

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

APPLICATION OF
MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC.

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

THIRD REPORT OF THE INFORMATION OFFICER

May 2, 2012

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BACKGROUND

1. This report follows two earlier reports by BDO Canada Limited in its capacity as the Information Officer (the “**Information Officer**” or “**IO**”), appointed by this Honourable Court in these proceedings, reporting on the status and conduct of certain Chapter 11 proceedings ongoing in the United States involving the Elephant & Castle Group.
2. The Elephant & Castle Group (“**E&C**”) owns, operates and franchises, full service British style restaurant pubs in the United States and Canada.
3. E&C was founded in 1977. Elephant & Castle Group Inc. (“**E&C Group Inc.**”), one of the Chapter 11 Debtors, is the holding company for the affiliate debtors. In 2007, Repechage Investments Limited (“**Repechage**”), acquired and privatized E&C Group Inc. Further details regarding the corporate structure of the Chapter 11 Debtors are set out in the First Report of the Information Officer dated November 29, 2011 (the “**First Report**”), a copy of which is attached hereto as Appendix “**A**” (without appendices).
4. On June 28, 2011, E&C filed voluntary petitions pursuant to Chapter 11 of the US Bankruptcy Code in the United States Bankruptcy Court (the “**US Court**”) for the District of Massachusetts Eastern Division (the “**Chapter 11 Proceedings**”). The list of Chapter 11 Debtors is found at Schedule A, which is attached hereto.
5. E&C has both assets and creditors in Canada. However, E&C’s Canadian operations are fully integrated with E&C’s US operations and the integrated North American operation is controlled and managed by E&C’s management at E&C’s corporate offices, which are located in Boston, Massachusetts. Accordingly, E&C’s “centre of main interest” is in the United States.
6. On June 29, 2011, Massachusetts Elephant & Castle Group Inc. as the foreign representative of the Chapter 11 Debtors (the “**Foreign Representative**”), commenced proceedings in Canada (the “**CCAA Recognition Proceedings**”).

7. As part of the Recognition Proceedings, the Foreign Representative applied for and received an Order dated June 29, 2011 under Part IV of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 (the "CCAA"), granting certain limited interim relief including an interim stay of proceedings until a request for an Initial Recognition Order and Supplemental Order (as such terms are defined herein) could be heard.
8. Upon application of the Foreign Representative:
 - (a) an Order of this Honourable Court dated July 4, 2011 (the "Initial Recognition Order"):
 - (i) recognized the Foreign Representative;
 - (ii) declared the Chapter 11 Proceedings to be a "foreign main proceedings" for purposes of the CCAA; and
 - (iii) stayed any claims, rights, liens, proceedings against or in respect of the Chapter 11 Debtors, the directors and officers of the Chapter 11 Debtors and the property of the Chapter 11 Debtors.
 - (b) an Order of this Honourable Court dated July 4, 2011, (the "Supplemental Order"):
 - (i) recognized in Canada and enforced certain orders of the US Bankruptcy Court made in the Chapter 11 Proceedings on June 30, 2011; and
 - (ii) appointed BDO Canada Limited as the Information Officer.
9. In the Second Report of the Information Officer dated January 26, 2012 (the "Second Report"), the Information Officer reported that:
 - (a) the Chapter 11 Debtors, with the exception of Repechage Investments Limited ("Repechage"), entered into an asset purchase agreement dated November 18, 2011 (the "Stalking Horse Agreement") with Original Joe's Acquisition Corp. (the "Stalking Horse Bidder" or the "Purchaser")

- pursuant to which the Chapter 11 Debtors other than Repechage, agreed to sell substantially all of their assets (the “Assets”) to the Stalking Horse Bidder, subject to approval by the US Court and the receipt of higher and better offers (the “Stalking Horse Sales Process”).
- (b) Repechage is the ultimate parent company of the Debtors. It is incorporated under the Canada Business Corporations Act with its registered office in Toronto, Ontario. E&C Group Inc. is a wholly owned subsidiary of Repechage.
 - (c) Repechage is not a party to the Stalking Horse Agreement and, as such, its assets are not part of the transaction with the Purchaser.
 - (d) the Information Officer understood that Repechage was in the process of considering its options for an orderly liquidation of its assets. That position is not entirely clear at this time.
 - (e) on November 18, 2011, the Chapter 11 Debtors filed a motion (the “**Bidding Procedures Motion**”) for an order, among other things, approving the bidding procedures for the Stalking Horse Sales Process, scheduling a hearing to consider the sale of substantially all of the assets of the Chapter 11 Debtors, authorizing the sale of the Assets free and clear of all liens, claims, encumbrances and other interests and authorizing the assumption and assignment of certain executory contracts.
 - (f) on December 21, 2011, the US Court granted an order (the “**Bidding Procedures Order**”) that, among other things, approved the bidding procedures for the sale of assets of the Chapter 11 Debtors (the “**Bid Procedures**”), approved certain bidding protections, approved the form and manner of the notice of sale and assumption and assignment of certain executory contracts and unexpired leases and scheduled an auction and sale hearing. In the Bidding Procedures Order, the US Court agreed with the conclusions of the Chapter 11 Debtors that a sale of the Property, excluding the assets of Repechage (the “**Sale Assets**”) as well as the assumption of

and assignment of certain executor contracts and unexpired assets to the Stalking Horse Bidder, subject to higher and better offers, was the best method for maximizing the return to the creditors of the Chapter 11 Debtors. In addition, the US Court agreed that the sale price of the Sale Assets will be maximized by holding an auction in accordance with the Bidding Procedures.

(g) the Chapter 11 Debtors completed the Bid Procedures pursuant to the Bidding Procedures Order and no “qualified bids” other than the bid by the Purchaser were received by the Bid Deadline. Accordingly, the Chapter 11 Debtors proceeded with their motion (the “**Sale Approval Motion**”) before the US Court seeking an order (the “**Sale Approval Order**”):

- (i) approving the Stalking Horse Agreement and the transaction contemplated therein;
- (i) authorizing the sale of the Sale Assets to the Purchaser free and clear of all liens, claims and interests; and
- (ii) authorizing the assumption and assignment of certain executory contracts and unexpired leases in connection therewith.

(h) The Sale Approval Order directed that all proceeds from the Sale Assets be paid to GE Canada except for the Transaction Fees, fees and expenses owing to Bellmark, certain fees owing to the Debtor’s Professionals, the Committee’s Professionals, the US Trustee and Clerk of the US Court and the following carve out amounts (the “**Carve Out Amounts**”) (all capitalized terms are defined in the Stalking Horse Agreement):

- (i) approximately \$3 million to be paid into a segregated escrow account to fund pre and post petition sales taxes, Cure Amounts and the Gift Card liability;
- (ii) approximately \$1.7 million minus cash on hand to fund the Priority Claim Carve Out;

- (iii) an amount equal to the lesser of \$500,000 and 10% of the aggregated unsecured claims non-priority unsecured claims against the Chapter 11 Debtors, which are to be distributed on a pro-rata basis; and
 - (iv) fees of \$30,000 to a party to be selected to administer the unsecured claims made against the Chapter 11 Debtors.
- (i) Mr. David Dobbin, the principal of the Chapter 11 Debtors, the Chairman of the Board of the E&C Group Inc. and Repechage, and the guarantor of the Chapter 11 Debtors' debt to GE Canada filed with the US Court a motion for leave to conduct a Rule 2004 examination of GE Canada (the "**Dobbin Motion**") and a limited objection to the Sale Approval Motion requesting that the Sale Approval Motion be *deferred* pending the results of the examination of GE Canada (the "**Dobbin Objection**").
 - (j) On January 21, 2012, in his capacity as the controlling shareholder of Repechage, Dobbin acted to remove the entire board of directors of E&C Group Inc., other than himself.
 - (k) On January 23, 2012, the US Court denied the Dobbin Motion and Mr. Dobbin withdrew the Dobbin Objection.
 - (l) On January 24, 2012, the US Court granted the Sale Approval Order, approving the Stalking Horse Bid. That transaction has now closed with proceeds being paid according to the respective orders.
10. A copy of the Second Report is attached hereto as Appendix "**B**" (without appendices).
11. On January 30, 2012, Mr. Justice Morawetz issued an order recognizing the Sale Approval Order (the "**January 30 Order**"). A copy of the January 30 Order and the endorsement of Mr. Justice Morawetz is attached hereto as Appendix "**C**".

PURPOSE

12. The purpose of this Third Report of the Information Officer dated May 1, 2012

(the "Third Report") is to:

- (a) summarize the activities relating to the Chapter 11 Proceedings from the date of the Second Report to the date of this Third Report;
- (b) provide an update to recent events regarding the Chapter 11 Proceedings;
and
- (c) request an order of this Honourable Court to:
 - (i) approve the First, Second and Third Reports of the Information Officer and the activities of the Information Officer described therein; and
 - (ii) directing the IO to seek its discharge and, if appropriate, the termination of the CCAA Recognition Proceedings within 30 days of the return of this motion.

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

14. Capitalized terms not defined in this Third Report are as defined in the First Report or the Second Report.

ACTIVITIES OF THE INFORMATION OFFICER

15. Since the date of the Second Report, the activities of the Information Officer include the following:
- (a) responding to creditor inquiries regarding the Chapter 11 Proceedings;
 - (b) assisting with the transfer of utility and supplier accounts in Canada from the Chapter 11 Debtors to the Purchaser;

- (c) requesting confirmation from the Chapter 11 Debtors regarding whether proofs of claim have been received from Canadian creditors; and
- (d) holding discussions with legal counsel to the Chapter 11 Debtors regarding the completion of the sale to the Purchaser and the status of the drafting of a plan of arrangement to deal with certain “Carve Outs” to be paid to the unsecured creditors of the Chapter 11 Debtors.

STATUS OF THE PLAN OF ARRANGEMENT

- 16. The sale to the Stalking Horse Bidder closed on February 3, 2012.
- 17. On January 20, 2012, the Chapter 11 Debtors filed a motion for an order to further extend the exclusivity period during which only the Chapter 11 Debtors may file a plan and solicit acceptances thereof (the “Exclusivity Period”). On January 24, 2012, the US Court granted the motion to extend the Exclusivity Period to April 23, 2012.
- 18. Proofs of claims filed by creditors have been reviewed by the Chapter 11 Debtors and hearings to deal with objections filed by the Chapter 11 Debtors to disallow and/or amend certain of the claims have been scheduled to take place on May 16, 2012.

RECENT DEVELOPMENTS

- 19. On April 23, 2012, the Chapter 11 Debtors filed another motion (the “April 23 Motion”) to request an order of the US Court extending the Exclusivity Period for 60 days through and including June 22, 2012. A copy of the April 23 Motion is attached hereto as Appendix “D”. In the April 23 Motion, the Chapter 11 Debtors stated that:
 - (a) the preservation of the exclusivity period is in order as “the controlling insider of Repechage and Repechage’s main creditors have been engaged in discussions on how best to maximize the value of this company” and “Repechage expects these discussions to continue which will aid in the

formulation of a framework for exiting its bankruptcy case.”

- (b) The Chapter 11 Debtors (excluding Repechage) had prepared and circulated among various key parties a proposed plan and disclosure statement.
20. Following a hearing held on April 25, 2012, the Chapter 11 Debtors submitted a proposed order to the US Court extending the Exclusivity Period through and including June 22, 2012, with the provision that if the Chapter 11 Debtors (other than Repechage) do not file a plan by June 22, 2012, then the bankruptcy cases of the Chapter 11 Debtors other than Repechage shall be automatically converted to liquidation cases pursuant to Chapter 7 of the US Bankruptcy Code (“Chapter 7”). In addition, the proposed order provides that if Repechage does not file a plan by May 23, 2012, or files a plan that is not consented to by GE Canada Equipment Financing G.P. and Fifth Street Finance Corp. (collectively the “Secured Creditors”), then the either of the Secured Creditors will be permitted to file a plan with respect to Repechage.
21. On April 27, 2012, the US Trustee filed a motion (the “**April 27 Motion of the US Trustee**”) with the US Court to request an expedited hearing to convert the Chapter 11 cases of the Chapter 11 Debtors to Chapter 7 because the relationship between the Chapter 11 Debtors and their legal counsel in both the US and Canada (collectively the “**Chapter 11 Debtors’ Legal Counsel**”) has broken down with regard to various matters to the extent that the Chapter 11 Debtors’ Legal Counsel will be seeking leave of the US Court to withdraw. As a result of this impasse, the US Trustee has concluded that it is unlikely that the Chapter 11 Debtors will propose any plan or plans within a reasonable time and without legal counsel a conversion to Chapter 7 is appropriate at this time. A copy of the April 27 Motion of the US Trustee is appended hereto as Appendix “E”.
22. In parallel with the US Trustee’s request, on April 27, 2012, the Chapter 11 Debtor’s Legal Counsel filed a joint motion with the US Court to withdraw as legal counsel to the Chapter 11 Debtors due to irreconcilable differences with

their clients (the “April 27 Motion of the Chapter 11 Debtors’ Legal Counsel”). A copy of the April 27 Motion of the Chapter 11 Debtors’ Legal Counsel is appended hereto as Appendix “F”. It is understood that the Chapter 11 Debtors’ Canadian counsel will be seeking an order from this Honourable Court removing them from the record in the CCAA Recognition Proceedings on May 8, 2012.

23. The US Court issued an Order dated April 27, 2012 extending the Exclusivity Period through to May 2, 2012 and agreed to hear both the April 27 Motion of the US Trustee and the April 27 Motion of the Chapter 11 Debtors’ Legal Counsel on May 2, 2012 (the “May 2 Hearing”).
24. The IO has a retainer on hand of approximately \$30,000 available for the unpaid fees and disbursements of the IO and its legal counsel and to fulfill any additional responsibilities in the role that has been assigned to the IO by this Honourable Court.
25. On the afternoon of May 2, 2012, the US Court issued orders (the “May 2 Orders”):
 - (a) converting the Chapter 11 Proceedings to Chapter 7;
 - (b) granting the withdrawal of the Chapter 11 Debtors’ US and Canadian legal counsel; and
 - (c) dispensing with the need for a status hearing on extending the date for the Exclusivity Period.
26. Copies of the May 2 Orders are attached hereto as Appendix “G”.

SUMMARY AND CONCLUSION

27. Since the Chapter 11 Proceedings have been converted to Chapter 7, there will be no possibility of a plan of reorganization, and it is expected that a trustee in bankruptcy will be appointed in the United States over the estates of the Chapter 11 Debtors to monetize the remaining assets, if any.

28. It is anticipated that any proceeds from the estates of the Chapter 11 Debtors, will not be sufficient to pay out the secured claims of the Secured Creditors, which will leave no funds available for unsecured creditors. The Information Officer and its legal counsel have made inquiries, but have not received a response from GE Canada, as to their intentions regarding GE Canada's next steps.
29. The Information Officer has limited funds to continue in its role and there is little reason to do so.
30. In conclusion, now that the Chapter 11 Proceedings have been converted to Chapter 7, there will be no further need for the CCAA Recognition Proceedings and the Information Officer requests an order of this Honourable Court directing the Information Officer to return to this Honourable Court to seek its discharge subject to the approval of the fees and disbursements of the Information Officer and its legal counsel and, if appropriate, the termination of the CCAA Recognition Proceedings within 30 days of the return of this motion.

All of which is respectfully submitted on this 2nd day of May, 2012.

BDO CANADA LIMITED

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

Per:

A handwritten signature in black ink, appearing to read 'Ken Pearl', written in a cursive style.

Ken Pearl
Vice President

SCHEDULE A

CHAPTER 11 DEBTORS

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

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WITH RESPECT TO THE COMPANIES LISTED ON
SCHEDULE "A" HERETO (THE "ELEPHANT & CASTLE GROUP" OR THE "CHAPTER 11
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APPLICATION OF
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UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED

FIRST REPORT OF THE INFORMATION OFFICER

November 29, 2011

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EXECUTIVE SUMMARY

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

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

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

BACKGROUND

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

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

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

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

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

- (a) Edmonton, AB - 2 locations
- (b) Halifax, NS- franchise¹
- (c) Ottawa, ON
- (d) Toronto, ON - 2 locations
- (e) Whistler, BC.
- (f) Vancouver, BC - 2 locations
- (g) Winnipeg, MB

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

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

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

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

THE E&C DEBT STRUCTURE

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

EVENTS LEADING TO CHAPTER 11 PROCEEDINGS

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

CHAPTER 11 AND CCAA PROCEEDINGS

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

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

33. Upon application of the Foreign Representative:

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

(i) recognized the Foreign Representative;

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

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

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

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

(ii) appointed BDO as Information Officer to:

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

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

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

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

ACTIVITIES OF THE INFORMATION OFFICER

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

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

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

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

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

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

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

SUMMARY OF EVENTS SINCE THE PETITION DATE

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

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

42. With the consent of the GE Canada and Fifth Street, pursuant to an Order dated June 30, 2011 of the US Court², the Chapter 11 Debtors were authorized to:

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

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

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

RESTRUCTURING PROCESS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

All of which is respectfully submitted on this 29th day of November, 2011.

BDO CANADA LIMITED
In its capacity as Information Officer of the
Elephant & Castle Group
Per:

A handwritten signature in black ink, appearing to read "Ken Pearl". The signature is written in a cursive style with a large, looping initial "K".

Ken Pearl
Vice President

SCHEDULE A
CHAPTER 11 DEBTORS

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

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

APPENDIX B to the Third
Report of the Information
Officer.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

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

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

SECOND REPORT OF THE INFORMATION OFFICER

January 26, 2012

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Appendices

- A First Report of the Information Officer dated November 29, 2011 (without appendices)
- B Initial Recognition Order
- C Supplemental Order
- D Stalking Horse Agreement
- E Bidding Procedures Motion (without exhibits)
- F Initial Cash Collateral Order dated June 30, 2011
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- I Endorsed Order of the U.S. Court dated January 23, 2012
- J Form of Sale Approval Order
- K Form of Lease Extension Order
- L King West Objection dated January 20, 2012

BACKGROUND

1. The Elephant & Castle Group (“E&C”) owns, operates and franchises, full service British style restaurant pubs in the United States and Canada.
2. E&C was founded in 1977. Elephant & Castle Group Inc. (“E&C Group Inc.”), one of the Chapter 11 Debtors, is the holding company for the affiliate debtors. In 2007, Repechage Investments Limited (“Repechage”), acquired and privatized E&C Group Inc. Further details regarding the corporate structure of the Chapter 11 Debtors are set out in the First Report of the Information Officer dated November 29, 2011 (the “First Report”), a copy of which is attached hereto as Appendix “A” (without appendices).
3. As a result of the recession which commenced in 2009, E&C was impacted by a downturn of sales in all of E&C’s restaurants in North America. In order to prevent the shutdown of operations, the loss of jobs of more than 1,000 E&C employees, and to protect the interests of their creditors and landlords, E&C has instituted these proceedings.
4. On June 28, 2011 (the “Petition Date”), E&C filed voluntary petitions pursuant to Chapter 11 of the US Bankruptcy Code in the United States Bankruptcy Court (the “US Court”) for the District of Massachusetts Eastern Division (the “Chapter 11 Proceedings”).
5. E&C has both assets and creditors in Canada. However, E&C’s Canadian operations are fully integrated with E&C’s US operations and the integrated North American operation is controlled and managed by E&C’s management at E&C’s corporate offices, which are located in Boston, Massachusetts. Accordingly, E&C’s “centre of main interest” is in the United States.
6. On June 29, 2011, Massachusetts Elephant & Castle Group Inc. as the foreign representative of the Chapter 11 Debtors (the “Foreign Representative”), commenced proceedings in Canada (the “Recognition Proceedings”).

- 7. As part of the Recognition Proceedings, the Foreign Representative applied for and received an Order dated June 29, 2011 under Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA"), granting certain limited interim relief including an interim stay of proceedings until a request for an Initial Recognition Order and Supplemental Order (as such terms are defined herein) could be heard.
- 8. Upon application of the Foreign Representative:
 - (a) an Order of this Honourable Court dated July 4, 2011 (the "Initial Recognition Order"):
 - (i) recognized the Foreign Representative;
 - (ii) declared the Chapter 11 Proceedings to be a "foreign main proceedings" for purposes of the CCAA; and
 - (iii) stayed any claims, rights, liens, proceedings against or in respect of the Chapter 11 Debtors, the directors and officers of the Chapter 11 Debtors and the property of the Chapter 11 Debtors (the "Property").
 - (b) an Order of this Honourable Court dated July 4, 2011, (the "Supplemental Order"):
 - (i) recognized in Canada and enforced certain orders of the US Bankruptcy Court made in the Chapter 11 Proceedings on June 30, 2011; and
 - (ii) appointed BDO Canada Limited ("BDO" or the "Information Officer").
- 9. Copies of the Initial Recognition Order and Supplemental Order are attached as Appendices "B" and "C" respectively.

PURPOSE

- 10. The purpose of this Second Report of the Information Officer dated January 25, 2012 (the "Second Report") is to:

- (a) provide a summary of the activities relating to the Chapter 11 Proceedings from the date of the First Report to the date of this Second Report;
- (b) advise the Court with respect to the results of the stalking horse sales process undertaken by the Chapter 11 Debtors and the orders of the US Court in respect thereof; and
- (c) provide information to this Court with respect to the Applicant's request to have the sale and approval order granted by the US Court recognized in Canada and granting certain ancillary relief in order to allow the purchase transaction to close.

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

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

THE E&C DEBT STRUCTURE

13. As is more particularly detailed in the First Report, pursuant to the Loan Agreement dated April 20, 2007, as amended (the "Loan Agreement"), GE Canada Equipment Financing G.P. ("GE Canada") provided E&C Group Inc. with a non-revolving credit facility. As at the Petition Date, GE Canada was owed approximately \$15.9 million and CDN\$2.5 million pursuant to the Loan Agreement. The remaining Chapter 11 Debtors guaranteed E&C Group Inc.'s debt to GE Canada.

14. Mr. David Dobbin ("Dobbin"), the Chairman of the Board of the E&C Group Inc. and the President of Repechage, guaranteed E&C Group Inc.'s obligations pursuant

to the Loan Agreement.

15. In addition, Fifth Street Finance Corp. (as successor-in-interest to Fifth Street Mezzanine Partners III, L.P. ("Fifth Street")) provided certain facilities to Elephant & Castle, Inc., one of the Chapter 11 Debtors, pursuant to a credit agreement dated April 20, 2007, as amended (the "Fifth Street Credit Agreement"). The Information Officer understands that, as at the Petition Date, Fifth Street was owed approximately \$4 million by Repechage.
16. The Information Officer also understands that, pursuant to an interlender agreement among the Chapter 11 Debtors, GE Canada and Fifth Street, as amended, the obligations owing to Fifth Street are subordinate to the obligations owing to GE Canada. The outstanding principal under the Fifth Street Credit Agreement was partially repaid, and the remaining outstanding amounts were assigned to Repechage, pursuant to a Credit Agreement dated October 16, 2009.
17. In addition, as at the Petition Date, E&C owes a total of approximately \$5 million to unsecured creditors in the United States and Canada.

ACTIVITIES OF THE INFORMATION OFFICER

18. Since the date of the First Report, the activities of the Information Officer have included the following:
 - (a) responding to creditor inquiries regarding the Chapter 11 Proceedings;
 - (b) coordinating assistance between the Chapter 11 Debtors and ongoing suppliers regarding continuing operations in Canada;
 - (c) coordinating information requests between Canada Revenue Agency and the Chapter 11 Debtors;
 - (d) providing the names and addresses of Canadian creditors who had not received notice of the Chapter 11 Proceedings, to the Chapter 11 Debtors;

- (e) holding discussions with parties interested in a purchase of the Property in Canada and directing them to BellMark Partners, LLC ("Bellmark"), the Chapter 11 Debtor's financial advisor; and
- (f) providing instructions to creditors regarding filing of proofs of claim with the Chapter 11 Debtors.

STALKING HORSE SALES PROCESS

19. As described in the First Report, the Chapter 11 Debtors, with the exception of Repechage, entered into an asset purchase agreement dated November 18, 2011 (the "Stalking Horse Agreement") with Original Joe's Acquisition Corp. (the "Stalking Horse Bidder" or the "Purchaser") pursuant to which the Chapter 11 Debtors, other than Repechage, agreed to sell substantially all of their assets (the "Assets") to the Stalking Horse Bidder, subject to approval by the US Court and the receipt of higher and better offers (the "Stalking Horse Sales Process"). A copy of the Stalking Horse Agreement is attached hereto as Appendix "D".
20. The principal terms of the Stalking Horse Agreement are as follows:
- (a) Purchase Price - \$22,750,000 less certain adjustments;
 - (b) Excluded Assets - the following assets of the Chapter 11 Debtors are excluded:
 - (i) cash in bank;
 - (ii) accounts receivable;
 - (iii) utility and sales tax deposits;
 - (iv) certain refunds due to the Chapter 11 Debtors; and
 - (v) the assets of Repechage;
 - (c) Assumed liabilities - includes certain executory contracts and leases to be assigned to the Purchaser; and
 - (d) Closing Date - the later of:

- (i) two business days following the issuing of an order of the Court approving the sale; and
- (ii) a date to be determined in January 2012.

21. On November 18, 2011, the Chapter 11 Debtors filed a motion (the “**Bidding Procedures Motion**”) for an order, among other things, approving the bidding procedures for the Stalking Horse Sales Process, scheduling a hearing to consider the sale of substantially all of the assets of the Chapter 11 Debtors, authorizing the sale of the Assets free and clear of all liens, claims, encumbrances and other interests and authorizing the assumption and assignment of certain executory contracts. A copy of the Bidding Procedures Motion (without exhibits) is attached hereto as Appendix “E”.

CASH COLLATERAL ORDERS

22. Pursuant to an Order of the US Court dated June 30, 2011 (the “**Initial Cash Collateral Order**”), the Chapter 11 Debtors were authorized to use Cash Collateral (as defined in the Initial Cash Collateral Order) in order to meet the expenses of the operations of their business in accordance with approved budgets. A copy of the Initial Cash Collateral Order is attached hereto as Appendix “F”.

23. The ongoing use of Cash Collateral has been authorized by subsequent interim orders of the US Court. On December 21, 2011, the US Court issued a Stipulation and Final order authorizing the use of Cash Collateral (the “**Final Cash Collateral Order**”). The Final Cash Collateral Order authorizes the Chapter 11 Debtors to use Cash Collateral in the ordinary course of their business in accordance with the approved budget from December 8, 2011 through to February 3, 2012 (subject to the Chapter 11 Debtors committing an event of default or consummating a sale of substantially all of their assets on an earlier date). A summary of the Final Cash Collateral Order is as follows:

- (a) authorizes the Chapter 11 Debtors to use the Cash Collateral in the ordinary

course of their business within the budget (the "**Final Budget**") a copy of which is attached as Exhibit A to the Final Cash Collateral Order, from December 8, 2011 to the earlier of: (a) the expiration of the Notice Period relating to an Event of Default as defined in the Final Cash Collateral Order, (b) the date on which a plan of reorganization of the Chapter 11 Debtors or a sale of all the Chapter 11 Debtors' assets is consummated, and (c) February 3, 2012, or such later date which GE Canada consents in its sole discretion;

(b) allows the Chapter 11 Debtors to use the amounts solely for the purposes identified in the Final Budget, provided that the Chapter 11 Debtors shall be authorized to exceed the amounts, except for expenses of Retained Professionals (as defined in the Final Cash Collateral Order) of the Chapter 11 Debtors and the Unsecured Creditors' Committee (the "**Committee**"), in the Final Budget by no more than ten (10) percent on an aggregate basis in any week;

(c) recognizes the validity and enforceability of the outstanding pre-petition secured debt, and granted perfected postpetition security interests and replacement liens subject to certain Carve-Outs (as defined in the Final Cash Collateral Order) against all presently owned and hereafter acquired personal property, and real property of the Chapter 11 Debtors (except E&C Pratt) for the amounts owed by the Chapter 11 Debtors to GE Canada, which consisted of \$19,217,831 plus interest, fees, costs, and expenses, as well as certain guarantees owed by the Chapter 11 Debtors for the guarantee of the amounts owed by Interim Aviation Holdings, Inc., a non-debtor affiliate, to GE Canada in the amount of \$2,126,452 plus interest, fees, costs, and expenses.

24. The Stalking Horse Bidder and Chapter 11 Debtors have mutually agreed to extend the initial closing date to February 3, 2012. The closing of the Sale Transaction is

tied to the expiration of the Chapter 11 Debtors' authority to continue to use the Cash Collateral.

25. A copy of the Final Cash Collateral Order is attached hereto as Appendix "G".

BIDDING PROCEDURES ORDER

26. On December 21, 2011, the US Court granted an order (the "Bidding Procedures Order") that, among other things, approved the bidding procedures for the sale of assets of the Chapter 11 Debtors (the "Bid Procedures"), approved certain bidding protections, approved the form and manner of the notice of sale and assumption and assignment of certain executory contracts and unexpired leases and scheduled an auction and sale hearing.

27. In the Bidding Procedures Order, the US Court agreed with the conclusions of the Chapter 11 Debtors that a sale of the Property, excluding the assets of Repechage (the "Sale Assets") as well as the assumption of and assignment of certain executory contracts and unexpired assets to the Stalking Horse Bidder, subject to higher and better offers, was the best method for maximizing the return to the creditors of the Chapter 11 Debtors. In addition, the US Court agreed that the sale price of the Sale Assets will be maximized by holding an auction in accordance with the Bidding Procedures.

28. Attached hereto as Appendix "H" is a copy of the Bidding Procedures Order, the highlights of which are summarized as follows:

- (a) The Bidding Procedures provided for a bid deadline of January 20, 2012 (the "Bid Deadline"). In the event that one or more Qualified Bids (as defined in the Bid Procedures) were received, the Debtors were required by the Bid Procedures to conduct an auction (the "Auction"). If no Qualified Bids, other than the Stalking Horse Bid, are received by the Bid Deadline then the Auction will be cancelled and the Chapter 11 Debtors shall accept the

Stalking Horse Bid.

- (b) If a competing transaction or a plan of arrangement is approved by the US Court, the Chapter 11 Debtors shall pay \$500,000 to the Stalking Horse Bidder as an expense reimbursement (the “**Expense Reimbursement**”).
- (c) A hearing to approve the results of the Auction, or if no Auction, the sale to the Stalking Horse Bidder will be held on Tuesday January 24, 2012 (the “**Sale Hearing**”).
- (d) Any objection to the Bidding Procedures Motion is to be filed by Friday January 20, 2012.
- (e) The Closing Date for the Stalking Horse Bid has been extended until February 3, 2012.
- (f) Following entry of the Bidding Procedures Order, the Debtors were to file a schedule of cure obligations (the “**Cure Schedule**”) for all potentially designated contracts (the “**Designated Contracts**”), which includes a description of the executory contract or unexpired lease, and set forth the costs the Chapter 11 Debtors believe is owed under each Designated Contract (the “**Cure Costs**”). The Chapter 11 Debtors were to serve notices, together with the Cure Schedule on each of the non-debtor parties listed on the Cure Schedule no later than four business days after the entry of the Bidding Procedures Order.
- (g) Any objections to the assumption and assignment of a Designated Contract were to be filed with the US Court no later than Friday January 20, 2012. Should the Auction result in the successful bidder being a party other than the Stalking Horse Bidder, then objections to the assignment of the Designated Contracts to the Successful Bidder on the basis of adequate assurance of future performance shall be filed and served no later than the commencement of the Sale Hearing.

- (h) If a non-debtor party to a Designated Contract fails to object to the Assumption and Assignment Notice in a timely manner, such party shall be forever barred from contesting the assumption and assignment of such Designated Contract or asserting a claim or disputing the payment of the Cure Cost.
- (i) If an objection is filed on time, and should the parties be unable to consensually resolve the objection prior to the Sale Hearing, then the objection will be determined at the Sale Hearing.

RESULTS OF THE STALKING HORSE SALES PROCESS

29. The Debtors completed the Bid Procedures pursuant to the Bidding Procedures Order and no “qualified bids” other than the bid by the Purchaser were received by the Bid Deadline. An additional bid (the “**Good Times Bid**”) was received from Good Times Restaurants, Inc. (“**Good Times**”). However, the Good Times Bid was not considered a Qualified Bid under the terms of the Bidding Procedures Order. In particular, the Good Times Bid did not include a cash deposit or evidence establishing that Good Times has readily available funds to enable it to timely consummate its competing offer. Accordingly, the Chapter 11 Debtors proceeded with their motion (the “**Sale Approval Motion**”) before the US Court seeking an order (the “**Sale Approval Order**”):

- (a) approving the Stalking Horse Agreement and the transaction contemplated therein (the “**Sale Transaction**”);
- (b) authorizing the sale of the Sale Assets to the Purchaser free and clear of all liens, claims and interests; and
- (c) authorizing the assumption and assignment of certain executory contracts and unexpired leases in connection therewith.

30. On January 20, 2012, Dobbin filed with the US Court:

(a) a motion for leave to conduct a Rule 2004 examination of GE Canada (the "Dobbin Motion"); and

(b) a limited objection to the Sale Approval Motion requesting that the Sale Approval Motion be deferred pending the results of the examination of GE Canada (the "Dobbin Objection").

- 31. Dobbin is the principal of the Chapter 11 Debtors, the Chairman of the Board of the E&C Group Inc., Good Times, and Repechage, the guarantor of the Chapter 11 Debtors' debt to GE Canada.
- 32. The Dobbin Motion alleged that, upon information and belief, GE Canada was providing financing to the Stalking Horse Bidder in connection with the acquisition of the Sale Assets and, to ensure the sale of the Sale Assets was conducted without taint, an investigation into GE Canada's conduct in connection with the sales process was warranted.
- 33. On the advice of counsel, the board of E&C Group Inc. took steps to form an independent committee (the "Independent Committee") to consider the Dobbin Objection and the Good Times Bid. A meeting of the Independent Committee was called on January 21, 2012 to discuss the Dobbin Objection and the Good Times Bid. Dobbin objected to such meeting and, on January 21, 2012, in his capacity as the controlling shareholder of Repechage, Dobbin acted to remove the entire board of directors of E&C Group Inc., other than himself.
- 34. On January 23, 2012, the US Court denied the Dobbin Motion holding that Dobbin failed to demonstrate good cause for the examination and, among other things, a fishing expedition on behalf of a counter-offeror which would delay a court-ordered sale of the Sale Assets would be inappropriate in the circumstances and not in the interest of the bankruptcy estate. A copy of the Endorsed Order of the US Court dated January 23, 2012 is attached hereto as Appendix "I".
- 35. Dobbin withdrew the Dobbin Objection to the Sale Approval Motion.

36. On January 24, 2012, the US Court granted the Sale Approval Order, approving the Stalking Horse Bid. A copy of the form of Sale Approval Order that has been submitted to the US Court for approval is attached hereto as Appendix "J". The form of Sale Approval Order concludes that:

- (a) the Bidding Procedures, including the issuing of Notices of the Sale Hearing and the assumption and assignment of unexpired leases were properly carried out;
- (b) the Stalking Horse Bid was a fair and reasonable offer and no other Qualifying Bids were received;
- (c) GE Canada has recommended the approval of the Stalking Horse Bid;
- (d) the proceeds from the Sale Assets will stand in place of the Sale Assets and therefore the approval of the Sale Transaction was in the best interests of the Chapter 11 Debtors, their creditors, and all other parties with an interest in this matter; and
- (e) pursuant to the Sale Approval Order the US Court will retain jurisdiction with respect to the terms and provisions of the Sale Approval Order, however to the extent necessary and to recognize and give effect to the Sales Approval Order in Canada, the US Court requests the aid and assistance of this Honourable Court to grant recognition to the Sales Approval Order.

37. The Information Officer understands that the Applicant will file a copy of the issued and entered Sale Approval Order once it is received.

CANADIAN LANDLORDS

38. The Sale Approval Order authorizes the Chapter 11 Debtors to assign certain executory contracts, including real property leases, to the Purchaser, on the condition that all cure costs are paid by the Chapter 11 Debtors as part of the assignment.

39. Pursuant to the Order of the US Court dated November 7, 2011, the US Court extended the deadline by which the Chapter 11 Debtors were required to assume or reject any lease of non-residential real estate to January 24, 2012. Certain of the landlords consented to a further extension of the January 24, 2012 deadline, however most either did not consent, or did not respond to the Chapter 11 Debtors request for consent.

40. At the hearing of the Sale Approval Motion, the Chapter 11 Debtors advised the US Court of their intention to reject the lease for the Whistler location at 19-4308 Main Street, Whistler, BC. The Chapter 11 Debtors also confirmed that they will assume the leases for the following Canadian locations:

- (a) 378 Yonge Street, Toronto, Ontario;
- (b) 350 Saint Mary Avenue, Winnipeg, Manitoba;
- (c) Unit G 310, Edmonton City Centre, Edmonton, Alberta; and
- (d) 385 Burrard Street, Vancouver, British Columbia.

41. On January 24, 2012, the US Court granted the Chapter 11 Debtors an extension of the time to assume or reject certain non-residential real property leases with the written consent of the affected landlords. The form of order, a copy of which is attached hereto as Appendix "K" (the issued order was not available at the time of filing this Second Report), provides the following deadlines for the Chapter 11 Debtors to assume or reject the remaining Canadian leases:

- (a) 10314 Whyte Avenue, Edmonton, Alberta - February 2, 2012;
- (b) Rosie's on Robson, 293 Robson Street, Vancouver, BC - February 29, 2012;
- (c) Unit 100, Rideau Centre, Ottawa, Ontario - February 29, 2012; and
- (d) 212 King St. West, Toronto, Ontario - February 1, 2012.

42. Four landlords filed objections to the Sale Approval Motion. All landlords in

Canada were served with notice of the Sale Approval Motion and the proposed cure amounts associated with their leases. Only one Canadian landlord, 212 King West Holdings ("**212 King West**"), in respect of the restaurant located at 212 King St. West in Toronto, filed an objection to the Sale Approval Motion (the "**King West Objection**").

43. The King West Objection, a copy of which is attached hereto as Appendix "L" (without exhibits), objects to the cure amount owed under the lease and asserts that the Chapter 11 Debtors forfeited their renewal rights under the lease based on numerous pre-petition payment defaults.
44. 212 King West agreed to extend the date to resolve the King West Objection to January 26, 2012. The Sale Approval Order provides that, the parties shall continue discussions concerning the King West Objection and shall endeavour to file a stipulation on or before the close of business on January 26, 2012 resolving such issues. In the event the Chapter 11 Debtors and 212 King West are unable to reach a resolution, the parties will be heard before the US Court at a hearing to be held on January 27, 2012 at 2 pm in Springfield, Massachusetts. The Applicant or the Information Officer will update the Court on the status of this dispute at the hearing of the within motion.

PAYMENT OF PROCEEDS

45. The Sale Approval Order directs that all proceeds from the Sale Assets be paid to GE Canada except for the following (all capitalized terms are defined in the Stalking Horse Agreement):
- (a) approximately \$3 million to be paid into a segregated escrow account to fund pre and post petition sales taxes, Cure Amounts and the Gift Card liability;
 - (b) approximately \$1.7 million minus cash on hand to fund the Priority Claim Carve Out;

- (c) the Transaction Fee (as defined in the Final Cash Collateral Order), unpaid fees and expenses owing to Bellmark;
 - (d) unpaid fees and expenses owing to the Debtor's Professionals and subject to certain limits (as defined in the Final Cash Collateral Order);
 - (e) unpaid fees and expenses owing to the Committee's Professionals and subject to certain limits (as defined in the Final Cash Collateral Order);
 - (f) an amount equal to the lesser of \$500,000 and 10% of the aggregated unsecured claims non-priority unsecured claims against the Chapter 11 Debtors, which are to be distributed on a pro-rata basis;
 - (g) fees of \$30,000 to a party to be selected to administer the unsecured claims made against the Chapter 11 Debtors; and
 - (h) an amount equal to the unpaid fees of the US Trustee and Clerk of the US Court.
46. In addition, collections from accounts receivable (which are excluded from the Sale Assets) received after closing are to be turned over by the Chapter 11 Debtors to GE Canada.

REPECHAGE

- 47. Repechage is the ultimate parent company of the Debtors. It is incorporated under the *Canada Business Corporations Act* with its registered office in Toronto, Ontario. E&C Group Inc. is a wholly owned subsidiary of Repechage.
- 48. Repechage is not a party to the Stalking Horse Agreement and, as such, its assets are not part of the transaction with the Purchaser.
- 49. The Information Officer understands that Repechage is in the process of

considering its options for an orderly liquidation of its assets.

SUMMARY AND CONCLUSION

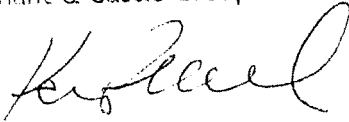
- 50. Since the Petition Date, the Chapter 11 Debtors, have continued to operate their business as debtors in possession, and with the assistance of professional restructuring advisors, have considered whether a sale of the Property or a restructuring plan would maximize a return to their creditors in both the US and Canada.
- 51. In mid-November, with the consent of GE Canada and the Committee, the Chapter 11 Debtors accepted an offer from the Stalking Horse Bidder to purchase the Sale Assets subject to the Stalking Horse Sales Process. The Chapter 11 Debtors believed that the Stalking Horse Sales Process would maximize the return to creditors and brought a motion to the US Court to issue orders approving the Stalking Horse Agreement and Bidding Procedures. The US Court issued the requested orders.
- 52. By the Bid Deadline, no other Qualifying Offers were received. On January 24, 2012, the US Court issued the Sale Approval Order.
- 53. Four objections to the assumption and assignments of unexpired leases have been filed by Canadian landlords, however the time period to assume or reject the leases has been extended by the US Court.
- 54. Although it is anticipated that net proceeds of the Sale will not be sufficient to pay the secured claim of GE Canada, there will be a limited distribution to priority claims as set out under the US Bankruptcy Code and unsecured creditors in both Canada and the US will also be paid from the sales proceeds an amount on account of their claims. The Information Officer understands that a mechanism to

distribute these funds to the unsecured creditors is to follow in relatively short order after the closing of the Sale Transaction.

55. In conclusion, the integrity of the Stalking Horse Sales Process, and the Stalking Horse Bid was approved by order of the US Court, who concluded that the approval of the Sale Transaction was in the best interests of the Chapter 11 Debtors, their creditors, and all other parties with an interest in this matter.
56. The Information Officer understands, based on discussions with the Chapter 11 Debtors that the Sale Transaction, in accordance with the Bid Procedures and timeline contemplated by the Bidding Procedures Order is a critical component of the Chapter 11 Debtors' restructuring.
57. In connection with the recognition of the Sale Approval Order, the Foreign Representative requests an order vesting the Assets in and to the Purchaser free and clear of all encumbrances.
58. To give effect to the Sale Approval Order in Canada, the Sale Approval Order requests the assistance of this Honourable Court to issue an order recognizing the Sale Approval Order (the "Recognition Order").
59. The recognition of the Sale Approval Order is necessary for the completion of the sales process and the conveyance of the Sale Assets to the Purchaser. In addition, it is the Information Officer's understanding that the recognition of the Sale Approval Order is necessary for the protection of the Chapter 11 Debtors' property and the interests of the Chapter 11 Debtors' creditors both in Canada and the United States.
60. As a consequence of the foregoing, the Information Officer sees no reason for the Recognition Order not to be granted by this Honourable Court.

All of which is respectfully submitted on this 26th day of January, 2012.

BDO CANADA LIMITED
In its capacity as Information Officer of the
Elephant & Castle Group
Per:

A handwritten signature in black ink, appearing to read "Ken Pearl". The signature is written in a cursive, flowing style.

Ken Pearl
Vice President

APPENDIX C of the Third Report
of the Information Officer

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE

)

MONDAY THE ^{30th} ~~31st~~ DAY

JUSTICE MORAWETZ

)

OF JANUARY, 2012

)

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

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

APPLICATION OF
MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC.

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

CONFIRMATION
APPROVAL AND VESTING ORDER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

JAN 30 2012

A handwritten signature in black ink, appearing to be "A. J. [unclear]", written over a horizontal line.

SCHEDULE A

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

Schedule B

Sale Approval Order

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

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

ORDER (A) APPROVING ASSET PURCHASE AGREEMENT BETWEEN THE DEBTORS AND OJAC; (B) AUTHORIZING THE SALE OF THE ASSETS OF THE DEBTORS FREE AND CLEAR OF ALL LIENS, CLAIMS, AND INTERESTS; AND (C) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION THEREWITH

Upon the motion (the "Motion") of Massachusetts Elephant & Castle Group, Inc. and its debtor affiliates (collectively, the "Debtors"), for the entry of an order (the "Order") pursuant to Bankruptcy Code sections 105(a), 363, and 365 and Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014 (a) approving an asset purchase agreement (the "APA") between the Debtors and Original Joe's Acquisition Corporation ("OJAC") to acquire Debtors' assets and operations used in the conduct of, or related to, owning, managing, operating, and franchising restaurants operated by Debtors (as defined in the APA, the "Assets")², a copy of which is attached as an exhibit to the Motion; (b) authorizing the sale of the Assets free and clear of Liens (as defined in the APA), Claims (as defined in Section 101(5) of the Bankruptcy Code) and interests; and (c)

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

² The term "Assets" does not include any assets or any other interests of Repechage Investments Limited.

authorizing the assumption and assignment of executory contracts and unexpired leases (the "Designated Contract(s)", as defined in the Motion) to OJAC; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties-in-interest; and after due deliberation thereon after notice and hearing as appropriate under the circumstances; and good and sufficient cause appearing therefor:

THE COURT HEREBY FINDS THAT:

Jurisdiction, Final Order, and Statutory Bases

A. This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue is proper in this District and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no just reason for delay in the implementation of this Order, and expressly directs entry of judgment as set forth herein.

C. The statutory predicates for the relief requested in the Motion are Bankruptcy Code sections 105(a), 363(b), (f), and (m), and 365 and Bankruptcy Rules 2002(a)(2), 6004(a), (b), (c), (e), (f), and (h), 6006(a), (c), and (d), 9007, and 9014.

D. This Court entered the Order (A) Approving Bidding Procedures for the Sale of Assets Free and Clear of All Liens, Claims, Interests and Encumbrances Pursuant to Section 363 of the Bankruptcy Code; (B) Approving Certain Bidding Protections, (C) Approving the Form

and Manner of Notice of the Sale and Assumption and Assignment of Executory Contracts and Unexpired Leases; and (C) Scheduling an Auction and Sale Hearing (the "Bid Procedures Order").

Notice

E. Actual written notice of the Sale Hearing³, the Auction, the Motion, the sale of the Assets, and a reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all known interested entities, including, but not limited to the following parties:

- (i) the Office of the United States Trustee for the District of Massachusetts;
- (ii) counsel to the Committee;
- (iii) all known secured lenders (the "Secured Lenders");
- (iv) all known lien-holders;
- (v) all known federal and state taxing authorities which have a reasonably known interest in the relief requested in the Motion;
- (vi) any party that has previously expressed an interest in the Assets;
- (vii) all other creditors and other persons entitled to notice under Bankruptcy Rule 2002(a);
- (viii) all current employees of the Debtors and former employees who were employed within the last twenty-four months;
- (ix) all current and former franchisees of the Debtors;
- (x) all parties referenced in Section 8.3(k) of the APA; and
- (xi) all entities who have filed with the Court a request for notice pursuant to Bankruptcy Rule 2002 (collectively, the "Notice Parties").

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

F. In accordance with the provisions of the Bid Procedures, the Debtors have served notice upon the counterparties to Designated Contracts: (i) that the Debtors seek to assume and assign certain Designated Contracts by the closing date of the Sale (the "Closing Date"); and (ii) of the relevant Cure Obligations (as defined in the APA). The service of such notice was good, sufficient, and appropriate under the circumstances and no further notice need be given in respect of establishing the Cure Obligations for the Designated Contracts. Each of the counterparties to the Designated Contracts (collectively, the "Contract Counterparties") have had an opportunity to object to the Cure Obligations set forth in the notice.

G. As evidenced by the affidavits of service previously filed with this Court, proper, timely, adequate, and sufficient notice of the Motion, the Auction, the Sale Hearing, and APA has been provided in accordance with Bankruptcy Code sections 102(1), 363, and 365 and Bankruptcy Rules 2002, 6004, 6006, and 9014. The Debtors also have complied with all obligations to provide notice of the Motion, the Auction, the Sale Hearing, and the APA required by the Bid Procedures Order. The notices described above were good, sufficient, and appropriate under the circumstances, and no other or further notice of the Motion, the Auction, the Sale Hearing, or the APA is required.

H. The disclosures made by the Debtors concerning the APA, the Auction and the Sale Hearing were good, complete, and adequate.

Good Faith of OJAC

I. OJAC is not an "insider" of any of the Debtors, as defined in Bankruptcy Code section 101(31).

J. OJAC is purchasing the Assets in good faith and is a good faith buyer within the meaning of Bankruptcy Code section 363(m). OJAC is, therefore, entitled to the full protections

of section 363(m) and has proceeded in good faith in all respects in connection with this proceeding in that, among other things: (i) OJAC complied with the provisions in the Bid Procedures Order; (ii) all payments to be made by OJAC and other agreements or arrangements entered into by OJAC in connection with the APA have been disclosed; (iii) OJAC has not violated Bankruptcy Code section 363(n) by any action or inaction; (iv) no common identity of directors or controlling stockholders exists between OJAC and any of the Debtors; and (v) the APA was negotiated at arms'-length and in good faith.

Highest and Best Offer

K. The Debtors conducted an auction process in accordance with, and have otherwise complied in all respects with, the Bid Procedures Order. The auction process set forth in the Bid Procedures Order and the Bid Procedures afforded a full and fair-opportunity for any entity to make a higher or otherwise better offer to purchase the Assets. The auction process was duly noticed and conducted in a non-collusive, fair, and good faith manner, and a reasonable opportunity has been given to any interested party to make a higher and better offer for the Assets.

L. The APA constitutes the highest and best offer for the Assets and will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative. The Debtors' determination that the APA constitutes the highest and best offer for the Assets constitutes a reasonable exercise of the Debtors' business judgment.

M. The APA represents a fair and reasonable offer to purchase the Assets under the circumstances of these chapter 11 cases. No other entity or group of entities has offered to purchase the Assets for greater economic value to the Debtors' estates than OJAC.

N. Approval of the Motion and the APA and the consummation of the transactions

contemplated thereby is in the best interests of the Debtors, their creditors, their estates, and all other parties-in-interest.

O. The Debtors have demonstrated compelling circumstances and a good and sufficient business purpose and justification for the Sale.

No Fraudulent Transfer

P. The consideration provided by OJAC pursuant to the APA is fair and adequate and constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, and the District of Columbia.

Q. OJAC is not a mere continuation of the Debtors or their estates, and there is no continuity between OJAC and the Debtors. OJAC is not holding itself out to the public as a continuation of the Debtors. OJAC is not a successor to the Debtors or their estates, and the transactions contemplated by the APA do not amount to a consolidation, merger, or de facto merger of OJAC and the Debtors. Except to the extent set forth in the APA, OJAC is not liable as a successor under any theory of successor liability for Liens, Claims, and interests that encumber or relate to the Assets.

Validity of Transfer.

R. The Debtors have full corporate power and authority to execute and deliver the APA and all other documents contemplated thereby, and no further consents or approvals are required for the Debtors to consummate the transactions contemplated by the APA, except as otherwise set forth in the APA.

S. The transfer of each of the Assets to OJAC will be, as of the Closing Date, a legal, valid, and effective transfer of such assets, and each such transfer vests or will vest OJAC with

all right, title, and interest of the Debtors to the Assets free and clear of all Liens, Claims, and interests accruing, arising, or relating thereto any time prior to the Closing Date, except for any Designated Contracts (as defined in APA) under the APA.

Satisfaction of Section 363(f)

T. OJAC would not have entered into the APA and would not consummate the transactions contemplated thereby if the sale of the Assets to OJAC, and the assumption, assignment, and sale of the Designated Contracts to OJAC, were not free and clear of all Liens, Claims, and interests of any kind or nature whatsoever (except Designated Contracts) including, but not limited to, (i) any employment or labor agreements (except Designated Contracts related to the Debtors' location in San Diego, California); (ii) any pension, welfare, compensation, or other employee benefit plans, agreements, practices, and programs, including, without limitation, any pension plan of the Debtors; (iii) any other employee, worker's compensation, occupational disease, or unemployment or temporary disability related Claim, including without limitation Claims that might otherwise arise under or pursuant to (a) the Employee Retirement, Income, Security Act of 1974, as amended, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Worker Adjustment and Retraining Act of 1988, (g) the Age Discrimination and Employee Act of 1967, and (h) the Consolidated Omnibus Budget Reconciliation Act of 1986; (iv) environmental Claims or Liens arising from conditions first existing on or prior to the Closing (including, without limitation, the presence of hazardous toxic, polluting, or contaminating substances or waste) that may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* or similar state statute, (v) any bulk sales or similar law; and (vi) any

tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended.

U. The Debtors may sell the Assets free and clear of all Liens, Claims, and interests against the Debtors, their estates, or any of the Assets (except for Designated Contracts) because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. The Secured Lenders have expressly consented to the sale of the Assets as and to the extent provided in this Order, free and clear of all Liens, Claims, and interests against the Debtors, their estates, or any of the Assets held by, maintained by or otherwise in favor of the Secured Lenders, and the Secured Lenders waive all claims and objections that could be raised now or in the future with respect to the transactions set forth in the APA. Those holders of Liens, Claims, and interests against the Debtors, their estates, or any of the Assets who did not object, or who withdrew their objections, to the APA or the Motion are deemed to have consented thereto pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of such Liens, Claims, and interests who did object fall within one or more of the other subsections of section 363(f) and are adequately protected by having their Liens, Claims, and interests, if any, in each instance against the Debtors, their estates, or any of the Assets, attach to the net cash proceeds of the Sale attributable to the Assets in which such creditor alleges an interest, in the same order of priority, with the same validity, force, and effect that such creditor had prior to the transactions, and subject to any claims and defenses the Debtors and their estates may possess with respect thereto.

V. The transfer of the Assets to OJAC free and clear of all Liens, Claims, and interests, if any, will not result in any undue burden or prejudice to any holders of any Liens, Claims, and interests, if any, as all such Liens, Claims, and interests of any kind or nature

whatsoever shall attach, except as otherwise provided in this Order, to the net proceeds of the sale of the Assets received by the Debtors in the order of their priority, with the same validity, force and effect which they now have as against the Assets and subject to any claims and defenses the Debtors or other parties may possess with respect thereto and subject to the Carve Outs described in paragraph 26 below. All persons having Liens, Claims, and interests of any kind or nature whatsoever against or in any of the Debtors or the Assets shall be forever barred, estopped and permanently enjoined from pursuing or asserting such Liens, Claims, and interests, if any, against OJAC, any of their assets, property, successors or assigns, or the Assets.

Assumption and Assignment of Designated Contracts

W. The assumption and assignment of the Designated Contracts pursuant to the terms of this Order is integral to the APA, is in the best interests of the Debtors and their estates, creditors, and other parties in interest, and represents a reasonable exercise of the Debtors' business judgment.

X. The Debtors properly served each Counterparty with notice of their Cure Obligation either by way of the Notice of Proposed Assumption and Assignment of Executory Contracts (the "First Cure Notice") or the Supplemental Notice of Proposed Assumption and Assignment of Executory Contracts (the "Second Cure Notice" and together with the First Cure Notice, the "Cure Schedules"). After being served with the Cure Schedules, the following lease Counterparties filed an objection to the assumption and assignment of their lease contract or to the sale, with all such objections being either resolved or overruled as noted in Paragraph 16 below:

(i) D.C. One Associates filed a Limited Objection to an Order Authorizing the Assumption and Assignment of Certain Executory Contracts;

(ii) Presidential Plaza, L.P. filed a Limited Objection to Adequate Assurance of Future

Performance Pursuant to Order (I) Approving Bidding Procedures for the Sale of Assets Free and Clear of All Liens, Claims, Interests and Encumbrances Pursuant to Section 363 of the Bankruptcy Code, (II) Approving Certain Bidding Protections, (III) Approving the Form and Manner of Notice of the Sale and Assumption and Assignment of Executory Contracts and Unexpired Leases and (IV) Scheduling an Auction and Sale Hearing;

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

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

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

Z. On or before the Closing Date, for all Designated Contracts assumed and assigned to OJAC, the Buyer shall have paid the Cure Obligations or revised Cure Obligation, where applicable. OJAC has also provided adequate assurance of its future performance under such Designated Contracts within the meaning of Bankruptcy Code sections 365(b)(1)(C) and

365(f)(2)(B).

Compelling Circumstances for Immediate Sale

AA. To maximize the value of the Assets and preserve the viability of the business to which the Assets relate, it is essential that the closing of the Sale occur within the time constraints set forth in the APA. Time is of the essence in consummating the transactions set forth in the APA.

BB. Given all of the circumstances of these chapter 11 cases and the adequacy and fair value of the purchase price under the APA, the transactions constitute a reasonable exercise of the Debtors' business judgment and should be approved.

CC. The consummation of the Sale is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, Bankruptcy Code sections 105(a), 363(b), 363(f), 363(m), 365(b) and 365(f), and all of the applicable requirements of such sections have been complied with in respect of the transactions.

AND THE COURT HEREBY ORDERS THAT:

General Provisions

1. The relief requested in the Motion is GRANTED. The transactions contemplated by the Motion and the APA are approved as set forth in this Order.
2. This Court's findings of fact and conclusions of law in the Bid Procedures Order are incorporated herein by reference.
3. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled as announced to this Court at the Sale Hearing or by stipulation filed with this Court or as otherwise provided in this Order, and all reservations of rights included therein, are hereby overruled on the merits.

Approval of Purchase Agreement

4. The APA and all other ancillary documents, and all of the terms and conditions thereof, are hereby approved.

5. Pursuant to section 363(b) and (f) of the Bankruptcy Code, the Debtors are authorized, empowered and ordered to take any and all actions necessary or appropriate to (a) consummate the Sale pursuant to and in accordance with the terms and conditions of the APA, (b) close the Sale as contemplated in the APA and this Order, and (c) execute and deliver, perform under, consummate, implement, and close the APA, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the APA and the transactions contemplated thereby, including any other ancillary documents, or as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by the APA and such other ancillary documents.

6. This Order shall be binding in all respects upon the Debtors and their estates and creditors, all holders of equity interests in any Debtor, all holders of any Claim(s), whether known or unknown, against any Debtor, any holders of Liens, Claims, and interests against or on all or any portion of the Assets, including, but not limited to the Secured Lenders, all Contract Counterparties, OJAC and all successors and assigns of OJAC, and any trustees, examiners, responsible officers, estate representatives, or similar entities for any of the Debtors, if any, subsequently appointed in any of the Debtors' chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code of any of the Debtors' cases. This Order and the APA shall inure to the benefit of the Debtors, their estates and creditors, OJAC, and their respective successors and assigns.

Transfer of Assets

7. Pursuant to Bankruptcy Code sections 105(a), 363(b), 363(f), 365(b), and 365(f), the Debtors are authorized to transfer the Assets on the Closing Date, and OJAC is directed to pay the Purchase Price to the Debtors as provided in the APA. Except as otherwise provided in the APA, the Assets shall be transferred to OJAC "as is, where is" with all faults in accordance with the APA upon and as of the Closing Date and such transfer shall constitute a legal, valid, binding, and effective transfer of such Assets and, upon the Debtors' receipt of the Purchase Price, shall be free and clear of all Liens, Claims, and interests, except any Designated Contracts. Upon the closing of the Sale, OJAC shall take title to and possession of the Assets, subject only to any Designated Contracts.

8. All entities that are in possession of some or all of the Assets on the Closing Date are directed to surrender possession of such Assets to OJAC at the closing of the Sale. All entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtors to sell and transfer the Assets to OJAC in accordance with the terms of the APA and this Order.

9. Pursuant to section 363(f) of the Bankruptcy Code, the transfer of title to the Assets shall be free and clear of any and all Liens, Claims, and interests, except for Designated Contracts, including, but not limited to Liens, Claims, and interests held by, maintained by, or otherwise in favor of the Secured Lenders. Except to the extent set forth in the APA or otherwise agreed upon in writing between OJAC and a Contract Counterparty, OJAC is not and shall not be liable as a successor under any theory of successor liability for Liens, Claims, and interests that encumber or relate to the Assets. All Liens, Claims, and interests shall attach solely

to the proceeds of the Sale with the same validity, priority, force, and effect that they now have as against the Assets, and subject to any claims and defenses the Debtors and their estates may possess with respect thereto.

10. On the Closing Date, each creditor is authorized and directed to execute such documents and take all other actions as may be necessary to release Liens, Claims, and interests (except for Designated Contracts) on the Assets, if any, as provided for herein, as such Liens, Claims, and interests may have been recorded or may otherwise exist.

11. This Order shall be effective as a determination that, as of the Closing Date, all Liens, Claims, and interests of any kind or nature whatsoever (except for Designated Contracts) existing as to the Assets prior to the Closing have been unconditionally released, discharged and terminated and that the conveyances described herein have been effected with such Liens, Claims, and interests automatically attaching to the proceeds of the Sale in the same priority and perfection that existed immediately prior to the Closing Date.

12. If any entity (a "Claim Holder") which has filed statements or other documents or agreements evidencing Liens, Claims, or interests on, or interests in, all or any portion of the Assets shall not have delivered to the Debtors prior to the Closing of the Sale, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of Liens and easements, and any other documents necessary or desirable to OJAC for the purpose of documenting the release of all Liens, Claims, and interests that such Claim Holder has or may assert with respect to all or any portion of the Assets, then (i) the Debtors are authorized to execute and file such statements, instruments, releases, and other documents on behalf of such Claim Holder with respect to the Assets and (ii) OJAC is authorized to file, register, or otherwise record a certified copy of this Order with the appropriate clerk(s) and/or

recorder(s), which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all Liens, Claims, and interests in the Assets as of the Closing Date of any kind or nature whatsoever, other than the Designated Contracts; provided, however, that, notwithstanding anything to the contrary contained herein, any Liens held by the Secured Lenders shall be released and the authorization set forth herein shall apply to the release of such Liens only upon receipt by GE CEF of the proceeds of the Sale.

13. Except as expressly permitted or otherwise specifically provided by the APA or this Order, all entities holding Liens, Claims, and interests in all or any portion of the Assets (other than Designated Contracts) arising under or out of, in connection with, or in any way relating to the Debtors, the Assets, the operation of the Debtors' business prior to the Closing Date, or the transfer of the Assets to OJAC, are hereby forever prohibited and permanently enjoined from asserting such Liens, Claims, and interests against OJAC, its successors or assigns, their property, or the Assets.

14. Except as otherwise provided by the Sale Documents or this Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, employees, former employees, tort claimants, litigants, trade and other creditors, holding Liens, Claims, and interests of any kind or nature whatsoever except for Designated Contracts against or in any of the Debtors or the Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Debtors, the Assets, the operation of the Assets prior to the Closing or the Sale, are forever barred, estopped and permanently enjoined from asserting, other than in this Court which shall retain exclusive jurisdiction to hear such controversies, against OJAC, its successors

or assigns, its property or the Assets, such persons' or entities' Liens, Claims, and interests.

15. This Order is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease, and each of the foregoing entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA.

Designated Contracts

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

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

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

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

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

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

at 10:30 am

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

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

17. The payment of the applicable Cure Cost (if any) with regard to the Designated Contracts shall (a) effect a cure of all defaults existing thereunder as of the Closing Date and (b) compensate for any actual pecuniary loss resulting from such default. The Debtors shall then have assumed the Designated Contracts and assigned them to OJAC and, pursuant to section 365(f) of the Bankruptcy Code, the assignment by the Debtors of the Designated Contracts shall not be a default there under. After the payment of the relevant Cure Cost, if any, neither the Debtors nor OJAC shall have any further liabilities to the Contract Counterparties other than OJAC's obligations under the Designated Contracts that accrue and become due and payable on or after the Closing Date except as otherwise agreed upon in writing between OJAC and a Contract Counterparty.

18. Nothing in this Order shall affect the rights of OJAC, until the Closing (as defined in the APA), in its sole discretion, to remove any executory contract or unexpired lease of the Debtors to or from the list of Designated Contracts.

19. The Debtors shall cooperate fully with and support OJAC in executing such applications and furnishing such documents as are necessary for OJAC to obtain all Liquor Licenses in accordance with the terms of the APA and Interim Management Agreement at no

cost to the Debtors. All applicable state alcoholic beverage control, law enforcement, and regulatory agencies shall not interrupt any of the Business (as defined in the APA) without first bringing the matter before this Court. Furthermore, the Business shall continue operating under all existing alcoholic beverage and other licenses of the Debtors until such licenses have been changed to OJAC's name, including, but not limited to state alcoholic beverage licenses, state food service licenses, local occupational licenses, and any other licenses needed to operate the Business with no interruption of the Business.

20. Any provisions in any Designated Contracts that prohibit or condition the assignment of such Designated Contracts or allow the party to such Designated Contracts to terminate, recapture, impose any penalty, condition on renewal or extension, or modify any term or condition upon the assignment of such Designated Contract constitute unenforceable anti-assignment provisions that are of no force and effect in connection with the Debtors' assumption and assignment of the Designated Contracts to OJAC. Each Contract Counterparty who failed to file an objection to the proposed assignment of its contract with the Debtors (a "Contract Assignment Objection"), or by virtue of electing to withdraw such objection, is deemed to consent to the assumption by the Debtors and assignment to OJAC of their Designated Contract. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to OJAC of the Designated Contracts have been satisfied. Upon the closing of the Sale, in accordance with sections 363 and 365 of the Bankruptcy Code, OJAC shall be fully and irrevocably vested with all right, title, and interest of the Debtors under the Designated Contracts, which will remain in full force and effect. In addition, all Contract Counterparties to the Designated Contracts are (a) forever barred from asserting any additional cure or other amounts with respect to the Designated Contracts, and the

Debtors and OJAC are entitled to rely solely upon the Cure Obligations set forth on Cure Schedule or Revised Cure Schedule, where applicable; (b) deemed to have consented to the assumption and assignment; and (c) forever barred and estopped from asserting or claiming against the Debtors or OJAC that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied under such Designated Contracts, or that there is any objection or defense to the assumption and assignment of such Designated Contracts.

21. Upon the closing of the Sale and payment of the relevant Cure Obligations related to the Designated Contracts, if any, OJAC shall be deemed to be substituted for the Debtors as a party to the applicable Designated Contracts, and the Debtors shall be relieved, pursuant to section 365(k) of the Bankruptcy Code, from any further liability under the Designated Contracts.

22. Upon the payment of the applicable Cure Obligations, if any, the Designated Contracts will remain in full force and effect, and no default shall exist under the Designated Contracts nor shall there exist any event or condition which, with the passage of time or giving of notice, or both, would constitute such a default.

23. OJAC has provided adequate assurance of future performance under the relevant Designated Contracts within the meaning of Bankruptcy Code sections 365(b)(1)(C) and 365(f)(2)(B).

24. There shall be no rent accelerations, assignment fees, increases, or any other fees charged to OJAC or the Debtors as a result of the assumption and assignment of the Designated Contracts.

25. Pursuant to Bankruptcy Code sections 105(a), 363, and 365, all Contract Counterparties are forever barred and permanently enjoined from raising or asserting against the

Debtors or OJAC any assignment fee, default, breach, claim for pecuniary loss, or condition to assignment arising under or related to the Designated Contracts existing as of the Closing Date or arising by reason of the Closing

Payment of Sale Proceeds

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

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

by the court
subject to approval of an
application,

~~_____~~
~~_____~~

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

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

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

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

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

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

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

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

Other Provisions

30. Except for Designated Contracts or as otherwise expressly set forth in this Order or the APA, OJAC shall not have any liability or other obligation of the Debtors arising under or related to any of the Assets, except as otherwise agreed upon in writing between OJAC and a Contract Counterparty. Without limiting the generality of the foregoing, and except as otherwise specifically provided herein or in the APA, OJAC shall not be liable for any Claims against the Debtors or any of their predecessors or affiliates, and OJAC shall have no successor or vicarious liabilities of any kind or character, including, but not limited to, any theory of antitrust, environmental, successor or transferee liability, labor law, de facto merger, substantial continuity, the WARN Act and employee benefit and/or welfare plan(s) (including, without limitation (i) any employment or labor agreements (except Designated Contracts); (ii) any pension, welfare, compensation, or other employee benefit plans, agreements, practices, and programs, including, without limitation, any pension plan of the Debtors (iii) any other employee, workers’ compensation, occupational disease, or unemployment or temporary disability related Claim, including without limitation Claims that might otherwise arise under or pursuant to (a) the Employee Retirement, Income, Security Act of 1974, as amended, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Worker Adjustment and Retraining Act of 1988, (g) the Age Discrimination and Employee Act of 1967, and (h) the

Consolidated Omnibus Budget Reconciliation Act of 1986; (iv) environmental Claims or Liens arising from conditions first existing on or prior to the Closing (including, without limitation, the presence of hazardous toxic, polluting, or contaminating substances or waste) that may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq. or similar state statute, (v) any bulk sales or similar law; and (vi) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether asserted or unasserted, fixed or contingent, or liquidated or unliquidated with respect to the Debtors or any obligations of the Debtors arising prior to the Closing Date. Notwithstanding anything to the contrary herein, nothing in this Sale Order shall impair, modify or release any rights, claims or recovery any Counterparty to a Designated Contract may be entitled to under policies of insurance previously obtained and maintained by Debtor under the terms of the Designated Contracts, naming the Counterparty as an additional insured, with respect to claims, losses, costs, damages, and expenses resulting from acts or occurrences prior to the Closing but not asserted until thereafter.

31. OJAC shall not be liable for any Liens, Claims, and interests of any kind or nature whatsoever in or against the Debtors or any of their predecessors or affiliates (except for Designated Contracts), and OJAC shall have no successor or vicarious liabilities of any kind or character including, but not limited to (except as agreed to in the Sale Documents), liabilities on account of any tax arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of any of the Assets prior to the closing of the Sale, and OJAC shall be exonerated of any successor liability to any state or federal taxing authority with regard to any tax, including sales tax.

32. OJAC has given substantial consideration under the Sale Documents for the benefit of Claim Holders. The consideration given by OJAC shall constitute valid and valuable consideration for the releases of any potential Claims of successor liability of OJAC, releases which the Court holds shall be deemed to have been given in favor of OJAC by all Claim Holders against the Debtors or their respective assets, except as set forth below.

33. Under no circumstances shall OJAC be deemed a successor of or to the Debtors for any Liens, Claims, and interests of any kind or nature whatsoever against or in the Debtors or Assets. The sale, transfer, assignment and delivery of the Assets shall not be subject to any Liens, Claims, and interests of any kind or nature whatsoever (except for Designated Contracts), which shall remain with, and continue to be obligations of, the Debtors. All Claim Holders asserting Liens, Claims, and interests of any kind or nature whatsoever against or in the Debtors or the Assets (including, but not limited to, the Debtors and/or their respective successors, including any trustees thereof, creditors, employees, unions, former employees and shareholders, administrative agencies, governmental units, secretaries of state, federal, state and local officials, maintaining any authority relating to any environmental, health and safety laws, and their respective successors or assigns) shall be, and hereby are, forever barred, estopped and permanently enjoined from asserting, prosecuting or otherwise pursuing such Liens, Claims, and interests of any kind or nature whatsoever against OJAC, its property, its successors and assigns, or the Assets, as an alleged successor or otherwise, with respect to any Liens, Claims, and interests of any kind or nature whatsoever such person or entity had, has, or may have against or in the Debtors, the Debtors' estates, their respective officers, directors, shareholders or the Assets (except for Designated Contracts). Following the Closing, no Claim Holder shall interfere with OJAC's title to or use and enjoyment of the Assets based on or related to such

Lien, Claim or interest, or any actions that the Debtors may take in their Chapter 11 case.

34. The transactions contemplated by the APA are undertaken by OJAC without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the transactions contemplated by the APA (including the assumption and assignment of the Designated Contracts), unless such authorization and consummation of such transactions are duly stayed pending such appeal. OJAC is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code.

35. Nothing contained in any plan of reorganization or liquidation, or order of any type or kind entered in (a) these chapter 11 cases, (b) any subsequent chapter 7 case into which any such chapter 11 cases may be converted, or (c) any related proceeding subsequent to entry of this Order, shall conflict with or derogate from the ~~provisions of the APA~~ or the terms of this Order. ✓

36. Pursuant to Bankruptcy Rules 7062, 9014, 6004(h), and 6006(d), this Order shall be effective immediately upon entry and the Debtors and OJAC are authorized, but are not required, to close the Sale immediately upon entry of this Order, notwithstanding the fourteen-day stay periods in Bankruptcy Rules 6004(h) and 6006(d), which are expressly waived.

37. Except for the fees and expenses of Bellmark (for which the Debtors are solely responsible), the Debtors do not have any obligation to pay any fees, commissions or other similar compensation to any broker, finder, investment banker, financial advisor or other similar person in connection with the Sale.

38. The failure specifically to include any particular provision of the APA in this

Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the APA be authorized and approved in its entirety.

39. The APA and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto and in accordance with the terms thereof, without further order of this Court; provided, that any such modification, amendment, or supplement does not have a material adverse effect on the Debtors' estates.

40. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to any of the transactions under the APA.

41. The transactions authorized herein shall be of full force and effect, regardless of any Debtor's lack of good standing in any, jurisdiction in which such Debtor is formed or authorized to transact business.

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

43. To the extent that this Order is inconsistent with any prior order or pleading with respect to the Motion in these chapter 11 cases, the terms of this Order shall govern.

44. To the extent there are any inconsistencies between the terms of this Order and the APA (including all ancillary documents executed in connection therewith), the terms of this Order shall govern.

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

46. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby lifted with respect to the Debtors to the extent necessary, without further order of this Court, to (i) allow OJAC to deliver any notice provided for in the APA, and (ii) allow OJAC to take any

and all actions permitted under the APA in accordance with the terms and conditions thereof.

47. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the findings of fact set forth herein constitute conclusions of law, they are adopted as such. To the extent any of the conclusions of law set forth herein constitute findings of fact, they are adopted as such.

48. This Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order and the APA, all amendments thereto and any waivers and consents there under and each of the agreements executed in connection therewith to which the Debtors are a party or which has been assigned by the Debtors to OJAC, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale. To the extent necessary to recognize and give effect to this Order in Canada, this Court hereby *respectfully* requests ~~for~~ and appreciates the previous aid and assistance of the courts in Canada, and specifically the Ontario Superior Court of Justice where the Debtors have obtained orders granting recognition in that court of orders entered by this Court.

Dated: January 27, 2012

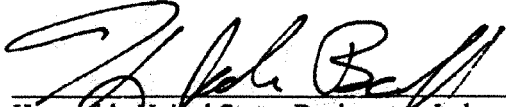

Honorable United States Bankruptcy Judge
Henry J. Boroff

EXHIBIT A
REVISED CURE SCHEDULE

EXHIBIT B

PARAGRAPH 25(b) EXPENSES

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

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

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

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

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

FOOTNOTES:

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

CONFIDENTIAL

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

Sources:		Uses:	
Proceeds from 363 Transaction	19,100,193	Post-Petition AP	437,214 (1)
Est. Cash on Hand	860,822	Employee Insurance Claims	75,000 (2)
Est. Cash Collections for AR	378,873	Canadian Severance Claims	60,000 (2)
<i>*Due from Credit Card Companies (avg 3 days) and Hotels</i>		Vacation Accrual (US&Canada)	64,970 (2)
		Accrued Wages (US&Canada)	288,828 (2)
		503(b)(9) Claims on Pre-Petition AP	424,186 (3)
		PACA Claims	134,000 (4)
		Other	248,420
		Total Administrative/Priority Payments (Paragraph 26(b))	1,732,618
		US Trustee Payments (Paragraph 26(f))	124,000 (5)
		Carve out for Unpaid Professional Fees (Paragraph 26(d/e/f))	1,190,916 (6)
		Carve Out for Liquidation Agent (Paragraph 26(h))	30,000
		Carve Out for Debtors Professional (Post Closing) (Paragraph 26(e))	100,000
		Maximum SPA Carve Out (Unsecureds) (Paragraph 26(a))	500,000
		Total Carve Outs of GE Proceeds	1,944,916
		Est. GE Payment on Pre-Petition Secured Debt	16,662,353
Total Sources	20,339,887	Total Uses	20,339,887

FOOTNOTES:
 (1) Estimated for the week ending 2/3 in the final cash collateral order and excludes sales tax, landlords, professional fees
 (2) Estimated amounts for Employees as part of the Stalking Horse bidders APA
 (3) Have unsigned stipulation agreements outstanding w/ Edward Don, US Foods, Gordon Foods for \$408,677.23
 (4) Have unsigned stipulation agreements outstanding w/ Delmar's and US Foods for \$83,192.72
 (5) Estimated 2 quarters of payments at \$62,000/quarter
 (6) Includes maximum payment to UCC for unpaid professional fees and based on accrued fee schedule less retainers that can be applied

Schedule C

Canadian Assigned Leases

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

Schedule D

Claims to be deleted and expunged from title to Real Property

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST

Proceeding commenced at Toronto

CONFIRMATION
APPROVAL AND VESTING ORDER

Heenan Blaikie LLP
Bay Adelaide Centre
333 Bay Street, Suite 2900
P.O. Box 2900
Toronto, Ontario M5H 2T4

Kenneth D. Kraft LSUC #31919P
John Salmas LSUC #42336B
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Fax: 416-360-8425/416-360-8425/1-866-895-2095

**Lawyers for Massachusetts Elephant & Castle
Group, Inc.**

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

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

JAN 30-12

January 30, 2012

*K.D. Kraft - for Applicants
J. Wisley for BDO - for other Officers
T. Drummond 212 Ky N. W. Holdings.
H. Perreault for GE.*

B3 Phone

*K. Lang - Ch Counsel to Original for
B. Cohen US Counsel to Original for*

J. Lochrane US Counsel to Applicants

J. Harty US Counsel -

W. Golding -> for D. Dobbin.

D. Dobbin

P. B. Long - Counsel to Col. Castle

*The note was brought to other
members of the Sale Approval*

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST

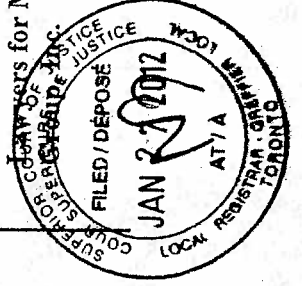
Proceeding commenced at Toronto

MOTION RECORD
(RETURNABLE JANUARY 30, 2012)

Heenan Blaikie LLP
Bay Adelaide Centre
333 Bay Street, Suite 2900
P.O. Box 2900
Toronto, Ontario M5H 2T4

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John Salmas LSUC #42336B
Sara-Ann Wilson LSUC #56016C
Tel: 416-643-6822/416-360-3570/416-777-4171
Fax: 416-360-8425/416-360-8425/1-866-895-2095

Lawyers for Massachusetts Elephant & Castle



Order ~~was~~ granted by Judge Baroff
of the US BC - Dist of Mass which Order
was entered on June 27, 2012. The
motion also requests that the Court
provide authority to the parties to
enter into certain agreements and
to also provide certain declarations
that affect relate to the proposed
transactions.

The motion was supported by counsel
to be.

Counsel to the proposed purchaser
also supported the motion, however
the support of the proposed purchaser
did not factor into my determination of
the motion.

No party made submissions to oppose
the requested relief.

Having reviewed the record
and hearing submissions, I am
satisfied that the requested
relief should be granted.

Previous orders of the court have
recognized the US as the
"center of main interest" in the
matter. The Sales Program
has been approved in the US ~~act~~
as has the sale itself. In
my view it is appropriate
to recognize and give full
effect to the US Order and
to grant the ancillary relief
requested by the Applicants.
The stated
Order signed in the form
presented

A. H. [Signature]

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

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

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

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

**JUSTICE MORAWETZ'S ENDORSEMENT
January 30, 2012
(Unofficial Transcription)**

K.D. Kraft for Applicants
J. Wigley for BDO – Information Officer
T. Dunn for 212 King St. W. Holdings
H. Meredith for GE

By Phone:

K. Lenz – Canadian Counsel to Original Joes
B. Cohen – US Counsel to Original Joes
J. Loughnane – US Counsel to Applicants
J. Hertz – US Trustee
M. Goldberg – for D. Dobbin
D. Dobbin
P. Bilowz – Counsel to Creditors Committee

The matter was brought to obtain recognition of the Sale Approval Order granted by Judge Boroff of the United States Bankruptcy Court – District of Massachusetts which Order was entered on January 27, 2012. The motion also requests that this Court provide

authorization to the parties to enter into certain agreements and to also provide certain declarations that also relate to the proposed transaction.

The motion was supported by counsel to GE.

Counsel to the proposed purchaser also supported the motion, however the support of the proposed purchaser did not factor into my determination of this motion.

No party made submissions to oppose the requested relief.

Having reviewed the material and hearing submissions, I am satisfied that the requested relief should be granted.

Previous orders of this Court have recognized the US as the “centre of main interest” in this matter. The Sales Process has been approved in US as has the sale itself. In my view it is appropriate to recognize and give full effect to the US order and to grant the ancillary relief requested by the Applicants.

Motion granted.

Order is signed in the form presented.

“G.B. Morawetz”

APPENDIX D to the Third Report of the Information Officer

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

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

**MOTION FOR AN ORDER PURSUANT TO SECTION 1121(d) OF THE
BANKRUPTCY CODE *FURTHER* EXTENDING THE
EXCLUSIVITY PERIOD DURING WHICH ONLY THE DEBTORS
MAY FILE A PLAN AND SOLICIT ACCEPTANCES THEREOF
(Request for Expedited Determination)**

The above-captioned Debtors (the “Debtors”), by and through counsel, file this Motion (the “Motion”) for an order pursuant to Section 1121(d) of the Bankruptcy Code (as defined below) *further* extending exclusive periods during which the Debtors may file a plan and solicit acceptances thereof. In support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicates for the relief requested herein are set forth in the introductory paragraph.

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

BACKGROUND

2. On June 28, 2011 (the “Petition Date”), each of the Debtors filed a voluntary petition with this Court for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Massachusetts (the “Court”).

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

4. On July 12, 2011, the Office of the United States Trustee appointed an Official Committee of Unsecured Creditors (the “Committee”) in this case, consisting of three (3) of the Debtors’ largest unsecured creditors.

5. The Debtors operated and franchised authentic, full-service British style restaurant pubs in the United States and Canada. There were nine debtor owned locations and one franchised location in the United States, in addition to nine debtor-owned locations and one franchised location in Canada.² Each restaurant employed approximately 40 people, 40% of whom work part-time. The Debtors’ corporate offices were located in Boston.³

6. The events leading up to the Petition Date and the facts and circumstances supporting the relief requested herein are set forth in the Declaration of Keith A. Radford in Support of First Day Motions (the “Radford Declaration”) and Declaration of David Dobbin in Support of First Day Motions (the “Dobbin Declaration”) that were filed previously and are herewith incorporated herein by reference.

² Since the Petition Date, the franchised location in Canada has ceased operating.

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

7. On October 21, 2011, the Debtors filed their Motion for an Order Pursuant to Section 1121(d) of the Bankruptcy Code Extending the Exclusivity Period During Which Only the Debtors May File a Plan and Solicit Acceptances Thereof (the "First Motion").

8. On October 24, 2012, the Court granted the First Motion, pursuant to which the Debtors' exclusive period during which only they may propose and file a plan was continued to January 24, 2012, and their current exclusive period during which they may solicit acceptances of such plan was continued to February 12, 2012.

9. On January 20, 2012, the Debtors filed their Motion for an Order Pursuant to Section 1121(d) of the Bankruptcy Code Further Extending the Exclusivity Period During Which Only the Debtors May File a Plan and Solicit Acceptances Thereof (the "Second Motion").

10. On January 24, 2012, the Court granted the Second Motion, pursuant to which the Debtors' exclusive period during which only they may propose and file a plan was continued to April 23, 2012, and their current exclusive period during which they may solicit acceptances of such plan was continued to May 12, 2012.

Relief Requested

11. The Debtors now request entry of an order further extending the exclusivity period to file a plan for sixty (60) days through and including June 22, 2012 and extending this exclusive period to solicit acceptances thereto for sixty (60) days through and including July 11, 2012, 2012, without prejudice to the rights of the Debtors to seek further extensions of this period.

Basis For Relief Requested

12. Section 1121(b) of the Bankruptcy Code provides for an initial period of 120 days after the commencement of a chapter 11 case during which a debtor has the exclusive right to

propose and file a chapter 11 plan (the "Plan Period"). See 11 U.S.C. § 1121(b). Section 1121(c)(3) of the Bankruptcy Code provides that, if a debtor files a plan within the 120-day Plan Period, it has a period of 180 days after the commencement of the case to obtain acceptance of such plan, during which time competing plans may not be filed (the "Solicitation Period," and together with the Plan Period, the "Exclusive Periods"). See 11 U.S.C. § 1121(c)(3). Pursuant to section 1121(d) of the Bankruptcy Code, these Exclusive Periods provided for in the Bankruptcy Code may be extended for cause if they prove to be an unrealistic time frame for proposal and solicitation of a plan. See 11 U.S.C. § 1121(d).⁴

13. Although the Bankruptcy Code does not define the term "cause," the legislative history indicates it is intended to be a flexible standard to balance the competing interests of a debtor and its creditors. See H.R. Rep. No. 95-595, at 231-32 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 6191 (noting that Congress intended to give bankruptcy courts flexibility to protect a debtor's interests by allowing an unimpeded opportunity to negotiate settlement of debts without interference from other parties in interest).

14. In determining whether cause exists to extend the Exclusive Periods, a court may consider a variety of factors to assess the totality of circumstances in each case. See In re Dow Corning Corp., 208 B.R. 661, 664, 670 (Bankr. E.D. Mich. 1997); In re Express One Intl, Inc., 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996); In re McLean Indus., Inc., 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987) (identifying the factors used by courts to determine whether cause exists to extend exclusivity). Those factors include, without limitation:

(a) the size and complexity of the debtor's case;

⁴ Pursuant to section 1121(d)(1) of the Bankruptcy Code (as amended by the Bankruptcy Abuse Protection and Consumer Protection Act), the Plan Period may not be extended beyond a date that is 18 months after the commencement of a chapter 11 case. See 11 U.S.C. § 1121(d)(1). Pursuant to section 1121(d)(2), the Solicitation Period may not be extended beyond a date that is 20 months after the commencement of a chapter 11 case. See 11 U.S.C. § 1121(d)(2).

- (b) the existence of good-faith progress towards reorganization;
- (c) a finding that the debtor is not seeking to extend exclusivity to pressure creditors to accede to the debtor's reorganization demands;
- (d) existence of an unresolved contingency; and
- (e) the fact that the debtor is paying its bills as they come due.

See, e.g., McLean Indus., 87 B.R. at 834 (citations omitted); accord In re Express One Intl, 194 B.R. at 100 (identifying four of the five above-quoted factors, among others, as relevant in determining whether "cause" exists to extend exclusivity); In re United Press Int'l, Inc., 60 B.R. 265, 269 (Bankr. D.D.C. 1986) (holding that the debtor showed "cause" to extend its exclusivity period based upon certain of above-quoted factors). As illustrated by the facts set forth below, application of the aforementioned standard to the facts of this case demonstrates sufficient "cause" to grant the Debtors' requested extension of the Exclusive Periods.

Cause Exists to Extend the Debtors' Exclusive Periods

15. On November 18, 2011, the Debtor (together, other than Debtor Repechage Investments Limited ("RIL"), the "Non-RIL Debtors") filed their Motion for an Order (A) Authorizing and Approving Bid Procedures; (B) Scheduling a Hearing to Consider the Sale of Substantially All of the Debtors' Assets; (C) Prescribing the Manner and Notice of the Sale Hearing; (D) Authorizing the Sale of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances and Other Interests; (E) Authorizing the Assumption and Assignment of Certain Executory Contracts; and (F) Granting Related Relief (the "Sale Motion").

16. Pursuant to the Sale Motion, the Non-RIL Debtors sought approval of a competitive bidding process through which to sell substantially all of their assets to Original Joe's Acquisition Corporation ("OJAC").

17. After an opportunity for competitive bidding at a scheduled auction, the Court approved the Sale Motion, with OJAC purchasing the Non-RIL assets. On February 3, 2012, the sale closed.

18. Pursuant to the terms of the sale, OJAC agreed to pay the purchase price which amount was to be paid to GE Canada Equipment Financing, G.P. ("GE CEF") except for certain carved out amounts ("Carve Outs") that were negotiated as part of the final cash collateral order entered on December 21, 2012 and restated later in the Sale Approval Order entered on January 27, 2012.

19. Because there is no other money or estate assets available except for the Carve Outs with respect to the Non-RIL Debtors, no creditor or other party in interest will be prejudiced by the Non-RIL Debtors obtaining this extension. Furthermore, the Non-RIL Debtors have already prepared and circulated among various key parties a proposed plan and disclosure statement. Once comments have been received from these parties, the Non-RIL Debtors can finalize and thereafter file these documents with the Court.

20. As for Debtor RIL, the controlling insider of RIL and RIL's main creditors have been engaged in discussions on how best to maximize the value of this company. These discussions have been fruitful and recently resulted in the entry of non-disclosure agreements revolving around the sharing of financial information. Debtor RIL expects these discussions to continue which will aid in the formulation of a framework for exiting its bankruptcy case. To help preserve the status quo and to encourage such discussions to continue, the preservation of the exclusivity period is in order.

21. For the foregoing reasons, the Non-RIL Debtors and Debtor RIL believe there is cause for extending the exclusivity period. The Non-RIL Debtors and Debtor RIL further reserve

the right to seek a further extension of their Exclusivity Periods.

22. Nothing in this Motion is intended to preclude any party in interest from filing a motion to terminate the Exclusivity Periods nor the Debtors' right to contest such a motion.

NOTICE

23. Notice of the Motion will be given to (i) the Office of the United States Trustee for the District of Massachusetts; (ii) counsel to secured lenders; (iii) counsel to the Committee; (v) any person requesting notice pursuant to Bankruptcy Rule 2002. The Debtors submits that in light of the nature of the relief requested such notice is appropriate under the circumstances of this case and that no further notice is required.

NO PRIOR REQUEST

24. No previous motion for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter an Order extending the exclusive periods during which the Debtors may file a plan and solicit acceptances thereof and to grant such other relief as the Court deems just and necessary.

Dated: April 23, 2012

ECKERT SEAMANS CHERIN & MELLOTT, LLC

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COUNSEL TO THE DEBTORS

APPENDIX E to the Third Report
of the Information Officer

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

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

**UNITED STATES TRUSTEE'S MOTION TO
CONVERT DEBTORS' CHAPTER 11 CASES TO CHAPTER 7**

[Request for Expedited Hearing]

William K. Harrington, the United States Trustee for Region 1 (the "U.S. Trustee") hereby moves this Court to convert the Chapter 11 cases of all of the debtors (identified in Footnote 1 below, the "Debtors") to cases under Chapter 7 because:

- The Debtors, with the exception of Repechage Investments Limited ("RIL"), have sold substantially all of their assets and, upon information and belief, the Debtors are unlikely to submit any plan or plans of liquidation in a timely fashion;
- Upon information and belief, Debtors' counsel and the Debtors have experienced a breakdown of communications resulting in the potential withdrawal of Debtors' counsel; and
- Conversion of the Debtors' cases is in the best interests of the Debtors' estates and their creditors.

As set forth in the accompanying Motion for Expedited Hearing and Request to Limit Notice of the United States Trustee's Motion to Convert Debtors' Chapter 11 Cases to Chapter 7,

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

the U.S. Trustee seeks an expedited hearing on this motion, and also seeks to request to limit notice of this Motion and the related hearing as set forth therein. In support of this motion, the U.S. Trustee respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter under 28 U.S.C. 157 and 1334. This is a core proceeding under 28 U.S.C. 157(b)(2)(A). Venue is proper in this court under 28 U.S.C. 1408 and 1409. The statutory predicates for relief are 28 U.S.C. 586(a)(3) and 1930(a)(6), 11 U.S.C. 307 and 1112(b) and Fed. R. Bankr. P. 1017.

FACTS

2. On June 28, 2011 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

3. On July 12, 2011, the U.S. Trustee appointed an Official Committee of Unsecured Creditors in this case, consisting of three of the Debtors' largest unsecured creditors.

4. On or about February 3, 2012, the sale of substantially all assets of the Debtors other than RIL closed.

5. Following a hearing on April 25, 2012, the Debtors submitted a proposed agreed order to this Court extending exclusivity period for the Debtors to file a plan through and including June 22, 2012. The proposed order further provides that, if the Debtors (other than RIL) do not file a plan by June 22, 2012, then the bankruptcy cases of the Debtors other than RIL shall be automatically converted to cases under Chapter 7 without further notice or need for hearing.

6. In addition, the proposed agreed order provides that, if RIL does not file a plan on

or before May 23, 2012, or (ii) files a plan to which either or both of GE Canada Equipment Financing G.P. (“GE CEF”) and Fifth Street Finance Corp. (“Fifth Street”) do not consent in writing in their respective sole discretion as of the date such plan is filed, then, except to the extent GE CEF and Fifth Street have otherwise agreed in writing in their sole discretion, the exclusivity rights of RIL would be “adjusted” so as to permit either or both of GE CEF and Fifth Street to file a plan and solicit acceptances with respect to RIL at any time after May 24, 2012.

7. Upon information and belief, subsequent to the April 25, 2012 hearing, counsel for the Debtors and the Debtors have reached an impasse with regard to various matters affecting the Debtors’ estates. Upon information and belief, Debtors’ counsel intends to seek leave of this Court to withdraw due to a breakdown in relations.

8. Upon information and belief, because of this breakdown in relations, it appears unlikely that the Debtors will propose any plan or plans within a reasonable time. In addition, because any potential withdrawal will leave RIL without counsel, a conversion of RIL in addition to the remaining Debtors is appropriate at this time.

ARGUMENT

9. The above facts support a finding of “diminution of the estates and the absence of a reasonable likelihood of rehabilitation” and therefore “cause” to convert these cases pursuant to 11 U.S.C. §1112(b)(4)(A) and (B).

10. The interests of creditors and the estates would best be served by the immediate conversion of these cases for “cause” under 11 U.S.C. § 1112(b)(1). See United Sav. Ass’n of Texas v. Timbers of Inwood Forest Associates, Ltd., 808 F.2d 363, 371 (5th Cir. 1987) (en banc), aff’d 484 U.S. 365 (1988) (noting that “[i]n the case of most Chapter 11 debtors . . . a plan

of reorganization can be effectuated, if at all, within a matter of months, not years . . . The charge to the bankruptcy judge under §1112, then, is to evaluate each debtor's viability in light of the best interest of creditors and the estate . . ."). There is no longer any reorganization purpose to the Debtors' cases. *Fields Station, LLC v. Capitol Food Corp. of Fields Corner In re Capitol Food Corp. of Fields Corner*, 490 F.3d 21, 25 (1st Cir. 2007).

PRAYER

WHEREFORE, the United States Trustee respectfully requests that this Court enter an order or orders converting the Debtors' cases to Chapter 7, and granting all such other and further legal and equitable relief which may be just and proper.

Respectfully submitted,

WILLIAM K. HARRINGTON,

United States Trustee

By: /s/ Jennifer L. Hertz
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Dated: April 27, 2012

CERTIFICATE OF SERVICE

I certify that on April 27, 2012, true and correct copies of the foregoing motion were served by CM/ECF upon the individuals who filed notices of appearance in the Court's CM/ECF database, including the Debtors' counsel listed below. I further certify that true and correct copies of the motion were served in the form and manner indicated to the parties identified below.

Respectfully submitted,

WILLIAM K. HARRINGTON,

United States Trustee

By: /s/ Jennifer L. Hertz
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Dated: April 27, 2012

By ECF:

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(Members of Official Committee of Unsecured Creditors)

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

	:	Chapter 11	APPENDIX F to the Third
In re:	:		Report of the Information
	:	Case No. 11-16155 (HJB)	Officer
MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC., <i>et al.</i> , ¹	:	Jointly Administered	
	:		
Debtors.	:		
	:		

MOTION FOR EXPEDITED DETERMINATION

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE

Pursuant to MLBR 9013-1(g), Eckert, Seamans, Cherin & Mellott, LLC (“ESCM”) and Heenan Blaikie LLP (“Heenan Blaikie”) hereby submit this motion (the “Motion for Expedited Determination”) to consider on an expedited basis the Joint Motion (“Motion to Withdraw”) to Withdraw as Counsel to the Debtors which is filed concurrently herewith. In further support of the Motion for Expedited Determination, ESCM and Heenan Blaikie respectfully state as follows:

1. On June 28, 2011 (the “Petition Date”), each of the Debtors filed a voluntary petition with this Court for relief under chapter 11 of the Bankruptcy Code.
2. The Debtors continue to operate their businesses and to manage their properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

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

3. The Movants represented the Debtors throughout their Chapter 11 cases as U.S. counsel and Canadian counsel, respectively.

4. Due to irreconcilable issues that have arisen in the attorney-client relationship, the Movants have filed the Motion to Withdraw.

5. The Movants request that the Motion to Withdraw be heard on an expedited basis due to pending matters that require substitute counsel's prompt attention.

6. Among other things, on April 23, 2012, the Court held a hearing on the Debtors' Motion (the "Motion to Extend Exclusivity") Pursuant to Section 1121(d) to Further Extend the Exclusivity Period During Which Only the Debtors May File a Plan and Solicit Acceptances Thereof. At the hearing, the Court ordered that the exclusivity period for the Debtors would be extended, with the exclusivity period applicable to Debtor RIL to expire on May 23, 2012 with respect to GE Canada Equipment Financing G.P. and Fifth Street Finance Corp. The Court has also scheduled a status conference for these cases on May 23, 2012 at 2 pm.

7. Furthermore, on April 3, 2012, the Debtors filed the First through Fourth Omnibus Objections to Claims (see D.I. ## 397 to 400). A hearing is scheduled on these claims objections on May 16, 2012, and the Debtors have received both informal and formal responses from certain creditors. These claims objections are in need of review and or a continuance of the hearing would be in order. Similarly, the Court has scheduled hearings for May 16 for certain applications for compensation

WHEREFORE, the Movants respectfully request that this Court approve the relief sought in the Motion for Expedited Determination and grant such other and further relief as this Court deems just and proper.

Dated: April 27, 2012

ECKERT, SEAMANS, CHERIN &
MELLOTT, LLC

/s/ John G. Loughnane

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COUNSEL TO THE DEBTORS

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

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

**JOINT MOTION OF ECKERT, SEAMANS, CHERIN & MELLOTT, LLC AND
HEENAN BLAIKIE LLP TO WITHDRAW AS COUNSEL TO THE DEBTORS**
(Request for Expedited Determination)

Eckert, Seamans, Cherin & Mellott, LLC (“ESCM”) and Heenan Blaikie LLP (“Heenan Blaikie”) together file this Joint Motion (“Motion”) to Withdraw as Counsel to the Debtors. In support of this Motion, the Movants respectfully represent as follows:

1. On June 28, 2011 (the “Petition Date”), each of the Debtors filed a voluntary petition with this Court for relief under Chapter 11 of the Bankruptcy Code.
2. Since that time, the Movants have represented the Debtors throughout their Chapter 11 cases as U.S. counsel and Canadian counsel, respectively.
3. Due to irreconcilable issues that have arisen in the attorney-client relationship, the Movants believe it is in the best interest of the Debtors that each firm withdraw as counsel.
4. This relief is being sought on an expedited basis. On April 23, 2012, the Court held a hearing on the Debtors’ Motion (the “Motion to Extend Exclusivity”) Pursuant to Section 1121(d) to Further Extend the Exclusivity Period During Which Only the Debtors May File a Plan and Solicit Acceptances Thereof. At the hearing, the Court ordered that the exclusivity period for the Debtors would be extended, with the exclusivity period applicable to Debtor RIL

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

to expire on May 23, 2012 with respect to GE Canada Equipment Financing G.P. and Fifth Street Finance Corp. The Court has also scheduled a status conference for these cases on May 23, 2012 at 2 pm.

5. Furthermore, on April 3, 2012, the Debtors filed the First through Fourth Omnibus Objections to Claims (see D.I. ## 397 to 400). A hearing is scheduled on these claims objections on May 16, 2012, and the Debtors have received both informal and formal responses from certain creditors. These claims objections are in need of review and or a continuance of the hearing would be in order. Similarly, the Court has scheduled hearings for May 16 for certain applications for compensation.

Notice

6. Notice of this Application has been given to: (i) the Offices of the United States Trustee for the District of Massachusetts; (ii) counsel to the Committee; (iii) counsel for GE CEF; (iv) counsel to David Dobbin; (v) counsel to Fifth Street and (vi) anyone requesting notice pursuant to Rule 2002. In light of the nature of the relief requested, the Debtors submit that no further notice is required.

No Prior Request

7. No prior application for the relief requested herein has been made to this or any other court.

[Remainder of page intentionally left blank]

WHEREFORE, ESCM and Heenan Blaikie respectfully request that the Court approve the relief being requested herein and to grant such further relief as the Court deems just and necessary.

Dated: April 27, 2012

By: /s/ John G. Loughnane
John G. Loughnane (BBO No. 557599)
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and

By: /s/ Kenneth David Kraft
Kenneth David Kraft
HEENAN BLAIKIE, LLP
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P.O. Box 2900
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UNITED STATES BANKRUPTCY COURT, DISTRICT OF MASSACHUSETTS

Proceeding Memorandum/Order of Court

In Re: Massachusetts Elephant & Castle Group, Inc.

Case Number: 11-16155

Ch: 11

MOVANT/APPLICANT/PARTIES:

#460 Motion of United States Trustee to Convert case to Chapter 7

APPENDIX G to the Third Report of the Information Officer

OUTCOME:

Granted Denied Approved Sustained
Denied Denied without prejudice Withdrawn in open court Overruled
OSC enforced/released
Continued to: For:
Formal order/stipulation to be submitted by: Date due:
Findings and conclusions dictated at close of hearing incorporated by reference
Taken under advise ment: Brief(s) due From
Response(s) due From
Fees allowed in the amount of: \$ Expenses of: \$
No appearance/response by:

DECISION SET OUT MORE FULLY BY COURT AS FOLLOWS:

GRANTED.

IT IS SO NOTED:

IT IS SO ORDERED:

[Handwritten signature]

Dated: 05/02/2012

Courtroom Deputy

UNITED STATES BANKRUPTCY COURT, DISTRICT OF MASSACHUSETTS

Proceeding Memorandum/Order of Court

In Re: Massachusetts Elephant & Castle Group, Inc.

Case Number: 11-16155

Ch: 11

MOVANT/APPLICANT/PARTIES:

#459 Motion of Eckert, Seamans, Cherin & Mellott, LLC and Heenan Blaikie, LLP to Withdraw as Counsels to the Debtors

OUTCOME:

Granted Denied Approved Sustained
Denied Denied without prejudice Withdrawn in open court Overruled
OSC enforced/released
Continued to: For:
Formal order/stipulation to be submitted by: Date due:
Findings and conclusions dictated at close of hearing incorporated by reference
Taken under advise ment: Brief(s) due From
Response(s) due From
Fees allowed in the amount of: \$ Expenses of: \$
No appearance/response by:

DECISION SET OUT MORE FULLY BY COURT AS FOLLOWS:

GRANTED.

IT IS SO NOTED:

IT IS SO ORDERED:

Handwritten signature of Henry Jack Beaufort

Dated: 05/02/2012

Courtroom Deputy

UNITED STATES BANKRUPTCY COURT, DISTRICT OF MASSACHUSETTS

Proceeding Memorandum/Order of Court

In Re: Massachusetts Elephant & Castle Group, Inc.

Case Number: 11-16155

Ch: 11

MOVANT/APPLICANT/PARTIES:

Status Hearing

OUTCOME:

Granted Denied Approved Sustained
Denied Denied without prejudice Withdrawn in open court Overruled
OSC enforced/released
Continued to: For:
Formal order/stipulation to be submitted by: Date due:
Findings and conclusions dictated at close of hearing incorporated by reference
Taken under advise ment: Brief(s) due From
Response(s) due From
Fees allowed in the amount of: \$ Expenses of: \$
No appearance/response by:

DECISION SET OUT MORE FULLY BY COURT AS FOLLOWS:

NO FURTHER STATUS CONFERENCE IS REQUIRED AT THIS TIME. ANY FURTHER REQUEST FOR AN EXTENSION OF THE EXCLUSIVITY PERIODS IS MOOT.

IT IS SO NOTED:

IT IS SO ORDERED:

[Handwritten signature]

Dated: 05/02/2012

Courtroom Deputy