition of the Purchased Assets, Buyer and Buyer's agents, contractors, engineers, surveyors, attorneys, and employees or any other party in connection with any inspections conducted by or for Buyer ("**Consultants**") shall have the opportunity, at their sole cost and risk, to inspect the Purchased Assets (including the environmental and other aspects of the physical condition of the Premises) and investigate and study the operations and acquisition of the Purchased Assets (such investigations collectively hereinafter referred to as "**Inspections**") prior to the Contingency Date. Buyer acknowledges that to facilitate Buyer's Inspections, Seller has, for informational purposes only and without any representation or warranty of any kind, provided Buyer with certain studies, reports and information related to the Purchased Assets (collectively, the "**Materials**"). Buyer's approval or disapproval pursuant to this Section 3.1(a) may be made at Buyer's sole and absolute discretion. In the event of Buyer's disapproval under this section, (i) this Agreement shall be and be deemed terminated, (ii) Seller shall promptly thereafter instruct Escrow Holder to return the Earnest Money Deposit, plus any interest accrued thereon, to Buyer, and (iii) other than those matters which expressly survive the termination hereof, neither party shall have any further rights or obligations hereunder. Buyer's failure to provide written notice to Seller prior to the Contingency Date regarding Buyer's approval or disapproval of the Purchased Assets shall be deemed Buyer's disapproval of the Purchased Assets.

(b) **Mechanic's Liens.** Buyer shall not permit any mechanic's or materialmen's liens or any other liens to attach to the Purchased Assets by reason of the performance of any work or the purchase of any materials by Buyer and its Consultants. The provisions of this paragraph shall survive the termination of this Agreement, and if not so terminated, shall survive the closing of the Agreement and the Closing.

(c) **Contracts.** Within three (3) days after the Effective Date, Buyer may deliver written notice to Seller (the "**Contracts Notice**") specifying any of the Contracts which Buyer desires to continue at the Closing (the "**Assigned Contracts**"), to the extent any such Contracts are assignable to Buyer. If Buyer fails to deliver the Contracts Notice in accordance with the terms herein, there shall be no Assigned Contracts and Seller shall use reasonable efforts to terminate all Contracts at the Closing. To the extent that any Contract being assumed by Buyer is assignable but requires the applicable vendor to consent to the assignment or assumption of the Contract by Seller to Buyer, then, prior to the Closing, Buyer shall be responsible for obtaining from each applicable vendor a consent (each a "**Required Assignment Consent**") to the assignment of the Property Contract by Seller to Buyer (and the assumption by Buyer of all obligations under such Property Contract). Buyer shall indemnify, hold harmless and, if requested by Seller (in Seller's sole discretion), defend (with counsel approved by Seller) Seller from and against any and all losses arising from or related to Buyer's failure to obtain any Required Assignment Consent.

3.2. Right of Entry and Restaurant Operations.

(a) **Buyer's Right of Access.** Until the Closing Date or, if sooner, the date this Agreement is terminated, Buyer shall have a limited, non-exclusive license to enter upon the Premises, at Buyer's sole cost and expense, in order to conduct such Inspections of the Purchased Assets as Buyer deems necessary or desirable; provided, however, that Buyer shall restore any damage done to the Premises in connection with any such Inspections performed by or on behalf of Buyer. Buyer's right of entry shall be subject to Seller's prior written approval, following Seller's receipt of written notice from Buyer by e-mail or fax (at the e-mail address or facsimile numbers listed below) of any such request giving the proposed time of entry, its approximate duration and a description of the specific nature of the entry, test, investigation or other matter, together with the parties that will be present. Seller's written approval may be evidenced by an e-mail or fax back to Buyer (at the e-mail address or facsimile number listed below) approving the request. Buyer shall permit Seller to have a representative present during all Inspections conducted with respect to the Premises. Buyer shall use best efforts to minimize disruption to any person or entity entitled to occupy any portion of the Premises in connection with Buyer's or its Consultant's activities pursuant to this Agreement. No consent by Seller to any such activity shall be deemed to constitute a waiver by Seller or assumption of liability or risk by Seller. Buyer hereby agrees to restore, at Buyer's sole cost and expense, the Purchased Assets to the same condition existing immediately prior

to Buyer's exercise of its rights pursuant to this section. Buyer shall comply with all applicable laws and governmental regulations applicable to the Purchased Assets and shall indemnify, defend, protect and hold harmless Seller and the Purchased Assets from any and all claims (known or unknown), liabilities, damages and costs, including, without limitation, attorneys' fees and costs, arising out of any entry onto the Premises for purposes contemplated herein by Buyer or its representatives, employees, Consultants or designees; provided, however, that Buyer shall not pursuant to this section be obligated to indemnify, defend, protect or hold harmless Seller or the Purchased Assets from claims, liabilities, damages or costs arising out of any: (i) acts or omissions of Seller, its agents or representatives; (ii) latent defects in the Premises or any other portion of the Leasehold Interest; or (iii) hazardous or toxic substances or industrial hygiene in violation of any and all applicable environmental laws not brought onto the Premises by Buyer or its agents or representatives, except if and to the extent Buyer exacerbates or worsens the condition.

(b) **Insurance Requirements.** As a prior condition to any entry onto the Premises (and for purposes hereof, any environmental inspections or soils tests shall not be considered routine inspections), Buyer shall maintain and cause its agents and Consultants to maintain and keep in effect (a) commercial general liability insurance naming Seller as an additional insured, with limits of not less than \$2,000,000.00 property damage, bodily injury or death and (b) worker's compensation insurance for all of its employees in accordance with the law of the State of California. Prior to Buyer's or its Consultants' entry onto the Premises, Buyer shall deliver to Seller certificates of insurance evidencing such coverage and further evidencing that such coverage may only be terminated or modified upon not less than thirty (30) days prior written notice to Seller. The provisions of this paragraph shall survive the termination of this Agreement, and if not so terminated, shall survive the Closing.

(c) **Restaurant Operations.** In addition to Buyer's limited right to conduct Inspections of the Purchased Assets as provided in Section 3.2(a) above, if this Agreement has not been terminated prior to the Contingency Date, then after the Contingency Date until the Closing or earlier termination of this Agreement, Buyer shall be permitted to commence operating a restaurant from the Premises pursuant to the terms and conditions of that certain management agreement attached hereto as Exhibit "G" and this Section 3.2(c) (the "**Operating and Management Agreement**"). Buyer's right to commence such restaurant operations prior to the Closing shall be strictly subject to and conditioned upon Landlord's approval and Buyer's compliance with any applicable requirements of the Lease, any rules, regulations and restrictions of Landlord, and any applicable requirements or approvals from governmental authorities (including, without limitation, the ABC with respect to the sale of any alcoholic beverages prior to the transfer of the Liquor License to Buyer).

3.3. Documents. In the event this Agreement is terminated for any reason (including due to either party's default), Buyer shall immediately deliver to Seller, at no cost to Seller, the originals (or copies if the originals are not available) of all studies, tests, surveys, applications, maps, agreements, plans and other documents related to the Purchased Assets in Buyer's possession or control, whether previously delivered to Buyer by Seller as a part of the Materials or reports and information and Materials provided to Buyer and any reports, studies or other information prepared or compiled for Buyer by any Consultant or other third-party in connection with Buyer's investigation of the Purchased Assets ("**Third-Party Reports**") obtained by Buyer in connection with its investigation and analysis of the Purchased Assets, and, upon written request of Seller, Buyer shall assign to Seller, AS-IS and without representation or warranty as to accuracy or completeness, and subject to the proprietary rights of any third party consultants and any limitations imposed by them, all right, title and interest of Buyer in and to all or any portion of such documents as specified by Seller; provided, however, that this section shall not apply to: (a) confidential information; (b) any information subject to a legal privilege (including, without limitation, legal memoranda); or (c) accounting and financial information (including, without limitation, financial models regarding the Land). The provisions of this section shall survive any termination of this Agreement.

3.4. Escrow Cancellation Charges. In the event the Escrow shall fail to close by reason of a party's default, the defaulting party shall be liable for all Escrow cancellation charges, including but not limited to the costs of the title examination, Title Commitment and escrow fee. In the event the Escrow shall fail to close due to the failure of a Closing condition set forth below that is not caused by a default of one of the parties, each party shall pay one-half (1/2) of any Escrow cancellation charges.

3.5. Pre-Closing Obligations. In the event that Buyer has approved of the Purchased Assets on or prior to the Contingency Date, then the parties shall thereafter be obligated to proceed as follows:

(a) **Liquor License.** Buyer and Seller shall fully cooperate with one another to facilitate the transfer of the Liquor License and Buyer shall promptly and diligently apply for and process the transfer of the Liquor License in all respects such that the Liquor License can be transferred as soon as reasonably practicable. Specifically, not more than five (5) days after the Court Approval Date, Buyer shall prepare and file the application with ABC, including forms ABC-227, ABC-211-A, ABC-231, and any other forms and documents required by ABC, Escrow Holder, and Seller to transfer the Liquor License to Buyer. Any and all fees and costs to transfer the Liquor License to Buyer (including, without limitation the cost of any expediter or consultant hired by Buyer or otherwise utilized by Buyer to facilitate the transfer of the Liquor License) shall be the sole expense of Buyer. Buyer shall pay for any and all fees and costs to transfer the Liquor License to Buyer, including the cost of any expediter or other consultant, in connection with the transfer of the Liquor License.

4.

SELLER'S OBLIGATIONS

4.1. General Operation of the Business. Seller shall not be obligated to operate the Business or cause the Business to be operated after the Effective Date.

5.

CLOSING

5.1. Escrow. The Closing of the purchase and sale of the Purchased Assets shall be consummated through Escrow in accordance with the provisions of this ARTICLE 5.

5.2. Escrow Instructions for Closing. This Agreement shall constitute joint instructions to Escrow Holder. The parties agree to execute and deliver to the Escrow Holder reasonable and customary additional escrow instructions in the usual form of Escrow Holder for the purpose of consummating the purchase and sale contemplated by this Agreement; provided, however, that standard extension provisions in such escrow instructions shall not apply; and provided, further, that in the event of any conflict between this Agreement and any escrow instructions, the provisions of this Agreement shall control. Escrow Holder shall perform all customary functions of an escrow holder to consummate this transaction, including among other duties the calculation of the prorations and Closing Costs (as defined in Section 5.7 below) required by this Agreement, as well as serving as depository for all funds, instruments, and documents needed for the Close of Escrow. Upon the Closing, Escrow Holder is hereby instructed to remit all sales proceeds from the sale of the Purchased Assets to an interest-bearing account maintained at a federally insured bank or savings and loan association established by Seller, which sales proceeds shall be held and distributed in the manner set forth in the Court order approving the sale. For the sake of clarity, Escrow Holder's remittance of all sales proceeds from the sale of the Purchased Assets pursuant to the manner set forth in the foregoing sentence shall mean that such sales proceeds shall be remitted to Receiver.

5.3. Closing Conditions.

(a) Buyer's obligation to close is subject to satisfaction of the following conditions, which are for the benefit of Buyer and may be waived by Buyer in its sole discretion:

(i) Buyer shall have completed its due diligence investigation of the Purchased Assets and approved of the Purchased Assets, or be deemed to have approved of the Purchased Assets, on or prior to the Contingency Date;

(ii) Seller shall not, as of the Closing Date, be in material default in the performance of its obligations under this Agreement; and

(iii) Landlord shall have consented to the assignment of the Lease to Buyer effective as of the Closing Date and shall have agreed to release Seller from its obligations under the Lease arising after the Closing Date pursuant to the terms and conditions of the Lease Assignment and Amendment.

(b) Seller's obligation to Close is subject to satisfaction of the following conditions, which are for the benefit of Seller and may be waived by Seller in its sole discretion:

(i) All representations and warranties made by Buyer in this Agreement shall be true when made and shall be true as of the Closing Date, without any material adverse change, except for any material adverse change of which Buyer has notified Seller and which Seller has accepted;

(ii) All of the documents and funds required to be delivered by Buyer to Seller or Escrow Holder (as the case may be) at the Closing pursuant to the terms and conditions hereof shall have been delivered;

(iii) Seller shall have received all consents, documentation and approvals necessary to consummate and facilitate the transactions contemplated hereby, including, without limitation, approval of the sale of the Purchased Assets to Buyer from the Court and as may be required by law;

(iv) Buyer shall not, as of the Closing Date, be in default in the performance of its obligations under this Agreement; and

(v) Landlord shall have consented to the assignment of the Lease to Buyer effective as of the Closing Date and shall have agreed to release Seller from its obligations under the Lease arising after the Closing Date pursuant to the terms and conditions of the Lease Assignment and Amendment.

(c) In addition to the foregoing, Buyer's and Seller's respective obligations to Close are subject to the approval of the transaction contemplated herein by the Court, which approval shall be a condition for the benefit of both Buyer and Seller and may not be unilaterally waived by either party.

(d) If the purchase and sale fails to Close by the Closing Date due to a failure of a condition, the party for whose benefit the condition is set forth may terminate this Agreement at any time thereafter until the Closing occurs, so long as the failure of condition is not caused by such party's breach of its obligations under this Agreement. If Buyer so terminates in connection with the conditions set forth in Sections 5.3(a)(ii) and/or 5.3(a)(iii), above (only), then Buyer shall be entitled as its sole and exclusive remedy to the return of the Earnest Money Deposit. If Seller so terminates, Seller shall be entitled to retain the Earnest Money Deposit.

5.4. Buyer's Deliveries. No later than one (1) business day prior to the Closing Date, Buyer shall deliver to Escrow Holder:

(a) The difference between the Purchase Price and the Earnest Money Deposit, and all costs and fees required to be paid by Buyer pursuant to Sections 5.6 and 5.7 below, all in Immediately Available Funds;

(b) A countersigned counterpart of the Lease Assignment and Amendment in the form attached hereto as Exhibit "D";

(c) Any declaration or other statement which may be required to be submitted to the local assessor with respect to the terms of the sale of the Leasehold Interest (*i.e.*, relating to Seller's rights in the Lease);

(d) A closing statement executed by Buyer;

(e) A countersigned counterpart of the Bill of Sale in the form attached as Exhibit "E" (the "**Bill of Sale**");

(f) A countersigned counterpart of a General Assignment and Assumption in the form attached as Exhibit "F" (the "**General Assignment**");

(g) A countersigned counterpart of the Management Agreement in the form attached as Exhibit "G" (the "**Management Agreement**")

(h) Copies of letters from the relevant vendors evidencing Buyer's assumption of the Assigned Contracts;

(i) Resolutions, certificates of good standing, and such other organizational documents, in form acceptable to the Title Company, authorizing the execution, delivery and performance by Buyer of this Agreement and designating one or more members to execute documents on Buyer's behalf in connection with this transaction; and

(j) Such other documents and instruments as may be reasonably requested by Seller or by the Escrow Holder in order to consummate this transaction.

5.5. Seller's Deliveries. No later than one (1) business day prior to the Closing Date, Seller shall deliver to Escrow Holder:

(a) A closing statement executed by Seller;

(b) A countersigned counterpart of the Lease Amendment and Assignment, executed by Landlord and Seller;

(c) A countersigned counterpart of the Bill of Sale;

- (d) A countersigned counterpart of the General Assignment;
- (e) A countersigned counterpart of the Management Agreement; and
- (f) Such other documents and instruments as may be required herein or reasonably requested by the Escrow Holder in order to consummate this transaction.

5.6. Prorations.

(a) **General.** All normal and customarily prorable items, including, without limitation, collected rents, operating expenses, all current installments of real estate taxes, assessments, bonds and personal property or use taxes, if any, shall be prorated as of the Closing Date, except as otherwise provided in the Management Agreement. If, however, subsequent to the Close of Escrow, by reason of any change in assessment or change in rate or any other reason, the real estate taxes for the fiscal year covered by such apportionment should be determined to vary from those apportioned, the amount of any refund received by, or payment due from, Buyer shall be apportioned between Seller and Buyer as of the Closing Date at the request of either party. Escrow Agent shall prepare and deliver to Seller and Buyer a proration schedule (the "**Proration Schedule**") of the adjustments described in this Section 5.6 no later than two (2) days prior to Closing. Such adjustments shall be paid by Buyer to Seller (if the prorations result in a net credit to Seller) or by Seller to Buyer (if the prorations result in a net credit to Buyer), by increasing or reducing the cash to be paid by Buyer at Closing. Any apportionments and prorations which are not expressly provided for below shall be made in accordance with customary practice in San Diego County, California.

(b) **Operating Expenses.** All of the operating, maintenance, taxes (other than real estate taxes, such as rental taxes), and other expenses incurred in operating the Business that Seller customarily pays, and any other costs incurred in the ordinary course of business for the management and operation of the Business, shall be prorated on an accrual basis. Except as otherwise provided in the Management Agreement, Seller shall pay all such expenses that accrue prior to Closing and Buyer shall pay all such expenses that accrue from and after the Closing Date.

(c) **Utilities.** Except as otherwise provided in the Management Agreement, the final readings and final billings for utilities will be made if possible as of the Closing Date, in which case Seller shall pay all such bills as of the Closing Date and no proration shall be made at the Closing with respect to utility bills. Otherwise, a proration shall be made based upon the parties' reasonable good faith estimate and a readjustment made within thirty (30) days after the Closing, if necessary. Seller shall be entitled to the return of any deposit(s) posted by it with any utility company, and Seller shall notify each utility company serving the Business to terminate Seller's account, effective as of noon on the Closing Date.

(d) **Real Estate Taxes.** Any real estate ad valorem or similar taxes for the Leasehold Interest, or any installment of assessments payable in installments which installment is payable in the calendar year of Closing, shall be prorated to the date of Closing, based upon actual days involved. The proration of real property taxes or installments of assessments shall be based upon the assessed valuation and tax rate figures (assuming payment at the earliest time to allow for the maximum possible discount) for the year in which the Closing occurs to the extent the same are available; provided, however, that in the event that actual figures (whether for the assessed value of the Leasehold Interest or for the tax rate) for the year of Closing are not available at the Closing Date, the proration shall be made using figures from the preceding year (assuming payment at the earliest time to allow for the maximum possible discount). The proration of real property taxes or installments of assessments shall be final and not subject to re-adjustment after Closing.

(e) **Insurance Premiums.** No proration shall be made in relation to insurance premiums and insurance policies will not be assigned to Buyer.

(f) **No Post Closing Adjustments.** Buyer and Seller hereby acknowledge and agree that neither Buyer nor Seller shall have any right to re-adjust any item on the Proration Schedule (or any item omitted therefrom) after the Closing. The provisions of this section shall survive the Closing.

5.7. Closing Costs. Seller and Buyer shall each pay one-half (1/2) of all Closing Costs. Any other costs or expenses of the Escrow shall be borne by the parties in accordance with customary practice in San Diego County, California. For purposes of this Agreement, "Closing Costs" shall mean escrow fees, city documentary transfer taxes, document preparation charges and acknowledgment and recording costs, but shall not include any attorneys' fees or other such costs and expenses incurred separately by Buyer or Seller.

5.8. Possession Upon Close of Escrow. Seller shall deliver possession of the Purchased Assets to Buyer (subject to the Assigned Contracts identified by Buyer pursuant to the terms above) upon the Close of Escrow.

5.9. Termination of this Agreement. In the event this Agreement is terminated in accordance with the provisions of Sections 5.3(d), 11.1(a), 11.2(a), or 13.5, (i) any documents deposited with Escrow Holder shall be returned to the party depositing the same; (ii) Buyer shall return to Seller all documents delivered by Seller to Buyer pursuant to this Agreement and any Third-Party Reports; and (iii) unless otherwise specifically provided elsewhere, the Buyer shall pay all Escrow, title, and other costs, if any, incurred in connection with cancellation of the Escrow. If this Agreement is not so terminated, Buyer shall go forward with the acquisition of the Purchased Assets as provided in this Agreement and the Earnest Money Deposit shall be non-refundable, except in the event of Seller's default prior to the Close of Escrow.

5.10. Waiver of "Bulk Sale" Provisions. Buyer and Seller hereby acknowledge and agree that the sale of the Purchased Assets shall not be made as a "bulk sale" under Sections 6101 *et seq.* of the California Commercial Code, that there shall be no separate escrow or sub-escrow for the sale of any portion of the Purchased Assets, and that no "bulk sale" notice pursuant to Section 6105 of the California Commercial Code shall be given by Escrow Holder or the parties in connection with the transfer of any portion of the Purchased Assets. Seller represents and warrants to Buyer that Seller's principal business is not the sale of inventory from stock or that of a restaurant owner.

6.

REPRESENTATIONS AND WARRANTIES OF BUYER

6.1. Representations and Warranties of Buyer. Buyer represents and warrants as follows:

(a) **Authority.** The execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby, have been duly authorized and approved by all requisite action of Buyer, and no other authorizations or approvals, whether of governmental bodies or otherwise, will be necessary in order to enable Buyer to enter into or to comply with the terms of this Agreement.

(b) **Binding Effect of Documents.** This Agreement and the other documents to be executed by Buyer hereunder, upon execution and delivery thereof by Buyer, will have been duly entered into by Buyer, and will constitute legal, valid and binding obligations of Buyer. Neither this Agreement nor anything provided to be done under this Agreement violates or shall violate any contract, document, understanding, agreement or instrument to which Buyer is a party or by which it is bound.

(c) **Representation Regarding Broker.** The Seller's Broker, the Buyer's Broker and their respective affiliates do not, and will not at the Closing, have any direct or indirect legal, beneficial, economic or voting interest in Buyer (or in an assignee of Buyer, which pursuant to Section 13.4, acquires the Purchased Assets at the Closing), nor has Buyer or any affiliate of Buyer granted (as of the Effective Date or the Closing Date) the Seller's Broker, the Buyer's Broker or any of their respective affiliates any right or option to acquire any direct or indirect legal, beneficial, economic or voting interest in Buyer.

(d) **No Pending or Threatened Litigation.** No pending or threatened litigation exists which if determined adversely would restrain the consummation of the transactions contemplated by this Agreement or would declare illegal, invalid or non-binding any of Buyer's obligations or covenants to Seller.

(e) **Survival of Buyer's Representations and Warranties.** All warranties and representations of Buyer set forth in this Agreement shall survive for a period of six

(6) months following the Closing Date and any claim with respect to a breach of any representation or warranty made or given by Buyer shall be initiated in accordance with the provisions of ARTICLE 9 within six (6) months of the Closing Date or such claim shall be forever barred.

7.

"AS IS" SALE

7.1. Independent Investigation. Buyer shall have independently investigated, analyzed and appraised the value, profitability and condition of the Purchased Assets, including, without limitation, the geological and soil condition of the Purchased Assets, the fitness or suitability of the Purchased Assets for Buyer's intended use of the Purchased Assets and all environmental matters relating to the Purchased Assets (including, but not limited to, the presence or absence of hazardous or toxic substances or industrial hygiene in violation of any and all applicable environmental laws), without relying on any representations of any kind (whether oral or written, express or implied) made by Seller to Buyer. Buyer is purchasing the Purchased Assets in its "AS IS, WHERE IS" condition as of the Effective Date solely in reliance upon Buyer's own investigations and evaluation thereof and without any representation or warranty by Seller as to the condition of the Purchased Assets.

7.2. AS-IS Purchase; No Side Agreements Or Representations. Buyer acknowledges and agrees that Buyer has independently and personally inspected the Purchased Assets, and the improvements, entitlements, plans and specifications related to the Purchased Assets, Buyer has elected to go forward with the purchase of the Purchased Assets on the basis of such personal examinations and inspections as Buyer has deemed appropriate to make. Buyer agrees that **AS A MATERIAL INDUCEMENT TO THE EXECUTION AND DELIVERY OF THIS AGREEMENT BY SELLER, BUYER IS PURCHASING THE PURCHASED ASSETS IN AN "AS IS" AND "WHERE IS" PHYSICAL CONDITION AND IN AN "AS IS" STATE OF REPAIR, WITH ALL FAULTS.** No person acting on behalf of Seller is authorized to make, and by execution hereof Buyer acknowledges and agrees that, except as specifically provided in this agreement, Seller has not made, does not make, and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of and to, concerning or with respect to:

- (i) the value of the Purchased Assets;
- (ii) the income to be derived from the Purchased Assets;
- (iii) the suitability of the Purchased Assets for any and all activities and uses which Buyer may conduct thereon, including without limitation any development of any or all of the Purchased Assets;

(iv) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Purchased Assets;

(v) the manner, quality, state of repair, or lack of repair, of the Purchased Assets;

(vi) the nature quality or condition of the Premises or any of the other Purchased Assets, as applicable, including without limitation, the water, soil and geology;

(vii) the compliance of or by the Purchased Assets or the operation of the Purchased Assets with any laws, rules, ordinances, or regulations of any applicable governmental authority or body;

(viii) the manner, condition, or quality of the construction or materials, if any, incorporated into the Purchased Assets;

(ix) compliance with any environmental protection, pollution or land use laws, rules, regulation, orders or requirements, including but not limited to, the Endangered Species Act, Title III of the Americans With Disabilities Act of 1990, and any other law, rule or regulation governing access by disabled persons;

(x) the presence or absence of hazardous or toxic substances at, on, under, or adjacent to the Premises;

(xi) the content, completeness or accuracy of the due diligence materials, including any informational package, document list or other materials prepared by Seller;

(xii) the conformity of the improvements to any plans or specifications for the Premises, including any plans and specifications that may have been or may be provided to Buyer;

(xiii) the conformity of the Premises to past, current or future applicable zoning or building requirements;

(xiv) deficiency of any undershoring;

(xv) deficiency of any drainage;

(xvi) the fact that all or a portion of the Purchased Assets may be located on or near an earthquake fault line or located in an Alquist-Priolo Special Study Zone;

(xvii) the existence of land use zoning or building entitlements affecting the Premises;

(xviii) deficiency of any access to the Purchased Assets; and

(xix) with respect to any other matter concerning the Purchased Assets, except as may be otherwise expressly stated herein, including any and all such matters referenced discussed or disclosed in any documents delivered by Seller to Buyer, in any public records of any governmental agency, entity or utility company, or in any other documents available to Buyer.

Buyer acknowledges and agrees that the opportunity to inspect the Purchased Assets and review information and documentation respecting the Purchased Assets (including that disclosed in the Acknowledgment) as provided in this Agreement is sufficient to allow the Buyer to make an adequate investigation of the Purchased Assets and that Buyer is relying solely on its own investigation of the Purchased Assets and review of such information and documentation, and not, on any information provided or to, be provided by Seller. Buyer further acknowledges and agrees that any information made available to Buyer or provided or to be provided by or on behalf of Seller with respect to the Purchased Assets was obtained from a variety of sources and that Seller has not made any independent investigation or verification of such information and make no representations as to the accuracy or completeness of such information except as may otherwise be provided herein. Buyer agrees to fully and irrevocably release all such sources of information and preparers of information and documentation to the extent such sources or preparers are Seller, or its employees, members, officers directors, representatives, agents, servants, attorneys, affiliates, parent companies, subsidiaries, successors or assigns, from any and all claims that it may now have or hereafter acquire against such sources and preparers of information for any costs, loss, liability, damage, expense, demand, action or cause of action arising from such information or documentation. Seller is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Purchased Assets or the operation thereof furnished by any of the foregoing entities and individuals or any other individual or entity. Buyer further acknowledges and agrees that to the maximum extent permitted by law, the sale of the Purchased Assets as provided for herein is made on an "AS-IS" condition and basis, with all faults, and that Seller has no obligations to make repairs, replacements or improvements.

7.3. NO LIABILITY TO RECEIVER. WITHOUT LIMITATION OF THE FOREGOING, AS AN ESSENTIAL INDUCEMENT TO RECEIVER TO ENTER INTO THIS AGREEMENT, AND AS PART OF THE DETERMINATION OF THE CONSIDERATION GIVEN HEREUNDER, BUYER ACKNOWLEDGES, UNDERSTANDS AND AGREES AS FOLLOWS:

(a) BUYER ACKNOWLEDGES AND AGREES THAT RECEIVER IS ENTERING INTO THIS AGREEMENT SOLELY IN CONNECTION WITH HIS OR HER DUTIES AS RECEIVER PURSUANT TO THE ORDERS. IN NO EVENT SHALL RECEIVER BE LIABLE FOR ANY ERROR OF JUDGMENT OR ACT DONE BY RECEIVER, OR BE OTHERWISE RESPONSIBLE OR ACCOUNTABLE UNDER ANY CIRCUMSTANCE WHATSOEVER, EXCEPT IF THE RESULT OF RECEIVER'S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT.

RECEIVER SHALL NOT BE PERSONALLY LIABLE IN CONNECTION WITH ANY DUTIES PERFORMED BY RECEIVER PURSUANT TO THE ORDERS.

(b) NO PROVISION OF THIS AGREEMENT SHALL OPERATE TO PLACE ANY OBLIGATION OR LIABILITY FOR THE CONTROL, CARE, MANAGEMENT OR REPAIR OF THE PURCHASED ASSETS UPON RECEIVER NOR SHALL IT OPERATE TO MAKE RECEIVER RESPONSIBLE OR LIABLE FOR ANY WASTE COMMITTED ON THE PREMISES BY ANY PERSON OR FOR ANY DANGEROUS OR DEFECTIVE CONDITION OF THE PURCHASED ASSETS OR FOR ANY NEGLIGENCE IN MANAGEMENT, UPKEEP, REPAIR OR CONTROL OF THE PURCHASED ASSETS RESULTING IN LOSS OR INJURY OR DEATH TO ANY PERSON.

7.4. Survival. The provisions of this ARTICLE 7 shall survive the Close of Escrow indefinitely or until the maximum extent allowed under applicable laws.

8.

RELEASE AND INDEMNITY

8.1. Release. To the maximum extent permitted by law, Buyer, on behalf of itself and its past, present and future agents, representatives, partners, shareholders, principals, attorneys, affiliates, parent corporations, subsidiaries, officers, directors, employees, predecessors, successors, heirs and executors and assigns (collectively, "**Buyer's Parties**"), hereby releases and forever discharges Seller, and each of their respective past, present and future agents (including Receiver and Seller's Broker (as defined herein)), representatives, partners, attorneys', shareholders, principals, affiliates, parent corporations, subsidiaries, officers, directors, employees, predecessors, successors, heirs, executors and assigns (collectively, "**Indemnitees**"), from and against all claims, rights, remedies, recourse or other basis for recovery, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, attorneys' fees and costs) ("**Claims**"), whether direct or indirect, known or unknown, foreseen, whether before or after the Closing Date, including without limitation any loss, damage, injury, illness, death or other claim attributable to: (a) the use of the Purchased Assets or any part thereof; (b) a defect in the design or construction of any improvements on or about the Purchased Assets or the physical condition of the Purchased Assets, including without limitation any property located adjacent to the Premises, whether or not performed by an Indemnitee, and any surface and subsurface conditions; (c) the presence on the Premises of any threatened or endangered species, or any archaeological sites, artifacts or other matters of archaeological significance, or any hazardous or toxic substances or industrial hygiene in violation of any and all applicable environmental laws including, without limitation, all claims in tort or contract and any claim for indemnification or contribution arising under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9601, et seq.) or any similar federal, state or local statute, rule or


ordinance relating to liability of property owners for environmental matters; (d) any act, omission or representation of Buyer or any of Buyer's Parties; (e) any accident or casualty on the Premises caused by or attributable to the acts or omissions of any Indemnitees, Buyer or Buyer's Parties on or about the Premises; (f) a violation or alleged violation by any Indemnatee, Buyer, or Buyer's Parties of any law now or hereinafter enacted, including, without limitation, any requirements of the City or ABC; (g) a slope failure or surface or subsurface geologic or groundwater condition caused by or attributable to any Indemnatee, Buyer or Buyer's Parties; (h) the design, construction, engineering or other, work with respect to the Premises provided or performed by or caused by or attributable to any Indemnatee, Buyer or Buyer's Parties, whether before or after the Closing Date; (i) any other cause whatsoever in connection with Buyer's use of the Purchased Assets or Buyer's performance under the Agreement or any of the instruments executed and delivered at Closing in connection herewith; (j) any breach by Buyer in the performance of its obligations under this Agreement or the other instruments executed and delivered at Closing in connection herewith; or (k) the application of the principles of strict liability in connection with the Purchased Assets (collectively, the "**Released Claims**"). Notwithstanding the foregoing, the Buyer shall not be required to or be deemed to have waived any Claims against any particular Indemnatee from an event which arises from a pre-existing relationship or claim between the Buyer and such Indemnatee.

With respect to this release and discharge, Buyer, on behalf of itself and all of Buyer's Parties, hereby acknowledges that the Released Claims may include Claims of which Buyer is presently unaware, or which Buyer does not presently suspect to exist, or which may not yet have accrued or become manifest, and which, if known by Buyer on the Effective Date or the Closing Date would materially affect Buyer's release and discharge of Seller and the other Indemnitees, and Buyer, on behalf of itself and all of Buyer's Parties, hereby waives application of the California Civil Code Section 1542 which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Buyer understands and acknowledges that the significance and consequence of this waiver of California Civil Code Section 1542 is that, even if Buyer or any of Buyer's Parties suffer future damages arising out of or resulting from any Released Claims, neither Buyer nor any of Buyer's Parties will be able to make any claim for those damages against Seller or any other Indemnatee. Furthermore, Buyer acknowledges that it intends these consequences for any such Claims which may exist as of the date of this release but which Buyer does not know exist, and which, if

known, would materially affect Buyer's decision to execute this Agreement, regardless of whether Buyer's lack of knowledge is the result of ignorance, oversight, error, negligence or any other cause.



Buyer's initials

8.2. Survival. The provisions of this ARTICLE 8 shall survive the Close of Escrow indefinitely or until the maximum extent allowed under applicable laws.

9.

DISPUTE RESOLUTION

9.1. Court Trial. Each party to this Agreement hereby expressly waives any right to trial by jury with respect to any claim, demand, action or cause of action (a) arising under this Agreement, including, without limitation, any present or future modification thereof, or (b) in any way connected with or related or incidental to the dealings of the parties hereto or any of them with respect to this Agreement (as now or hereafter modified) or any other instrument, document or agreement executed or delivered in connection herewith, or the transactions related hereto or thereto, in each case whether such claim, demand, action or cause of action is now existing or hereafter arising, and whether sounding in contract or tort or otherwise; and each party hereby agrees and consents that any such claim, demand or cause of action shall be decided by court trial without a jury, and that any party to this Agreement may file an original counterpart or a copy of this section with any court as written evidence of the consent of the parties hereto to the waiver of any right they might otherwise have to trial by jury. The parties shall be entitled to recover only their actual damages, and no party shall be entitled to recover any consequential damages, punitive damages, or any other damages that are not actual damages.

9.2. Venue. Any action shall be commenced and maintained in the Court. The parties irrevocably consent to jurisdiction and venue in such Court and agree not to seek transfer or removal of any action commenced in accordance with the terms of this article.

10.

NATURAL HAZARD DISCLOSURE STATEMENT

10.1. Buyer's Acknowledgment. Buyer acknowledges that: (a) it is a sophisticated and experienced purchaser of real property; (b) Buyer and Seller are parties of equal bargaining strength; (c) this Agreement is not a contract of adhesion but has been expressly negotiated between the parties; and (d) this Agreement concerns a transaction that is private in nature. Buyer further acknowledges that it has the opportunity to make, has made or will make its own independent investigations, as provided in this Agreement,

and that the opportunity for investigation provided herein allows the Buyer to determine, among other issues, whether the Premises is located in any natural hazard areas.

10.2. Waiver of Natural Hazard Disclosure Statement. Notwithstanding anything to the contrary below, Buyer hereby knowingly, voluntarily and intentionally waives its right to disclosure of natural hazards found in the Natural Hazard Disclosure Act, California Government Code Sections 8589.3, 8589.4, and 51183.5, California Public Resources Code Sections 2621.9, 2694, and 4136, and California Civil Code Section 1103, and any successor statutes or laws (the "**Act**"). This waiver is a material inducement to Seller's decision to enter into this Agreement and the calculation of the Purchase Price, and Buyer acknowledges that Seller would not have entered into this Agreement but for this waiver.

10.3. Natural Hazard Disclosure Statement. Buyer acknowledges that, prior to the Effective Date, Buyer has received and executed the Natural Hazard Disclosure Statement ("**Disclosure Statement**"). Buyer acknowledges that the Disclosure Statement is being delivered pursuant to the Act. Buyer acknowledges and agrees that nothing contained in the Disclosure Statement shall release Buyer from its obligation to fully investigate the condition of the Leasehold Interest, including without limitation whether the Premises is located, in any natural hazard areas, and that Buyer has the expertise to perform such investigations. Buyer further acknowledges and agrees that the matters set forth in the Disclosure Statement may change on or prior to the Close of Escrow and that Seller has no obligation to update, modify or supplement the Disclosure Statement. Buyer shall be solely responsible for preparing and delivering its own Natural Hazard Disclosure Statement to any subsequent prospective purchasers of the Leasehold Interest.

11.

CONDEMNATION AND DESTRUCTION

11.1. Eminent Domain or Taking. If proceedings under a power of eminent domain relating to the Premises or any part thereof are commenced prior to Close of Escrow, Seller shall promptly notify Buyer in writing and the following terms shall apply:

(a) If such proceedings involve the taking of title to all or a Material (as defined below) portion of the Premises, Buyer may elect to terminate this Agreement by written notice given within ten days of Seller's written notice to Buyer advising of such proceedings, in which case neither party shall have any further rights or obligations hereunder, except for those which are expressly stated to survive termination of this Agreement or which are contained in Section 5.9.

(b) If the proceedings do not involve the taking of title to all or a Material portion of the Premises, or if Buyer does not elect to terminate this Agreement, this transaction shall be consummated as described herein and any award or settlement

payable with respect to such proceeding shall be paid or assigned to Buyer upon Close of Escrow.

(c) If the purchase and sale of the Purchased Assets is not consummated for any reason, any condemnation award or settlement shall belong solely to Seller.

11.2. Damage or Destruction. Except as provided in this section, prior to the Close of Escrow, the entire risk of loss of damage by earthquake, landslide, fire or other casualty shall be borne and assumed solely by Seller. If, prior to the Close of Escrow any part of the Purchased Assets is damaged or destroyed by earthquake, landslide, fire or other casualty, Seller shall promptly inform Buyer of such fact in writing and advise Buyer as to the extent of the damage and whether it is, in Seller's reasonable opinion, "Material" or "not Material." The following terms shall apply:

(a) If such damage or destruction is "Material," Buyer shall have the option to terminate this Agreement upon written notice to Seller given not later than ten days after receipt of Seller's written notice to Buyer advising of such damage or destruction.

(b) If Buyer does not elect to terminate this Agreement, or if the damage or destruction is not "Material," Seller shall reduce the Purchase Price by the value reasonably estimated by Seller to repair or restore the damaged portion of such Purchased Assets, less any sums expended by Seller to make emergency repairs to such Purchased Assets or to otherwise protect the physical condition of such Purchased Assets, and this transaction shall close pursuant to the terms of this Agreement.

(c) If the damage is not "Material," Seller's notice to Buyer of the damage or destruction shall also set forth Seller's reduced Purchase Price and Seller's allocation of value to the damaged portion of such improvements. If Buyer does not accept Seller's reduced Purchase Price, Seller may elect to repair or restore the damaged portion of such improvements. If Seller elects to repair or restore the damage, then Buyer shall proceed to Closing. If Seller does not elect to repair or restore the damage, and Buyer does not accept Seller's reduced Purchase Price Buyer's sole remedy shall be to terminate this Agreement. If Buyer elects to terminate the Agreement pursuant to this Section 11.2(c), the provisions of Section 5.9 shall apply.

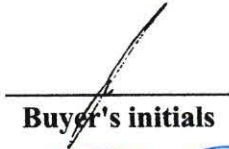

(d) Whether or not the sale of the Purchased Assets is consummated hereunder, all rights to insurance claims or proceeds with respect to any damage to or destruction of any improvements occurring prior to the Close of Escrow shall belong to Seller.

11.3. Definition of Material. As used in this ARTICLE 11, "**Material**" shall mean any taking, condemnation, damage or destruction to or of the Premises, as applicable, which causes the temporary closing of the Purchased Assets for a period of five (5) days or more and costs more than Thirty Thousand and No/100 Dollars (\$30,000.00) to repair.

12.

DEFAULT BY BUYER

12.1. DEFAULT BY BUYER. UPON DEFAULT BY BUYER, SELLER SHALL BE ENTITLED TO TERMINATE THIS AGREEMENT UPON WRITTEN NOTICE TO BUYER AND THE ESCROW HOLDER. IN SUCH EVENT, ESCROW HOLDER SHALL RELEASE THE EARNEST MONEY DEPOSIT TO SELLER, AND SELLER SHALL BE ENTITLED TO RECEIVE AND RETAIN THE EARNEST MONEY DEPOSIT AS LIQUIDATED DAMAGES AND, EXCEPT FOR BUYER'S INDEMNITY AND OTHER SPECIFIC OBLIGATIONS REFERRED TO HEREIN WHICH MAY BE ENFORCED BY SELLER, NEITHER PARTY SHALL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER. IN THE EVENT THE CLOSING DOES NOT OCCUR BECAUSE OF BUYER'S DEFAULT, BUYER AND SELLER AGREE THAT IT WOULD BE IMPRACTICABLE AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES SUFFERED BY SELLER AS A RESULT OF BUYER'S FAILURE TO COMPLETE THE PURCHASE OF THE PURCHASED ASSETS PURSUANT TO THIS AGREEMENT, AND THAT UNDER THE CIRCUMSTANCES EXISTING AS OF THE EFFECTIVE DATE, THE LIQUIDATED DAMAGES PROVIDED FOR IN THIS SECTION REPRESENT A REASONABLE ESTIMATE OF THE DAMAGES WHICH SELLER WILL INCUR AS A RESULT OF SUCH DEFAULT; PROVIDED, HOWEVER, THAT THIS PROVISION SHALL NOT: (A) LIMIT SELLER'S RIGHT TO RECEIVE REIMBURSEMENT FOR ATTORNEYS' FEES; (B) WAIVE OR AFFECT BUYER'S INDEMNITY OBLIGATIONS AND SELLER'S RIGHTS TO SUCH INDEMNITY; OR (C) WAIVE OR AFFECT BUYER'S OBLIGATIONS TO RETURN OR PROVIDE TO SELLER DOCUMENTS, REPORTS OR OTHER INFORMATION PROVIDED TO OR PREPARED BY OR FOR BUYER PURSUANT TO APPLICABLE PROVISIONS OF THIS AGREEMENT. THEREFORE, BUYER AND SELLER DO HEREBY AGREE THAT AS OF THE EFFECTIVE DATE, A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT THAT SELLER WOULD SUFFER IN THE EVENT THAT BUYER DEFAULTS AND FAILS TO COMPLETE THE PURCHASE OF THE PURCHASED ASSETS IS AN AMOUNT EQUAL TO THE EARNEST MONEY DEPOSIT (WHICH INCLUDES ANY ACCRUED INTEREST THEREON). SAID AMOUNT SHALL BE THE FULL, AGREED AND LIQUIDATED DAMAGES FOR THE BREACH OF THIS AGREEMENT BY BUYER. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. SELLER HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389.


 Buyer's initials

 Seller's initials

12.2. Default by Seller; Unsuccessful Bidder. Subject to Section 7.3, if the sale of the Purchased Assets is not consummated because of a material default by Seller under this Agreement or because Buyer is not the High Bidder, Buyer's sole remedy shall be to terminate this Agreement and recover the Earnest Money Deposit and interest accrued thereon.

13.

MISCELLANEOUS PROVISIONS

13.1. Brokerage Commissions. Seller represents and warrants to Buyer that Seller has not engaged any broker or finder in connection with the transaction contemplated by this Agreement other than Nate Benedetto and Paul Ahern of Next Wave Commercial ("**Seller's Broker**"), whose commission (if the Closing occurs) shall be paid pursuant to a separate agreement entered into by Seller and Seller's Broker. Buyer represents and warrants to Seller that Buyer has not engaged any broker or finder in connection with the transaction contemplated by this Agreement other than Colliers ("**Buyer's Broker**"), whose commission (if the Closing occurs) shall be paid pursuant to a separate agreement. Buyer shall indemnify, defend and hold Seller and Broker harmless from and against any liability, cost or expense arising out of or connected with any claim for any commission or compensation made by any person or entity claiming to have been retained or contacted by Buyer in connection with, this transaction, and Seller shall indemnify, defend and hold Buyer harmless from and against any liability, cost or expense arising out of or connected with any claim for any commission or compensation made by any person or entity claiming to have been retained or contacted by Seller in connection with this transaction. This indemnity provision shall survive the Closing or any earlier termination of this Agreement. Seller's Broker and Buyer's Broker shall not be deemed parties or third party beneficiaries of this Agreement. As a condition to Seller's obligation to pay the commission pursuant to this Section 13.1, each of Seller's Broker and Buyer's Broker shall execute the respective signature page for each such broker attached hereto solely for purposes of confirming the matters set forth therein; provided, however, that (a) such signatures hereon of Seller's Broker and Buyer's Broker's shall not be a prerequisite to the binding nature of this Agreement on Buyer and Seller, and the same shall become fully effective upon execution by Buyer and Seller, and (b) neither the signature of Seller's Broker nor Buyer's Broker will be necessary to amend any provision of this Agreement.

13.2. Notices. All notices, demands, requests and other communications required or permitted hereunder shall be in writing, and shall be (a) personally delivered with a written receipt of delivery; (b) sent by a nationally-recognized overnight delivery service requiring a written acknowledgement of receipt or providing a certification of delivery or attempted delivery; (c) sent by certified or registered mail, return receipt requested; or (d) sent by confirmed facsimile transmission with an original copy thereof transmitted to the recipient by one of the means described in subsections (a) through (c) no later than three (3) business days thereafter. All notices shall be deemed effective when actually delivered as documented in a delivery receipt; provided, however, that if the notice was sent by overnight courier or mail as aforesaid and is affirmatively refused or cannot be delivered during customary business hours by reason of the absence of a signatory to acknowledge receipt, or by reason of a change of address with respect to which the addressor did not have either knowledge or written notice delivered in accordance with this paragraph, then the first attempted delivery shall be deemed to constitute delivery. Each party shall be entitled to change its address for notices from time to time by delivering to the other party notice thereof in the manner herein provided for the delivery of notices. All notices shall be sent to the addressee at its address set forth following its name below:

To Seller/Receiver:

Krista L. Freitag
E3 Advisors
355 South Grand Avenue, Suite 2450
Los Angeles, California 90071
E-mail: kfreitag@ethreadvisors.com
Facsimile: (213) 943-1374

With a copy to:

Allen Matkins Leck Gamble Mallory & Natsis LLP
One America Plaza, 600 West Broadway, 27th Floor
San Diego, CA 92101-0903
Email: tfates@allenmatkins.com
Facsimile: (619) 233-1158
Attention: Ted G. Fates, Esq.

To Buyer:

[PLEASE PROVIDE]

G Boys Holdings LLC

2801 B Street, #73
San Diego, CA 92102

Email: _____
Facsimile: _____
Attention: _____

13.3. Confidentiality. Unless otherwise agreed to in writing by Seller and Buyer, each party shall keep confidential all documents, contracts, prices, plans specifications, strategies, marketing programs, financial statements, reports or other information provided to, or generated by the other party relating to the Purchased Assets and shall not disclose any such information to any person other than: (a) employees, agents and attorneys of Seller or Buyer; (b) those who are actively and directly participating in the evaluation of the Purchased Assets, or the appraisal, investigation or financing related to the Leasehold Interest; and (c) governmental, administrative, regulatory or judicial authorities in the investigation of the compliance of the Purchased Assets with applicable legal requirements. Buyer agrees to provide this confidentiality provision to any consultant, contractor or employee to whom confidential information may be disclosed and shall require any such consultant, contractor or employee to be bound by this confidentiality provision. Buyer expressly covenants and agrees that it shall not disclose any code compliance, environmental or other regulatory matters to governmental or other authorities without the express prior written approval by Seller unless required by law, in which case Buyer shall immediately notify Seller thereof. Upon any termination of this Agreement for any reason, Buyer shall promptly return to Seller copies of all documents or other information pertaining to the Purchased Assets provided to Buyer by Seller. Notwithstanding anything to the contrary contained herein, Buyer hereby acknowledges that a copy of this Agreement shall be provided to Prospective Bidders (as defined below) in connection with the overbid process, in accordance with and subject to the terms and conditions of Article 14, below, and that in no event shall any such provision of this Agreement to Prospective Bidders be considered a violation of the confidentiality requirements set forth herein. Buyer also acknowledges that a copy of this Agreement shall be filed with the Court in connection with the Receiver's motion for Court approval of the sale. The provisions of this Section 13.3 shall survive the Closing or earlier termination of this Agreement.

13.4. Assignment. Buyer shall not assign this Agreement without obtaining Seller's prior written consent, which consent may be withheld by Seller in its sole and absolute discretion for any reason whatsoever.

13.5. Bankruptcy. Buyer agrees that in the event that: (a) all or substantially all of Buyer's assets are placed in the hands of a receiver or trustee, and such receivership or trusteeship continues for a period of thirty (30) days; (b) Buyer makes an assignment for the benefit of creditors; (c) Buyer is adjudicated a bankruptcy; (d) Buyer institutes any proceeding under any law relating to bankruptcy wherein Buyer seeks to be adjudicated a bankrupt, or to be discharged of its debts, or to effect a plan of liquidation, composition or reorganization; (e) an involuntary proceeding is filed against Buyer under any

bankruptcy laws and Buyer consents thereto or acquiesces therein by pleading or default or such involuntary proceeding is not dismissed within ninety (90) days; or (f) substantially all of Buyer's assets are attached or seized by judicial order where such seizure is not discharged within thirty (30) days then: (i) Buyer shall be deemed to be in default hereunder, (ii) this Agreement, including without limitation the rights granted herein, shall not become an asset in any of such proceedings; (iii) in addition to all other available remedies it shall be lawful for Seller to declare this Agreement terminated; and (iv) Buyer shall have no further claim on the Purchased Assets hereunder or otherwise, and no right to return of its Earnest Money Deposit or any other payments or expenses incurred pursuant to this Agreement.

13.6. Not an Offer; Last Date for Submission. Seller's delivery of unsigned copies of this Agreement is solely for the purpose of review by the party to whom delivered, and neither the delivery nor any prior communications between the parties, whether oral or written, shall in any way be construed as an offer by Seller, nor in any way imply that Seller is under any obligation to enter the transaction which is the subject of this Agreement. The signing of this Agreement by Buyer constitutes an offer which shall not be deemed accepted by Seller unless and until Seller has signed this Agreement and delivered a duplicate original to Buyer.

13.7. Modification. This Agreement may not be modified or amended except by a written agreement executed by Seller and Buyer, and only to the extent set forth therein.

13.8. Attorneys' Fees. In the event any legal or equitable action is commenced in connection with this Agreement or the Purchased Assets, whether in contract or in tort, the prevailing party (as determined by the court) shall be entitled to recover from the losing party all reasonable costs and expenses incurred, including but not limited to reasonable attorneys' fees, in addition to all other relief and remedies to which the prevailing party may be entitled.

13.9. Successors and Assigns. Subject to the limitations on Buyer's right to assign, this Agreement shall be binding on, and shall inure to the benefit of, the successors and assigns of the parties.

13.10. Duplicate Counterparts. This Agreement may be executed in duplicate counterparts, all of which together shall constitute a single instrument, and each of which shall be deemed an original of this Agreement for all purposes, notwithstanding that less than all signatures appear on any one counterpart.

13.11. Section Headings. The various section headings in this Agreement are inserted for convenience of reference only, and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

13.12. Survival of Covenants, etc. Except as otherwise expressly provided herein, all agreements, conditions, acknowledgments, representations, and other obligations set forth in this Agreement shall survive as set forth herein.

13.13. Days/Holidays. All references to days herein shall refer to calendar days unless otherwise noted. When performance of an obligation or satisfaction of a condition set forth in this Agreement is required on or by a date that is a Saturday, Sunday or legal holiday, such performance or satisfaction shall instead be required on or by the next business day following that Saturday, Sunday or holiday, notwithstanding any other provisions of this Agreement.

13.14. No Recorded Memorandum. Prior to Close of Escrow, neither this Agreement nor any memorandum hereof or reference hereto shall be filed in any place of public record. Failure of Buyer to comply with this Section shall be a material default by Buyer under this Agreement and, at the election of Seller, shall automatically and immediately terminate all of Buyer's rights under this Agreement, and thereafter Buyer shall not have any right, title, or interest in or to the Purchased Assets whatsoever.

13.15. Exhibits. All Exhibits attached to, and to which reference is made in, this Agreement are incorporated into, and shall be deemed a part of, this Agreement.

13.16. Entire Agreement. This Agreement is the entire agreement of Seller and Buyer with respect to the Purchased Assets, containing all of the terms and conditions to which Seller and Buyer have agreed. This Agreement supersedes and replaces entirely all previous oral and written understandings, offers, counter offers, acceptances, if any, of Seller and Buyer respecting the Purchased Assets.

13.17. Time. Time is of the essence in this Agreement and each and every provision of this Agreement.

13.18. Governing Law and Forum. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. The exclusive forum for resolving disputes arising from or related to this Agreement, the overbid process (defined below) or closing of the sale shall be the Court in the Case.

13.19. Severability. If any term, provision, covenant or condition of this Agreement is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be affected, impaired, or invalidated.

13.20. Joint Venture. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other agreement between Buyer and Seller. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization or corporation not a party hereto, and no

such other person, firm, organization or corporation shall have any right or cause of action hereunder.

13.21. Signer's Warranty. Each individual executing and delivering this Agreement on behalf of a party hereby warrants and represents to the other party that he or she has been duly authorized and empowered to do so.

13.22. Multiple Buyers. As used in this Agreement, the term "Buyer" means all entities acquiring any interest in the Purchased Assets at the Closing, including, without limitation, any assignee(s) of the original Buyer pursuant to this Agreement. In the event that "Buyer" has any obligations or makes any covenants, representations or warranties under this Agreement, the same shall be made jointly and severally by all entities being a Buyer hereunder. In the event that Seller receives notice from any entity being a Buyer hereunder, the same shall be deemed to constitute notice from all entities being a Buyer hereunder. In the event that any entity being a Buyer hereunder takes any action, breaches any obligation or otherwise acts pursuant to the terms of this Agreement, the same shall be deemed to be the action of the other entity(ies) being a Buyer hereunder and the action of "Buyer" under this Agreement. In the event that Seller is required to give notice or take action with respect to Buyer under this Agreement, notice to any entity being a Buyer hereunder or action with respect to any entity being a Buyer hereunder shall be a notice or action to all entities being a Buyer hereunder. In the event that any entity being a Buyer hereunder desires to bring an action or arbitration against Seller, such action must be joined by all entities being a Buyer hereunder in order to be effective. In the event that there is any agreement by Seller to pay any amount pursuant to this Agreement to Buyer under any circumstance, that amount shall be deemed maximum aggregate amount to be paid to all parties being a Buyer hereunder and not an amount that can be paid to each party being a Buyer hereunder. In the event that Seller is required to return the Earnest Money Deposit or other amount to Buyer, Seller shall return the same to any entity being a Buyer hereunder and, upon such return, shall have no further liability to any other entity being a Buyer hereunder for such amount. The foregoing provisions also shall apply to any documents to be executed pursuant to the provisions of this Agreement.

14.

SALE PROCEDURES AND OVERBID, POTENTIAL AUCTION PROCESS

14.1. Due Diligence Information. After signing a Confidentiality and Non-Disclosure Agreement ("NDA") and Access Agreement, all prospective buyers ("**Prospective Buyers**") shall have had the opportunity to inspect the Purchased Assets and any documentation made available to all Prospective Buyers. Prospective Buyers may also request access to information about the Purchased Assets ("**Due Diligence Information**") and obtain a form purchase and sale agreement.

14.2. No Representations and Warranties for Due Diligence Information. Any Due Diligence Information provided to Prospective Buyers is for informational purposes only and provided without any warranty, guaranty or representation by Receiver, or Receiver's Broker. All Prospective Buyers shall conduct their own independent investigation and analysis regarding the condition of the Purchased Assets and their suitability for Prospective Buyers' intended use. Neither the Receiver, nor the Receiver's Broker has made any representations, express or implied, regarding the completeness or accuracy of the Due Diligence Information.

14.3. Receivership Sale. In connection with the sale of the Purchased Assets out of a federal receivership, Receiver shall accept only the "highest and best" offer. The parties acknowledge it is a condition precedent to the Closing that Receiver obtain the Court Approval and the Receiver shall seek such approval from the Court. If Buyer approves the Purchased Assets on or before the Contingency Date pursuant to Section 3.1(a) of this Agreement, Receiver shall file a motion with the Court within seven (7) days after the Contingency Date requesting an order to approve the sale, subject to overbid. Receiver shall, shortly after determining and announcing the highest and best offer, request a hearing date from the Court for the sale motion (the "**Hearing Date**"). During the offer review process, Receiver will work to qualify all offerors as potential qualified overbidders.

14.4. Qualified Bidders. To be determined a qualified overbidder (a "**Qualified Bidder**"), one must: (i) provide a fully executed purchase and sale agreement for the Purchased Assets in form substantially similar to this Agreement ("**Qualified Bid PSA**"), acceptable to the Receiver in her sole discretion; (ii) provide an earnest money deposit (the "**Bid Deposit**") by wire transfer or cashier's check in the amount of Sixteen Thousand Five Hundred and No/100 Dollars (\$16,500.00) payable to the Receiver, which amount shall be *non-refundable* to the Qualified Bidder with the highest bid at the Auction (the "**High Bidder**") if for any reason (a) the High Bidder fails to finally close the purchase and sale such that title transfers by no later than the Closing Date or (b) the High Bidder fails to provide the balance of the purchase price to the Receiver one day prior to the Closing Date; and (iii) provide proof of funds in such form as shall be required by Receiver. Each Qualified Bidder must provide the Qualified Bid PSA and Bid Deposit to the Receiver no later than five (5) business days prior to the Auction. The Qualified Bidders shall appear at the Auction in person, or through a duly authorized representative. If there are multiple Qualified Bidders at the Auction, the Receiver shall obtain the Court's approval of the High Bidder and also the Qualified Bidder with the next highest bid at the Auction (the "**Backup Bidder**"). The Receiver shall retain the Backup Bidder's Bid Deposit until (a) the closing for the High Bidder occurs, in which event the Backup Bidder's Bid Deposit shall immediately be returned to the Backup Bidder, or (b) the closing for the High Bidder fails to occur, in which event the Backup Bidder's Bid Deposit shall be applied to the purchase price for the Backup Bidder's closing as set forth herein below. If the High Bidder fails to close the purchase and sale

of the Purchased Assets, the Backup Bidder shall be deemed to be the High Bidder and the Receiver shall provide written notice thereof to the Backup Bidder. Within ten (10) days after the Backup Bidder's receipt of such notice from the Receiver, the closing for the Backup Bidder's purchase of the Purchased Assets shall occur. Pursuant to the foregoing, if the initial High Bidder fails to close the purchase and sale of the Purchased Assets and the Court has approved a Backup Bidder, the Receiver shall proceed to close with the Backup Bidder without any obligation to conduct another auction as a condition precedent to such closing. The High Bidder's Bid Deposit shall be applied to the purchase price at closing, if the sale is approved by the Court and the High Bidder closes the purchase and sale of the Purchased Assets

14.5. Overbids, Bid Increments, and Auction. The minimum overbid shall be Ninety-Five Thousand and No/100 Dollars (\$95,000.00). If any overbids are received and are qualified, the Receiver will advise the Court of the overbid and will propose to the Court that the sale of the Purchased Assets be subject to an auction (the "**Auction**") conducted by the Receiver. As applicable, the Receiver will provide the Auction instructions to the Court and Qualified Bidders. Only Qualified Bidders (as defined below) may make bids at the Auction. All bids will be subject to overbids in increments of Ten Thousand and No/100 Dollars (\$10,000.00). The Court may reject any and all bids following conclusion of the Auction.

14.6. Consent to Court Jurisdiction. All Qualified Bidders appearing at the Auction shall have deemed to have consented to the Court's jurisdiction. The Court shall be the exclusive forum for any such disputes.

14.7. Receiver's Right to Determine Conduct of Auction. The Receiver reserves the right to deny any person admittance to the Auction, to postpone or cancel the Auction, to withdraw the Purchased Assets from the Auction, and to change any terms or procedures of the Auction or the particular conditions of sale, as necessary, upon notice to Buyer, and any Qualified Bidders, prior to or at the Auction, without further Court order.

14.8. No Contingencies for Qualified Bidder. The sale to any Qualified Bidder of the Purchased Assets shall *not* be contingent upon the validity, effectiveness, and or binding nature of the Qualified Bidder's offer; *provided, however*, that contingencies for financing may be permitted.

14.9. No Conditions Precedent for Qualified Bidder. The sale to any Qualified Bidder of the Purchased Assets shall not be subject to any conditions precedent to the Qualified Bidder's obligation to timely consummate the sale transaction, and to pay the remainder of the purchase price.

14.10. Auction Confirmation Order. The only authorized condition subsequent to the Auction for the Qualified Bidder is entry of a Court order confirming the sale to the Qualified Bidder (the "**Auction Confirmation Order**").

14.11. Conditions to Consummation of Sale Transaction Prior to and Following Auction. The closing of any sale to a Qualified Bidder shall be subject to the following conditions: (i) Receiver's review and acceptance of the highest bid received from a Qualified Bidder, (ii) entry of the Auction Confirmation Order, (iii) receipt of full payment on or before the date which is three (3) business days after the date upon which the Court enters the Auction Confirmation Order such that the Purchased Assets transfer can occur promptly thereafter, and (iv) prior to Auction, waiver and release of all claims against the Receiver. If any of these foregoing conditions are not satisfied, (a) the sale to the Qualified Bidder shall not be consummated, and (b) any obligations of the Receiver shall also be terminated, including any obligations under the Qualified Bid PSA.

14.12. Transfer of Title to Purchased Assets Following Auction. Following the Auction, title to the Purchased Assets shall be transferred by Grant Deed, and/or Bill of Sale, as applicable, "*AS-IS*", *WITHOUT REPRESENTATIONS AND WARRANTIES*, to the High Bidder.

14.13. Court Approval if No Qualified Bids are Received. In the event no Qualified Bids are provided to the Receiver, the Receiver will notify the Court that no Auction will take place and ask the Court to approve the sale to Buyer pursuant to this Agreement.

[Signatures on Following Page]

DocuSign Envelope ID: 9917284B-7EFC-4E7F-AC99-44AC3B6330C5

IN WITNESS WHEREOF, this Purchase and Sale Agreement and Joint Escrow Instructions is executed and delivered by the parties as of the Effective Date.

SELLER:

2163 ABBOTT STREET, LP,
a California limited partnership

By: 

Krista L. Freitag, solely in capacity as
Court-Appointed Receiver

BUYER:

G BOYS HOLDINGS LLC,
a California limited liability company

By: 

Name: Joseph Galascione, Member

Title: _

ESCROW HOLDER SIGNATURE PAGE

The undersigned Escrow Holder hereby agrees to: (i) accept the foregoing Agreement; (ii) be Escrow Holder under said Agreement; and (iii) be bound by said Agreement in the performance of its duties as Escrow Holder, and hereby establishes _____, 2020 as the date of opening of escrow and designates _____ as the escrow number assigned to this escrow.

Dated: _____

HERITAGE ESCROW

By _____
Authorized Representative

SELLER'S BROKER SIGNATURE PAGE

The undersigned Seller's Broker hereby executes this Seller's Broker Signature Page solely to confirm the following: (a) Seller's Broker represents only the Seller in the transaction described in the Agreement to which this signature page is attached, (b) Seller's Broker acknowledges that the only compensation due to Seller's Broker in connection with the Closing of the transaction described in the Agreement to which this signature page is attached is as set forth in a separate agreement between Seller and Seller's Broker, and (c) Seller's Broker represents and warrants to Seller that Seller's Broker and its affiliates has not and will not receive any compensation (cash or otherwise) from or on behalf of Buyer or any affiliate thereof in connection with the transaction, and do not, and will not at the Closing, have any direct or indirect legal, beneficial, economic or voting interest in Buyer (or in an assignee of Buyer, which pursuant to the Agreement, acquires any of the Purchased Assets at the Closing) nor has Buyer granted (as of the Effective Date or the Closing Date) the Seller's Broker or any of its affiliates any right or option to acquire any direct or indirect legal, beneficial, economic or voting interest in Buyer.

SELLER'S BROKER:

NEXT WAVE COMMERCIAL

DocuSigned by:

A blue ink signature of Nathan Benedetto is written over a blue line.

8C557E369D3B4FC...

By: _____

Name: _____ Nathan Benedetto

Title: _____ President

BUYER'S BROKER SIGNATURE PAGE

The undersigned Buyer's Broker hereby executes this Buyer's Broker Signature Page solely to confirm the following: (a) Buyer's Broker represents only the Buyer in the transaction described in the Agreement to which this signature page is attached, (b) Buyer's Broker acknowledges that the only compensation due to Buyer's Broker in connection with the Closing of the transaction described in the Agreement to which this signature page is attached is as set forth in a separate agreement between Seller and Buyer's Broker, and (c) Buyer's Broker represents and warrants to Seller that Buyer's Broker and its affiliates has not and will not receive any compensation (cash or otherwise) from or on behalf of Buyer or any affiliate thereof in connection with the transaction, and do not, and will not at the Closing, have any direct or indirect legal, beneficial, economic or voting interest in Buyer (or in an assignee of Buyer, which pursuant to the Agreement, acquires any of the Purchased Assets at the Closing) nor has Buyer granted (as of the Effective Date or the Closing Date) the Buyer's Broker or any of its affiliates any right or option to acquire any direct or indirect legal, beneficial, economic or voting interest in Buyer.

BUYER'S BROKER:

COLLIERS

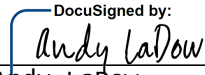

By:  _____
Name:  Andy LaDow _____
Title: Managing Director _____

Exhibit List

Exhibit "A"	List of Lease Documents
Exhibit "B"	Tangible Assets
Exhibit "C"	Contracts
Exhibit "D"	Lease Assignment and Amendment
Exhibit "E"	Bill of Sale
Exhibit "F"	General Assignment
Exhibit "G"	Operating and Management Agreement

Exhibit A

List of Lease Documents

1. Commercial Lease Agreement dated January 1, 2016, by and between Palace Enterprises, LLC, a California limited liability company, as "Landlord," and Kidult Creative LLC, a California limited liability company, and Hilary A. Rossi, an individual, collectively, as "Tenant," relating to the Premises.
2. Guarantee dated February 1, 2016, by Gina Champion-Cain, an individual, as "Guarantor".
3. First Amendment to Commercial Lease Agreement dated as of April 1, 2020, by and between Palace Enterprises, LLC, a California limited liability company, as "Landlord," and 2163 Abbott Street, LP, a California limited partnership, as "Tenant"
4. Second Amendment to Commercial Lease Agreement dated as of May 12, 2020, by and between Palace Enterprises, LLC, a California limited liability company, as "Landlord," and 2163 Abbott Street, LP, a California limited partnership, as "Tenant"

Exhibit B**Tangible Assets**

Surf Rider Ocean Beach			
2163 Abbott St., San Diego, CA 92107			
Count	Item	Model #	Location
22	Wood bar-height chairs		Seating Area
5	Wood & metal 2-top bar-height tables		Seating Area
12	Asst. wall decor		Seating Area
5	Wood & metal bar-height stools		Seating Area
2	Samsung flatscreen TV		Seating Area
2	Metal 2-top tables		Seating Area
8	Metal chairs		Seating Area
2	Wooden high chairs		Seating Area
1	McCann's fountain drink system	16-1579	Seating Area
2	Wood & metal 4-top tables		Seating Area
5	Surf board lights		Seating Area
1	AC Infinity holding display case	No discernible information	Front Service Area
1	True refrigerator	TDM-R-48-GE/GE-B-B	Front Service Area
1	SS sink w/drying station	No discernible information	Front Service Area
1	Bosch water heater	ES 4-1M WIR	Front Service Area
1	Allstrong handsink	S1B1310-D-C	Front Service Area
1	Manitowoc ice maker	No discernible information	Front Service Area
2	Plastic ice bins		Front Service Area
2	Blogett ovens	961-P	Front Service Area
1	Hood	No discernible information	Front Service Area
1	6ft SS prep table		Front Service Area
16	Wall decor		Front Service Area
1	Beer tap system	No discernible information	Front Service Area
1	Turbo air refrigerator	TBC-24SB-GF-N6	Front Service Area
36	Asst. drinking glasses		Front Service Area
1	Fagor cooler	FBB-59- G 115 V 60Hz	Front Service Area
1	Samsung flatscreen tv		Front Service Area
2	Garland pizza ovens	CPD60	Kitchen
1	Vulcan range	36S-6BN	Kitchen
1	Handsink	No discernible information	Kitchen
3	Escali food scale	SCMDL2	Kitchen
1	Soda pump system	G55102NM	Kitchen
2	Turbo air refrigerators	TST-28SD	Kitchen
10	Cast iron pans		Kitchen
8	Metal pots		Kitchen
14	Metal pans		Kitchen
1	Turbo air refrigerator	TPP-93	Kitchen
147	Plastic food storage containers w/lids		Kitchen
8	Plastic squeeze bottles		Kitchen
68	Asst. cooking utensils		Kitchen
1	Metal baking dish		Kitchen
29	Lrg. metal pizza trays		Kitchen
26	Metal food prep trays		Kitchen
10	Asst. metal mixing bowls		Kitchen
10	Plastic busing tubs		Kitchen

Surf Rider Ocean Beach			
2163 Abbott St., San Diego, CA 92107			
Count	Item	Model #	Location
1	Metal baking tray		Kitchen
8	Plastic pitchers		Kitchen
9	Plastic measuring cups		Kitchen
1	Vitamix Commercial	Vita prep 3	Kitchen
2	Robot Coup	R2	Kitchen
1	Edlund can opener		Kitchen
1	Waring immersion blender	WSB40	Kitchen
1	Taylor digital food scale		Kitchen
1	Metal collander		Kitchen
67	Metal baking pans		Kitchen
2	Plastic rolling carts		Kitchen
1	Blodgett oven	SHO-100-E	Kitchen
4	Lrg. speed racks		Kitchen
1	Metal can rack		Kitchen
1	6ft SS prep table		Kitchen
1	Turbo air refrigerator	TSR-49SD	Kitchen
1	36"x36" SS prep table		Kitchen
1	36"x48" butcher block prep table		Kitchen
1	True refrigerator	T-49-HC	Kitchen
1	Commercial salad spinner		Kitchen
2	24"x24 SS prep table		Kitchen
3	Comp. sink	No discernible information	Kitchen
1	True refrigerator	STA2RRI-2S	Kitchen
1	Continental refrigerator	2FE	Kitchen
115	Dough proofing boxes		Kitchen
7	Dough proofing box dollys		Kitchen
1	True refrigerator	T-23	Kitchen
1	6ft butcher block prep table		Kitchen
4	Rubbermaid dry food storage bins		Kitchen
1	Hoshizaki Commercial Series refrigerator	No discernible information	Kitchen
1	Hobart mixer	HL6001	Kitchen
1	Hobart mixer	M 802	Kitchen
1	Traulsen refrigerator	G22010	Kitchen
4	Chef knives		Kitchen
3	Nemco easy chopper		Kitchen
4	Asst. hobart mixing whisks		Kitchen

Exhibit C

Contracts

[list to be inserted]

Exhibit D**Lease Assignment and Amendment****ASSIGNMENT, CONSENT TO ASSIGNMENT
AND THIRD AMENDMENT TO COMMERCIAL LEASE AGREEMENT**

This ASSIGNMENT, CONSENT TO ASSIGNMENT AND THIRD AMENDMENT TO COMMERCIAL LEASE AGREEMENT (this "**Assignment and Amendment**") is entered into and made effective as of the ____ day of _____, 2020 (the "**Effective Date**"), by and among PALACE ENTERPRISES, LLC, a California limited liability company ("**Landlord**"), 2163 ABBOTT STREET, LP, a California limited partnership ("**Original Tenant**"), by and through Krista L. Freitag, solely in her capacity as "**Receiver**" in the case entitled *Securities and Exchange Commission v. Gina Champion-Cain, ANI Development, LLC, and American National Investments, Inc.*, United States District Court for the Southern District of California (the "**Court**"), Case No. 3:19-CV-01628-LAB-AHG (the "**Action**"), and G BOYS HOLDINGS LLC, a California limited liability company ("**Tenant**"). Landlord, Original Tenant, Receiver and Tenant are collectively referred to herein as the "**Parties**."

RECITALS:

A. Landlord and Kidult Creative LLC, a California limited liability company, and Hilary A. Rossi, and individual (collectively, the "**First Tenant**"), entered into that certain Commercial Lease Agreement dated January 1, 2016 (the "**Original Lease**"), as amended by (i) that certain First Amendment to Commercial Lease Agreement dated as of April 1, 2020 by and between Landlord and Tenant and (ii) that certain Second Amendment to Commercial Lease Agreement dated as of May 12, 2020 by and between Landlord and Tenant (collectively, the "**Lease**"). Original Tenant is the successor-in-interest in the Lease to First Tenant.

B. Pursuant to the Lease, Landlord leases to Original Tenant and Original Tenant leases from Landlord those certain premises as more particularly defined in the Lease (the "**Premises**") in that certain building (the "**Building**") known as 2163 Abbott Street, in the City of San Diego, in the State of California.

C. The terms and conditions of the Lease provide for, among other things, an initial term of sixtythree (63) months with two (2) options to extend the term for a period of five (5) years each. Tenant has not yet exercised its options to extend the term of the Lease. The term of the Lease is currently scheduled to expire on March 31, 2021.

D. Original Tenant is one of several related entities placed in receivership by the Court pursuant to the Action, and is therefore under the Receiver's exclusive management and control.

E. Original Tenant, as the "Seller," and Tenant, as the "Buyer," have entered into that certain Purchase and Sale Agreement and Joint Escrow Instructions dated [] whereby Tenant has agreed to purchase from Original Tenant, and Original Tenant has agreed to sell to Tenant, Original Tenant's interest in the Lease and certain other assets as more particularly described in such agreement (the "**Purchase Agreement**").

F. Pursuant to the terms and conditions of the Purchase Agreement, Original Tenant desires to assign its right, title and interest in, to and under the Lease to Tenant, and Tenant desires to accept such assignment (the "**Assignment**"), and Original Tenant and Tenant desire to obtain Landlord's consent thereto. Landlord is willing to consent to the Assignment upon and subject to all of the terms and conditions hereinafter set forth. Additionally, Landlord and Tenant desire to amend the Lease on the terms and conditions set forth in this Assignment and Amendment.

G. All capitalized terms when used herein shall have the same respective meanings as are given such terms in the Lease, unless expressly provided otherwise in this Assignment and Amendment.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Assignment and Assumption of Tenant's Interest in the Lease.** For good and valuable consideration as more particularly described in the Purchase Agreement, the receipt and sufficiency of which are hereby acknowledged, Original Tenant hereby grants, sells, transfers, conveys and assigns to Tenant all of Original Tenant's right, title and interest in and to the Lease. Tenant hereby (i) accepts the foregoing assignment and assumes and agrees to observe and perform all of the duties, obligations, liabilities, commitments, terms, covenants and conditions of Original Tenant, as tenant under the Lease, with respect to or arising under the Lease and arising or accruing from and after the Effective Date, and (ii) agrees to indemnify, hold harmless and defend Original Tenant and Receiver from and against any and all obligations, liabilities, costs and claims (including reasonable attorneys' fees) arising as a result of or with respect to a default on the part of Tenant of any of its obligations as tenant under the Lease.
2. **Release of Original Tenant and Original Guarantors.** Notwithstanding any term or provision contained in the Lease to the contrary, Original Tenant and Gina ChampionCain, the "Guarantor" under that certain Guarantee dated as of February 1, 2016, are hereby released from any and all obligations under the Lease.

3. **Landlord Consent.** Landlord hereby consents to the Assignment on the terms and conditions set forth in Section 1, above.

4. **No Broker.** Landlord and Tenant hereby warrant to each other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Assignment and Amendment, and that they know of no real estate broker or agent who is entitled to a commission in connection with this Assignment and Amendment. Each party agrees to indemnify and defend the other party against and hold the other party harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including, without limitation, reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of the indemnifying party's dealings with any real estate broker or agent. The terms of this Section 4 shall survive the expiration or earlier termination of the Lease.

5. **Notices.** Notwithstanding any provision to the contrary contained in the Lease, effective as of the Effective Date, any notices to Tenant shall be sent, transmitted, or delivered, as the case may be, in accordance with the terms of Paragraph 38 of the Original Lease to the following address:

G Boys Holdings LLC
[PLEASE PROVIDE: _____]
2801 B Street, #73
San Diego, CA 92102

6. **Dispute Resolution.** Notwithstanding any provision to the contrary contained in the Lease (with specific reference to Paragraph 36 of the Original Lease), the following terms and conditions of this Section 6 shall apply with respect to any dispute arising under the Lease and relating to the Original Tenant or Receiver:

6.1. Each of the Parties hereby expressly waives any right to trial by jury with respect to any claim, demand, action or cause of action (a) arising under the Lease, including, without limitation, any present or future modification thereof, or (b) in any way connected with or related or incidental to the dealings of the Parties hereto or any of them with respect to the Lease (as now or hereafter modified) or any other instrument, document or agreement executed or delivered in connection herewith, or the transactions related hereto or thereto, in each case whether such claim, demand, action or cause of action is now existing or hereafter arising, and whether sounding in contract or tort or otherwise; and each party hereby agrees and consents that any such claim, demand or cause of action shall be decided by court trial without a jury, and that any party to the Lease may file an original counterpart or a copy of this section with any court as written evidence of the consent of the Parties hereto to the waiver of any right they might otherwise have to trial by jury. The Parties shall be entitled to recover only their actual

damages, and no party shall be entitled to recover any consequential damages, punitive damages, or any other damages that are not actual damages.

6.2. Any action shall be commenced and maintained in the Court. The Parties irrevocably consent to jurisdiction and venue in the Court and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section 6.

7. **NO LIABILITY TO RECEIVER.** TENANT HEREBY ACKNOWLEDGES, UNDERSTANDS AND AGREES AS FOLLOWS:

7.1. TENANT ACKNOWLEDGES AND AGREES THAT RECEIVER IS ENTERING INTO THIS ASSIGNMENT AND AMENDMENT SOLELY IN CONNECTION WITH HER DUTIES AS RECEIVER. IN NO EVENT SHALL RECEIVER BE LIABLE FOR ANY ERROR OF JUDGMENT OR ACT DONE BY RECEIVER, OR BE OTHERWISE RESPONSIBLE OR ACCOUNTABLE UNDER ANY CIRCUMSTANCE WHATSOEVER, EXCEPT IF THE RESULT OF RECEIVER'S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT. RECEIVER SHALL NOT BE PERSONALLY LIABLE IN CONNECTION WITH ANY DUTIES PERFORMED BY RECEIVER IN CONNECTION WITH THE MATTERS SET FORTH IN THE LEASE.

7.2. NO PROVISION OF THE LEASE SHALL OPERATE TO PLACE ANY OBLIGATION OR LIABILITY FOR THE CONTROL, CARE, MANAGEMENT OR REPAIR OF THE PROPERTY UPON RECEIVER NOR SHALL IT OPERATE TO MAKE RECEIVER RESPONSIBLE OR LIABLE FOR ANY WASTE COMMITTED ON THE PROPERTY BY ANY PERSON OR FOR ANY DANGEROUS OR DEFECTIVE CONDITION OF THE PROPERTY OR FOR ANY NEGLIGENCE IN MANAGEMENT, UPKEEP, REPAIR OR CONTROL OF THE PROPERTY RESULTING IN LOSS OR INJURY OR DEATH TO ANY PERSON.

8. **Conflict; No Further Modification.** In the event of any conflict between the Lease and this Assignment and Amendment, the terms of this Assignment and Amendment shall prevail. Except as specifically set forth in this Assignment and Amendment, all of the terms and provisions of the Lease shall remain unmodified and in full force and effect.

9. **Counterparts and Signatures.** This Assignment and Amendment may be executed in counterparts, each of which shall be deemed an original, but such counterparts, when taken together, shall constitute one agreement. This Assignment and Amendment may be executed by a party's signature transmitted by facsimile ("**fax**") or email and copies of this Assignment and Amendment executed and delivered by means of faxed or emailed signatures shall have the same force and effect as copies hereof executed and delivered with original signatures. The Parties may rely upon faxed or emailed signatures as if such signatures were originals. Any party executing and

delivering this Assignment and Amendment by fax or email shall promptly thereafter deliver a counterpart signature page of this Assignment and Amendment containing said party's original signature. The Parties agree that a faxed or emailed signature page may be introduced into evidence in any proceeding arising out of or related to this Assignment and Amendment as if it were an original signature page.

[Remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, this Assignment and Amendment has been executed as of the Effective Date.

LANDLORD:

PALACE ENTERPRISES, LLC,
a California limited liability company

By: _____
Name: _____
Title: _____

ORIGINAL TENANT:

2163 ABBOTT STREET, LP,
a California limited partnership

By: _____
Krista L. Freitag, solely in capacity as
Court-Appointed Receiver

TENANT:

G BOYS HOLDINGS LLC,
a California limited liability company

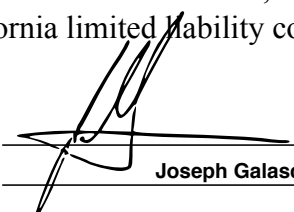
By:  _____
Name: _____ **Joseph Galascione, Member**
Title: _____

Exhibit E

Form of Bill of Sale

BILL OF SALE

FOR VALUE RECEIVED, 2163 ABBOTT STREET, LP, a California limited partnership ("**Seller**"), by and through Krista L. Freitag, solely in her capacity as Receiver, appointed by the United States District Court for the Southern District of California, hereby sells, conveys and assigns to G BOYS HOLDINGS LLC, a California limited liability company ("**Buyer**"), all of Seller's right, title and interest in and to the following:

Those certain apparatus, equipment, computer equipment, software, furniture, appliances, food items, beverage items or other inventory or tangible items of personal property owned by Seller and located in the premises as described on Schedule 1 attached hereto and incorporated herein by this reference (collectively, the "**Tangible Assets**").

From and after the date of this Bill of Sale, it is intended by the parties that Buyer and Buyer's successors and assigns shall have the right to use, have, hold and own the Tangible Assets forever. This Bill of Sale may be executed in counterparts, each of which shall be deemed an original, and all of which shall taken together be deemed one document. Seller and Buyer agree that the delivery of an executed copy of this Bill of Sale sent by facsimile or e-mail shall be legal and binding and shall have the same full force and effect as if an original executed copy of this Bill of Sale had been delivered.

Seller makes no warranties of any kind or nature whatsoever, express or implied, including without limitation any warranty of merchantability or fitness for a particular purpose, with respect to any of the Tangible Assets transferred hereby, any and all such warranties being hereby expressly disclaimed. Buyer hereby assumes all liabilities and obligations in connection with or arising under the matters assigned under this agreement to the extent arising after the date of execution set forth below.

TO HAVE AND TO HOLD unto the grantee and its successors and assigns forever.

[SIGNATURE APPEARS ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, Seller and Buyer have executed this Bill of Sale as of the
____ day of _____, 2020.

Seller:

2163 ABBOTT STREET, LP,
a California limited partnership

By: _____
Krista L. Freitag, solely in capacity as
Court-Appointed Receiver

Buyer:

G BOYS HOLDINGS LLC,
a California limited liability company

By: _____
Name: Joseph Galascione, Member
Title: _____

Schedule 1

Tangible Assets

[to be attached]

Exhibit F

Form of General Assignment

GENERAL ASSIGNMENT AND ASSUMPTION

This General Assignment and Assumption (this "**Assignment**") is executed by 2163 ABBOTT STREET, LP, a California limited partnership ("**Seller**"), by and through Krista L. Freitag, solely in her capacity as Receiver, appointed by the United States District Court for the Southern District of California, in favor of G BOYS HOLDINGS LLC, a California limited liability company ("**Buyer**"), as of _____, 2020 (the "**Effective Date**").

R E C I T A L S :

A. Seller is party to that certain Commercial Lease Agreement dated January 1, 2016, as amended and assigned (as so amended and assigned, collectively, the "**Lease**"), by and between Palace Enterprises, LLC, a California limited liability company, as "Landlord," and Seller, as "Tenant," whereby Seller leases from Landlord, and Landlord leases to Seller, certain premises located at 2163 Abbott Street, San Diego, California 92107 (the "**Premises**").

B. Seller conducts the business of owning and/or operating a restaurant located at the Premises, which is commonly known as "Surf Rider Pizza Co." (the "**Business**").

C. Seller and Buyer have entered into that certain Purchase and Sale Agreement and Joint Escrow Instructions dated as of _____, 2020 ("**Agreement**"), pursuant to which Seller has agreed to sell and Buyer has agreed to purchase from Seller, all of Seller's interest in the Lease, the Business and certain other Purchased Assets related thereto, as further described in the Agreement.

D. Pursuant to the Agreement, Seller has agreed to assign, without recourse or warranty on an "as is" basis, to Buyer all of Seller's right, title and interest, if any, in and to those certain rights and obligations set forth below.

E. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Agreement.

A G R E E M E N T :

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. **Assignment.** As of the Effective Date, Seller hereby assigns, sells and transfers all of Seller's right, title and interest (if any) in and to the following to Buyer, to the extent assignable by Seller, without recourse or warranty:

1.1 Any warranty or guaranty rights relating to the Leasehold Interest or the Tangible Assets and assignable by Seller as the "Tenant" pursuant to the terms of the Lease (the "**Warranties**");

1.2 Any intangible personal property owned by Seller and/or used in or related to the use, operating or maintenance of the Premises (the "**Intangible Assets**"); provided, however, that in no event shall such Intangible Assets include Seller's trademark or trade name rights, rights to the name "Surf Rider Pizza Co.," or any other names used, or any title or interest in or to any intellectual property which relates to the Business or the Purchased Assets; and

1.3 All permits, licenses, registrations, certificates, variances, consents, authorizations, governmental approvals and other entitlements necessary for the use, operation or maintenance of the Premises or otherwise relating to the Leasehold Interest pursuant to the Lease (the "**Permits**"); provided, however, for the purposes of this Assignment the meaning of Permits shall expressly exclude the Liquor License, which shall be transferred pursuant to the terms and conditions of a separate agreement.

2. **Assumption.** As of the Effective Date, Buyer expressly agrees to assume and hereby assumes all liabilities and obligations of the Seller in connection with the Warranties, the Intangible Assets and the Permits.

3. **Counterparts.** This Assignment may be executed in counterparts, each of which shall be deemed an original, and both of which together shall constitute one and the same instrument.

4. **Attorneys' Fees.** If any action or proceeding is commenced by either party to enforce its rights under this Assignment, the prevailing party in such action or proceeding shall be awarded all reasonable costs and expenses incurred in such action or proceeding, including reasonable attorneys' fees and costs (including the cost of in-house counsel and appeals), in addition to any other relief awarded by the court.

5. **Applicable Law.** This Assignment shall be governed by and interpreted in accordance with the laws of the State of California.

6. **Binding Effect.** This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective transferees, successors, and assigns.

WITH RESPECT TO ALL MATTERS TRANSFERRED, WHETHER TANGIBLE OR INTANGIBLE, PERSONAL OR REAL, SELLER EXPRESSLY DISCLAIMS A WARRANTY OF MERCHANTABILITY AND WARRANTY FOR FITNESS FOR A PARTICULAR USE OR ANY OTHER WARRANTY EXPRESSED OR IMPLIED THAT MAY ARISE BY OPERATION OF LAW OR UNDER THE UNIFORM COMMERCIAL CODE FOR THE STATE IN WHICH THE PROPERTY IS LOCATED (OR ANY OTHER STATE).

[Remainder of Page Intentionally Left Blank]

WITNESS the signatures of the undersigned.

Dated: _____, 2020

Seller:

2163 ABBOTT STREET, LP,
a California limited partnership

By: _____
Krista L. Freitag, solely in capacity as
Court-Appointed Receiver

Buyer:

G BOYS HOLDINGS LLC,
a California limited liability company

By: _____
Name: Joseph Galascione, Member
Title: _____

Exhibit G

Form of Management Agreement

OPERATING AND MANAGEMENT AGREEMENT

THIS OPERATING AND MANAGEMENT AGREEMENT ("**Agreement**") is made and entered into as of the ____ day of _____, 2020 by and between 2163 ABBOTT STREET, LP, a California limited partnership (collectively, "**Seller**"), by and through Krista L. Freitag, solely in her capacity as Receiver ("**Receiver**") in the case entitled *Securities and Exchange Commission v. Gina Champion-Cain, ANI Development, LLC, and American National Investments, Inc.*, United States District Court for the Southern District of California, Case No. 3:19-CV-01628-LAB-AHG, and G BOYS HOLDINGS LLC, a California limited liability company ("**Manager**").

RECITALS:

A. Seller owns and operates that certain restaurant commonly known as "Surf Rider Pizza Co." located at 2163 Abbott Street, San Diego, California 92107 (the "**Premises**").

B. Manager, as "Buyer," and Seller, as "Seller," entered into that certain Purchase and Sale Agreement and Joint Escrow Instructions dated as of _____, 2020 (the "**Purchase Agreement**"), whereby Seller agreed to sell to Manager, and Manager agreed to purchase from Seller, those certain "Purchased Assets" (as defined in the Agreement) relating to the operation of a restaurant from the Premises.

C. In order to permit Manager to operate the restaurant from the Premises prior to the Closing Date for the Purchase Agreement, Seller desires to engage Manager as an independent contractor to operate, coordinate maintenance and perform restaurant management services from the Premises, and Manager desires to accept such engagement to operate, maintain and perform restaurant management services for the Premises, upon the terms and subject to the conditions set forth herein.

D. Unless otherwise defined herein, capitalized terms as used herein shall have the same meanings as given thereto in the Purchase Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT:

1. Appointment of Manager. Seller hereby appoints Manager as an independent contractor to manage, operate, maintain and repair the Premises and hereby authorizes Manager to exercise such powers with respect to the Premises as may be necessary for the performance of Manager's obligations under this Agreement, and Manager accepts such appointment on the terms and conditions hereinafter set forth. Manager shall have no right or authority, express or implied, to commit or otherwise obligate Seller in any manner whatsoever except to the extent specifically provided herein.

2. Operation and Management of the Premises.

2.1. Management Agreement. Manager shall operate and manage the Premises in accordance with the terms and conditions of this Section 2 (collectively, the "**Services**").

2.2. Term. If the Purchase Agreement has not been terminated prior to the Contingency Date, then the term of this Agreement (the "**Term**") shall commence as of the day immediately following the Contingency Date (the "**Commencement Date**"), and shall terminate thereafter upon the earlier to occur of (i) the Closing Date, (ii) the termination of the Purchase Agreement, or (iii) either party's election to terminate this Agreement upon five (5) days' prior written notice to the other party. Pursuant to the foregoing, if the Purchase Agreement is terminated prior to the Contingency Date or at any time thereafter prior to the Closing Date, this Agreement shall automatically terminate and be of no further force or effect, except for any obligations which survive such termination as expressly stated in this Agreement. Such termination of this Agreement prior to the Closing Date shall be referred to herein as "**Early Termination**."

2.3. Income; Fees and Costs. Manager shall be entitled to retain all income received from the restaurant operations at the Premises during the Term. In consideration of Seller permitting Manager to commence operating a restaurant from the Premises and retain all such income prior to the Closing Date as provided in this Agreement, Manager shall pay Seller the sum of One Dollar (\$1.00), to be paid concurrently with Manager's execution of this Agreement. During the Term, Manager shall be obligated to pay for all fees, costs and other expenses associated with or arising from the operation of the Premises including, without limitation, all (i) all rent amounts payable by Seller as the "Tenant" under the Lease (including, without limitation, all Base Rent payable to Landlord), (ii) wages for any employees, (iii) food and drink items, (iv) restaurant supplies, (v) governmental fees and permits, (vi) utilities costs of any kind, (vii) repair, replacement and maintenance of the Premises, and (viii) any other expenses incurred by Manager in operating such restaurant or otherwise occupying the Premises. In furtherance of the foregoing, Seller and Manager hereby acknowledge and agree that in no event shall Seller be liable for any fees, costs, expenses or other amounts, or any obligations whatsoever, under this Agreement in connection with the restaurant operations at the Premises and/or the management of the Premises.

2.4. Contracts. Manager hereby acknowledges that the operation of the Premises may require the payment of certain fees and costs pursuant to agreements with third parties (the "**Contracts**") and that, effective as of the Commencement Date, Manager shall be obligated to pay for all such fees and costs on behalf of Seller prior to the actual assignment of the Contracts to Manager at the Closing. Manager's restaurant operations and use of the Premises at any time prior to the Closing Date shall in all respects be subject to Seller's prior approval including, without limitation, Manager's menu, personnel, hours of operation, maintenance schedules for the kitchen within the Premises, marketing, and disclosure of this Agreement to third parties. Manager will at all times during the Term service and supply the usual and ordinary demands and requirements of its customers, in a first class manner, including, without limitation, maintaining an "A" rating for the restaurant or a similar first-class rating based on the standard then generally employed by the San Diego County Department of Environmental Health (the "**First-Class Restaurant Standard**").

2.5. Inspection of Premises. Seller may inspect the Premises, without notice, on any day at any time Seller in its sole discretion may deem desirable. The inspection will be conducted in a manner to avoid disruption to Manager's operation of the restaurant from the Premises.

2.6. Staff for Services. At no time shall any employees of manager and/or independent contractors of Manager and/or their employees (collectively, "**Manager's Employees**") be considered employees or independent contractors of Seller. Seller reserves the right, in its sole discretion, to request removal from the Premises of any of Manager's Employees at any time, for any reason reasonably deemed appropriate by Seller. Manager shall fully comply with all local, state and federal labor and tax laws and regulations, including, but not limited to, those related to workers' compensation, social security, unemployment insurance, hours of labor, wages, working conditions, and other employer-employee related subjects and with all applicable union agreements, if any. Manager shall be responsible for the preparation of and shall timely file all local, state and federal labor payroll tax and equal employment opportunity reports and other similar reports, and shall timely make payments of all withholding and other payroll taxes with respect to Manager's Employees. This Agreement is not one of agency between Manager for Seller, but one with Manager engaged independently in the business of managing the Premises as an independent contractor. All employment and independent contractor arrangements related to management of the Premises are therefore solely Manager's concern, and Seller shall have no liability with respect thereto.

2.7. Services and Liquor License. Manager shall provide or cause the provision of an adequate and appropriate inventory sufficient for operating the restaurant from the Premises in accordance with the First-Class Restaurant Standard, and the timely and full payment for such inventory and as otherwise necessary to provide restaurant services from the Premises. In no event shall such inventory or services include alcoholic

beverages unless the ABC has issued a temporary permit to Manager that will allow Manager to sell alcoholic beverages from the Premises prior to the Closing Date and the transfer of the Liquor License to Manager.

2.8. Limitation on Scope of Engagement. Seller and Manager acknowledge and agree that Manager is being retained by Seller as an independent contractor, not as an employee, partner or co-venturer, only for the purposes and to the extent set forth in this Agreement. Except as set forth herein, neither Manager nor any of its or its contractor's employees shall be considered as having any employee or agent status with Seller unless written approval is obtained from Seller, or as being entitled to participate in any plans, arrangements or distributions of Seller by virtue of the provisions of this Agreement.

2.9. Compliance with Lease and Laws. Notwithstanding anything to the contrary contained in this Agreement, Manager's right to conduct restaurant operations and otherwise utilize the Premises as contemplated in this Agreement shall be strictly subject to and conditioned upon Landlord's approval and all applicable requirements of the Lease, and any necessary requirements or approvals from applicable governmental authorities, including, without limitation, the ABC with respect to the nature of this Agreement and/or the sale of any alcoholic beverages prior to the Closing Date.

3. Condition of Premises and Maintenance.

3.1. Seller's Obligations. Seller shall provide the Premises to Manager with all currently existing equipment, inventory, improvements and other items in their existing "as is" condition as of the date of this Agreement for Manager's use in operating the restaurant from the Premises, subject to the terms and conditions of the Purchase Agreement.

3.2. Manager's Obligations. Manager shall keep clean all walls, windows, ceilings, lighting, ventilation fittings and interiors, and grease interceptors. The Premises and all equipment and utilities located thereon shall be serviced and kept by Manager in a good workmanlike manner and in a safe operating condition and further shall be maintained, replaced, and repaired to ensure continued fitness for their particular and intended purposes, and in accordance with relevant manufacturer warranties and recommendations. Manager shall contract for and maintain service contracts for the aforementioned cleaning, maintenance and safety obligations provided for in this Section 3 (collectively, the "**Service Contracts**"), including, but not limited to, the maintenance of the grease interceptors servicing the Premises. Any such Service Contract shall be immediately terminable upon Early Termination, unless otherwise elected by Seller as provided in Section 4.1 below. Landlord's prior review and approval shall be required for any Service Contract. The Service Contracts shall be maintained pursuant to a commercially reasonable industry standard, and Manager shall hire qualified, reputable vendors approved by Seller, which approval shall not be unreasonably withheld. Manager shall also be responsible for maintaining insurance with

respect to the Service Contracts pursuant to Section 6 below. Manager shall make itself available to meet with and report to a representative of Seller concerning the operations of the Premises on no less than weekly basis, which meetings shall be held at such time(s) and place(s) as designated by Seller.

4. Termination and Surrender.

4.1. Obligations of Manager Upon Termination. Upon any Early Termination of this Agreement, for any reason unless otherwise permitted by Seller, Manager shall promptly, without necessity of demand or notice, deliver the following to Seller, or Seller's appointed agent on the effective date of expiration or termination, or, if this Agreement is terminated immediately for cause, within thirty (30) days of such termination: (i) all items, files, accounting related records or documents, keys, supplies, contracts, warranties, promotional materials, bank statements, plans and specifications, inventories, correspondence, receipts, paid and unpaid bills or invoices and maintenance records and any other items reasonably requested by Seller that relate to the Premises or Manager's operation thereof; and (ii) at Seller's option, an assignment to Seller, or its nominee or designee, of all service contracts relating to the Premises. The obligation of Manager to deliver the foregoing shall survive the termination of this Agreement. Upon termination of this Agreement for any reason, Manager shall remain liable for the payment of amounts which Manager is required to pay under this Agreement with respect to the period prior to such termination.

4.2. Surrender of Possession. Except as expressly set forth in Section 4.1, above, promptly after any Early Termination, Manager shall surrender and deliver possession of the Premises to Seller, and remit to Seller all monies owed to Seller for the period prior to the effective date of such Early Termination, which obligation shall survive the termination of this Agreement.

4.3. Equipment Return. Promptly following any Early Termination of this Agreement, Manager shall return to Seller all equipment and utilities located within or otherwise utilized for the Premises in a similar condition as existed on the Commencement Date, ordinary wear and tear excepted.

5. Representations, Warranties and Covenants.

5.1. Taxes; Assessments. Manager shall pay when due all federal, state local, and other governmental taxes or assessments in connection with the operation and performance of any services from the Premises, including, without limitation, all license and permit fees, payroll taxes, as well as any federal, state, local, and other governmental sales, use taxes or related assessments in connection with the same. Seller shall pay when due all real estate ad valorem or similar taxes for the Leasehold Interest attributable to the period prior to the Closing Date, as required of Seller as the "Seller" in the Purchase Agreement. Any documentary transfer taxes shall be included within the

Closing Costs and payable by the parties as provided in the Purchase Agreement.

5.2. Compliance with Laws. Manager shall comply with and cause the Premises to be kept, maintained, used and occupied in compliance with all applicable laws, statutes, ordinances, rules, regulations and orders of any governmental authority (specifically including, but not by way of limitation, rules and regulations related to alcoholic beverages). Promptly upon receipt thereof, Manager shall submit to Seller a copy of each notice or statement received from any governmental agency together with any other notices or statements received by Manager which threaten or might have a material effect upon the Premises or the License.

5.3. Employees. Manager's employees shall be subject to the rules and regulations established by Seller as reasonable and necessary for the Premises, which rules and regulations shall not be in violation of any federal, state, or local laws.

5.4. Title. Notwithstanding anything to the contrary contained herein, Seller shall retain all right, title and interest in any equipment, inventory, or other property furnished or installed by Seller or by Manager, at Seller's expense, on the Premises, except as otherwise provided in the Purchase Agreement.

5.5. Assignability. Manager shall not assign or otherwise delegate its rights, duties and obligations under this Agreement.

6. Insurance and Indemnity.

6.1. Insurance Policies. Manager shall, at the expense of Manager, maintain in full force and effect insurance policies with respect to Manager's duties hereunder satisfactory to Seller issued by insurance companies with an A.M. Best service rating of not less than A-, which are licensed in California and which are otherwise reasonably satisfactory to Seller. Such policies shall provide at least the following coverages:

(a) Worker's Compensation Insurance in an amount in compliance with applicable statutory limits in California for Manager's employees. Manager shall provide Seller with a certificate evidencing such coverage with the following provisions: (i) coverage for injury, death or occupational disease of manager's employees arising out of or in the scope of employment; and (ii) Employees' Liability Insurance with a limit of Five Hundred Thousand Dollars (\$500,000) per each accident and per each employee.

(b) Comprehensive General Liability or Commercial General Liability Form covering Manager's premises, Manager's business operations and Manager's acts and omissions written on an occurrence basis with a general aggregate with a minimum limit of Five Million Dollars (\$5,000,000) and minimum limits of Three Million Dollars (\$3,000,000) combined single limits per occurrence for bodily injury, including death, and property damage liability.

(c) Comprehensive Automobile Liability Insurance for all owned, hired and non-owned vehicles with minimum limits of One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage liability.

(d) Professional liability/errors and omissions liability insurance with a minimum limit of One Million Dollars (\$1,000,000).

All such insurance as provided for in this Section 6.1, except Worker's Compensation Insurance, shall provide that Seller, Krista L. Freitag as Receiver and E3 Realty Advisors, Inc., a California corporation d/b/a E3 Advisors ("E3"), are additional insureds under the policy and that Seller, Krista L. Freitag as Receiver and E3, although additional insureds, may recover for any loss suffered by Seller, Krista L. Freitag as Receiver or E3 by reason of Manager's negligent acts or omissions. Such insurance shall be primary insurance with respect to Seller and shall not be participating with other available insurance. Certificates of all insurance required under this Section 4.1 shall be provided by Manager to Seller upon Manager's execution of this Agreement and Manager shall also provide Seller with replacement certificates on a timely basis. The certificates shall provide that the policy shall not be cancelled or reduced in coverage unless thirty (30) days written notice has been given to Seller of such cancellation or reduction in coverage. Manager shall also include a provision in all insurance policies required under this Section 6 that Seller's consent in writing is required for any such cancellation or reduction in coverage. In addition to the insurance certificates, Manager shall provide Seller with an endorsement naming Seller as an additional insured and stating, "Such coverage as is afforded by this policy for the benefit of the additional insureds is primary and any other coverage maintained by such additional insureds shall be noncontributing with the coverage provided under this policy." Manager shall also use its commercially reasonable efforts to obtain copies of insurance policies or certificates of insurance evidencing insurance required of its subcontractors and shall keep such documents in Manager's files available for inspection upon request by Seller.

6.2. Reports on Insurance Claims. Manager shall immediately provide Seller with an oral, followed by a written, factual report of all accidents, incidences and possible claims for injury or damage concerning all accidents, events and incidences that could lead to claims for damage relating to the ownership, operation and maintenance of the Premises pursuant to the License.

6.3. Manager's Indemnity. In addition to but not in lieu of Manager's other indemnification obligations under this Agreement, Manager shall release, indemnify, protect, defend and hold harmless Seller, Krista L. Freitag as Receiver and E3, and their respective members, directors, officers, trustees, employees, agents, consultants, successors and assigns (each a "**Seller Party**") from and against any and all damages, liabilities, judgments, fines, liens, obligations, claims, actions, suits, proceedings, losses, costs and expenses, including reasonable attorneys' fees and expenses, incurred by or otherwise asserted against any Seller Party to the extent arising out of or resulting from any acts or omissions of Manager or the Manager Employees, or their directors, officers,

employees, or agents (a) in violation of this Agreement; (b) outside the scope of Manager's authority hereunder; or (c) constituting negligence, fraud, malfeasance, breach of fiduciary duty or willful, reckless or willful misconduct on the part of Manager or its directors, officers, employees, or agents.

6.4. Seller's Indemnity. Seller shall release, indemnify, defend and hold harmless Manager and its directors, officers, employees and agents (each a "**Manager Party**") from and against any and all claims, actions, suits, proceedings, losses, costs and expenses, including reasonable attorneys' fees and expenses, arising out of or resulting from the acts or omissions of Seller or its employees, or their directors and officers constituting gross negligence or willful misconduct, except that such indemnification shall not apply (a) to any matter for which Manager has agreed to indemnify Seller under this Agreement; or (b) to the extent any loss, cost or expense, including reasonable attorneys' fees and expenses, arises because Manager shall have failed to maintain the insurance required to be maintained by Manager under this Section 6.

6.5. Survival of Indemnification Rights and Obligations. The indemnification rights and obligations contained herein shall survive the termination of this Agreement. Should any disputes arise with respect to the applicability and/or interpretation of the right to indemnification, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs in addition to any other remedy.

7. Notices. Any notice, demand or other communication which may or is required to be given under this Agreement shall be in writing and delivered either personally by facsimile, by deposit with an overnight courier with charges prepaid, or by deposit in the United States mail, first-class postage prepaid by registered or certified mail, addressed to the parties at the respective address for each such party stated below or at any other address as designated by one party upon notice to the other party. Any such notices shall be deemed to have been given (i) upon delivery in the case of personal delivery; (ii) upon the first (1st) business day following facsimile receipt; (iii) one business day after deposit with an overnight courier; or (iv) three (3) business days after deposit in the United States mail.

If to Seller:

E3 Advisors
355 South Grand Avenue, Suite 2450
Los Angeles, California 90071
Attn: Krista Freitag, Receiver

with a copy to:

Allen Matkins Leck Gamble Mallory & Natsis LLP
One America Plaza
600 West Broadway, 27th Floor
San Diego, California 92101

Attn: Ted Fates, Esq.

If to Manager:

8. Qualification/Licenses. Manager shall, at its sole cost and expense, qualify to do business in the State of California and obtain and maintain such licenses as may be required for the performance by Manager and each of Manager's employees, agents and representatives of their respective services under this Agreement.

9. NO LIABILITY TO RECEIVER. AS AN ESSENTIAL INDUCEMENT TO RECEIVER TO ENTER INTO THIS AGREEMENT, AND AS PART OF THE DETERMINATION OF THE CONSIDERATION GIVEN HEREUNDER, MANAGER ACKNOWLEDGES, UNDERSTANDS AND AGREES AS FOLLOWS:

9.1. MANAGER ACKNOWLEDGES AND AGREES THAT RECEIVER IS ENTERING INTO THIS AGREEMENT SOLELY IN CONNECTION WITH HER DUTIES AS RECEIVER. IN NO EVENT SHALL RECEIVER BE LIABLE FOR ANY ERROR OF JUDGMENT OR ACT DONE BY RECEIVER, OR BE OTHERWISE RESPONSIBLE OR ACCOUNTABLE UNDER ANY CIRCUMSTANCE WHATSOEVER, EXCEPT IF THE RESULT OF RECEIVER'S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT. RECEIVER SHALL NOT BE PERSONALLY LIABLE IN CONNECTION WITH ANY DUTIES PERFORMED BY RECEIVER IN CONNECTION WITH THE MATTERS SET FORTH IN THIS AGREEMENT.

9.2. NO PROVISION OF THIS AGREEMENT SHALL OPERATE TO PLACE ANY OBLIGATION OR LIABILITY FOR THE CONTROL, CARE, MANAGEMENT OR REPAIR OF THE PROPERTY UPON RECEIVER NOR SHALL IT OPERATE TO MAKE RECEIVER RESPONSIBLE OR LIABLE FOR ANY WASTE COMMITTED ON THE PROPERTY BY ANY PERSON OR FOR ANY DANGEROUS OR DEFECTIVE CONDITION OF THE PROPERTY OR FOR ANY NEGLIGENCE IN MANAGEMENT, UPKEEP, REPAIR OR CONTROL OF THE PROPERTY RESULTING IN LOSS OR INJURY OR DEATH TO ANY PERSON.

10. Attorneys' Fees. In the event either party fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement or any dispute arising under this Agreement, the non-prevailing party in such dispute, action or proceeding shall pay the other party its reasonable fees, costs and expenses incurred in connection therewith including but not limited to its reasonable attorneys' fees and costs.

11. Governing Law; Amendments. This Agreement shall be governed in accordance with the laws of the State of California. This Agreement represents the entire agreement

between the parties hereto with respect to the subject matter hereof. This Agreement may not be changed, waived, discharged or terminated orally but only by an instrument in writing signed by the person or entity against whom enforcement is sought.

12. No Partnership. Nothing in this Agreement shall be construed as making Seller or Manager partners, joint ventures or members of a joint enterprise or as creating between Seller and Manager any employer-employee relationship.

13. Counterparts and Fax/Email Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, but such counterparts, when taken together, shall constitute one agreement. This Agreement may be executed by a party's signature transmitted by facsimile ("**fax**") or email and copies of this Agreement executed and delivered by means of faxed or emailed signatures shall have the same force and effect as copies hereof executed and delivered with original signatures. All parties hereto may rely upon faxed or emailed signatures as if such signatures were originals. Any party executing and delivering this Agreement by fax or email shall promptly thereafter deliver a counterpart signature page of this Agreement containing said party's original signature. All parties hereto agree that a faxed or emailed signature page may be introduced into evidence in any proceeding arising out of or related to this Agreement as if it were an original signature page.

14. Recording. This Agreement shall not be recorded or filed with any government authority or official, including without limitation the county recorder of the county in which the Golf Course is located.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this Agreement has been executed as of the day and year first above written.

SELLER:

2163 ABBOTT STREET, LP,
a California limited partnership

By: _____
Krista L. Freitag, solely in capacity as
Court-Appointed Receiver

MANAGER:

G BOYS HOLDINGS LLC,
a California limited liability company

By: _____
Name: _____ **Joseph Galascione, Member**
Its: _____



2550 Fifth Avenue, Suite 800
San Diego, CA 92103
(619)234-2010
Fax: (714)481-2234
www.heritageescrow.com

AMENDED ESCROW INSTRUCTIONS

TO: The Heritage Escrow Company
CA HEC Balboa Park Escrow

Date: September 09, 2020
Escrow Number: **107-040108 (DLH)**
Escrow Officer: Debbie Kneeshaw Howe
E-mail: BulkSaleTeam@heritageescrow.com

Re: Surf Rider Pizza, 2163 Abbott Street , San Diego, CA
92107


Instructions in the above numbered escrow are hereby modified - supplemented in the following particulars only:

CONTINGENCY PERIOD: Escrow Holder has been advised that the Buyer's contingency period has been extended to Friday, September 11, 2020.

All other terms and conditions of this escrow shall remain the same. All parties signing this instruction have read, understood and agreed to the instruction and acknowledge receipt of a copy of same.

SELLER:

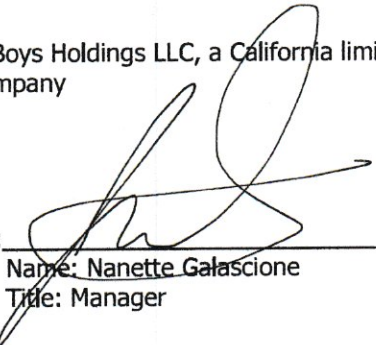
2163 Abbott Street, LP

By: 

Name: Krista L. Freitag
Title: solely in capacity as Court-
Appointed Receiver

BUYER:

G Boys Holdings LLC, a California limited liability
company

By: 

Name: Nanette Galascione
Title: Manager



2550 Fifth Avenue, Suite 800
San Diego, CA 92103
(619)234-2010
Fax: (714)481-2234
www.heritageescrow.com

AMENDED ESCROW INSTRUCTIONS

TO: The Heritage Escrow Company
CA HEC Balboa Park Escrow

Date: September 10, 2020
Escrow Number: **107-040108 (DLH)**
Escrow Officer: Debbie Kneeshaw Howe
E-mail: BulkSaleTeam@heritageescrow.com

Re: Surf Rider Pizza, 2163 Abbott Street , San Diego, CA
92107

Instructions in the above numbered escrow are hereby modified - supplemented in the following particulars only:

REMOVAL OF CONTINGENCIES: Escrow Holder has been advised that the Bueyr has removed all contingencies.

All other terms and conditions of this escrow shall remain the same. All parties signing this instruction have read, understood and agreed to the instruction and acknowledge receipt of a copy of same.

SELLER:

2163 Abbott Street, LP

By: 

Name: Krista L. Freitag

Title: solely in capacity as Court-
Appointed Receiver

BUYER:

G Boys Holdings LLC, a California limited liability
company

By: 

Name: Nanette Galascione

Title: Manager