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

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| In re: | ) | Chapter 11 |
| FRIENDLY ICE CREAM CORPORATION, *et al.*,[1] | ) | Case No. 11-13167 (___) |
| Debtors. | ) | (Joint Administration Requested) |

**DECLARATION OF STEVEN C. SANCHIONI OF FRIENDLY ICE CREAM CORPORATION IN SUPPORT OF DEBTORS' CHAPTER 11 PETITIONS AND FIRST DAY MOTIONS**

I, Steven C. Sanchioni, hereby declare under penalty of perjury:

1. I am the Executive Vice President, Chief Financial Officer, Treasurer and Assistant Secretary of Friendly Ice Cream Corporation ("FICC"), a corporation organized under the laws of the Commonwealth of Massachusetts and one of the above-captioned debtors and debtors in possession (collectively, the "Debtors" or "Friendly's"). In this capacity, I am familiar with the Debtors' day-to-day operations, businesses, financial affairs, and books and records.

2. On the date hereof (the "Petition Date"), FICC and four of its affiliates each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently herewith, the Debtors filed a motion seeking joint administration of these

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Friendly Ice Cream Corporation (3130); Friendly's Restaurants Franchise, LLC (3693); Friendly's Realty I, LLC (2580); Friendly's Realty II, LLC (2581); and Friendly's Realty III, LLC (2583). The location of the Debtors' corporate headquarters and the Debtors' service address is: 1855 Boston Road, Wilbraham, Massachusetts 01095.

chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

3. I submit this declaration (this "First Day Declaration") to provide an overview of the Debtors and these chapter 11 cases and to support the Debtors' chapter 11 petitions and "first day" motions (each, a "First Day Motion," and collectively, the "First Day Motions").[2] Except as otherwise indicated herein, all facts set forth in this First Day Declaration are based upon my personal knowledge of the Debtors' operations and finances, information learned from my review of relevant documents, information supplied to me by other members of the Debtors' management and the Debtors' advisors, or my opinion based on my experience, knowledge, and information concerning the Debtors' operations and financial condition. I am authorized to submit this First Day Declaration on behalf of the Debtors, and, if called upon to testify, I could and would testify competently to the facts set forth herein.

## Preliminary Statement

4. Friendly's is a leading full-service, family-oriented restaurant chain and provider of ice cream products in the Eastern United States. As of the Petition Date, Friendly's operations encompasses approximately 490 restaurants located in 16 states. In addition to its restaurant operations, Friendly's manufactures a complete line of premium ice cream products distributed to more than 7,000 supermarkets and other third party retail locations in 48 states.

5. As discussed in further detail below, in the years leading up to the Petition Date, the significant U.S. economic downturn hit the restaurant industry hard, including the Friendly's business. As unemployment levels skyrocketed, discretionary spending by historically-loyal

[2] All capitalized terms used but otherwise not defined herein shall have the meanings set forth in the relevant First Day Motion.

customers and other consumers dropped, leading to depressed restaurant sales and reduced consumer traffic. Within the restaurant industry, the mid-scale sector—which encompasses the Debtors' restaurant business—suffered deep declines, as sales decreased by approximately 8.2 percent over the two years leading to the Petition Date. The Debtors have also experienced significant inflation in commodity prices, particularly in the price of cream, which is the largest raw material component of their manufactured ice cream. The Debtors introduced new advertising campaigns and cost-cutting programs to mitigate these effects on their business; however, the Debtors were not immune to the effects of the economy and rising commodity prices, and restaurant sales and overall profitability and liquidity suffered significantly. In the first eight months of 2011, Friendly's generated approximately $329.7 million in revenue and approximately $8.6 million in adjusted EBITDA. The Debtors are headquartered in Wilbraham, Massachusetts.

6. As the Debtors' liquidity has suffered, the Debtors have struggled to meet their debt service obligations. Prior to the Petition Date, the Debtors were required under the Debtors' prepetition senior secured revolving credit facility to maintain certain levels of EBITDA. In the months leading up to the Petition Date, the Debtors failed to meet these EBITDA targets, resulting in a default under the prepetition revolving credit agreement; however, the Debtors were able to successfully negotiate a forbearance agreement with their senior secured lenders. The forbearance agreement, however, is subject to periodic testing, and, absent their chapter 11 filings, the Debtors may have defaulted as early as the end of October 2011.

7. In consultation with their professionals and after careful examination by the Debtors' board of directors, the Debtors determined that, rather than continue to pursue temporary forbearances, chapter 11 would provide the necessary tools to preserve asset value,

accomplish a meaningful operational restructuring on an expedited basis, and run a streamlined sale process. After extensive negotiations over the terms of a potential restructuring or sale, the Debtors secured a stalking horse credit bid from their largest prepetition secured lender.[3] The Debtors determined that this credit bid offered the most viable solution to the Debtors' liquidity and debt burden issues. Through these chapter 11 cases, the Debtors intend to implement an efficient public sale process to preserve their going-concern operations and maximize value for their creditors and estates.

## I. General Background.

### A. Debtors' Business and Overview.

8. The Debtors are a leading family-dining restaurant chain and manufacturer of premium ice cream products. As stated above, the Debtors operate or have franchised approximately 490 stores primarily concentrated in the Northeast United States. In addition to operating and franchising their restaurants, the Debtors manufacture and distribute their own brand of "Friendly's" packaged ice cream and dessert products to their restaurants and third-party retail customers. With a history dating to 1935, the Debtors pride themselves for having a strong reputation for offering customers a family-oriented casual dining experience at value prices that emphasize comfort food and dessert items made from Friendly's own signature premium ice cream.

9. The Debtors' operations are segmented into four key business units: Company-Owned Restaurants, Franchising, Foodservice, and Retail and Custom Packing.

[3] The Debtors' proposed stalking horse bidder is an affiliate of the Debtors' equity sponsor.

### 1. Company-Owned Restaurants.

10. The Debtors own and operate approximately 250 restaurants (excluding franchised locations), positioned as a casual dining destination for families and children to enjoy a wide variety of freshly prepared meals and deserts for breakfast, lunch, and dinner. Meal offerings include handhelds (sandwiches, burgers, and melts), plated entrees, baskets, entree salads, and appetizers; however, the main focus of the menu is centered on the Debtors' premium ice cream products. Restaurant operations generated $213.9 million in revenue (64.9 percent of total revenues) in the first eight months of 2011 with Adjusted EBITDA of $1.5 million.

### 2. Franchising.

11. The Debtors have contracted with approximately 40 independent businesses the right to operate more than 230 restaurants under franchise agreements. Franchisees are offered the right to operate a Friendly's restaurant for an upfront fee. Franchised locations are operated under strict guidelines to present a unified brand image. Franchising offers stable cash flows from the collection of royalties and product purchases, accounting for a significant percentage of the Debtors' EBITDA. Franchising operations generated $11.5 million in revenue (3.5 percent of total revenues) in the first eight months of 2011 with Adjusted EBITDA of $7.5 million.

### 3. Foodservice.

12. The Debtors operate a vertically integrated foodservice operation that distributes nearly all food products, including their premium ice cream, to their company-owned and franchised restaurants. In addition, the Debtors produce all of their premium ice cream, syrups, and toppings in their 62,000 square foot state-of-the-art manufacturing facility in Wilbraham, Massachusetts. In 2010, the Debtors produced approximately 17 million gallons of ice cream. The Debtors distribute both their food and ice cream products through two distribution facilities in Chicopee, Massachusetts and York, Pennsylvania. Foodservice operations generated $51.6

million in net revenues in the first eight months of 2011, (15.7 percent of total revenues) with Adjusted EBITDA of $6.5 million.

**4. Retail and Custom Packing.**

13. The Debtors produce and distribute a branded product line of premium ice cream to more than 7,000 supermarkets and other third-party retail locations in 48 states. In their core New England and New York markets, the Friendly's brand is consistently ranked first or second in market share of carton ice cream. In addition to manufacturing and marketing ice cream under the Friendly's name, the Debtors leverage their excess capacity by offering custom packing services to third-party brands as well as private label manufacturing for specific grocery markets. Retail and custom packing generated $46.8 million and $5.9 million in revenue, respectively (16.0 percent combined of total revenues) with Adjusted EBITDA of $1.7 million and $0.6 million, respectively in the first eight months of 2011.

**B. The Debtors' Prepetition Organizational Structure.**

14. Prior to August 2007, FICC was a public company that traded on the American Stock Exchange under the symbol "FRN." In August of 2007, an affiliate of Sun Capital Partners, Inc. completed a take-private acquisition of FICC for $15.50 per share, for a total acquisition price of $395 million. The chart attached hereto as **Exhibit A** depicts the Debtors' prepetition organizational structure.

**C. The Debtors' Prepetition Capital Structure.**

15. As of the Petition Date, the Debtors have outstanding debt obligations in the aggregate principal amount of approximately $297.0 million (excluding approximately $14.9 million in issued and unfunded letters of credit), consisting primarily of approximately (a) $21.5 million in secured debt under the first lien senior secured credit facility,

(b) $267.7 million in a subordinated secured promissory note, and (c) $7.8 million in principal amount of 8.375-percent unsecured notes.

### 1. Revolving Credit Facility.

16. FICC, as borrower, and certain affiliates as guarantors, Wells Fargo Capital Finance, Inc. (f/k/a Wells Fargo Foothill, Inc.), as administrative agent (the "Prepetition Administrative Agent"), and the lenders party thereto (collectively, the "Prepetition Secured Lenders") are parties to that certain Second Amended and Restated Credit Agreement, dated as of June 5, 2008 (as amended, supplemented, or otherwise modified from time to time, the "Prepetition Secured Credit Agreement"). The Prepetition Secured Credit Agreement matures in April 2012 and provides for up to $49 million of revolving credit. The obligations under the Prepetition Secured Credit Agreement are secured by substantially all of the assets and capital stock of FICC, Freeze Operations Holding Corp., and Friendly's Restaurants Franchise, LLC pursuant to that certain Omnibus Amendment to Security Documents, dated as of February 27, 2009. As of the Petition Date, the Debtors had approximately $21.5 million of principal amount outstanding and $14.9 million in letters of credit outstanding under the Prepetition Credit Agreement (excluding unpaid interest and accrued and unpaid fees).

### 2. Subordinated Secured Promissory Note Due 2013.

17. FICC is obligated to Sundae Group Holdings I, LLC (the "PIK Noteholder") pursuant to that certain Subordinated Secured Promissory Note, dated as of January 11, 2008, (as amended, supplemented, or otherwise modified from time to time, the "Secured Promissory Note"). The PIK Noteholder is majority owned, indirectly, by one or more affiliates of Sun Capital Partners, Inc. Certain co-investors, including the Debtors' Chief Executive Officer, are minority owners of the PIK Noteholder. The Debtors' ultimate majority equity holders are also affiliates of Sun Capital Partners, Inc. On September 9, 2011, Freeze, LLC (as successor to the

original lender under the Secured Promissory Note, Freeze Group Holding Corp.) assigned its right, title, and interest in the Secured Promissory Note to the PIK Noteholder in exchange for, among other things, the agreement by the PIK Noteholder to lend an additional $2 million under the PIK Note to fund the Debtors' operations and a commitment to lend certain additional amounts. Pursuant to this commitment, the PIK Noteholder subsequently lent an additional $2 million on September 26, 2011, and a further $2 million on September 30, 2011, for an aggregate of $6 million since the assignment. Under the Secured Promissory Note, FICC issued a secured promissory note due January 11, 2013 in the original principal amount of $100 million, with interest paid in-kind at a floating rate tied to an EBITDA grid which was subsequently amended to a flat rate of 12 percent (the "PIK Note"). On March 11, 2008 and June 5, 2008, the principal amount of the PIK Note was increased by $26.5 million and $19.5 million, respectively. The current amount outstanding under the PIK Note is approximately $267.7 million.

18. The PIK Note is junior in interest to the Prepetition Secured Credit Agreement, pursuant to that certain Intercreditor and Subordination Agreement, dated June 5, 2008, between Wells Fargo Foothill, Inc. and Freeze Group Holding Corp. The Secured Promissory Note is guaranteed by Freeze Operations Holding Corp. and Friendly's Restaurant Franchise, LLC, and is secured by substantially all of the assets of FICC, Freeze Operations Holding Corp., and Friendly's Restaurant Franchise, LLC.

**3. 8.375-Percent Senior Subordinated Notes Due 2012.**

19. FICC, as issuer, Friendly's Restaurants Franchise, as guarantor, and The Bank of New York, as indenture trustee, are parties to that certain Indenture, dated as of March 8, 2004 (as supplemented by the First Supplemental Indenture, dated August 8, 2007) (the "Note Indenture"). Under the Note Indenture, FICC issued a total of approximately $175 million in unsecured 8.375-Percent Senior Subordinated Notes due June 15, 2012 (the "Notes") to holders

(the "Noteholders"). On July 26, 2007, pursuant to that certain Offer to Purchase and Consent Solicitation Statement, FICC commenced a tender offer for the Notes whereby Noteholders of approximately $167,196,000 of Notes agreed to tender their Notes. As of the Petition Date, approximately $7.8 million in principal balance (excluding accrued interest) on the Notes remains outstanding.

**II. Events Leading to these Chapter 11 Cases.**

20. Over the course of the last few years, a series of factors has contributed to the Debtors' need to file these chapter 11 cases, including, most notably, declining restaurant sales and rising commodity prices. Although the Debtors' business model is sound, these events placed significant strain on the Debtors' business, liquidity, and ability to satisfy covenants under the credit documents governing the Prepetition Credit Facility, ultimately leading to the filing of these chapter 11 cases.

**A. Declining Restaurant Sales.**

21. Prior to the commencement of the chapter 11 cases, the Debtors' operations and financial performance were adversely affected by the downturn in the economy, the highly competitive nature of the family dining sector and poor sales results. The recession has been a primary factor in the decline in the Debtors' sales, as consumers prioritized the savings of dining at home over eating-out. With overall unemployment rates at historically high levels, discretionary income for customers has been severely constrained, directly correlating to depressed restaurant sales and reduced or eliminated customer traffic. In the first eight months of 2011, the Debtors reported a 5.3 percent and 4.5 percent decline in same store sales of franchise and company-operated stores, respectively. In the same segments, the Debtors reported comparable declines of 2.6 percent and 3.7 percent, respectively, in 2010. These

decreases were driven by a decline in guest traffic, particularly as industry-wide declines in parties with children translated to lower guest counts at Friendly's stores.

22. Throughout the economic recession and leading to the Petition Date, the Debtors' management has extensively focused on introducing new and strategic initiatives to combat the fall in consumer spending and improve guest traffic. Such initiatives include, amongst others, revamping Friendly's menu, new advertising campaigns, and new bundling strategies. Nonetheless, although the Debtors fared better than industry averages for mid-scale and casual dining sectors over the last few years, ultimately, the Debtors could not shield their bottom line from the impact of the economic downturn.

**B. Rise in Commodity Prices.**

23. In addition to declining sales, the cost of certain commodities, principally milk, cream, and meats, had an adverse impact on the Debtors' operating results for several years. In the two years preceding the Petition Date, the price of butter (which drives the price of cream) increased by 57.5 percent, while the price of milk increased by 22.2 percent. Meanwhile, the cost of shipping Friendly's products to restaurants and supermarkets rose, as fuel prices surged. The Debtors have implemented strategies to mitigate or partially offset the impact of higher commodity prices, including price increases, cost reduction actions, selective in-sourcing of certain supplies, work force reductions, wage freezes, and reductions in other employee benefits; however, due to the magnitude and duration of the increased commodity costs, these strategies offset only a portion of the overall adverse effect of commodity prices on the Debtors' operating profits.

**C. The Debtors' Prepetition Restructuring Negotiations.**

24. The depressed state of the economy—together with the rising price of commodities, pension liability, and the upcoming maturity date on the Notes—made it

increasingly difficult for the Debtors' to service their debt obligations. Specifically, the Debtors were at risk of violating certain EBITDA targets on their Prepetition Credit Facility. On August 31, 2011, the Debtors entered into a forbearance agreement with the Prepetition Administrative Agent and the Prepetition Secured Lenders, under which the Prepetition Secured Lenders agreed to forbear from exercising their contractual and legal rights and remedies with respect to the Debtors' EBITDA defaults.

25. In addition to negotiating the forbearance agreement, on September 9, 2011, September 26, 2011, and September 30, 2011, the Debtors negotiated amendments to the Secured Promissory Note, which increased the principal amount of the PIK Note by a total of $6 million. The increase in funds allowed the Debtors to maintain operations up to the Petition Date. Ultimately, however, the Debtors could not meet their liquidity needs going forward. Faced with severe liquidity shortfalls, the Debtors consulted with their advisors to determine the best strategy to preserve value for the benefit of the Debtors' creditor constituencies.

26. To that end, after careful review, the Debtors, in consultation with their advisors, determined that a chapter 11 filing, combined with an expedited operational restructuring and an efficient sale of the Debtors' assets, was the best and most efficient way to maximize a return for the Debtors, their estates, and all parties-in-interest. Through a chapter 11 filing, the Debtors can close a targeted group of underperforming retail stores on an expedited basis. At the same time, the Debtors intend to dual-track a sale process aimed at securing the highest and best offer for substantially all of their assets for the benefit of their estates and all parties-in-interest.

27. For the past several months, the Debtors and their advisors have explored alternatives in connection with a going-concern sale of all their assets. These efforts have bore fruit, and the Debtors secured a stalking horse bidder and form sale documentation for

substantially all of their assets. Furthermore, the Debtors have secured committed debtor-in-possession financing to fund the chapter 11 cases and the sale.

**D. The Proposed Sale of the Debtors' Assets.**

28. The Debtors' proposed sale of substantially all of their assets will preserve the value of the Debtors' businesses and maximize such value for the Debtors' creditors and estates. The Debtors and their advisors negotiated extensively over the terms of a potential restructuring or sale. As a result of these negotiations, the Debtors secured a stalking horse bid from an affiliate of the PIK Noteholder (the "Purchaser"). The Debtors proceeded to negotiate the terms of the proposed transaction with the Purchaser and determined that the Purchaser's credit bid (by way of an assignment from the PIK Noteholder) offered the best solution to the Debtors' liquidity and debt burden issues. The transaction proposed by the credit bid seeks to preserve the value of the Debtors' businesses as a going concern. Substantially all of the Debtors' assets will be sold pursuant to the stalking horse asset purchase agreement (or pursuant to any other successful bid). In connection with the proposed sale, the Debtors intend to implement an operational restructuring (including through, among other things, the rejection of certain burdensome and unprofitable leases). To ensure continuity, the PIK Noteholder and the Purchaser have already negotiated certain compensation, bonus, and severance terms with members of the Debtors' management. The PIK Noteholder's and the Purchaser's agreements with management are not exclusive and are not designed to "lock up" the management team or chill competitive bidding. Copies of agreements between the PIK Noteholder, the Purchaser, and the Debtors' management will be made available to the Court, counsel to any official committee, the United States Trustee, and, subject to execution of appropriate confidentiality agreements, other potential bidders for the Debtors' assets. Through the sale to the Purchaser or such other purchaser as may submit a higher or better bid, the Debtors intend to implement an efficient

public sale process to preserve their going-concern operations and maximize value for their creditors and estates.

## III. Evidentiary Support for First Day Motions.[4]

29. Concurrently with the filing of their chapter 11 petitions, the Debtors have filed a number of First Day Motions seeking relief that the Debtors believe is necessary to enable them to operate with minimal disruption and loss of productivity. The Debtors request that the relief requested in each of the First Day Motions be granted as critical elements in ensuring a smooth transition into, and stabilizing and facilitating the Debtors' operations during the pendency of these chapter 11 cases. I have reviewed each of the First Day Motions discussed below and the facts set forth in each First Day Motion are true and correct to the best of my knowledge and belief with appropriate reliance on corporate officers and advisors.

### A. Debtors' Motion for Entry of an Order Directing Joint Administration of Their Chapter 11 Cases (the "Joint Administration Motion").

30. The Debtors request entry of an order directing joint administration of these chapter 11 cases for procedural purposes only pursuant to Bankruptcy Rule 1015(b). Specifically, the Debtors request that the Court maintain one file and one docket for all of these chapter 11 cases under the case of Friendly Ice Cream Corporation and also request that an entry be made on the docket of each of the Debtors' chapter 11 cases, other than Friendly Ice Cream Corporation, to reflect the joint administration of these chapter 11 cases.

31. Given the integrated nature of the Debtors' operations, joint administration of these chapter 11 cases will provide significant administrative convenience without harming the substantive rights of any party in interest. Many of the motions, hearings, and orders that will

4 Capitalized terms used in this section and not otherwise defined shall have the meanings ascribed to them in the applicable motion.

arise in these chapter 11 cases will jointly affect Friendly Ice Cream Corporation and each of its affiliates that also have filed chapter 11 cases. The entry of an order directing joint administration of these chapter 11 cases will reduce fees and costs by avoiding duplicative filings and objections and will allow the U.S. Trustee and all parties in interest to monitor these chapter 11 cases with greater ease and efficiency.

32. I believe that the relief requested in the Joint Administration Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the Joint Administration Motion should be approved.

**B. Debtors' Motion for Entry of an Order (1) Authorizing the Debtors to (A) Continue Using the Cash Management System, (B) Maintain Existing Bank Accounts and Business Forms, and (C) Continue Intercompany Arrangements and (2) Granting Intercompany Claims Administrative Priority (the "Cash Management Motion").**

33. The Debtors request the authority to: (a) continue to use, with the same account numbers, all of the Bank Accounts in their Cash Management System; (b) treat the Bank Accounts for all purposes as accounts of the Debtors as debtors in possession; (c) open new debtor-in-possession accounts, if needed; (d) use, in their present form, all correspondence and business forms (including check stock, letterhead, purchase orders, and invoices) and other documents related to the Bank Accounts existing immediately before the Petition Date, without reference to the Debtors' status as debtors in possession; and (e) continue performing Intercompany Transactions in the ordinary course of business.

34. In addition, the Debtors further request that the Court authorize the Banks to: (a) continue to maintain, service, and administer the Bank Accounts; and (b) debit the Bank Accounts in the ordinary course of business on account of (i) checks drawn on the Bank

Accounts that are presented for payment at the Banks or exchanged for cashier's checks prior to the Petition Date; (ii) checks or other items deposited in the Bank Accounts prior to the Petition Date that have been dishonored or returned unpaid for any reason (including associated fees and costs), to the same extent the Debtors were responsible for such items prior to the Petition Date; and (iii) undisputed, outstanding service charges owed to the Banks as of the Petition Date on account of the maintenance of the Debtors' Cash Management System, if any.

35. In the ordinary course of business, the Debtors utilize an integrated Cash Management System to collect, transfer, and disburse funds generated by their operations and maintain current and accurate accounting records of all daily cash transactions. If the Debtors were required to comply with the U.S. Trustee Guidelines, the burden of opening new accounts, revising cash management procedures, instructing customers to redirect payments, and the immediate ordering of new checks with a "Debtor in Possession" legend, would disrupt the Debtors' business at this critical time. The Debtors respectfully submit that parties in interest will not be harmed by their maintenance of the existing Cash Management System, including their Bank Accounts, because the Debtors have implemented appropriate mechanisms to ensure that unauthorized payments will not be made on account of obligations incurred prior to the Petition Date.

36. In addition, in the ordinary course of business, the Debtors maintain a large and complex system of Intercompany Transactions for, among other reasons, facilitating intercompany sales, centralizing accounting and purchasing departments, and moving cash between entities. If the Intercompany Transactions are discontinued, a number of services provided by and to the Debtors would be disrupted and could affect the Debtors' ability to pay wages and benefits to their employees and make timely payments to vendors.

37. The relief requested in the Cash Management Motion is vital to ensuring the Debtors' seamless transition into bankruptcy. Authorizing the Debtors to maintain their Cash Management System will avoid many of the possible disruptions and distractions that could divert their attention from more critical matters during the initial days of these chapter 11 cases.

38. I believe that the relief requested in the Cash Management Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the Cash Management Motion should be approved.

**C. Debtors' Motion for Entry of an Order Authorizing the Payment of Prepetition (A) Wages, Salaries, and Other Compensation; (B) Reimbursable Employee Expenses, and (C) Employee Medical and Similar Benefits (the "Wages and Benefits Motion").**

39. The Debtors request the authority, in their sole discretion, to pay prepetition claims, honor obligations, and to continue programs, in the ordinary course of business and consistent with past practices, relating to the Employee Wages and Benefits.

40. As of the Petition Date, the Debtors employ approximately 10,300 employees, of which approximately 9,800, or about 95 percent, are paid on an hourly basis and approximately 500, or about five percent, are paid on a salaried basis. Although the Debtors have paid their wage, salary, and other obligations in accordance with their ordinary compensation schedule prior to the Petition Date, as of the date hereof, certain prepetition obligations for Employees may nevertheless be due and owing.

41. The majority of the Debtors' Employees rely exclusively on their compensation, benefits, and reimbursement of expenses to satisfy their daily living expenses. Consequently, these Employees will be exposed to significant financial difficulties if the Debtors are not

permitted to honor obligations for unpaid compensation, benefits, and reimbursable expenses. Moreover, if the Debtors are unable to satisfy such obligations, Employee morale and loyalty will be jeopardized at a time when Employee support is critical to the Debtors. In the absence of such payments, the Debtors believe their Employees may seek alternative employment opportunities, perhaps with the Debtors' competitors, thereby hindering the Debtors' ability to meet their customer obligations and likely diminishing creditors' confidence in the Debtors. Moreover, the loss of valuable Employees and the recruiting efforts that would be required to replace such Employees would be a substantial and costly distraction at a time when the Debtors should be focusing on stabilizing their operations.

42. I believe that the relief requested in the Wages and Benefits Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the Wages and Benefits Motion should be approved.

**D. Debtors' Motion for Entry of an Order Authorizing the Debtors to Continue Prepetition Insurance Coverage and Related Practices (the "Insurance Motion").**

43. The Debtors request authority to continue insurance coverage currently in effect and pay any prepetition amounts related thereto, including prepetition deductibles and self-insured retentions and payments on account of the Financed Policies.

44. The Debtors' insurance policies are essential to the preservation of the value of the Debtors' business, properties, and assets. In many cases, insurance coverage such as that provided by the Insurance Policies is required by the diverse regulations, laws, and contracts that govern the Debtors' commercial activities. Failure to make the payments required by the Debtors' Insurance Policies, including the Financed Policies, could have disastrous effects on the

Debtors' attempts to restructure in chapter 11. Indeed, termination of the Insurance Policies due to any such non-payment likely would deprive the Debtors of the ability to operate their business under the laws of the states in which the Debtors conduct business.

45. I believe that the relief requested in the Insurance Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the Insurance Motion should be approved.

### E. Debtors' Motion for Entry of an Order Authorizing the Debtors to Pay Certain Prepetition Taxes and Fees (the "Taxes and Fees Motion").

46. The Debtors request authority to pay any Taxes and Fees that, in the ordinary course of business, accrued or arose before the Petition Date. In the ordinary course of business, the Debtors incur and/or collect certain Taxes and Fees and remit such Taxes and Fees to various authorities. The Debtors must continue to pay the Taxes and Fees to continue operating in certain jurisdictions and to avoid costly distractions during these chapter 11 cases. Specifically, the Debtors' failure to pay the Taxes and Fees could affect adversely the Debtors' business operations because the authorities could suspend the Debtors' operations, file liens, or seek to lift the automatic stay. In addition, certain authorities may take precipitous action against the Debtors' directors and officers for unpaid Taxes that undoubtedly would distract those individuals from their duties related to the Debtors' restructuring.

47. I believe that the relief requested in the Taxes and Fees Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the Taxes and Fees Motion should be approved.

### F. Debtors' Motion for Entry of Interim and Final Orders Determining Adequate Assurance of Payment for Future Utility Services (the "Utilities Motion").

48. The Debtors request the entry of interim and final orders: (a) determining that the Utility Providers have been provided with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code; (b) approving the Debtors' proposed offer of adequate assurance and procedures governing the Utility Providers' requests for additional or different adequate assurance; (c) prohibiting the Utility Providers from altering, refusing, or discontinuing services on account of prepetition amounts outstanding and on account of any perceived inadequacy of the Debtors' proposed adequate assurance pending entry of the Final Order; (d) determining the Debtors are not required to provide any additional adequate assurance beyond what is proposed by the Utilities Motion, pending entry of the Final Order; and (e) authorizing the Debtors to pay Advantage any amounts due and owing prior to the Petition Date and continue making payments to Advantage in the ordinary course of business.

49. In the ordinary course of business, the Debtors incur expenses for gas, water, sewer, electric, telecommunications, and other similar utility services provided by approximately 380 utility providers. Uninterrupted utility services are essential to the Debtors' ongoing operations and, therefore, to the success of their reorganization. Indeed, any interruption of utility services, even for a brief period of time, would negatively affect the Debtors' operations, customer relationships, revenues, and profits, seriously jeopardizing the Debtors' reorganization efforts and, ultimately, value and creditor recoveries. It is, therefore, critical that utility services continue uninterrupted during these chapter 11 cases.

50. I believe and am advised that the Debtors' proposed offer of adequate assurance and procedures governing the Utility Providers' requests for additional or different adequate assurance are necessary in these chapter 11 cases, because if such procedures were not approved,

the Debtors could be forced to address numerous requests by the Utility Providers in a disorganized manner during the critical first weeks of these chapter 11 cases. Moreover, a Utility Provider could blindside the Debtors by unilaterally deciding—on or after the 30th day following the Petition Date—that it is not adequately assured of future performance and discontinuing service or making an exorbitant demand for payment to continue service. Discontinuation of utility service could shut down operations, and any significant disruption of operations could jeopardize a successful reorganization in these chapter 11 cases.

51. I believe that the relief requested in the Utilities Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the Utilities Motion should be approved.

### G. Debtors' Motion For Entry of an Order Authorizing the Debtors to Maintain and Administer Customer Programs and Honor Prepetition Obligations Related Thereto (the "Customer Programs Motion").

52. The Debtors request the authority to maintain and administer customer programs and honor prepetition obligations to customers related thereto in the ordinary course of business and in a manner consistent with past practice.

53. To maintain the loyalty and goodwill of their customers, in the ordinary course of business the Debtors implemented Customer Programs to encourage new purchases, enhance customer satisfaction, sustain goodwill, and ensure that the Debtors remain competitive. The Debtors' ability to honor their Customer Program Obligations in the ordinary course of business is necessary to retain their customer base and reputation for quality. The Debtors believe that the relief requested herein will pay dividends with respect to the long-term reorganization of their business, both in terms of profitability and the engendering of goodwill, especially at this critical time following the filing of the chapter 11 cases.

54. I believe that the relief requested in the Customer Programs Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the Customer Programs Motion should be approved.

**H. Debtors' Motion for Entry of an Order Authorizing the Retention and Employment of Epiq Bankruptcy Solutions, LLC as Notice and Claims Agent for the Debtors and Debtors in Possession Nunc Pro Tunc to the Petition Date (the "Epiq Retention Motion").**

55. The Debtors request entry of an order pursuant to section 156(c) of title 28 of the United States Code, section 503(b) of the Bankruptcy Code, and Rule 2002-1(f) and 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware authorizing the employment and retention of Epiq Bankruptcy Solutions, LLC ("Epiq") as notice, claims, and balloting agent in connection with these chapter 11 cases, in accordance with the terms and conditions set forth in the Services Agreement.

56. I believe that the relief requested in the Epiq Retention Motion is in the best interests of the Debtors estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the Epiq Retention Motion should be approved.

**I. Debtors' Motion for Entry of An Order (I) Authorizing the Debtors to Pay Certain Prepetition Claims (A) Arising Under the Perishable Agricultural Commodities Act, (B) of Shippers, Warehousemen, and Other Lien Claimants, and (C) Arising Under Section 503(b)(9) of the Bankruptcy Code and (II) Granting Certain Related Relief (the "Lienholders Motion").**

57. The Debtors request the authority to (a) pay prepetition claims arising, or of the type, under the Perishable Agricultural Commodities Act of 1930, (b) pay prepetition claims of

shippers, warehousemen, and certain other lienholders, and (c) satisfy claims subject to section 503(b)(9) of the Bankruptcy Code.

58. The Debtors rely on several sellers who supply the Debtors with fruits and vegetables protected by PACA, who may be eligible to assert PACA Claims against the Debtors in priority ahead of all other secured and unsecured creditors in the Debtors' chapter 11 cases. Additionally, in the ordinary course of business, the Debtors rely on shippers and warehousemen to supply, deliver, or store, as applicable, high-quality food, products, and supplies. The Debtors also do business with a number of vendors who could potentially assert mechanic's liens and materialman's liens against the Debtors. In addition, the Debtors, under certain state laws, are required to post surety bonds in favor of certain dairy vendors to secure payment for products purchased. Finally, the Debtors have received goods delivered within the twenty-day period prior to the Petition Date that may be entitled to administrative priority under section 503(b)(9) of the Bankruptcy Code.

59. Without the relief granted in the Lienholders Motion, certain shippers may refuse to ship or transport goods (or recall such shipments), certain vendors may refuse to supply essential food, product, and supplies, while certain servicers and repairmen may assert mechanic's liens against the Debtors and their property for amounts the Debtors owe to those vendors. Failure to receive these services could cause serious disruptions to the continuous and timely flow of food, product, and supplies essential to the Debtors' business. Paying the prepetition obligations owed to the PACA Vendors, Shippers, Warehousemen, Lien Claimants, and holders of claims subject to section 503(b)(9) of the Bankruptcy Code in the ordinary course of business will thus benefit the Debtors' estates and their creditors by allowing the Debtors' business operations to continue without interruption.

60. I believe that the relief requested in the Lienholders Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the Lienholders Motion should be approved.

**J. Debtors' Motion for Entry of an Order (I) Authorizing the Debtors to Pay Certain Prepetition Media Claims and (II) Granting Certain Related Relief ("Media Claims Motion")**

61. The Debtors request the authority to pay in the ordinary course of business certain claims held by media stations in markets in which Franchisees operate. Absent such authority, I believe that the Debtors' operations could be substantially disrupted and the Debtors' ability to preserve the value of their assets materially impaired.

62. The Debtors' relationships with the Franchisee Media Stations are not governed by long-term contracts. As a result, the Debtors have no way to ensure that the media stations will continue to run media advertisements on a going-forward basis. In fact, the Debtors have been advised by certain of the Franchisee Media Stations that, unless such prepetition obligations are satisfied, those stations will cancel substantially all future scheduled media runs.

63. I believe that any disruption in the media advertising in the Franchisee operating markets may have a detrimental effect on the Debtors' businesses given the importance of the Debtors' relationship with the Franchisees. Thus, to prevent immediate and irreparable harm to the Debtors' business, I believe that the relief requested in the Media Claims Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and is necessary for the Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the relief requested in the Media Claims Motion should be granted.

**K. Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to Obtain Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Adequate Protection to Prepetition Secured Parties, and (IV) Granting Liens and Superpriority Claims (the "DIP Motion").**

64. The Debtors request the authority to (a) obtain postpetition financing on a senior secured, priming, superpriority basis, (b) use Cash Collateral, and (c) grant adequate protection to certain prepetition secured parties for the priming of their existing liens on the Prepetition Collateral and the Debtors' use of the Cash Collateral. The Debtors need financing to fund the administration of these chapter 11 cases and implement the efficient, public process through which the Debtors intend to sell their businesses as a going concern.

65. Without access to the DIP Facility, the Debtors could experience a liquidity shortfall and would be deprived of the capital necessary to operate their businesses. The DIP Facility will provide the funding necessary to allow the Debtors to, among other things, maintain their businesses in the ordinary course, thereby preserving value for the benefit of all creditor constituencies through the consummation of any sale of the Debtors' businesses. The DIP Facility also will enhance the Debtors' ability to minimize disruption to their businesses and instill confidence in their various creditor constituencies, including customers, employees, vendors, and service providers. In sum, approval of the DIP Facility is necessary to avoid erosion of value and to accomplish a seamless transition into chapter 11 and, ultimately, to new ownership through a public sale process.

66. I believe that the relief requested in the DIP Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the DIP Motion should be approved.

**L. Debtors' Motion for Entry of an Order Authorizing and Approving (A) Rejection of Certain Unexpired Leases and (B) Abandonment of Certain Personal Property, Each Effective as of October 31, 2011 (the "Lease Rejection Motion").**

67. By the Lease Rejection Motion, the Debtors request the entry of an order authorizing the rejection of certain unexpired leases (each a "Lease" and, collectively, the "Leases") of nonresidential real property and the abandonment of certain related personal property, each effective as of October 31, 2011. Additionally, the Debtors request that the Court confirm that claims rejection damages arising from the rejection of the Leases—rent payments under each of which are due on the first of each month and will not come due before November 1, 2011—shall comprise prepetition general unsecured claims.

68. The Debtors have ceased operations (or currently are in the process of ceasing operations) at approximately 63 store locations as part of the Debtors' prepetition and ongoing restructuring efforts. To eliminate ongoing obligations under the Leases for these locations and minimize claims against the Debtors' estates arising from the termination of the Leases, the Debtors seek to reject the Leases before November 1, 2011.

69. Because the Debtors' no longer need the locations covered by the Leases, rejection of the Leases is a sound exercise of the Debtors' business judgment and will benefit the Debtors' estates and stakeholders. Accordingly, on behalf of the Debtors, I respectfully request that the Court approve the Lease Rejection Motion.

**M. Debtors' Motion for Entry of an Order Authorizing and Approving Expedited Procedures for (A) Rejection of Executory Contracts and Unexpired Leases and (B) Abandonment of Personal Property (the "Rejection Procedures Motion").**

70. By the Rejection Procedures Motion, the Debtors request the entry of an order authorizing the implementation of expedited procedures to reject executory contracts and unexpired leases. Additionally, the Debtors request authority to remove any property from the

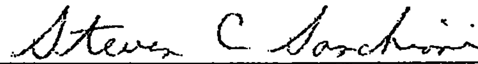
premises that is the subject of any rejected Contract prior to the effective date of any proposed rejection, consistent with the Debtors' ownership rights or other property interests therein.

71. I am advised that absent the relief requested in the Rejection Procedures Motion, filing motions for each rejection would result in substantial increased costs and administrative burdens on the Debtors' estates. As such, expedited procedures for Contract rejection are appropriate and necessary to minimize the costs and administrative burden on the Debtors' estates. Accordingly, on behalf of the Debtors, I respectfully submit that the Rejection Procedures Motion should be approved.

*[Remainder of Page Intentionally Left Blank]*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true correct.

Dated: October 5, 2011
Wilmington, Delaware



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