

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

FORM 8-K

**CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(D)
OF THE SECURITIES EXCHANGE ACT OF 1934**

Date of Report (Date of earliest event reported): June 20, 2019

FAMOUS DAVE'S OF AMERICA, INC.

(Exact name of registrant as specified in its charter)

Minnesota
(State or other jurisdiction
of incorporation)

0-21625
(Commission
File Number)

41-1782300
(IRS Employer
Identification No.)

(Address of principal executive offices) (Zip Code)

**12701 Whitewater Drive, Suite 290, Minnetonka, MN 55343
(952) 294-1300**

(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.01 par value	DAVE	The Nasdaq Global Market

Indicated by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01. Entry into a Material Definitive Agreement.

Asset Purchase Agreement

On June 20, 2019, Famous Dave's Ribs, Inc. ("Ribs"), a wholly owned subsidiary of Famous Dave's of America Inc. (the "Company") entered into an asset purchase agreement (the "Purchase Agreement") with Desert Ribs LLC, a Delaware limited liability company ("Desert Ribs"), Famous Charlie LLC, a Delaware limited liability company ("Famous Charlie"), Famous Freddie LLC, a Delaware limited liability company ("Famous Freddie"), Famous Gracie LLC, a Delaware limited liability company ("Famous Gracie"), and Famous George LLC, a Delaware limited liability company ("Famous George") (collectively referred to as the "Seller") pursuant to which Ribs has agreed, subject to specified terms and conditions, to purchase the assets comprising four restaurants currently operated by the Seller in Arizona (the "Restaurants"). Ribs may elect to exclude from the acquisition the assets comprising the Famous George, LLC restaurant in San Tan, Arizona (the "Excluded Restaurant"). The Seller currently owns and operates all four Restaurants under the "Famous Dave's" brand name pursuant to existing franchise agreements with the Company. The Purchase Agreement resulted from a stalking horse bid in a sale process conducted under Sections 363 and 365 of Chapter 11 of the U.S. Bankruptcy Code. As such, Ribs' acquisition of the Restaurants was approved by the United States Bankruptcy Court for the District of Arizona (the "Bankruptcy Court") by an order entered on June 24, 2019.

Pursuant to the Purchase Agreement, Ribs has agreed to purchase substantially all of the assets owned by the Seller and used in the operation of the Restaurants, except the San Tan, Arizona lease, for a cash purchase price equal to approximately \$1.6 million and the assumption of liabilities of approximately \$1.6 million, inclusive of past due franchise royalty fees, assumption of gift card liabilities, payments of specific other liabilities as specified in the Purchase Agreement, and fees related to debtor-in-possession financing. If Ribs elects to exclude the Excluded Restaurant from the acquisition, the cash purchase price will not be impacted pursuant to the Purchase Agreement. Certain cure amounts required to be paid pursuant to applicable provisions of the U.S. Bankruptcy Code resulting from the Seller's assumption and assignment to Ribs of certain real estate and vehicle leases are approximately \$94,000 and will be deducted from the total cash purchase price at closing and remitted directly to the party entitled to payment thereof. Except for such cure amounts, and future obligations under the real estate and vehicle leases for each Restaurant location, Ribs will not assume additional liabilities of the Seller.

The Purchase Agreement contains representations, warranties, covenants and agreements as are customary for a transaction of this size and nature. Closing of the contemplated transaction will be contingent upon, among other things, the accuracy of representations and warranties and the satisfaction of other customary closing conditions. The Company expects that the sale process will be completed during the third quarter of 2019 and the Company expects that the Restaurants will remain open throughout the process.

The foregoing description of the Purchase Agreement does not purport to be complete and is qualified in its entirety by reference to the Purchase Agreement itself, a copy of which is filed as Exhibit 10.1 to this Current Report on Form 8-K and incorporated herein by reference. The benefits of the representations and warranties set forth in the Purchase Agreement are intended to be relied upon by the parties to the Purchase Agreement only, and do not constitute continuing representations and warranties of the Company to any other party or for any other purpose.

First Loan Agreement

On June 20, 2019 (the "Effective Date"), the Company entered into a Loan Agreement among the Company and Choice Financial Group (the "Lender"). The Loan Agreement provides for a term loan from the Lender to the borrowers set forth therein in the principal amount of up to \$24.0 million and is evidenced by a promissory note (the "First Note") executed and delivered by the borrowers to the Lender on the Effective Date. The First Note has a maturity date of June 20, 2025. The first year of the First Note (the "Draw Period") provides for payments of interest only, with the remaining five years requiring payments of interest and principal based on a 60 month amortization period. Interest shall be payable in an amount equal to the Wall Street Journal Prime Rate, but in no circumstances shall the rate of interest be less than 5.00%. The Note may be prepaid, partially or in full, at any time and for no prepayment penalty.

Proceeds from the loan were used to repay the Company's previous real estate loan, dated December 2, 2016, which outstanding balance as of the Effective Date was approximately \$2.6 million. The remainder of the First Note may be drawn upon during the Draw Period, provided that there are no uncured events of default. The Company expects to utilize proceeds from the First Note to support the future growth of the Company.

The Loan Agreement is secured by a mortgage and security agreement and fixture financing statement (the "First Mortgage") granting to the Lender a security interest in and title to certain real property in the state of Minnesota and as more fully described therein.

The Loan Agreement contains customary representations and warranties and financial and other covenants and conditions, including, among other things, minimum debt service coverage ratio and a post-closing covenant to maintain a complete deposit and cash management relationship with the Lender. The Loan Agreement also places certain restrictions on, among other things, the borrowers' ability to incur additional indebtedness, to create liens or other encumbrances, to use funds for purposes other than as stated therein, to sell or otherwise dispose of assets without the consent of the Lender.

In addition, the Loan Agreement contains events of default (subject to certain materiality thresholds and grace periods), including, without limitation, payment defaults; breaches of covenants; breaches of representations and warranties; failure to perform remediation of any environmental matters on the mortgaged property, as set forth in the First Mortgage; failure to perform or observe the covenants, conditions or terms of the First Loan Agreement and related agreements; certain bankruptcy events of the borrowers and failure to timely provide financial statements.

Second Loan Agreement

On the Effective Date, the Company entered into a Revolving Promissory Note among the Company and the Lender. The Revolving Promissory Note provides for a revolving line of credit from the Lender to the borrowers set forth therein in the principal amount of up to \$1.0 million (the "Second Note") executed and delivered by the borrowers to the Lender on the Effective Date. The Second Note has a maturity date of December 2, 2019. The Second Note provides for monthly payments of interest only, with a balloon payment of the remaining outstanding balance and applicable interest is due on the maturity date. Interest shall be payable in an amount equal to the 30-day London Interbank Offer Rate ("LIBOR") plus 325 basis points, but in no circumstances shall the rate of interest be less than 3.75%. The Note may be prepaid, partially or in full, at any time and for no prepayment penalty.

Proceeds from the revolving line of credit may be used at the Company's discretion. The Company expects to utilize proceeds from the Second Note, as needed, to supplement operations of the business and future initiatives to support the future growth of the Company.

The foregoing descriptions of the First Loan Agreement, the First Note, the Second Note and the First Mortgage do not purport to be complete and are qualified in their entirety by reference to the full text of the First Loan Agreement, the First Note, the Second Note and the First Mortgage, which are filed, respectively, as Exhibits 10.2, 10.3, 10.4 and 10.5 hereto and incorporated by reference herein.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information set forth under the caption "*First Loan Agreement*" and "*Second Loan Agreement*" of Item 1.01 above is incorporated by reference into this Item 2.03.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

10.1	Purchase Agreement date June 20, 2019, by and among Famous Dave's Ribs, Inc. and Desert Ribs LLC, Famous Charlie LLC, Famous Freddie LLC, Famous Gracie LLC, and Famous George LLC.
10.2	Loan Agreement dated June 20, 2019 among Famous Dave's of America, Inc., D&D of Minnesota, Inc., Famous Dave's Ribs of Maryland, Inc., Famous Dave's Ribs, Inc., Famous Dave's Ribs-U, Inc., Lake & Hennepin BBO & Blues, Inc. and Choice Financial Group.
10.3	Term Promissory Note dated June 20, 2019 among Famous Dave's of America, Inc., D&D of Minnesota, Inc., Famous Dave's Ribs of Maryland, Inc., Famous Dave's Ribs, Inc., Famous Dave's Ribs-U, Inc., Lake & Hennepin BBO & Blues, Inc. to Choice Financial Group.
10.4	Revolving Promissory Note, dated June 20, 2019 among Famous Dave's of America, Inc., D&D of Minnesota, Inc., Famous Dave's Ribs of Maryland, Inc., Famous Dave's Ribs, Inc., Famous Dave's Ribs-U, Inc., Lake & Hennepin BBO & Blues, Inc. to Choice Financial Group.
10.5	Mortgage Security Agreement and Fixture Financing Statement, dated June 20, 2019 among Famous Dave's of America, Inc., D&D of Minnesota, Inc., Famous Dave's Ribs of Maryland, Inc., Famous Dave's Ribs, Inc., Famous Dave's Ribs-U, Inc., Lake & Hennepin BBO & Blues, Inc. to Choice Financial Group.

SIGNATURE

Pursuant to the requirements of the Exchange Act, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

FAMOUS DAVE'S OF AMERICA, INC.

Date: June 26, 2019

By: /s/ Paul M. Malazita
Name: Paul M. Malazita
Title: Chief Financial Officer and Secretary

Asset Purchase Agreement

This Asset Purchase Agreement ("Agreement") is made between Desert Ribs LLC, a Delaware limited liability company ("Desert Ribs"), a Delaware limited liability company, Famous Charlie LLC, a Delaware limited liability company ("Famous Charlie"), Famous Freddie LLC, a Delaware limited liability company ("Famous Freddie"), Famous Gracie LLC, a Delaware limited liability company ("Famous Gracie"), and Famous George LLC, a Delaware limited liability company ("Famous George") (together "Seller", or "Sellers", "Debtor" or "Debtors"); and Famous Dave's Ribs Inc., a Minnesota corporation ("Purchaser"), assignee of Famous Dave's of America, Inc., a Minnesota corporation, or its designee ("Franchisor"), as of June [20], 2019.

Background**Debtors**

A. On April 5, 2019, Debtors filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code. Each of the Debtors is organized under Delaware law. Each of the Debtors is a debtor-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

B. Desert Ribs is the 100% sole member of Famous Charlie, Famous Freddie, Famous George, and Famous Gracie. John and Romy Erlandson are the members of Desert Ribs and direct the management.

C. Desert Ribs leases premises at 14795 N. 78th Way #100, Scottsdale, AZ 85260. This lease is not being assigned.

Operators

D. Famous Charlie, Famous Freddie, Famous George, and Famous Gracie ("Operators") each operate a Famous Dave's of America, Inc. franchise in Maricopa County, Arizona.

E. *Famous Gracie/Chandler.* Famous Gracie operates a Famous Dave's of America franchise at 3250 West Frye Road, Chandler, Arizona 85224 ("Chandler Store") pursuant to a Franchise Agreement dated December 27, 2002 with Franchisor. The Franchise Agreement has been amended from time to time and further modified by a settlement agreement dated August 22, 2016. As of April 1, 2019, Famous Gracie is in default under the Franchise Agreement and owes approximately \$131,200 in past due sums due under the Franchise Agreement, including past due royalties, as well as unpaid advances.

F. The Chandler Store is leased from Propcor II Associates ("Chandler Landlord") pursuant to a Lease Agreement originally dated November 14, 2003. The Chandler Lease had a 15-year term with four five-year extension options. On September 19, 2018, Famous Gracie advised the Chandler Landlord of its intent to exercise the first removal option.

G. *Famous George/San Tan.* Famous George operates a Famous Dave's of America franchise at 2206 East Williams Field Road, Suite 101, Gilbert, Arizona 85226 (the "San Tan

Store") under a Franchise Agreement effective August 26, 2005. The Franchise Agreement has been amended from time to time. As of April 1, 2019, Famous George is in default under the Franchise Agreement and owes approximately \$118,400 in past due sums due under the Franchise Agreement, including past due royalties, as well as unpaid advances.

H. Famous George leases the premises at the San Tan store pursuant to a Lease Agreement with Westcor San Tan Village LLC originally dated December 12, 2007. The San Tan Lease has been amended with agreement of the San Tan Landlord. The San Tan Lease expires by its terms on December 31, 2019, subject to contractual renewal options.

I. The San Tan Lease is not being assumed by Famous George and assigned to Buyer.

J. *Famous Charlie/Mesa*. Famous Charlie operates a Famous Dave's of America franchise at 1011 North Dobson, Mesa, AZ 85201 (the "Mesa Store") pursuant to a Franchise Agreement originally dated March 5, 2006. The Franchise Agreement has been amended from time to time thereafter. As of April 1, 2019, Famous Charlie is in default under the Franchise Agreement and owes approximately \$249,000 in past due sums due under the Franchise Agreement, including past due royalties, as well as unpaid advances.

K. Famous Charlie leases the Mesa Store pursuant to a Shopping Center Ground Lease with De Rito/Kimco Riverview, L.L.C. ("Mesa Landlord") dated as of June 27, 2006. The Mesa Lease has been amended from time to time. Pursuant to a First Amendment to Lease dated as of September 27, 2007, the Mesa Lease term was extended to November 30, 2022, with two remaining five-year extension options.

L. *Famous Freddie/Peoria*. Famous Freddie operates a Famous Dave's of America franchise at 16148 North 83rd Avenue, Peoria, Arizona 85382 (the "Peoria Store") pursuant to a Franchise Agreement originally dated June 24, 2004. The Franchise Agreement has been amended from time to time. As of April 1, 2019, Famous Freddie is in default under the Franchise Agreement and owes approximately \$205,000 in past due sums due under the Franchise Agreement, including past due royalties, as well as unpaid advances.

M. Famous Freddie leases the Peoria Store pursuant to a Lease with Leytanlor Development Corp. as Landlord under a Lease originally dated April 21, 2004. The Peoria Lease had a 15-year term expiring July 31, 2019. The Peoria Landlord declined to allow Famous Charlie to extend the term of the Peoria Lease. Consequently, Purchaser has entered into a lease of the Peoria Store for a term commencing August 1, 2019.

N. None of the Operators have substantially refreshed or refurbished the Stores since they were opened.

Debtors' Creditors

O. *Famous Dave's of America*. The Franchisor is a creditor of each Store and the parent entity for unpaid fees under the Franchise Agreements, as well as advances, totaling

\$907,846.00 as of June 20, 2019. No sums have been paid to the Franchisor for royalties and other sums due under the Franchise Agreements since the bankruptcy filings.

P. *Newtek*. Debtors borrowed \$5,000,000 from Newtek Small Business Finance, LLC (“Newtek”) in a Loan made September 8, 2017 (the “Loan”). The Loan was guaranteed by the United States Small Business Administration.

Q. The Loan is evidenced by, among other things, a Loan Agreement, a U.S. Small Business Administration Note made by Debtors to the order of Newtek, and the documents described below (the “Loan Documents”), all dated September 8, 2017. The Note bears interest at a variable rate of 2.75% above the Prime Rate, adjusted pursuant to the terms of the Note. Repayment of the Note is secured by a Security Agreement made by Debtors. The Newtek loan is further secured by leasehold deeds of trust on the Peoria Store operated by Famous Freddie and the Mesa Store operated by Famous Charlie. The balance of the Newtek loan is about \$4,930,000. It is payable monthly in the amount of \$39,982, exclusive of late charges. The current interest rate is 8.25%. Debtors are delinquent with Newtek and charged late fees as a result.

R. *AZDOR*. The Stores were delinquent in their prepetition transaction privilege tax payments. The State of Arizona ex rel Arizona Department of Revenue (“AZDOR”) asserts a blanket lien on Debtors’ assets. The Debtors have been segregating accruing post-petition sales taxes on a daily basis, and have further provided in the proposed DIP Financing for payment of the Transaction Privilege Taxes accrued for the month of March 2019.

S. *Sysco*. Sysco is Debtors’ primary vendor, and provides more than weekly delivery of fresh ingredients required for Debtors to meet the Franchisor’s brand standards and customer expectations. As of March 7, 2019, Sysco was owed \$187,518.05 for the four Stores. Sysco agreed to a payment plan, so that the balance would be paid in ten weekly installments of \$18,518.05 plus current invoices. Debtors sought authority to pay the prepetition claim as a “critical vendor.” Debtors have no practical alternative to Sysco without shutting down the Stores for a period of time.

T. *Landlords*. Debtors are delinquent with landlords, generally in the range of one to two months’ past due rent. Defaults owed to each of the Landlords whose leases are proposed to being assumed would be cured in connection with assumption and assignment of the leases described herein.

U. *Gift Cards*. Debtors have issued gift cards to their customers from time to time. Debtors’ good faith estimate of gift card liability is set forth in the Purchase Price schedule.

V. *Budget*. Debtors and Franchisor agreed on a debtor in possession loan pursuant to a Budget filed with this Court (the “Budget”). Although the DIP Loan was not approved by this Court, the Budget remains in place.

W. Debtors have paid their post-petition obligations, including rent, generally pursuant to the Budget, except for payments to Franchisor and Newtek. Any payments to Debtors' professionals are held in trust subject to appropriate fee application and court order.

X. Debtors are unable to operate their Stores as a going concern. Debtors have sought approval of the Bankruptcy Court for the sale of substantially all of their assets to Purchaser.

Y. With the assistance of a Court-approved broker, Debtors sought higher and better bids for the Assets. No bids were received from anyone other than Purchaser.

Z. Subject to Bankruptcy Court approval, Debtors agree to sell substantially all of their assets, and Purchaser agrees to assume certain of Debtors' liabilities, as follows.

Agreements

1. *Assets.* Sellers shall sell to Purchaser at the Closing all of their Assets other than those Assets identified on the "Excluded Assets" Schedule attached. The Parties may add Excluded Assets up through the Closing. Hereafter, the "Assets" are the assets being purchased.

2. *Free and Clear.* Seller shall purchase the Assets at the Closing free and clear of all liens, claims and Encumbrances, other than those Liabilities expressly assumed pursuant to Section 3.2.

3. *Purchase Price.* Purchaser shall pay for the Assets via a combination of cash and assumption of liabilities as follows:

3.1. *Cash.* The sum of the following amounts, which are estimated on the Purchase Price Schedule, and shall be finalized at the Closing:

3.1.1. *Landlords.* All sums required to (i) satisfy obligations of the applicable Debtor arising after the petition date until the Closing, and (ii) cure pre-Closing monetary defaults under Assumed Leases, or are otherwise required as a condition of assumption and assignment to Purchaser of the Assumed Leases. Purchaser may elect to make Cure Payments directly to the affected Landlord(s).

3.1.2. *United States Trustee.* All sums required for payment to the Office of the United States Trustee with respect to quarterly UST fees for the periods through the third quarter of 2019. Purchaser shall pay the estimated 2d quarter UST fee to Debtor for deposit in the debtor in possession account at Closing. In the four Operators' cases, Purchaser shall further

advance an amount equal to the lesser of \$4,875 per debtor or the actual quarterly UST fees owed for the 3d quarter as and when such fees are calculated and due.

3.1.3. *Debtors' Professionals.* All sums required to pay allowed interim or final fee applications of Debtors' counsel and accountants, which are estimated on the Purchase Price schedule. Purchaser shall fund a payment so that Debtors' counsel has \$90,000 in trust on the Closing, and Debtors' accountant has \$31,000 in trust on the Closing.

3.1.4. *Broker Commission.* \$25,000 payable to the Court-approved broker;

3.1.5. *Willie Itule Produce, Inc. (disputed).* An amount agreed to by Purchaser and Willie Itule Produce, Inc. with respect to a disputed PACA claim. Currently Debtor has objected to the Itule claim and no payment is contemplated.

3.1.6. *Newtek.* The amount of \$1,000,000.00 payable to Newtek at Closing in consideration of Newtek's consent to the sale and release of its liens on the Assets and any claims against Franchisor or Purchaser;

3.1.7. *Vehicles.* The sum of \$59,222.00 payable to Desert Ribs, LLC's debtor in possession account on account of vehicles owned by Desert Ribs, LLC, including trailers, owned or used by Debtors; and the Famous Gracie vehicles referenced in Paragraph

3.1.8. With respect to \$7,773.09, less post-petition payments, owed to Ally, which holds a lien on the 2014 Chevy Express Supershot VIN ending in 9772, Purchaser shall assume the liability and the cash purchase price for vehicles be reduced by the unpaid balance of the Ally loan.

3.1.8. *AZDOR.* The amount of \$10,000.00 for the Famous Gracie building plus proceeds of the Famous Gracie vehicles in the amount of \$83,508.00, less the amount owed to Ally at time of Closing, for a total amount estimated to be \$87,434.00 payable to AZDOR at Closing in consideration of its consent to the sale and release of its liens on the Assets and any claims against Franchisor or Purchaser accruing prior to Closing;

3.1.9. *Post-Sale Hearing DIP.* Sums required to maintain the Operators as a going concern from the June 20, 2019 sale hearing to the Closing, with such advances to be made in Purchaser's sole discretion.

3.2. *Assumed.* The sum of the following amounts, which are estimated on the Purchase Price schedule, and shall be finalized at the Closing:

3.2.1. *Franchisor Cure.* All sums required to cure Sellers' pre-closing defaults under each of the Franchise Agreements;

3.2.2. *Pre-petition DIP.* \$106,000 advanced by Franchisor as an emergency pre-petition DIP loan;

3.2.3. *Sysco.* The balance estimated at \$34,998 owed to Sysco under Debtors' pre-petition settlement agreement, which is assumed and assigned to Purchaser at Closing;

3.2.4. *Gift Cards.* Performance of Debtors' obligations under outstanding gift cards, estimated at \$346,000 as of April 30, 2019, as such amount is due and payable on or after the Closing, but no sums shall be payable in cash by Purchaser to any holder of any gift card;

3.2.5. *Transaction Privilege Tax.* All sums payable by Debtors for post-petition transaction privilege taxes, but upon payment of all TPT tax obligations incurred through Closing, Purchaser shall not be required to segregate amounts collected for TPT taxes.

3.2.6. *Insured Liabilities.* All liabilities arising from the ownership of the acquired assets on and after the closing date, and any pre-closing liabilities that are covered by insurance policies and binders assigned to Buyer, but only to the extent of insurance coverage;

3.2.7. *Assumed Contracts.* All pre-Closing cure amounts and all post-Closing liabilities arising under any assumed contract or lease;

3.2.8. *Employees.* All accrued post-petition payroll obligations owing as of the Closing, not to exceed amounts provided in the Budget, and all accrued liabilities owing to transferred employees for vacation time, personal time off, and sick pay, under Debtors' prepetition agreements without post-petition modification unless approved by Purchaser;

3.2.9. *Trade Payables.* All accrued postpetition trade payables, not to exceed amounts provided in the Budget;

3.2.10. *Utilities.* All post-petition sums payable to utilities by Debtors as and when due. All deposits provided by or on behalf of Debtor, when refunded, shall be paid to Purchaser.

3.2.11. *Extraordinary Items.* Any additional liability assumed by Purchaser in its sole discretion.

4. *Franchise Agreement.* Sellers will assume and assign to Purchaser each of the Franchise Agreements (including San Tan).

5. *Leases.* Sellers shall assume and assign to Purchaser at Purchaser's expense each of the following:

5.1. *Assumed.* The following Leases shall be assumed by the applicable Debtor and assigned to Buyer at Buyer's expense:

5.1.1. Peoria Lease;

5.1.2. Mesa Lease; and

5.1.3. Chandler Lease.

5.2. *Rejected.* The San Tan Lease shall not be assumed. Buyer shall ensure that funds sufficient to pay the obligations of Debtor arising under the San Tan Lease from the

petition date until the Closing are paid. Debtor shall seek rejection of the San Tan Lease as of the Closing.

6. *No Other Assumption.* Except for, and limited solely to the liabilities described in Section 3.2, Purchaser shall not assume, and shall not be liable for, any liabilities or obligations of any Seller of any nature whatsoever, express or implied, fixed or contingent, or any claim, regardless of when made or asserted, which arises out of or is based upon negligence, strict liability or any express or implied representation, warranty agreement or guarantee made by Sellers, or alleged to have been made by Sellers, or which is imposed or asserted to be imposed by operation of law, and any claim seeking recovery for property damage, consequential damage, lost revenue or income or personal injury. In addition to the foregoing, in no event other than as provided in Section 3.2.5 shall Purchaser assume any liability or incur any liability or obligation in respect of any federal, state or local income or other tax liability of Sellers payable with respect to the Operators, Assets, properties or operations of Sellers for any period.

7. *Closing.* The Closing shall be deemed to occur on the first business day that Debtors and Purchaser certify the Conditions to Closing stated below are satisfied.

8. *Conditions to Closing.*

8.1. *Sellers' Conditions to Closing.*

8.1.1. This Court's entry of an order approving this transaction in form reasonably satisfactory to Sellers and Purchaser (the "Sale Order"), which order is not stayed pending appeal.

8.1.2. Purchaser's tender of the Purchase Price as provided above.

8.2. *Purchaser's Conditions to Closing.* The Closing shall not occur until satisfaction of each of the following conditions, or Purchaser's waiver of such condition in Purchaser's sole discretion.

8.2.1. The Sale Order has been entered, is final and not subject to a pending appeal or stay.

8.2.2. Each Debtor has tendered in appropriate form documentation reasonably necessary to transfer the Assets to Purchaser without representation or warranty, as-is, where-is.

8.2.3. Newtek has tendered any releases reasonably requested by Purchaser in recordable form as appropriate.

8.2.4. The AZDOR has tendered any releases reasonably requested by Purchaser in appropriate form,

8.2.5. Each Landlord has executed and delivered a consent to the assumption and assignment of its Lease in form reasonably acceptable to Purchaser.

8.2.6. The Operators have conducted their businesses in the ordinary course, without material adverse change, from the Sale Hearing to the Closing.

9. *Termination.* This Agreement may be terminated by Purchaser upon written notice to Debtors if the Purchaser's Conditions to Closing have not occurred on or before June 30, 2019.

10. *Purchase and Release of Claims.* Entry of the Sale Order shall constitute a sale by Debtors to Purchaser and a release by the Purchaser as of the Closing of any claim or cause of action of any kind against the following, but specifically excluding any claim or cause of action of any kind against Romy Pamela Erlandson and John Andrew Erlandson:

- 10.1. Franchisor and Purchaser, in consideration of the purchase,
- 10.2. Newtek, in consideration of its lien release,
- 10.3. Sysco, on account of assumption of the Sysco settlement agreement,
- 10.4. Any Landlord on an Assumed Lease, on account of assumption and assignment of each Lease,
- 10.5. Each utility,
- 10.6. CPA for Hire, PC, on account of its continuing agreement to provide necessary accounting services to Debtors and Purchaser,
- 10.7. The AZDOR, and
- 10.8. Any other party to a lease or contract assumed and assigned to Purchaser prior to Closing,

with respect to any act or event occurring on or before the Closing, whether known or unknown, and regardless of whether any such claim or cause of action is contingent, unliquidated, disputed or otherwise.

11. *Miscellaneous.*

11.1. *Certain Phrases and Calculations of Time*

11.1.1. In this Agreement, (i) the words "including" and "includes" mean "including (or includes" without limitation"; and (ii) in the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding". If the last day of any such period is not a Business Day, such period will end on the next Business Day.

11.1.2. When calculating the period of time "within" which or "following" which any act or event is required or permitted to be done, notice given or steps taken, the date which is the reference date in calculating such period is to be excluded from the calculation. If

the last day of any such period is not a Business Day, such period will end on the next Business Day.

11.2. *Headings.* The inclusion of a table of contents, the division of this Agreement into Articles and Sections and the insertion of headings are for convenience reference only and are not to affect or be used in the construction or interpretation of this Agreement.

11.3. *Currency.* All monetary amounts in this Agreement, unless otherwise specified, are stated in the currency of the United States.

11.4. *No Presumption.* The Parties and their counsel have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or a question of intent or interpretation arises, this Agreement is to be construed as if drafted jointly by the Parties. No presumption or burden of proof should arise in favor of any Party by virtue of the authorship of any provision of this Agreement.

11.5. *Governing Law.*

11.5.1. This Agreement is governed by and is to be interpreted, construed and enforced in accordance with the laws of the State of Arizona and the federal laws of United States applicable therein, without regard to conflict of law principles.

11.5.2. Subject to the dispute resolution provisions of this Agreement, each of the Parties irrevocably submits to the exclusive jurisdiction of the United States Bankruptcy Court for the District of Arizona in any action or proceeding arising out of or relating to this Agreement. Each of the Parties waives objection to the venue of any action or proceeding in such court or any argument that such court provides an inconvenient forum.

11.6. *Notices*

11.6.1. Any notice, consent, waiver or other communication given under this Agreement must be in writing and shall be given by delivering it (personally or by nationally recognized courier) or sending it by facsimile or electronic mail addressed:

11.6.1.1. To the Purchaser at:

Famous Dave's of America, Inc.
Famous Dave's Ribs Inc.
Attn. Michael Medved, Corporate Counsel
12701 Whitewater Drive, Suite 290
Minnetonka, MN 55343
Email: Michael.Medved@famousdaves.com

With a copy to:

Robert M. Charles, Jr.
Lewis Roca Rothgerber Christie LLP
One South Church Avenue, Suite 2000
Tucson, AZ 85701
Email: RCharles@LRRC.com

11.6.1.2. To Debtors at:

c/o Desert Ribs LLC
Attn. John Erlandson
14795 N. 78th Way, Suite# 100
Scottsdale, AZ 85260

With a copy to:

Michael W. Carmel
80 East Columbus Avenue
Phoenix, AZ 85012-2334
E-mail: Michael@mcarmellaw

Any such communication is deemed to have been duly given (a) if delivered personally during regular business hours, on the day of delivery, (b) if sent by a nationally recognized courier service (delivery receipt requested) with charges paid by the sender, on the later of (i) the first Business Day following the date of dispatch, or (ii) the scheduled day of delivery by such service, (c) if sent by facsimile (with confirmation of transmission) or email (with confirmation of receipt), on the day so sent if the day is a Business Day and the transmission was sent prior to 5 pm (PST) and otherwise on the next Business Day. In the case of electronic mail, receipt of each communication must be confirmed by the recipient by the end of the next Business Day or, if not so confirmed, must be followed by the dispatch of a copy of such communication pursuant to one of the other methods described above; provided however that such email notice shall be deemed to have been given on the date stipulated in (c) above. A Person may change its address for service by notice given in accordance with the foregoing and any subsequent communication must be sent to such Person at its changed address.

11.7. *Entire Agreement.* This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, understandings, negotiations and discussions relating to the subject matter thereof, whether oral or written. There are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between the Parties relating to the subject matter hereof except as specifically set forth in this Agreement. Neither Party has relied or is relying on any other information, discussions or understandings in entering into and completing the transactions contemplated in this Agreement.

11.8. *Amendments.* This Agreement may only be amended, supplemented or otherwise modified by written agreement of the Sellers and the Purchaser.

11.9. *Waiver.* The failure or delay by a Party in enforcing, or insisting upon strict performance of, any provision of this Agreement does not constitute a waiver of such provision or in any way affect the enforceability of this Agreement (or any of its provisions) or deprive a Party of the right, at any time or from time to time, to enforce or insist upon strict performance of that provision or any other provision of this Agreement. Any waiver by a Party of any provision of this Agreement is effective only if in writing and signed by a duly authorized representative of such Party.

11.10. *Assignments.*

11.10.1. This Agreement will become effective when executed by the Parties and thereafter will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

11.10.2. Except as provided in Section 11.10.3, neither this Agreement nor any of the rights, duties or obligations under this Agreement are assignable or transferable by a Party without the prior written consent of the other Party. Any attempt to assign any of the rights, duties or obligations in this Agreement without such written consent is void.

11.10.3. Purchaser may, with written notice, at any time on prior to the Closing Date, assign its rights and obligations under this Agreement to an Affiliate of Franchisor, upon such Affiliates assumption of the obligations of Purchaser under this Agreement.

11.11. *Third Party Beneficiaries.* Except as otherwise expressly provided in this Agreement, the Parties do not intend that this Agreement benefit or create any legal or equitable right, remedy or cause of action in, or on behalf of, any Person other than a Party and no Person, other than a Party, is entitled to rely on the provisions of this Agreement in any proceeding.

11.12. *Time of the Essence.* Time is of the essence in this Agreement.

11.13. *Sales, Transfer and Documentary Taxes.* Neither Party shall be responsible for the other's sales, transfer, documentary taxes, or other fees directly relating to the transfer of the Assets, due as a result of the transfer of the Assets to Purchaser.

11.14. *Expenses.* Except as otherwise expressly provided in this Agreement, all costs and expenses (including the fees and disbursements of legal counsel, brokers, investment advisers, consultants and accountants) incurred in connection with this Agreement and the transactions contemplated herein are to be paid by the Party incurring such expenses. If this Agreement is terminated, the obligation of each Party to pay its own expenses will be subject to any rights of such Party arising from a breach of this Agreement by the other Party.

11.15. *Further Assurances.* From time to time after the Closing, each Party will, at the request of the other Party, execute and deliver such additional conveyances, transfers and other assurances and perform or cause to be performed such further and other acts or things as may be reasonably required to give effect to, and carry out the intent of, this Agreement.

11.16. *Counterparts*. This Agreement may be executed in any number of separate counterparts (including by facsimile or other electronic means) and all such signed counterparts will together constitute one and the same agreement. To evidence its execution of an original counterpart of this Agreement, a Party may send a copy of its original signature on the execution page hereof to the other Parties by facsimile or other means of recorded electronic transmission and such transmission (including in PDF form) with an acknowledgement of receipt shall constitute delivery of an executed copy of this Agreement to the receiving Party.

[signatures follow]

Desert Ribs LLC

By /s/Romy Pamela Erlandson
Romy Pamela Erlandson, Member/Manager

By /s/Romy Pamela Erlandson
John Andrew Erlandson, Member/Manager

Famous Charlie LLC

By Desert Ribs LLC, Its Member/Manager

By /s/Romy Pamela Erlandson
Romy Pamela Erlandson, Member/Manager

By /s/John Andrew Erlandson
John Andrew Erlandson, Member/Manager

Famous Freddie LLC

By Desert Ribs LLC, Its Member/Manager

By /s/Romy Pamela Erlandson
Romy Pamela Erlandson, Member/Manager

By /s/John Andrew Erlandson
John Andrew Erlandson, Member/Manager

Famous Gracie LLC

By Desert Ribs LLC, Its Member/Manager

By /s/Romy Pamela Erlandson
Romy Pamela Erlandson, Member/Manager

By /s/John Andrew Erlandson
John Andrew Erlandson, Member/Manager

Famous George LLC
By Desert Ribs LLC, Its Member/Manager

By /s/Romy Pamela Erlandson
Romy Pamela Erlandson, Member/Manager

By /s/John Andrew Erlandson
John Andrew Erlandson, Member/Manager

FAMOUS DAVE'S OF AMERICA, INC.

By: /s/ Jeffery Crivello
Its: Chief Executive Officer

FAMOUS DAVE'S RIBS, INC.

By: /s/ Jeffery Crivello
Its: Chief Executive Officer

Excluded Assets

Desert Ribs' lease of its premises.

San Tan Lease

Chapter 5 causes of action other than avoidance or other actions that might interfere with Buyer's rights with respect to the acquired Assets, as detailed in Section 10 of this Agreement.

Purchase Price Schedule

LOAN AGREEMENT

THIS LOAN AGREEMENT (this "Agreement") is made, entered into and effective as of June 20, 2019 (the "Effective Date"), by and between CHOICE FINANCIAL GROUP, a North Dakota banking corporation doing business as Choice Bank ("Lender"), FAMOUS DAVE'S OF AMERICA, INC., a Minnesota corporation ("FDOA"), MINWOOD PARTNERS, INC., a Delaware corporation ("MinWood"), D&D OF MINNESOTA, INC., a Minnesota corporation ("D&D"), FAMOUS DAVE'S RIBS OF MARYLAND, INC., a Minnesota corporation ("FDRM"), FAMOUS DAVE'S RIBS, INC., a Minnesota corporation ("EDR"), FAMOUS DAVE'S RIBS-U, INC., a Minnesota corporation ("FDRU"), and LAKE & HENNEPIN BBQ AND BLUES, INC., a Minnesota corporation ("Lake & Hennepin") or collectively with FDOA, MinWood, D&D, FDRM, FDR and FDRU, "Borrowers" or each a "Borrower". Lender or Borrowers may be individually referred to herein as a "party" or collectively as the "parties."

RECITALS

A. It is proposed that Borrowers borrow from Lender and Lender lend to Borrowers the principal sum of up to \$24,000,000.00 (the "Term Loan Amount") via a term loan facility (the "Term Loan"), to be secured by an Amended and Restated Mortgage, Security Agreement and Fixture Financing Statement, an Amended and Restated Assignment of Leases, Rents and Income, and certain other collateral loan documents deemed necessary by Lender or Lender's counsel to secure the Term Loan.

B. It is also proposed that Borrowers borrow from Lender and Lender lend to Borrowers the additional principal sum of up to \$1,000,000.00 (the "Revolving Loan Amount" or collectively with the Term Loan Amount, the "Loan Amounts") via a revolving loan facility (the "Revolving Loan" or collectively with the Term Loan, the "Loans"), to be secured by an Amended and Restated Mortgage, Security Agreement and Fixture Financing Statement, an Amended and Restated Assignment of Leases, Rents and Income, and certain other collateral loan documents deemed necessary by Lender or Lender's counsel to secure the Revolving Loan.

C. Lender is willing, upon the terms and subject to the conditions herein set forth, to make the Loans to Borrowers.

D. Borrowers have issued, caused the issuance of and/or shall issue or cause to be timely issued, the following documentation, in such form and substance as required by Lender in its sole and absolute discretion, fully executed by all applicable parties thereto (collectively, the "Loan Documents"):

- D.1 this Agreement executed by Lender and Borrowers;
 - D.2 Term Promissory Note issued by Borrowers to Lender in the principal amount of \$24,000,000.00 (the "Term Note");
 - D.3 Revolving Promissory Note issued by Borrowers to Lender in the principal amount of \$1,000,000.00 (the "Revolving Note" or collectively with the Term Note, the "Notes");
 - D.4 Amended and Restated Mortgage, Security Agreement and Fixture Financing Statement (the "Mortgage") encumbering the real property therein described (the "Mortgaged Property");
 - D.5 Amended and Restated Assignment of Leases, Rents and Income (the "Assignment of Rents");
 - D.6 Security Agreement;
 - D.7 Uniform Commercial Code Financing Statement perfecting security interest in the assets of Borrowers in favor of Lender;
 - D.8 ADA and Environmental Indemnification Agreement;
 - D.9 Borrower's Affidavits from each Borrower;
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- D.10 Resolutions and Secretary's Certificate of each Borrower;
- D.11 Deposit Account Control Agreement;
- D.12 Collateral Assignment of Promissory Note dated October 31, 2017, by and between Venture Bank (as predecessor-in-interest by merger and acquisition to Lender) and FDOA (the "Collateral Assignment"); and
- D.13 all additional documentation not otherwise listed herein as required by Lender.

AGREEMENTS

NOW THEREFORE, in consideration of the mutual covenants hereinafter contained, it is hereby agreed as follows:

1. Recitals. The recitals set forth above are hereby fully incorporated herein.
2. Loans. Subject to the terms of this Agreement and the Loan Documents, Borrower agrees to take and Lender agrees to make certain Advances (as defined below) of up to and including: (a) the Term Loan Amount, said Term Loan to be evidenced by the Term Note; and (b) the Revolving Loan Amount, said Revolving Loan to be evidenced by the Revolving Note. The terms and conditions of the Loan Documents are hereby expressly incorporated herein by reference and made a part hereof.
 - 2.1 Notes. The obligation to repay the Loans together with interest and other charges thereon shall be evidenced by the Notes.
 - 2.2 Use of Proceeds. The proceeds of the Term Loan shall be used solely to: (a) satisfy in full Lender's loan number 17381 as evidenced by that certain Promissory Note dated December 2, 2016 issued by FDOA and MinWood to Venture Bank (Lender's predecessor-in-interest by merger and acquisition) in the original principal amount of \$3,700,000.00 (the "2016 Term Loan"); and (b) for certain acquisitions and expansions of Borrowers' business operations, as approved by Lender in its sole and absolute discretion pursuant to this Agreement.

The proceeds of the Revolving Loan shall be used solely to: (a) satisfy in full Lender's loan 17396 as evidenced by that certain Promissory Note dated December 2, 2016, issued by FDOA, D&D, FDRM, FDR, FDRU and Lake & Hennepin in the original principal amount of \$1,000,000.00 (the "2016 Revolving Loan"); and (b) for the general capital needs in connection with the operation of the business of Borrowers as approved by Lender in its sole and absolute discretion pursuant to this Agreement.
 - 2.3 Advance Procedures.
 - 2.3.1 Provided no uncured Event of Default then exists, Lender agrees, on the terms and subject to the conditions set forth below, for a period commencing on the Effective Date and ending on the twelve (12) month anniversary thereof (the "Draw Period"), to make certain advances (each an "Advance" or collectively, "Advances") to Borrowers. As used herein, the term "Disburse" or "Disbursement" shall mean the disbursement of Advances made or to be made by Lender. The Term Loan is not a revolving credit facility; no re-Advance(s) of any portion of the Term Loan shall be made. Borrowers may request an extension of the Draw Period by providing written notice to Lender prior to the expiration of the Draw Period, which extension may be granted or withheld by Lender at its sole and absolute discretion.
 - 2.3.3 Advances under the Term Loan shall be made during the Draw Period upon the submission by Borrowers to Lender of a request for an Advance in such form and substance as required

by Lender in its sole and absolute discretion. All Advances shall be subject to the approval by Lender in its sole and absolute discretion of such a request.

- 2.3.4 Provided no uncured Event of Default then exists, Lender agrees, on the terms and subject to the conditions set forth below, to make certain Advances or re-Advances to Borrowers of any remaining amount of the Revolving Loan Amount under the Revolving Loan to satisfy-in-full the 2016 Revolving Loan and thereafter as requested by any Borrower and as approved by Lender in its sole and absolute discretion.
 - 2.3.5 Each request for an Advance shall constitute a reaffirmation by Borrowers that all representations and warranties set forth in this Agreement and the Loan Documents are true and correct as of the date of such request.
 - 2.4 Protective Advances and Disbursements. Notwithstanding anything herein to the contrary, Lender shall have the irrevocable right, but no obligation, at any time and from time to time to cause an Advance or a Disbursement of funds that are on deposit with Lender to pay principal or interest on the Notes and to pay any and all costs and expenses referred to in this Agreement or the Loan Documents, all without receipt of a request from any Borrower.
 - 2.5 Payment and Balance. All payments of principal, interest and other charges under the Notes and of all amounts hereunder shall be made to Lender in immediately available funds. Borrowers agree that the amount shown on the books and records of Lender as being the aggregate balance of the Loans outstanding shall be prima facie evidence of the outstanding balance of the Notes.
3. Additional Requirements for the Advances and Disbursements. Notwithstanding the foregoing, Borrowers covenant and agree to immediately, and without expense to Lender, satisfy the following additional requirements prior to any Advance and thereafter prior to Disbursement thereof, which Advance(s) and Disbursement(s) shall remain at all times subject to the sole and absolute discretion of Lender:
- 3.1 Deliver to Lender the required Loan Documents.
 - 3.2 Deliver to Lender a date down endorsement of Old Republic National Title Insurance Company Loan Policy of Title Insurance Number LX-11656815 issued by DCA Title, as agent, to Lender on December 9, 2016 and December 12, 2016, with such coverages and subject only to exceptions as permitted by Lender at its sole and absolute discretion.
 - 3.3 Deliver to Lender a certificate or policy for all insurance required, under the terms hereof and the Loan Documents, to be maintained by Borrowers.
 - 3.4 Deliver to Lender evidence reasonably satisfactory to Lender in its sole discretion that Borrowers' business operations will at all times comply with all governmental and quasi-governmental regulations applicable thereto.
 - 3.5 Deliver to Lender Certificates of Good Standing for each Borrower issued by the applicable governmental authorities in the jurisdiction in which said Borrower is domiciled within thirty (30) days of the Effective Date.
 - 3.6 Deliver to Lender any amendments or changes to the following incorporation documents of each Borrower since the date copies were last provided by Borrowers to Lender: (a) Certificate and Articles of Organization; (b) Bylaws; (c) Shareholder, Voting Control or Buy-Sell Agreements; and (d) such other and further matters or documents as Lender may reasonably require.
 - 3.7 No uncured Event of Default hereunder or event which would constitute such an Event of Default but for the requirement that notice be given or time elapse shall have occurred and be continuing, and all
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representations and warranties made by Borrowers in this Agreement or the Loan Documents shall continue to be true and correct as of the date of such Advance and Disbursement.

- 3.8 Provide to Lender such evidence of compliance with all of the provisions of this Agreement as Lender may reasonably request.
- 3.9 Provide Lender such assurances that any other loans or mortgages, rights of reversion, leases or other encumbrances for any portion of any collateral pledged by any Borrower to Lender shall be subordinate to the Loans.
- 3.10 Deliver to Lender a FIRREA compliant appraisal of the Mortgaged Property on an "as if construction completed and stabilized occupancy" basis showing an appraised value of not less than \$7,170,000.00 and as otherwise acceptable to Lender in Lender's sole and absolute discretion.
- 3.11 Deliver to Lender an origination fee equal to one-half of one percent (0.50%) of the Term Loan Amount and any additional fees or costs required by Lender hereunder.
- 3.12 Deliver to Lender zoning letters issued by applicable governmental authorities that state the Mortgaged Property complies with its intended use and will comply with all zoning and use laws, regulations, rules or ordinances.
- 3.13 Deliver to Lender such environmental studies and audits in form and content acceptable to Lender prepared by an engineer or scientist acceptable to Lender, showing no substantial environmental hazards on the Mortgaged Property.
- 3.14 Deliver to Lender such other and further documents or provide Lender such other and further information as Lender may reasonably require.

The making of any Advance or Disbursement prior to the satisfaction of any requirement hereof shall not be construed as a waiver of such requirement, and Lender reserves the right to require the satisfaction of any and all such conditions prior to making any subsequent Advance or Disbursement, which Advance or Disbursement shall remain at all times subject to the sole and absolute discretion of Lender

4. Affirmative Covenants. Each Borrower covenants and agrees that hereunder and thereafter, so long as any portion of the Loan Amounts remain outstanding under this Agreement, it will:

- 4.1 Payment of Obligations. Evidence payment of and discharge all taxes and other governmental charges and all contractual obligations calling for the payment of money before the same shall become overdue, unless and to the extent only that such payment is being contested in good faith, with adequate reserves as determined by Lender in its sole and absolute discretion.
- 4.2 Payment of Charges. Evidence payment of all charges required by any local, state or federal governments for the maintenance and operation of the Mortgaged Property.
- 4.3 Insurance. To obtain and maintain at all times (and, from time to time at the request of Lender, furnish Lender with proof of payment of premiums on or a certificate of insurance, as requested by Lender): (a) comprehensive general public liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) providing for limits of coverage of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate with umbrella or excess coverage of not less than \$5,000,000.00 and naming Lender as an additional insured; (b) workers' compensation insurance to the extent required by applicable law; and (c) such other insurance as is normally carried by companies engaged in similar businesses and owning similar property or as otherwise required by the Loan Documents or Lender in its reasonable discretion.

The policies of insurance required hereunder shall be in form and content reasonably satisfactory to Lender and placed with financially sound and reputable insurers, acceptable to Lender, licensed to transact business in the State of Minnesota; and such policies of insurance shall contain an agreement of the insurer to give not less than thirty (30) days' advance written notice to Lender in the event of cancellation, termination or amendment of such policy affecting the coverage thereunder.

- 4.4 Books and Records; Inspection and Examination. Maintain accurate books and records in accordance with generally accepted accounting principles ("GAAP") consistently applied, as applicable. Upon request and reasonable notice by Lender, each Borrower must permit any representative of Lender, at any reasonable time mutually agreeable between said Borrower and Lender (but in no event more than two (2) business days after the request from Lender) during business hours, to inspect, audit, examine, and make copies of all corporate and financial books and records of said Borrower and to inspect any collateral pledged by any Borrower to Lender.
- 4.5 Notice of Adverse Change. Provide Lender timely notice of any condition or event which constitutes, or with the running of time and/or the giving of notice would constitute a default under this Agreement or any of the Loan Documents, and promptly inform Lender of any material adverse change in the financial condition of a Borrower.
- 4.6 Additional Assignments and Consents. At any time or times, execute assignments or supplemental assignments and such other and further instruments of assurance as Lender may request and deem necessary in order to carry into effect the full intent and purpose of this Agreement and otherwise to do any and all things and acts whatsoever that Lender may request as reasonably required in order to perfect the assignment to Lender of any security granted pursuant to this Agreement.
- 4.7 Hold Harmless. Hold Lender harmless from, and Lender shall have no liability or obligation of any kind to any Borrower, creditors of any Borrower or any third party, in connection with, any defective, improper or inadequate workmanship performed in or about, or materials supplied to the Mortgaged Property, or any mechanic's, supplier's or materialman's liens arising as a result of such defective, improper or inadequate workmanship or materials, and upon Lender's request, to replace or cause to be replaced, any such defective, improper or inadequate workmanship or materials.
- 4.8 Condition. Keep the Mortgaged Property, and all improvements, equipment and fixtures thereon, in good working order and condition.
- 4.9 Reporting Requirements.
- 4.9.1 Annual Financial Statements. As soon as available, and in any event within ninety (90) days after the end of each fiscal year, each Borrower shall furnish to Lender the following: (i) annual financial statements of said Borrower for the calendar year end, which financial statements must include, but not be limited to, a balance sheet, a statement of liabilities and shareholder equity, a statement of income or loss and retained earnings, statement of cash flows, and a statement of changes in financial position, all with footnotes, if any, included; and (ii) any other financial statements and information that Lender reasonably requests. All annual financial statements furnished by Borrowers must be prepared in reasonable detail and in accordance with GAAP (or tax accounting reconciled to GAAP) and audited by a reputable accounting firm in form and substance acceptable to Lender and with such certifications as Lender may specify. The foregoing financial statements shall have been deemed delivered to Lender as to a Borrower (and said Borrower shall have complied in all respects with the requirements of this Section 4.9.1) without any other action required by said Borrower upon the filing of Borrower's 10-K each year with the Securities Exchange Commission.
- 4.9.2 Quarterly Financial Statements. As soon as available, and in any event within forty-five (45) days after the end of each calendar quarter, and as otherwise reasonably requested by Lender, each Borrower must furnish to Lender the following: (i) financial statements of

said Borrower for the fiscal quarter end, which financial statements must include, but not be limited to, a balance sheet, a statement of income or loss; and (ii) any other financial statements and information that Lender reasonably requests. All quarterly financial statements furnished by Borrowers must be prepared in reasonable detail and in accordance with GAAP (or tax accounting reconciled to GAAP) and reviewed by a reputable accounting firm in form and substance acceptable to Lender and with such certifications as Lender may specify. The foregoing financial statements shall have been deemed delivered to Lender as to a Borrower (and said Borrower shall have complied in all respects with the requirements of this Section 4.9.2) without any other action required by said Borrower upon the filing of Borrower's 10-Q each quarter with the Securities Exchange Commission.

- 4.9.3 Delivery of Quarterly Compliance Certificate. Borrowers shall furnish to Lender at the time it delivers (or is deemed to deliver) each set of financial statements required by Section 4.9 hereof a Compliance Certificate in substantially the form of Exhibit A hereto, duly executed by either Borrower's Chief Executive Officer, Chief Financial Officer or Chief Accounting Officer, which shall set forth in reasonable detail the computations necessary to determine whether Borrowers are in compliance with the financial covenants contained in Section 4.10 hereof.
- 4.10 Debt Coverage Ratio. Borrowers shall maintain a global minimum Debt Coverage Ratio of 1.5 to 1.0. For purposes of this section, the Debt Coverage Ratio shall be the ratio of: (a) Borrowers' EBITDA to (b) the aggregate amount of principal and interest due and payable by Borrowers under the Loans and any other debt obligations of any Borrower. The Debt Service Coverage ratio shall each be calculated quarterly using the preceding twelve (12) months of the Borrowers' operations utilizing Borrowers' public financial statements and Borrower-prepared supplemental schedules.
- For purposes of this Agreement, "EBITDA" means, for any period, the sum of the following determined on a consolidated basis, without duplication, for Borrowers and their respective subsidiaries in accordance with GAAP (a) consolidated net income for the most recently completed period, plus (b) the following to the extent deducted in calculating such consolidated net income (without duplication): (i) interest expense, (ii) the provision for federal, state, local and foreign income taxes payable, (iii) depreciation and amortization expense, and (iv) non-cash charges and losses, including any write-offs or write-downs and in respect of equity-based compensation and asset impairment.
- 4.11 Deposit Account(s). Except as otherwise permitted by Lender, Borrowers shall maintain all of their respective deposit account(s) with Lender for all periods during which any Borrower shall have any outstanding loan obligations to Lender or shall have the right to draw upon any credit obligations of Lender.
5. Negative Covenants. Each Borrower agrees that, without the prior written consent of Lender, it will not:
- 5.1 grant any security interest in the Mortgaged Property or any part thereof or create or permit to be created or allow to exist any mortgage, encumbrance or other lien upon the Mortgaged Property other than the Mortgage;
- 5.2 sell or otherwise voluntarily transfer any of its business interests or make any material change in its capital structure or general business objects or purposes;
- 5.3 enter into any merger, reorganization or consolidation, or sell, lease, transfer or dispose of all, substantially all, or any material part of its assets, except in the ordinary course of its business;
- 5.4 guaranty, endorse, assume, or otherwise become directly or contingently liable in connection with any debt, obligation or liability of any other person or entity, except by the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business;

- 5.5 become or remain obligated for any indebtedness for borrowed money or for any indebtedness incurred in connection with the acquisition of any property, real or personal, tangible or intangible, except: (a) indebtedness to Lender; (b) current trade, utility or non-extraordinary accounts payable arising in the ordinary course of business; or (c) as permitted with the written consent of Lender;
- 5.6 purchase or otherwise acquire or become obligated for the purchase of all or substantially all of the assets or business interests of any person, firm or corporation, or any shares of stock or ownership interest of any corporation, partnership, limited liability company, trusteeship or association, or in any other manner effectuate or attempt to effectuate an expansion of present business by acquisition without the written consent of Lender;
- 5.7 declare or issue any dividends or distributions to any shareholders;
- 5.8 affirmatively pledge or mortgage any of its assets, whether now owned or hereafter acquired, or create or permit to exist any lien, security interest or encumbrance thereon, except to Lender, except as authorized in writing by Lender; or
- 5.9 enter into or be a party to any transaction with any Related Party except in the ordinary course of and pursuant to the reasonable requirements of such business and upon fair and reasonable terms that are no less favorable than would be obtained in a comparable arms-length transaction with a third party (for purposes of this Agreement, "Related Party" means a party that is any of the following: (i) an Affiliate of a Borrower; (ii) an individual or entity that has, directly or indirectly, a ten percent (10%) or more ownership interest in a Borrower; or (iii) an entity that is owned entirely or in part by a Borrower; and "Affiliate" means a person or entity who controls, is controlled by or is under common control with another person or entity).

Notwithstanding Sections 5.2 and 5.3, Lender acknowledges that Borrowers intend to undertake a corporate reorganization pursuant to which the issued and outstanding capital stock of each Borrower would be transferred to a new corporate entity (the "Parent"), with each Borrower thereafter constituting a wholly-owned subsidiary of Parent. Lender will not unreasonably withhold its approval of such transfers, provided that Borrowers and Parent shall provide such documentation evidencing such transfers as reasonably requested by Lender and Parent shall enter into such agreements with Lender as reasonably requested by Lender such that Parent shall become an obligor under this Agreement and the Loan Documents that is jointly and severally liable with Borrowers.

- 6. Time of Essence. Time is of the essence in the performance of this Agreement.
- 7. Assignability. No Borrower shall assign its rights or interest in this Agreement nor assign its obligations as specified herein without the written consent of Lender.
- 8. Representations and Warranties. Borrowers represent and warrant to Lender the following:
 - 8.1 Good Standing. Each Borrower is a corporation, duly incorporated and validly existing under the laws of the state of its domicile and has the power to enter into and has authorized execution and delivery of this Agreement and the Loan Documents.
 - 8.2 No Conflict of Law or Agreements. The execution, delivery and performance of this Agreement and the Loan Documents are within the powers of each Borrower, have been duly authorized by all necessary action on the part of each Borrower, and do not violate any provision of law or of the governing documents of a Borrower or result in the breach of, or constitute a default under, or result in the creation of any lien, charge or encumbrance upon any property or assets of a Borrower pursuant to any indenture or loan or credit agreement or other agreement or instrument to which a Borrower is a party or by which a Borrower or its property may be bound or affected, except other agreements with Lender.

- 8.3 Financial Statements. Any and all financial statements heretofore delivered to Lender by Borrowers are true and correct in all respects, and fairly represent the financial conditions of the subjects thereof as of the respective dates thereof in all material respects. No materially adverse change has occurred in the financial conditions reflected therein since the respective dates thereof and no additional borrowings have been made by any Borrower since the date thereof other than the borrowing contemplated hereby or approved by Lender. None of the aforesaid financial statements or any certificate or statement furnished to Lender by or on behalf of a Borrower in connection with the transactions contemplated hereby, and none of the representations and warranties in this Agreement, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained therein or herein not misleading. To the best of the knowledge of each Borrower, there is no fact which materially adversely affects or in the future (so far as a Borrower can now foresee) may materially adversely affect the business or prospects or condition (financial or other) of a Borrower or its properties or assets, which has not been set forth herein or in a certificate or statement furnished to Lender by a Borrower.
- 8.4 Material Misstatements or Omissions. No information, exhibit or report furnished by a Borrower to Lender in connection with the negotiation of this Agreement contains any material misstatement of facts or omits to state a material fact or any fact necessary to make the statements contained therein not misleading.
- 8.5 Financial Condition. After the closing of the transactions provided for in this Agreement, Borrowers will be in a financial position to enable them to pay their debts in the ordinary course of business as they become due. No Borrower is contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidating of all or a major portion of its property. No Borrower has any knowledge of any person contemplating the filing of any such petition against it.
- 8.6 Regulation U. No Borrower is engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of the Regulations of the Board of Governors of the Federal Reserve System), and no part of the proceeds of any advance will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock.
- 8.7 Claims. Except as set forth in Schedule 8.7 to this Agreement, no litigation, tax claims or governmental proceedings are pending or threatened against a Borrower, and no judgment or order of any court or administrative agency is outstanding against a Borrower.
- 8.8 Taxes. Borrowers have each respectively filed and will file and cause to be filed, all tax returns (federal and state) required to be filed and pay all taxes shown thereon to be due, including interest and penalties, or has provided adequate reserves for payment thereof.
- 8.9 OFAC Lists. No Related Entity is (and to each Borrower's knowledge after diligent inquiry, no other person holding any legal or beneficial interest whatsoever in a Borrower, directly or indirectly, is) included in, owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the persons referred to or described in any list of persons, entities, and governments issued by the Office of Foreign Assets Control of the United States Department of the Treasury ("OFAC") pursuant to Executive Order 13224 – Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended ("Executive Order 13224"), or any similar list issued by OFAC or any other department or agency of the United States of America (collectively, the "OFAC Lists"); and no Related Entity is controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the persons referred to or described in any list of persons, entities, and governments issued by OFAC pursuant to Executive Order 13224, or any other OFAC Lists. "Related Entity" as used in this Agreement shall mean each Borrower, each shareholder of a Borrower and any other Affiliate which directly or indirectly owns any legal or beneficial interest in a Borrower.

- 8.10 Compliance with Anti-Terrorism Regulations. No Related Entity will be included in, owned by, controlled by, act for or on behalf of, provide assistance, support, sponsorship, or services of any kind to, or otherwise be associated with any of the persons referred to or described in any list of persons, entities, and governments issued by OFAC pursuant to Executive Order 13224 or any other OFAC Lists; none of the Related Entities will be controlled by, act for or on behalf of, provide assistance, support, sponsorship, or services of any kind to, or otherwise associate with any of the persons referred to or described in any list of persons, entities, and governments issued by OFAC pursuant to Executive Order 13224, or any other OFAC Lists; Borrowers will comply at all times with the requirements of Executive Order 13224; the International Emergency Economic Powers Act, 50 U.S.C. Section 1701-06; the United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56; the United Nations Participation Act, 22 U.S.C. Section 287c; the Antiterrorism and Effective Death Penalty Act (enacting 8 U.S.C. Section 219, 18 U.S.C. Section 2332d, and 18 U.S.C. Section 2339b); the International Security and Development Cooperation Act, 22 U.S.C. Section 2349 aa-9; the Terrorism Sanctions Regulations, 31 C.F.R. Part 595; the Terrorism List Government Sanctions Regulations, 31 C.F.R. Part 596; and the Foreign Terrorist Organizations Sanctions Regulations, 31 C.F.R. Part 597, and any similar laws or regulations currently in force or hereafter enacted (collectively, the “Anti-Terrorism Regulations”); and if a Borrower becomes aware or receives any notice that any Related Entity is named on any of the OFAC Lists (such occurrence, an “OFAC Violation”), Borrowers will immediately: (a) give notice to Lender of such OFAC Violation; and (b) comply with all laws applicable to such OFAC Violation (regardless of whether the party included on any of the OFAC Lists is located within the jurisdiction of the United States of America), including without limitation, the Anti-Terrorism Regulations, and each Borrower hereby authorizes and consents to Lender’s taking any and all steps Lender deems necessary, in its sole discretion, to comply with all laws applicable to any such OFAC Violation, including, without limitation, the requirements of the Anti-Terrorism Regulations (including the freezing and/or blocking of assets).
- 8.11 Business Purposes. All amounts loaned to Borrowers by Lender pursuant to this Agreement and the Loan Documents are being loaned for business purposes only.
- 8.12 Environmental Matters. No Borrower is in violation of any applicable federal, state or local law, statute, rule, regulation, ordinance or requirement relating in any way to any Hazardous Substance or the protection of the environment.
- 8.13 Compliance with Laws. Each Borrower’s business operations do not violate any federal, state, local law or ordinance or any applicable provisions of any zoning, use, Environmental Laws or building laws, regulations, rules or ordinances. Each Borrower shall maintain all permits and licenses necessary to operate its business.
- 8.14 Reaffirmation of Collateral Assignment. FDOA reaffirms its obligations under the Collateral Assignment and acknowledges and agrees that the “Obligations” as defined therein includes the Loans.

For purposes of this Agreement, “Environmental Laws” and “Hazardous Substance” shall have the meanings set forth in the Mortgage.

9. Indemnification. Borrowers agree to jointly and severally indemnify Lender and save it harmless against all loss, liability, expense, or damages including but not limited to attorneys’ fees, which may arise by reason of a breach by a Borrower of any warranties, representations or covenants contained in this Agreement or the Loan Documents. Excluding any amounts of principal, interest and other fees and costs for which Borrowers may be liable pursuant to the Note, Borrowers shall not be liable under any indemnification obligations under this Section 9 for any special, indirect, punitive or consequential damages or lost profits.

10. Events of Default. Any of the following, after any applicable period to cure, shall be an Event of Default:

- 10.1 Payments. Borrowers shall fail to pay when due any amount of principal or interest or other amount payable under the Notes or hereunder, whether any such indebtedness is now existing or hereafter arises and whether direct or indirect, due or to become due, absolute or contingent, primary or secondary or joint or joint and several, and such failure shall continue unremedied for a period of fifteen (15) days.
- 10.2 Representations and Warranties. Any representation or warranty by a Borrower under or in connection with this Agreement or any of the Loan Documents shall prove to have been incorrect in any material respect when made or deemed made.
- 10.3 Failure to Perform Certain Covenants. Except for Sections 10.1 or 10.13 of this Agreement (for which no cure period shall be available to Borrowers), any Borrower shall fail to perform or observe any term, covenant or agreement contained in this Agreement or the Loan Documents and said Borrower shall fail to cure the same within thirty (30) days of its receipt of written notice thereof from Lender.
- 10.4 Insolvency. Any Borrower or any subsidiary of a Borrower: (a) shall make a general assignment for the benefit of creditors; (b) shall voluntarily cease to conduct its business in the ordinary course; (c) shall commence any insolvency proceeding with respect to itself; or (d) shall take any action to effectuate or authorize any of the foregoing.
- 10.5 Involuntary Proceedings. Upon the occurrence of any of the following: (a) any involuntary insolvency proceeding is commenced or filed against a Borrower or; (b) any writ, judgment, warrant of attachment, execution or similar process, is issued or levied against a substantial part of any Borrower and any such proceeding or petition shall not be dismissed, or such writ, judgment, warrant of attachment, execution or similar process shall not be released, vacated or fully bonded within thirty (30) days after commencement, filing or levy; (c) any Borrower admits the material allegations of a petition against it in any insolvency proceeding, or an order for relief (or similar order under non-U.S. law) is ordered in any insolvency proceeding; or (d) any Borrower acquiesces in the appointment of a receiver, trustee, custodian, conservator, liquidator, mortgagee in possession (or agent therefor), or other similar person for itself or himself or a substantial portion of its or his property or business.
- 10.6 Defaults under other Agreements with Lender. Any Borrower: (a) shall fail to pay any indebtedness owing under any other agreement with Lender or any of its subsidiaries or under any note or instrument in favor of Lender or any of its subsidiaries, when due (whether at scheduled maturity or by required prepayment, acceleration, demand or otherwise); or (b) shall otherwise be in breach of or default in any of its obligations under any such agreement, note or instrument, and such failure shall continue after the applicable grace period, if any, specified in such agreement, note or instrument.
- 10.7 Judgments. Final judgment(s) for the payment of money shall be rendered against any Borrower and shall remain undischarged and unsatisfied for a period of thirty (30) days during which execution shall not be effectively stayed.
- 10.8 Existence. The insolvency, dissolution, liquidation, merger or consolidation of any Borrower or, except for the sale of any ownership interest of a Borrower on a public securities exchange, the sale, assignment, conveyance, encumbrance or transfer of any ownership interest in any Borrower, including any financial or governance rights associated with any ownership interest of any Borrower, without the prior written consent of Lender, which consent may be granted or withheld by Lender at its sole discretion.
- 10.9 Sale of Assets. The sale, lease or other disposition (whether in one or more transactions) to one or more persons or entities of all or a substantial part of the assets of any Borrower, including but not limited to the Mortgaged Property.

- 10.10 Tax Liens. The attachment of any tax lien to any property of a Borrower for any past due tax obligation.
- 10.11 Material Adverse Change. There is a material adverse change in the condition (financial or otherwise), business or property of any Borrower.
- 10.12 Insecurity. Lender shall in good faith believe that the prospect of due and punctual payment or performance of the Notes or the due and punctual payment or performance of any other note, obligation, mortgage, deed of trust, assignment, guaranty, or other agreement heretofore, herewith or hereafter given to Lender from any Borrower or acquired by Lender is impaired.
- 10.13 Multiple Occurrences of an Event of Default. An Event of Default shall occur three (3) or more times in a twelve (12) month calendar year commencing January 1, regardless of whether or not any Event of Default was cured.
- 10.14 Mortgaged Property. Any of the following shall occur: (a) all or any portion of the Mortgaged Property, or the legal, equitable or any other interest herein, shall be sold or otherwise disposed of without the prior written consent of Lender; (b) title to the Mortgaged Property is not reasonably satisfactory to Lender; (c) the Mortgaged Property or any improvements thereupon is materially damaged or destroyed by casualty and the loss, in the reasonable judgment of Lender, is not adequately covered by insurance actually collected or in the process of collection; or (d) the Mortgaged Property is abandoned.
- 10.15 Mechanics' Liens. Any mechanic's or materialman's lien is filed against the Mortgaged Property or any lien, of any nature, is filed against the Mortgaged Property and is not released, satisfied or discharged or bonded to Lender's satisfaction within thirty (30) days.
11. Rights and Remedies. Upon the occurrence of an Event of Default and expiration of any period allowed by Lender for any Borrower to cure the same, Lender may, at its option, exercise any and all of the following rights and remedies (and any other rights and remedies available to it):
- 11.1 Lender may declare immediately due and payable all unpaid principal of and accrued interest on the Notes, and the same shall thereupon be immediately due and payable without presentment or other demand, protest, notice of dishonor or any other notice of any kind, all of which are hereby expressly waived.
- 11.2 Lender may declare all indebtedness of every type or description owed by Borrowers to Lender to be immediately due and payable, without presentment, demand or protest, and the same shall thereupon be immediately due and payable.
- 11.3 Lender may offset any deposits of any Borrower held by Lender against sums due hereunder or against any other indebtedness then owed by any Borrower to Lender, whether or not then due.
- 11.4 Lender shall have the right, in addition to any other rights provided by law, to enforce its rights and remedies under any of the Loan Documents, under any other agreement, and/or granted to Lender by law.
12. Right of Set-Off. To the extent permitted by applicable law, Lender reserves a right of set-off in all of each Borrower's accounts with Lender (whether checking, savings or any other account). This includes all accounts a Borrower holds jointly. Each Borrower authorizes Lender, to the extent permitted by applicable law, to charge or set-off all sums owing under the Notes or the Loan Documents or any other sums owed Lender by any Borrower against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and set-off rights provided in this Agreement or the Loan Documents.
13. Notices. Any notice required or permitted to be given under this Agreement shall be in writing, given to

Lender or Borrowers, or their respective legal counsel. Any such notice required or contemplated hereunder shall be effective: (a) when delivered personally; (b) one (1) business day after being deposited with a nationally-recognized delivery or courier service; or (c) two (2) business days after being deposited postage pre-paid in the United States Mail, certified or registered, return receipt requested, in each case to the address of the respective party specified herein (or to such other address as a party may designate in the manner set forth herein for the giving of notices).

Rejection or other refusal to accept or inability to deliver because of a changed address of which no notice was given shall be deemed to be receipt of such communication.

Notice shall be sent to:

If to Lender:

Choice Bank
Attn: Bryan Frandrup
2640 Eagan Woods Drive, Suite 100
Eagan, MN 55121

If to Borrowers (as applicable):

Famous Dave's of America, Inc.
MinWood Partners, Inc.
D&D of Minnesota, Inc.
Famous Dave's RIBS of Maryland, Inc.
Famous Dave's RIBS, Inc.
Famous Dave's RIBS-U, Inc.
Lake & Hennepin BBQ and Blues, Inc.
Attn: Jeffery Crivello or Paul Malazita
12701 Whitewater Drive, Suite 190
Minnetonka, MN 55343

14. Fees. Borrowers agree to pay all fees of title, appraisal fees, survey fees, recording fees, license and permit fees and title insurance and other insurance premiums, and agree to reimburse Lender upon demand for all reasonable out-of-pocket expenses actually incurred by Lender in connection with this Agreement or in connection with the transactions contemplated by this Agreement, including but not limited to, any and all reasonable legal expenses and attorneys' fees sustained by Lender in the exercise of any right or remedy available to it under this Agreement or the Loan Documents or otherwise by law or equity and all reasonable fees and disbursements of counsel for Lender for the services performed by such counsel in connection with the preparation of this Agreement and the documents and instruments contemplated hereby and any modifications or amendments of the same.

15. Headings. The headings used in this Agreement are for convenience only and do not define, limit or construe the contents of this Agreement.

16. Binding on Successors and Assigns. Subject to the limitations contained in this Agreement, this Agreement and the Loan Documents shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

17. Survival of Warranties and Agreements. All of the representations, warranties and agreements made herein, in the application for the Loans, any other instrument required under this Agreement or in connection with the Loans, shall survive the closing of the Loans and inure to the benefit of Lender, its successor and assigns.

18. Consent to Loan Participation. Each Borrower agrees and consents to Lender's sale or transfer, whether now or later, of one or more participation interests in the Loans to one or more purchasers, whether related or unrelated to Lender. Lender may provide, without any limitation whatsoever, to any one or more purchasers, or potential purchasers, any information or knowledge Lender may have about any Borrower or about any other matter relating to the Loans, and each Borrower hereby waives any rights to privacy they may have with respect to such matters. Borrowers additionally waive any and all notices of sale of participation interests, as well as all notices of any repurchase of such participation interests. Borrowers also agree that the purchasers of any such participation interests will be considered as the absolute owners of such interests in the Loans and will have all the rights granted under the participation agreement or agreements governing the sale of such participation interests. Borrowers further waive all

rights of off-set or counterclaim that they may have now or later against Lender or against any purchaser of such a participation interest and unconditionally agree that either Lender or such purchaser may enforce a Borrower's obligation under the Loans irrespective of the failure or insolvency of any Lender of any interests in the Loans. Borrowers further agree that the purchaser of any such participation interest may enforce its interest irrespective of any personal claims or defenses that any Borrower may have against Lender.

19. Waiver of Right to a Trial by Jury. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL PARTIES TO THIS AGREEMENT HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL:

- 19.1 WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS AGREEMENT, THE LOANS, THE LOAN DOCUMENTS AND ALL MATTERS CONTEMPLATED HEREBY, INCLUDING BUT NOT LIMITED TO THE AMOUNT, REASONABLENESS AND ENTITLEMENT TO ATTORNEYS' FEES; AND
- 19.2 AGREE NOT TO SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE, OR HAS NOT BEEN, WAIVED.

EACH PARTY TO THIS AGREEMENT CERTIFIES THAT NEITHER LENDER NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT LENDER WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.

20. Jurisdiction: Governing Law. Borrowers consent to the jurisdiction of the state and federal courts located in Minneapolis, Minnesota in connection with any controversy relating in any way to this Agreement or to any transaction or matter relating to this Agreement, waive any argument that venue in such forums is not convenient. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Minnesota (excluding conflict of law rules).

21. No Waiver. Lender shall not be deemed by any act of omission or commission to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by Lender, and then only to the extent specifically set forth in the writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.

22. Entire Agreement. This Agreement and the Loan Documents supersede and replace any previous letter or communication from Lender which summarizes the terms of the transactions described herein and any previous loan agreement or credit agreement for such transactions, and any such previous letters, loan agreements and credit agreements are terminated. No provision of this Agreement can be amended, modified, waived or terminated, except by a writing executed by Borrowers and Lender.

23. Errors and Omissions. Borrowers agree to fully cooperate with Lender, correct and adjust for any clerical errors contained in any or all loan closing documentation, including but not limited to the Loan Documents.

24. Multiple Borrowers. This Agreement has been executed by multiple obligors who are referred to herein individually and collectively and interchangeably as "Borrower" or "Borrowers". Unless specifically stated to the contrary, the words "Borrower" or "Borrowers" as used in this Agreement, including without limitation all representations, warranties and covenants, shall include all Borrowers, jointly and severally. Borrowers understand and agree that, with or without notice to any Borrower, Lender may:

- 24.1 make one or more additional secured or unsecured loans or otherwise extend additional credit with respect to any other Borrower;
- 24.2 with respect to any other Borrower, alter, compromise, renew, extend, accelerate or otherwise change one or more times the time for payment or other terms of any indebtedness, including increases or decreases of the rate of interest on any indebtedness;

- 24.3 exchange, enforce, waive, subordinate, fail or decide not to perfect and release any security, with or without the substitution of new collateral;
- 24.4 release, substitute, agree not to sue, or deal with any one or more of Borrowers or any other Borrower's sureties, endorsers or other guarantors on any terms or in any manner Lender may choose;
- 24.5 determine how, when and what application of payments and credits shall be made on any indebtedness;
- 24.6 apply such security and direct the order or manner of sale of any collateral, including without limitation, any non-judicial sale permitted by the terms of the controlling security agreement or deed of trust, as Lender, in its sole and absolute discretion, may determine;
- 24.7 exercise or refrain from exercising any rights against any Borrower or others or otherwise act or refrain from acting;
- 24.8 settle or compromise any indebtedness; and
- 24.9 subordinate the payment of all or any part of any of Borrowers' indebtedness to Lender to the payment of any liabilities which may be due Lender or others.

25. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute but one and the same instrument. Executed copies of the signature pages of this Agreement sent by facsimile or transmitted electronically in either Tagged Image File Format ("TIFF") or Portable Document Format ("PDF") shall be treated as originals, fully binding and with full legal force and effect, and the parties waive any rights they may have to object to such treatment. Any party delivering an executed counterpart of this Agreement by facsimile, TIFF or PDF also shall deliver a manually executed counterpart of this Agreement, but the failure to deliver a manually executed counterpart should not affect the validity, enforceability, and binding effect of this Agreement. The pages of any counterpart of this Agreement containing any party's signature or the acknowledgement of such party's signature hereto may be detached therefrom without impairing the effect of the signature or acknowledgement, provided such pages are attached to any other counterpart identical thereto except having additional pages containing the signatures or acknowledgements thereof of other parties.

26. Partial Release of Mortgaged Property. Provided no uncured Event of Default then exists, Lender will release from the Mortgage that portion of the Mortgaged Property referenced as Parcel 4 therein and generally known as 3211 Northdale Boulevard NW, Coon Rapids, Minnesota, upon a payment by Borrowers to Lender of principal under the Term Loan in an amount necessary to reduce the outstanding Principal Balance (as defined in the Term Note) thereof to an amount less than or equal to \$22,000,000.00, at which time the Term Loan Amount shall be permanently reduced to \$22,000,000.00.

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Lender:

CHOICE FINANCIAL GROUP,
a North Dakota banking corporation doing business as
Choice Bank

/s/ Bryan P. Frandrup _____
By: Bryan P. Frandrup
Its: Vice President

[Lender Signature Page to Loan Agreement dated June 20, 2019, entered into by and between Choice Financial Group, Famous Dave's of America, Inc., MinWood Partners, Inc., D&D of Minnesota, Inc., Famous Dave's RIBS of Maryland, Inc., Famous Dave's RIBS, Inc., Famous Dave's RIBS-U, Inc., and Lake & Hennepin BBQ & Blues, Inc.]

EACH BORROWER REPRESENTS AND WARRANTS TO LENDER AND AGREES THAT EACH HAS READ THIS ENTIRE AGREEMENT AND UNDERSTANDS ALL OF THE PROVISIONS OF THIS AGREEMENT.

Borrowers:

FAMOUS DAVE'S OF AMERICA, INC.,
a Minnesota corporation

/s/ Jeffery Crivello

By: Jeffery Crivello

Its: Chief Executive Officer

MINWOOD PARTNERS, INC.,
a Delaware corporation

/s/ Jeffery Crivello

By: Jeffery Crivello

Its: Chief Executive Officer

D&D OF MINNESOTA, INC.,
a Minnesota corporation

/s/ Jeffery Crivello

By: Jeffery Crivello

Its: Chief Executive Officer

FAMOUS DAVE'S RIBS OF MARYLAND, INC., a
Minnesota corporation

/s/ Jeffery Crivello

By: Jeffery Crivello

Its: Chief Executive Officer

FAMOUS DAVE'S RIBS, INC.,
a Minnesota corporation

/s/ Jeffery Crivello

By: Jeffery Crivello

Its: Chief Executive Officer

FAMOUS DAVE'S RIBS-U, INC.,
a Minnesota corporation

/s/ Jeffery Crivello

By: Jeffery Crivello

Its: Chief Executive Officer

LAKE & HENNEPIN BBQ AND BLUES, INC.,
a Minnesota corporation

/s/ Jeffery Crivello

By: Jeffery Crivello

Its: Chief Executive Officer

[Borrower Signature Pages to Loan Agreement dated June 20, 2019, entered into by and between Choice Financial Group, Famous Dave's of America, Inc., MinWood Partners, Inc., D&D of Minnesota, Inc., Famous Dave's RIBS of Maryland, Inc., Famous Dave's RIBS, Inc., Famous Dave's RIBS-U, Inc., and Lake & Hennepin BBQ and Blues, Inc.]

EXHIBIT A
COMPLIANCE CERTIFICATE
(Form)

Pursuant to Section 4.9 of the Loan Agreement dated as of June 20, 2019 (the terms defined therein being used herein as therein defined and terms used herein and not otherwise defined therein being used herein as defined in the Loan Agreement) between CHOICE FINANCIAL GROUP, a North Dakota banking corporation ("Lender"), and FAMOUS DAVE'S OF AMERICA, INC., a Minnesota corporation, MINWOOD PARTNERS, INC., a Delaware corporation, D&D OF MINNESOTA, INC., a Minnesota corporation, FAMOUS DAVE'S RIBS OF MARYLAND, INC., a Minnesota corporation, FAMOUS DAVE'S RIBS, INC., a Minnesota corporation, FAMOUS DAVE'S RIBS-U, INC., a Minnesota corporation, LAKE & HENNEPIN BBQ AND BLUES, INC., a Minnesota corporation (each a "Borrower" or collectively, "Borrowers"), Borrowers hereby certify to Lender as follows:

1. The financial statements of Borrowers attached hereto for the period ending _____, 20____, are maintained on a consolidated and consolidating reporting basis and are complete and correct in all material respects and fairly present the financial condition of Borrowers as of the date of said financial statements and results of their respective business operations for the period covered thereby, and are prepared in reasonable detail and in accordance with GAAP (or tax accounting reconciled to GAAP).

2. As of _____, 20____ (the "Reporting Date"), Borrowers are in compliance with Section 4.10 of the Loan Agreement. The calculations made to determine compliance with such provision were as follows:

DEBT SERVICE COVERAGE RATIO:

The Ratio of:

On a consolidated basis:

net income (net loss)	\$ _____
interest expense	+ _____
income tax expense	+ _____
depreciation and amortization expense	+ _____
non-cash charges and losses, including any write-offs or write-downs and in respect of equity-based compensation and asset impairment	+ _____
Subtotal	\$ _____

To

the aggregate amount of principal and interest due and payable by Borrowers under the Loans and any other loans	\$ _____
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Actual Ratio	_____
---------------------	-------

Minimum Required per Covenant This Period	1.50
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Date: _____, 20____.

[This space intentionally left blank; signature pages follow.]

Borrowers:

FAMOUS DAVE'S OF AMERICA, INC.,
a Minnesota corporation

/s/ Jeffery Crivello
By: Jeffery Crivello
Its: Chief Executive Officer

MINWOOD PARTNERS, INC.,
a Delaware corporation

/s/ Jeffery Crivello
By: Jeffery Crivello
Its: Chief Executive Officer

D&D OF MINNESOTA, INC.,
a Minnesota corporation

/s/ Jeffery Crivello
By: Jeffery Crivello
Its: Chief Executive Officer

FAMOUS DAVE'S RIBS OF MARYLAND, INC., a
Minnesota corporation

/s/ Jeffery Crivello
By: Jeffery Crivello
Its: Chief Executive Officer

FAMOUS DAVE'S RIBS, INC.,
a Minnesota corporation

/s/ Jeffery Crivello
By: Jeffery Crivello
Its: Chief Executive Officer

FAMOUS DAVE'S RIBS-U, INC.,
a Minnesota corporation

/s/ Jeffery Crivello
By: Jeffery Crivello
Its: Chief Executive Officer

LAKE & HENNEPIN BBQ AND BLUES, INC.,
a Minnesota corporation

/s/ Jeffery Crivello
By: Jeffery Crivello
Its: Chief Executive Officer

[Borrower Signature Pages to Compliance Certificate dated _____, 20____, submitted to Choice Financial Group by Famous Dave's of America, Inc., MinWood Partners, Inc., D&D of Minnesota, Inc., Famous Dave's RIBS of Maryland, Inc., Famous Dave's RIBS, Inc., Famous Dave's RIBS -U, Inc., and Lake & Hennepin BBQ and Blues, Inc.]

TERM PROMISSORY NOTE

Maximum Advance Amount:
\$24,000,000.00

Eagan, Minnesota
 June 20, 2019

FOR VALUE RECEIVED, FAMOUS DAVE'S OF AMERICA, INC., a Minnesota corporation, MINWOOD PARTNERS, INC., a Delaware corporation, D&D OF MINNESOTA, INC., a Minnesota corporation, FAMOUS DAVE'S RIBS OF MARYLAND, INC., a Minnesota corporation, FAMOUS DAVE'S RIBS, INC., a Minnesota corporation, FAMOUS DAVE'S RIBS-U, INC., a Minnesota corporation, and LAKE & HENNEPIN BBQ AND BLUES, INC., a Minnesota corporation (collectively "Borrowers" or each a "Borrower"), jointly and severally promise to pay to the order of CHOICE FINANCIAL GROUP, a North Dakota banking corporation doing business as Choice Bank and its successors and assigns ("Lender"), at 2640 Eagan Woods Drive, Suite 100, Eagan, MN 55121, that sum of money that has been Advanced up to the maximum outstanding amount of TWENTY-FOUR MILLION UNITED STATES DOLLARS (\$24,000,000.00) and remains unpaid (the "Principal Balance") pursuant to this Term Promissory Note (this "Note"), together with interest from the date of Advance until fully paid, calculated on the basis and at the rate(s) set forth herein.

1. Interest. Interest shall accrue upon the outstanding Principal Balance as follows:

- 1.1 Interest Calculation Method. Interest on this Note is computed on a 365/360 basis; that is, by applying the ratio of the Interest Rate over a year of three hundred sixty (360) days, multiplied by the Principal Balance, multiplied by the actual number of days the Principal Balance is outstanding. All interest payable under this Note is computed using this method. This calculation method results in a higher effective interest rate than the numeric interest rate stated in this Note.
- 1.2 Interest Rate. Interest shall accrue upon the outstanding Principal Balance at a variable rate equal to the Prime Rate (the "Index"), as published in the *Wall Street Journal* and effective on the same day (the "Interest Rate"). If the Index becomes unavailable during the term of this Note, Lender may designate a substitute index after notifying Borrower. The Interest Rate change will not occur more often than once per day.

Notwithstanding the foregoing, under no circumstances shall the Interest Rate be less than 5.00%.

2. Payments and Application of Payments.

- 2.1 Commencing July 20, 2019, Borrowers shall make monthly payments to Lender in an amount equal to any interest accrued upon the outstanding Principal Balance, due and payable on the 20th day of each calendar month (or if the 20th day of each month is not a business day, on the next immediate business day), until June 20, 2020.
- 2.2 Commencing on July 20, 2020, Borrowers shall make monthly payments to Lender in an amount equal to any interest accrued upon the outstanding Principal Balance, plus principal based upon an amortization period of sixty (60) months, due and payable on the 20th day of each calendar month (or if the 20th day of each month is not a business day, on the next immediate business day), until June 20, 2025 (the "Maturity Date").
- 2.3 Whenever increases occur in the Interest Rate, Lender, at its option, may do one or more of the following: (a) increase Borrowers' payments to ensure this Note will pay off in full

on the Maturity Date, (b) increase the payments due hereunder to cover accruing interest, (c) increase the number of payments required hereunder, and (d) continue payments hereunder at the same amount and increase the final payment due on the Maturity Date.

- 2.4 Lender, at its option, upon the conclusion of the Draw Period, may also increase or decrease Borrowers' payments to ensure this Note will pay off in full on the Maturity Date.
- 2.5 Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; then to principal; then to any unpaid collection costs; and then to any late charges. Borrowers will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.
- 2.6 If a regularly scheduled payment is fifteen (15) days or more late, Borrowers will be charged five percent (5.000%) of the unpaid portion of the regularly scheduled payment or Fifty United States Dollars (\$50.00), whichever is greater.

3. Prepayment. There shall be no prepayment fee or charge.

4. Default Rate. Upon the occurrence of and during the continuance of an Event of Default, the Interest Rate on this Note shall automatically increase by six percent (6.00%) per annum until the Event of Default has been cured ("Default Rate"), if allowed. The Default Rate shall apply to each succeeding interest rate change that would have applied had there been no default. However, in no event shall the Interest Rate exceed the maximum interest rate limitations under applicable law.

5. Events of Default. Any Event of Default set forth in that certain Loan Agreement, as amended, entered into by and between Lender and Borrowers of even date herewith (the "Loan Agreement") or any other document constituting the Loan Documents, as said term is defined in the Loan Agreement, shall constitute an "Event of Default" hereunder.

6. Attorneys' Fees and Costs of Collection. Borrowers agree to pay on demand all the losses, costs, and expenses (including, without limitation, attorneys' fees and disbursements) which Lender incurs in connection with enforcement or attempted enforcement of this Note, or the protection or preservation of Lender's rights under this Note, whether by judicial proceedings or otherwise. Such costs and expenses include, without limitation, those incurred in connection with any workout or refinancing, or any bankruptcy, insolvency, liquidation or similar proceedings.

7. Security. This Note is secured by certain collateral loan documents as set forth in the Loan Agreement. All of the terms and conditions contained in the Loan Documents that are to be kept and performed by Borrowers are hereby made a part of this Note and to the same extent and with the same force and effect as if they were fully set forth herein and Borrowers covenant and agree to keep and perform them, or cause them to be kept and performed, strictly in accordance with their terms.

8. Remedies. The remedies of Lender as provided herein and in the Loan Documents shall be cumulative and concurrent and may be pursued singularly, successively or together, at the sole discretion of Lender, and may be exercised as often as occasion therefore shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

9. Performance. Borrowers waive presentment for payment, demand, notice of demand, notice of nonpayment or dishonor, protest and notice of protest of this Note, and all other notices in connection with the delivery, acceptance, performance, default or enforcement of the payment of this Note.

10. Waiver. Lender shall not be deemed by any act of omission or commission to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by Lender, and then only to the extent specifically set forth in the writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.

11. Usury. All agreements herein are expressly limited so that in no contingency or event whatsoever shall the amount paid or agreed to be paid to Lender for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under applicable usury laws. If from any circumstances whatsoever fulfillment of any provision hereof at the time performance of such provisions shall be due shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any circumstance Lender shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due hereunder and not to the payment of interest.

12. Counterparts. This Note may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute but one and the same instrument. Executed copies of the signature page(s) of this Note sent by facsimile or transmitted electronically in either Tagged Image File Format (“TIFF”) or Portable Document Format (“PDF”) shall be treated as originals, fully binding and with full legal force and effect, and Borrowers waive any rights it may have to object to such treatment. If delivering an executed counterpart of this Note by facsimile, TIFF or PDF, a Borrower shall also deliver a manually executed counterpart of this Note, but the failure to deliver a manually executed counterpart should not affect the validity, enforceability, and binding effect of this Note. The page(s) of any counterpart of this Note containing a Borrower’s signature or the acknowledgement of such party’s signature hereto may be detached therefrom without impairing the effect of the signature or acknowledgement, provided such pages are attached to any other counterpart identical thereto except having additional pages containing the signatures or acknowledgements thereof of other parties.

13. Definitions. Any capitalized terms not defined herein shall have the same meaning as defined in the Loan Agreement.

14. Multiple Borrowers. This Note has been executed by multiple obligors who are referred to herein individually and collectively and interchangeably as “Borrower” or “Borrowers”. Unless specifically stated to the contrary, the words “Borrower” or “Borrowers” as used in this Note, including without limitation all representations, warranties and covenants, shall include all Borrowers, jointly and severally.

[This space intentionally left blank; signature pages follow.]

IN WITNESS WHEREOF, Borrowers, intending to be legally bound hereby, have duly executed this Note on the date first above written.

Borrowers:

FAMOUS DAVE'S OF AMERICA, INC.,
a Minnesota corporation

/s/ Jeffery Crivello
By: Jeffery Crivello
Its: Chief Executive Officer

MINWOOD PARTNERS, INC.,
a Delaware corporation

/s/ Jeffery Crivello
By: Jeffery Crivello
Its: Chief Executive Officer

D&D OF MINNESOTA, INC.,
a Minnesota corporation

/s/ Jeffery Crivello
By: Jeffery Crivello
Its: Chief Executive Officer

FAMOUS DAVE'S RIBS OF MARYLAND, INC.,
a Minnesota corporation

/s/ Jeffery Crivello
By: Jeffery Crivello
Its: Chief Executive Officer

FAMOUS DAVE'S RIBS, INC.,
a Minnesota corporation

/s/ Jeffery Crivello
By: Jeffery Crivello
Its: Chief Executive Officer

FAMOUS DAVE'S RIBS-U, INC.,
a Minnesota corporation

/s/ Jeffery Crivello
By: Jeffery Crivello
Its: Chief Executive Officer

LAKE & HENNEPIN BBQ AND BLUES, INC.,
a Minnesota corporation

/s/ Jeffery Crivello
By: Jeffery Crivello
Its: Chief Executive Officer

[Signature Pages to \$24,000,000.00 Term Promissory Note dated June 20, 2019, issued by Famous Dave's of America, Inc., MinWood Partners, Inc., D&D of Minnesota, Inc., Famous Dave's RIBS of Maryland, Inc., Famous Dave's RIBS, Inc., Famous Dave's RIBS-U, Inc., and Lake & Hennepin BBQ and Blues, Inc., to Choice Financial Group]

REVOLVING PROMISSORY NOTE

Maximum Advance Amount:
\$1,000,000.00

Eagan, Minnesota
June 20, 2019

FOR VALUE RECEIVED, FAMOUS DAVE'S OF AMERICA, INC., a Minnesota corporation, MINWOOD PARTNERS, INC., a Delaware corporation, D&D OF MINNESOTA, INC., a Minnesota corporation, FAMOUS DAVE'S RIBS OF MARYLAND, INC., a Minnesota corporation, FAMOUS DAVE'S RIBS, INC., a Minnesota corporation, FAMOUS DAVE'S RIBS-U, INC., a Minnesota corporation, and LAKE & HENNEPIN BBQ AND BLUES, INC., a Minnesota corporation (collectively "Borrowers" or each a "Borrower"), jointly and severally promise to pay to the order of CHOICE FINANCIAL GROUP, a North Dakota banking corporation doing business as Choice Bank and its successors and assigns ("Lender"), at 2640 Eagan Woods Drive, Suite 100, Eagan, MN 55121, that sum of money that has been Advanced or re-Advanced from time-to-time up to the maximum outstanding amount at any one time of ONE MILLION UNITED STATES DOLLARS (\$1,000,000.00) and remains unpaid pursuant to this Revolving Promissory Note (this "Note"), together with interest from the date of Advance until fully paid, calculated on the basis and at the rate(s) set forth herein. Such Advances and re-Advances shall be referred to hereafter as the "Revolving Credit." All Revolving Credit which remains outstanding and unpaid shall bear interest at the Interest Rate as defined below.

1. Interest. Interest shall accrue upon the outstanding Revolving Credit as follows:
 - 1.1 Interest Calculation Method. Interest on this Note is computed on a 365/360 basis; that is, by applying the ratio of the Interest Rate over a year of three hundred sixty (360) days, multiplied by the outstanding Revolving Credit, multiplied by the actual number of days the Revolving Credit is outstanding. All interest payable under this Note is computed using this method. This calculation method results in a higher effective interest rate than the numeric interest rate stated in this Note.
 - 1.2 Interest Rate. Interest shall accrue upon the outstanding Revolving Credit at a variable rate equal to the 30-day LIBOR (London Interbank Offer Rate) rate (the "Index") plus three hundred twenty-five (325) basis points, as published in the *Wall Street Journal* and effective on the same day (the "Interest Rate"). If the Index becomes unavailable during the term of this Note, Lender may designate a substitute index after notifying Borrower. The Interest Rate change will not occur more often than once per day.

Notwithstanding the foregoing, under no circumstances shall the Interest Rate be less than 3.75%.
 2. Payments and Application of Payments.
 - 2.1 Commencing July 2, 2019, Borrowers shall make monthly payments to Lender of interest accrued upon the outstanding Revolving Credit during the preceding calendar month, due and payable on the 1st day of each calendar month (or if the 1st day of each month is not a business day, on the next immediate business day), until December 2, 2019 (the "Maturity Date"). On the Maturity Date, the entire outstanding balance of the Revolving Credit plus all applicable interest or other fees shall be paid in full. The amount due on the Maturity Date is a balloon payment.
-

- 2.2 Whenever increases occur in the Interest Rate, Lender, at its option, may do one or more of the following: (a) increase Borrowers' payments to ensure this Note will pay off in full on the Maturity Date, (b) increase the payments due hereunder to cover accruing interest, (c) increase the number of payments required hereunder, and (d) continue payments hereunder at the same amount and increase the final payment due on the Maturity Date.
- 2.3 Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; then to principal; then to any unpaid collection costs; and then to any late charges. Borrowers will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.
- 2.4 If a regularly scheduled payment is fifteen (15) days or more late, Borrowers will be charged 5.000% of the unpaid portion of the regularly scheduled payment or \$50.00, whichever is greater.

3. Prepayment. There shall be no prepayment fee or charge.

4. Default Rate. Upon the occurrence of and during the continuance of an Event of Default, the Interest Rate on this Note shall automatically increase by six percent (6.00%) per annum until the Event of Default has been cured ("Default Rate"), if allowed. The Default Rate shall apply to each succeeding interest rate change that would have applied had there been no default. However, in no event shall the Interest Rate exceed the maximum interest rate limitations under applicable law.

5. Events of Default. Any Event of Default set forth in that certain Loan Agreement, as amended, entered into by and between Lender and Borrowers of even date herewith (the "Loan Agreement") or any other document constituting the Loan Documents, as said term is defined in the Loan Agreement, shall constitute an "Event of Default" hereunder.

6. Attorneys' Fees and Costs of Collection. Borrowers agree to pay on demand all the losses, costs, and expenses (including, without limitation, attorneys' fees and disbursements) which Lender incurs in connection with enforcement or attempted enforcement of this Note, or the protection or preservation of Lender's rights under this Note, whether by judicial proceedings or otherwise. Such costs and expenses include, without limitation, those incurred in connection with any workout or refinancing, or any bankruptcy, insolvency, liquidation or similar proceedings.

7. Security. This Note is secured by certain collateral loan documents as set forth in the Loan Agreement. All of the terms and conditions contained in the Loan Documents that are to be kept and performed by Borrowers are hereby made a part of this Note and to the same extent and with the same force and effect as if they were fully set forth herein and Borrowers covenant and agree to keep and perform them, or cause them to be kept and performed, strictly in accordance with their terms.

8. Remedies. The remedies of Lender as provided herein and in the Loan Documents shall be cumulative and concurrent and may be pursued singularly, successively or together, at the sole discretion of Lender, and may be exercised as often as occasion therefore shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

9. Performance. Borrowers waive presentment for payment, demand, notice of demand, notice of nonpayment or dishonor, protest and notice of protest of this Note, and all other notices in connection with the delivery, acceptance, performance, default or enforcement of the payment of this Note.

10. Waiver. Lender shall not be deemed by any act of omission or commission to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by Lender, and then only to the extent specifically set forth in the writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.

11. Usury. All agreements herein are expressly limited so that in no contingency or event whatsoever shall the amount paid or agreed to be paid to Lender for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under applicable usury laws. If from any circumstances whatsoever fulfillment of any provision hereof at the time performance of such provisions shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any circumstance Lender shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due hereunder and not to the payment of interest.

12. Counterparts. This Note may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute but one and the same instrument. Executed copies of the signature page(s) of this Note sent by facsimile or transmitted electronically in either Tagged Image File Format (“TIFF”) or Portable Document Format (“PDF”) shall be treated as originals, fully binding and with full legal force and effect, and Borrowers waive any rights it may have to object to such treatment. If delivering an executed counterpart of this Note by facsimile, TIFF or PDF, a Borrower shall also deliver a manually executed counterpart of this Note, but the failure to deliver a manually executed counterpart should not affect the validity, enforceability, and binding effect of this Note. The page(s) of any counterpart of this Note containing a Borrower’s signature or the acknowledgement of such party’s signature hereto may be detached therefrom without impairing the effect of the signature or acknowledgement, provided such pages are attached to any other counterpart identical thereto except having additional pages containing the signatures or acknowledgements thereof of other parties.

13. Definitions. Any capitalized terms not defined herein shall have the same meaning as defined in the Loan Agreement.

14. Multiple Borrowers. This Note has been executed by multiple obligors who are referred to herein individually and collectively and interchangeably as “Borrower” or “Borrowers”. Unless specifically stated to the contrary, the words “Borrower” or “Borrowers” as used in this Note, including without limitation all representations, warranties and covenants, shall include all Borrowers, jointly and severally.

[This space intentionally left blank; signature pages follow.]

IN WITNESS WHEREOF, Borrowers, intending to be legally bound hereby, have duly executed this Note on the date first above written.



Borrowers:

FAMOUS DAVE'S OF AMERICA, INC.,
a Minnesota corporation

/s/ Jeffery Crivello
By: Jeffery Crivello
Its: Chief Executive Officer

MINWOOD PARTNERS, INC.,
a Delaware corporation

/s/ Jeffery Crivello
By: Jeffery Crivello
Its: Chief Executive Officer

D&D OF MINNESOTA, INC.,
a Minnesota corporation

/s/ Jeffery Crivello
By: Jeffery Crivello
Its: Chief Executive Officer

FAMOUS DAVE'S RIBS OF MARYLAND, INC.,
a Minnesota corporation

/s/ Jeffery Crivello
By: Jeffery Crivello
Its: Chief Executive Officer

FAMOUS DAVE'S RIBS, INC.,
a Minnesota corporation

/s/ Jeffery Crivello
By: Jeffery Crivello
Its: Chief Executive Officer

FAMOUS DAVE'S RIBS-U, INC.,
a Minnesota corporation

/s/ Jeffery Crivello
By: Jeffery Crivello
Its: Chief Executive Officer

LAKE & HENNEPIN BBQ AND BLUES, INC.,
a Minnesota corporation

/s/ Jeffery Crivello
By: Jeffery Crivello
Its: Chief Executive Officer

[Signature Pages to \$1,000,000.00 Revolving Promissory Note dated June 20, 2019, issued by Famous Dave's of America, Inc., MinWood Partners, Inc., D&D of Minnesota, Inc., Famous Dave's RIBS of Maryland, Inc., Famous Dave's RIBS, Inc., Famous Dave's RIBS-U, Inc., and Lake & Hennepin BBQ and Blues, Inc., to Choice Financial Group]

THIS MORTGAGE AMENDMENT IS PROVIDING ADDITIONAL SECURITY FOR A DEBT AMOUNT FOR WHICH TAX WAS PAID UPON A PORTION THEREOF. TAX IN THE AMOUNT OF \$8,800.00 WAS PAID ON THE DEBT AMOUNT OF \$3,700,000.00 IN HENNEPIN COUNTY DOCUMENT NOS. T05405041 AND A10388817, RECORDED DECEMBER 9, 2016, WASHINGTON COUNTY DOCUMENT NO. 4094885 RECORDED DECEMBER 9, 2016, AND ANOKA COUNTY DOCUMENT NUMBER 544395.001 RECORDED DECEMBER 12, 2016, OF WHICH \$2,623,850.87 IS OUTSTANDING AS OF THE DATE HEREOF. THIS MORTGAGE AMENDMENT SECURES AN INCREASED AMOUNT OF DEBT EQUAL TO \$8,131,149.13.

NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, ENFORCEMENT OF THIS MORTGAGE IN MINNESOTA IS LIMITED TO A DEBT AMOUNT OF \$10,755,000.00, TOGETHER WITH SUCH ADDITIONAL AMOUNTS AS MAY BE ADVANCED BY LENDER AND FOR WHICH NO MORTGAGE REGISTRATION TAX IS PAYABLE PURSUANT CHAPTER 287 OF MINNESOTA STATUTES.

Additional Mortgage Registry Tax: _____

AMENDED AND RESTATED MORTGAGE, SECURITY AGREEMENT
AND
FIXTURE FINANCING STATEMENT

THIS AMENDED AND RESTATED MORTGAGE, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT (this "Mortgage") is made, entered into and effective as of June 20, 2019, by and between FAMOUS DAVE'S OF AMERICA, INC., a Minnesota corporation, and MINWOOD PARTNERS, INC., a Delaware corporation (each a "Mortgagor" or collectively, "Mortgagors"), with a principal business address of 12701 Whitewater Drive, Suite 190, Minnetonka, MN 55343, and CHOICE FINANCIAL GROUP, a North Dakota banking corporation doing business as Choice Bank ("Mortgagee"), with a business address of 2640 Eagan Woods Drive, Suite 100, Eagan, MN 55121.

BACKGROUND

A. Mortgagors granted a Mortgage and Security Agreement and Fixture Financing Statement dated December 2, 2016 to Venture Bank, a Minnesota banking corporation (and predecessor-in-interest to Mortgagee by acquisition and merger) (the "Original Mortgage"), to secure a certain loan in the principal amount of \$3,700,000.00 as evidenced by a certain Promissory Note issued by Mortgagors to Mortgagee for said amount dated December 2, 2016; and

B. The Original Mortgage was recorded as Document Number T05405041 on December 9, 2016, in

the Office of the Registrar of Titles of Hennepin County, Minnesota, as Document Number A10388817 on December 9, 2016 in the Office of the Recorder of Hennepin County, Minnesota, as Document Number 4094885 on December 9, 2016 in the Office of the Recorder of Washington County, Minnesota, and as Document Number 544395.001 on December 12, 2016, in the Office of the Registrar of Titles of Anoka County, Minnesota; and

C. Mortgagors have requested and Mortgagee has agreed to make certain additional loans (the "Loans") to Mortgagors as provided in a certain Loan Agreement of even date herewith (the "Loan Agreement") and evidenced by Mortgagor's \$24,000,000.00 Term Promissory Note (the "Term Note") of even date herewith, and \$1,000,000.00 Revolving Promissory Note (the "Revolving Note" or collectively with the Term Note, the "Notes"), both payable to the order of Mortgagee, and such other documents as entered into by and between Mortgagors and Mortgagee related to the Loans (as defined in the Loan Agreement, the "Loan Documents"); and

D. Mortgagors and Mortgagee desire to amend and restate the Original Mortgage with this Mortgage.

AGREEMENTS

NOW THEREFORE, in consideration of the premises and for the purposes of securing the repayment of the Loans and this Mortgage and of all other sums which may be advanced by Mortgagee in accordance with this Mortgage and all interest (collectively, the "Indebtedness"), and to secure the performance of all covenants, conditions and agreements herein and in the Loan Documents, and any other security document referred to therein, Mortgagors convey forever all of Mortgagors' right, title and interest in certain tracts or parcels of land, legally described on Exhibit A hereto (the "Land") together with: (i) all building materials, supplies and equipment now or hereafter incorporated in any building, structure or other improvement located or to be erected on the Land; and (ii) all of the buildings, structures and other improvements now standing or at any time hereafter constructed or placed upon the Land; and (iii) all heating, plumbing and lighting apparatus, motors, engines, and machinery, electrical equipment, incinerator apparatus, air-conditioning equipment, water and gas apparatus, pipes, faucets, and all other fixtures of every description which are now or may hereafter be placed or used upon the Land or in any building or improvement now or hereafter located thereon; and (iv) all furniture, furnishings and other personal property owned by any Mortgagor which are now or may hereafter be installed or placed in or about or used in connection with the use, operation or maintenance of the buildings or improvements now or hereafter located on the Land; (v) all additions, accessions, increases, parts, fittings, accessories, replacements, substitutions, betterments, repairs and proceeds to any and all of the foregoing; and (vi) all hereditaments, easements, appurtenances, estates, rents, issues, profits, insurance proceeds, condemnation awards, payments made in lieu of any insurance proceeds or condemnation awards, and other rights and interests now or hereafter related to the Land, its improvements and use (all of the foregoing, together with the Land, hereinafter being referred to as the "Mortgaged Property").

This Mortgage is upon the express condition that if Mortgagors shall pay to Mortgagee as and when due and payable the principal and the interest on the Notes, and shall also keep and perform all and singular the covenants herein contained, or any other security document referred to therein, including without limitation the Loan Agreement, on the part of Mortgagor to be kept and performed, then the Mortgage and the estate hereby granted shall cease and be and become void and shall be released of record at the expense of Mortgagors; otherwise this Mortgage shall be and remain in full force and effect.

Each Mortgagor further represents, warrants and covenants to Mortgagee that it is lawfully seized of the Mortgaged Property in fee simple and has good right and full power and authority to execute this Mortgage and to mortgage the Mortgaged Property; that neither this Mortgage, nor any other security document referred to therein nor the Notes contravene any covenant in any indenture or agreement affecting

Mortgagors; that the Mortgaged Property is free from all liens and encumbrances except those identified in Exhibit B; that Mortgagee shall quietly enjoy and possess the Mortgaged Property; that each Mortgagor will warrant and defend the title to the Mortgaged Property against all claims, whether now existing or hereafter arising; and that all buildings and improvements now or hereafter located on the Land are, or will be, located entirely within the boundaries of the Land. The covenants and warranties of this paragraph shall survive foreclosure of this Mortgage and shall run with the Land.

ARTICLE I
GENERAL COVENANTS, AGREEMENTS & WARRANTIES

Mortgagors make and include in this Mortgage the statutory covenants and other provisions set forth in Minnesota Statutes Section 507.15 or in any future Minnesota Statute providing for a statutory form of real estate mortgage and Mortgagors make the additional covenants, representations and warranties with Mortgagee, each of which covenants, warranties and representations shall be deemed to be continuing in nature, made and remade on each day during the time this Mortgage remains unreleased.

1.1 Payment of Indebtedness; Observance of Covenants. Mortgagors will duly pay each installment of principal and interest on the Notes and all other indebtedness and will perform all other agreements and covenants by Mortgagors to be performed hereunder or under the Notes, the Loan Agreement or any of the Loan Documents.

1.2 Payment of Impositions. Mortgagors agree to pay, before a penalty might attach for non-payment thereof, all taxes, assessments, water and sewer charges, and other fees, taxes and charges of whatsoever nature levied upon or assessed or placed against the Mortgaged Property. Mortgagors will likewise pay all taxes, assessments and other charges, levied upon or assessed, placed or made against, or measured by this Mortgage or the recordation hereof, or the Indebtedness, provided that Mortgagors shall not be obliged to pay such tax, assessment or charge if such payment would be contrary to law or would result in the payment of a usurious rate of interest on the Indebtedness. Mortgagors shall promptly furnish to Mortgagee all notices received by any Mortgagor of amounts due under this paragraph and, upon Mortgagee's request, shall deliver proper receipts evidencing the payment of such amounts. In the event of a judicial decree or legislative enactment after the effective date of this Mortgage providing that any such imposition may not be lawfully paid by a Mortgagor or in the event that the payment of any such imposition by a Mortgagor would result in the payment of a usurious rate of interest on the Indebtedness, the Indebtedness, together with interest, shall become immediately due and payable or, at Mortgagee's option, Mortgagee may pay any amount or portion of such imposition as renders the Indebtedness unlawful or usurious, in which event Mortgagors shall concurrently therewith pay the remaining lawful and non-usurious portion or balance of said imposition.

1.3 Payment of Operating Costs; Prior Mortgages and Liens. Except as provided in Section 1.4 below, Mortgagors agree that they will pay all operating costs and expenses; keep the Mortgaged Property free from mechanics', materialmen's and other liens not expressly subordinated to the lien of this Mortgage; will keep the Mortgaged Property free from levy, execution or attachment and will immediately pay whether or not then due all indebtedness which may be secured by mortgage, lien or charge on the Mortgaged Property (other than this Mortgage) and, upon request, will exhibit to Mortgagee satisfactory evidence of such payment and discharge.

1.4 Contest of Impositions, Liens and Levies. Mortgagors shall not be required to pay, discharge or remove any imposition, lien or levy so long as a Mortgagor shall in good faith contest the same or the validity thereof by appropriate legal proceedings which shall operate to prevent the collection of the levy, lien or imposition so contested and the sale of the Mortgaged Property, or any part thereof to satisfy the same, provided that Mortgagors shall, prior to the date such levy, lien or imposition is due and payable,

having given such reasonable security as may be demanded by Mortgagee to insure such payments and any penalties and interest that may accrue thereon and prevent any sale or forfeiture of the Mortgaged Property by reason of such nonpayment. Any such contest shall be prosecuted with due diligence and Mortgagors shall promptly after final determination thereof pay the amount of any such levy, lien or imposition so determined, together with all interest and penalties, which may be payable in connection therewith. Notwithstanding the provisions of this Section, Mortgagors shall, and Mortgagee may, pay any such levy, lien or imposition notwithstanding such contest if, in the reasonable opinion of Mortgagee, the Mortgaged Property is in jeopardy or in danger of being forfeited or foreclosed.

1.5 Maintenance and Repairs. Mortgagors agree that they will keep and maintain the Mortgaged Property in good condition and repair, free from any waste or misuse, and will comply with all requirements of law, municipal ordinances and regulations, restrictions and covenants affecting the Mortgaged Property and its use, and will promptly repair or restore any buildings, improvements or structures now or hereafter on the Mortgaged Property which may become damaged or destroyed. Mortgagors further agree that, without the prior consent of Mortgagee, it will not remove from the Mortgaged Property any fixtures outside the ordinary course of a Mortgagor's business or personal property unless the same is immediately replaced with like fixtures or personal property of at least equal value or is otherwise removable under Section 5.1 hereof; or expand any improvements on the Mortgaged Property, erect any new improvements or make any material alterations in any improvements which will alter the basic structure, affect the market value or change the existing architectural character of the Mortgaged Property except as the same may be done in accordance with the Loan Agreement. Mortgagors agree not to acquiesce in any rezoning classification, modification or restriction affecting the Mortgaged Property without Mortgagee's written consent. Mortgagors agree that they will not vacate or abandon the Mortgaged Property.

1.6 Insurance.

1.6.1 So long as any Indebtedness remains unpaid, Mortgagors shall, at its own cost, maintain with insurers of recognized responsibility acceptable to Mortgagee, rated A- or better by A.M. Best, the insurance required by the Loan Agreement, and upon the Mortgaged Property now existing or hereafter erected, hazard and fire insurance on such completed improvements insuring against loss by fire, hazards included in the term "extended coverage," loss by vandalism or malicious mischief, and such other hazards, casualties and contingencies as may be required by Mortgagee, on the basis of replacement cost without a co-insurance clause, in an amount equal to the full replacement cost thereof or such additional amounts and for such periods as may be required by Mortgagee. If the Mortgaged Property is located in an area designated in the Flood Disaster Act of 1973, as amended, as having "specific flood hazards," or should the Mortgaged Property be shown on any map maintained by the Federal Emergency Management Administration ("FEMA"), the county in which the Mortgaged Property is located or the city in which the Mortgaged Property is located, or any other governmental authority having jurisdiction over the Mortgaged Property, as being within the one hundred (100) year flood plain, Mortgagee shall be provided by Mortgagors, if requested, with a flood insurance policy covering the Mortgaged Property satisfactory in Mortgagee's discretion. Mortgagors shall pay all premiums on insurance required hereunder by making payment directly to the insurer. Mortgagee shall have the right to hold the policies and renewals thereof, and Mortgagors shall promptly furnish to Mortgagee all such policies, renewals thereof, renewal notices and all paid-premium receipts received by it. All policies of insurance and any and all refunds of unearned premiums are hereby assigned to Mortgagee as additional security for the payment of the Indebtedness secured hereby. In the event of foreclosure of this Mortgage, all right, title and interest of Mortgagors in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale.

1.6.2 The policies of all such insurance shall have loss payable provisions in favor of and in form acceptable to Mortgagee, shall provide for at least thirty (30) days' prior written notice of cancellation, termination or modification thereof to Mortgagee, shall permit Mortgagee to make premium payments to prevent cancellation, and shall provide that no act or negligence of a Mortgagor or of any occupant of the Mortgaged Property, and no occupancy or use of the Mortgaged Property for purposes more hazardous than permitted by the terms of the policy, will affect the validity or enforceability of such insurance as against Mortgagee. In the event of loss under such insurance, Mortgagors shall give prompt notice to the insurance carrier and Mortgagee; Mortgagors shall duly make proof of loss, and shall immediately furnish to Mortgagee a copy of such proof of loss. Mortgagee is authorized and empowered to collect and receive all insurance proceeds, and if no Event of Default has occurred and is continuing under this Mortgage, it shall apply such proceeds to the restoration of the Mortgaged Property and make disbursements thereof according and subject to the provisions of the Loan Agreement relating to the disbursement of proceeds of the Loans. Any insurance proceeds not so applied shall be applied to the payment of the Indebtedness without prepayment premium or premium, if any. If Mortgagee applies any insurance proceeds to the Indebtedness, then notwithstanding any restrictions on prepayment in the Notes, Mortgagors may prepay all (but not less than all) of the Indebtedness at any time within one hundred eighty (180) days after the date of such application, without prepayment premium or penalty, if any.

1.7 Inspection. Mortgagee, or its agents, shall have the right to enter upon the Mortgaged Property during ordinary business hours for the purposes of inspecting the Mortgaged Property or any part thereof. Mortgagee shall have no duty, however, to make such inspection.

1.8 Protection of Mortgagee's Security. If a Mortgagor fails to perform any of the covenants and agreements contained in this Mortgage or if any action or proceeding is commenced which does or may adversely affect the Mortgaged Property or the interest of a Mortgagor, at Mortgagee's option, Mortgagee may perform such covenants and agreements, defend against such action or proceeding, or otherwise act as Mortgagee deems necessary to protect its interest. In the event that, after damage to or destruction of the Mortgaged Property or condemnation of a portion of the Mortgaged Property or a sale under threat thereof, Mortgagee elects or is obligated to use the proceeds to restore the Mortgaged Property, and the insurance, sale or condemnation proceeds which are paid to Mortgagee are not sufficient to pay for such restoration, Mortgagee may nevertheless effect the restoration. Any amounts disbursed or costs incurred by Mortgagee pursuant to this Section, including interest and reasonable attorneys' fees, shall become additional indebtedness of Mortgagors secured by this Mortgage. All amounts disbursed or costs incurred by Mortgagee pursuant to this Section shall be payable upon demand, and shall bear interest from the date of disbursement or incurrence at the highest rate set forth in the Notes unless payment of interest at such rate would be contrary to law, in which event such amounts shall bear interest at the highest rate permitted by law. Mortgagee shall, at its option, be subrogated to any encumbrance, lien, claim or demand, and to all the rights and securities for the payment thereof, paid or discharged with the principal sum secured hereby or by Mortgagee under the provisions hereof, and any such subrogation rights shall be additional and cumulative security for this Mortgage. Nothing contained in this Section shall require Mortgagee to incur any expense or do any act hereunder, and Mortgagee shall not be liable to Mortgagor for any damages or claims arising out of action taken by Mortgagee pursuant to this Section.

1.9 Mortgagors' Covenant to Provide Information. Mortgagors covenant to provide documentation and such other information as is required by the terms and conditions of this Mortgage, the Loan Agreement or the Loan Documents.

1.10 No Encroachment. All buildings, structures and other improvements now or hereafter located on the Mortgaged Property are, or will be, located entirely within the boundaries of the Mortgaged Property and are set back from said boundaries in accordance with all applicable zoning and "set-back" laws and ordinances.

1.11 Governmental Requirements. The Mortgaged Property complies in all respects with all governmental requirements. The use of the Mortgaged Property for its present and intended purposes does not and will not violate any private covenant or restriction affecting the Mortgaged Property. The Mortgaged Property is zoned to permit the use thereof for its present and intended purpose. Mortgagors warrant and represent that Mortgagors have complied, and shall hereafter comply, with all valid laws, rules, ordinances and regulations of the federal, state and local government, and all agencies and subdivisions thereof which laws, rules, ordinances and regulations apply or relate to the Mortgaged Property, the development, construction and improvements existing or contemplated thereon or as a part thereof, or the improvements now or hereafter located thereon or a part thereof, including but not limited to all such laws, rules, ordinances, and regulations regarding land use, zoning, building, subdivision, environment, Occupational Safety and Health Administration, pollution and sales practices.

1.12 Mechanics and Laborers. Mortgagors shall pay from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers, and others which, if unpaid, might result in, or permit the creation of, a lien on the Mortgaged Property or any part thereof, and in general will do or cause to be done everything necessary so that the lien created by this Mortgage shall be fully preserved, at the cost of Mortgagors, without expense to Mortgagee.

1.13 Waste, Maintenance, Alteration and Compliance. Each Mortgagor shall:

- 1.13.1 abstain from and shall not permit the commission of waste in, on or about the Mortgaged Property;
- 1.13.2 keep and maintain the Mortgaged Property in good order, condition and in a rentable and tenantable state of repair;
- 1.13.3 make or cause to be made, as and when necessary, all repairs and replacements to the Mortgaged Property, structural and non-structural, exterior and interior, ordinary and extraordinary, foreseen and unforeseen, whether or not the same may be necessary by reason of fire or other casualty and whether or not insurance proceeds are available therefore;
- 1.13.4 not remove or demolish the fixtures or improvements now or hereafter located upon the Mortgaged Property, nor alter the design or structural character of the improvements now or hereafter located on the Mortgaged Property so as to diminish the value thereof;
- 1.13.5 not expand the existing improvements on the Mortgaged Property, erect any new improvements or make any material alterations to the improvements which will alter the basic structure, affect the market value or change the existing architectural character of the Mortgaged Property other than the current and planned development of the Mortgaged Property or as otherwise consented to in writing by Mortgagee;
- 1.13.6 complete within a reasonable time any buildings now or at any time in the process of erection on the Mortgaged Property;
- 1.13.7 comply with all federal, state, county, township, municipal or other governmental or quasi-

governmental law, ordinance and regulation, requirement, restriction, condition, order, license, permit, approval or covenant affecting the Mortgaged Property;

1.13.8 not acquiesce in any rezoning classification, modification or restriction affecting the Mortgaged Property; and

1.13.9 not vacate or abandon the Mortgaged Property.

1.14 Hazardous Substances. To induce Mortgagee to make and fund the Loans and accept this Mortgage, Mortgagors represent, warrant, covenant and agree as follows:

1.14.1 Except as heretofore disclosed to Mortgagee in writing: (a) the Mortgaged Property has never been used by a Mortgagor or, to a Mortgagor's knowledge, by any previous owners or operators or current operators to generate, manufacture, refine, transport, treat, store, handle or dispose of any Hazardous Substances and no Hazardous Substances exist on the Mortgaged Property except in de minimis quantities used by a Mortgagor or its lessee or tenant in the ordinary course of its business in accordance with all Environmental Laws; (b) to the best of each Mortgagor's knowledge, no portion of any improvements on the Mortgaged Property has been constructed with asbestos, asbestos containing materials, urea formaldehyde insulation or any other chemical or substance which has been determined to be a hazard to health and/or the environment; (c) to the best of each Mortgagor's knowledge, there does not presently exist, nor have there been in the past, electrical transformers or other equipment which have dielectric fluid containing polychlorinated biphenyls (PCB's) located in or on the Mortgaged Property; and (d) no Mortgagor has received nor does it have any knowledge of any summons, citation, directive, letter or other communication, written or oral, from any local, state or federal governmental agency concerning the existence of Hazardous Substances on the Mortgaged Property or in the immediate vicinity of the Mortgaged Property or the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of Hazardous Substances from the Mortgaged Property or into waters or other lands.

1.14.2 Each Mortgagor shall: (a) comply and shall cause all operators of the Mortgaged Property to comply with all federal, state and local laws, rules, regulations and orders with respect to the discharge, generation, removal, transportation, storage and handling of Hazardous Substances; (b) except for Hazardous Substances used in the ordinary course of the business of a Mortgagor or its lessee or tenant and in accordance with all Environmental Laws, remove any Hazardous Substances immediately upon discovery of the same, in accordance with, and to the extent required by, applicable laws, ordinances and orders of governmental authorities having jurisdiction thereof; (c) pay or cause to be paid all costs associated with such removal; (d) use commercially reasonable efforts to prevent the migration of Hazardous Substances from or through the Mortgaged Property onto or under other properties; (e) keep the Mortgaged Property free of any lien imposed pursuant to any state or federal law, rule, regulation or order in connection with the existence of Hazardous Substances on the Mortgaged Property; (f) not install or permit to be incorporated into any improvements in the Mortgaged Property or to exist in or on the Mortgaged Property any asbestos, asbestos containing materials, urea formaldehyde insulation or any other chemical or substance which has been determined to be a hazard to health and environment; (g) not cause or permit to exist, as a result of an intentional or unintentional act or omission on the part of a Mortgagor or any future operator of the Mortgaged Property, a releasing, spilling, leaking, pumping, emitting, pouring, emptying or dumping of any Hazardous Substances from the Mortgaged Property into waters or other lands; and (h) give all notifications and prepare all reports

required by Environmental Laws or any other law with respect to Hazardous Substances existing on, released from or emitted from the Mortgaged Property.

- 1.14.3 If a Mortgagor shall fail to diligently dispose of or secure any Hazardous Substance after discovery thereof in full compliance with, and to the extent required by, all applicable laws and regulations, Mortgagee may at its option but without any obligation whatsoever, proceed to so dispose of or secure the Hazardous Substance or take such other action necessitated or resulting therefrom at the cost and expense of Mortgagors. Mortgagors further agree that if an Event of Default occurs or if any Hazardous Substance is discovered in or on the Mortgaged Property or is attributable to the Mortgaged Property or if Mortgagee has received information which leads Mortgagee, in its reasonable discretion, to believe that a Hazardous Substance is present on or being handled, stored, transported, manufactured, released or disposed of in, on or about the Mortgaged Property in each case in violation of applicable laws and regulations, Mortgagors shall, at Mortgagors' expense, permit an environmental inspection, audit, assessment, or other testing or monitoring of the Mortgaged Property, for the sole benefit of Mortgagee (but also certified to Mortgagor), to be conducted by Mortgagee, or by an independent agent selected by Mortgagee. If any such environmental reports indicate any presence, handling, storage, transportation, manufacture, release or disposal of Hazardous Substances in, on or about the Mortgaged Property in violation of applicable laws and regulations, Mortgagee may require Mortgagors at Mortgagors' expense, to refrain from and take remedial action with respect to any such presence, handling, storage, transportation, manufacture, release or disposal to the satisfaction of Mortgagee.

For purposes of this Mortgage, "Environmental Law(s)" mean any applicable federal, state or local statute, law, regulation, order, consent, decree, judgment, permit, license, code, covenant, deed restriction, common law, treaty, convention, ordinance or other requirement relating to public health, safety or the environment, including, without limitation, those relating to releases, discharges or emissions to air, water, land or groundwater, to the withdrawal or use of groundwater, to the use and handling of polychlorinated biphenyls or asbestos, to the disposal, treatment, storage or management of hazardous or solid waste or Hazardous Substances or crude oil, or any fraction thereof, or to exposure to toxic or hazardous materials, to the handling, transportation, discharge or release of gaseous or liquid Hazardous Substances and any regulation, order, notice or demand issued pursuant to such law, statute or ordinance, in each case applicable to the property of a Mortgagor, including without limitation the following: (a) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Re-authorization Act of 1986; (b) the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984; (c) the Hazardous Materials Transportation Act, as amended; (d) the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1976; (e) the Safe Drinking Water Act; (f) the Clean Air Act, as amended; (g) the Toxic Substances Control Act of 1976; (h) the Occupational Safety and Health Act of 1977, as amended; (i) the Emergency Planning and Community Right-to-Know Act of 1986; (j) the National Environmental Policy Act of 1975; (k) the Oil Pollution Act of 1990; (l) the Minnesota Environmental Response Liability Act; (m) the Minnesota Petroleum Tank Release Cleanup Act and any similar or implementing state law; and any state statute and any further amendments to these laws providing for financial responsibility for cleanup or other actions with respect to the release or threatened release of Hazardous Substances or crude oil, or any fraction thereof and all rules and regulations promulgated thereunder.

For purposes of this Mortgage, "Hazardous Substance(s)" means any hazardous or toxic material, substance or waste, pollutant or contaminant which is regulated under any statute, law, ordinance, rule or regulation of any federal, state or local authority having jurisdiction over the property of a Mortgagor, or its use, including but not limited to any material, substance or waste which is: (a) defined as a hazardous substance under any

Environmental Laws; (b) a petroleum hydrocarbon, including crude oil or any fraction thereof and all petroleum products; (c) polychlorinated biphenyls; (d) lead; (e) urea formaldehyde; (f) asbestos or asbestos containing materials; (g) flammable explosives; (h) infectious materials; (i) radioactive materials; or (j) defined or regulated as a hazardous substance or hazardous waste under any rules or regulations promulgated under any Environmental Law.

Mortgagee shall have the right to join and participate in, as a party, if it so elects, any legal proceedings or actions initiated in connection with any Environmental Laws and have its attorneys' fees in connection therewith paid by Mortgagors.

Mortgagors shall jointly and severally protect, indemnify and hold Mortgagee, its trustees, employees, agents, successors and assigns harmless from and against any and all loss, damage, cost, expense or liability (including attorneys' fees and costs) directly or indirectly arising out of or attributable to the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, leaching or presence of a Hazardous Substance on, under or about the Mortgaged Property, including, without limitation: (i) all foreseeable consequential damages; and (ii) the costs of any required or necessary repair, cleanup or detoxification of the Mortgaged Property and the preparation and implementation of any closure, remedial or other required plans. This indemnity shall survive the re-conveyance of the lien of this Mortgage or the extinguishment of the lien by foreclosure or action in lieu thereof and this covenant shall survive such re-conveyance or extinguishment.

In the event that any investigation, site monitoring, containment, cleanup, removal, restoration or other remedial work of any kind or nature (the "Remedial Work") is reasonably necessary or desirable under any applicable local, state or federal law or regulation, any judicial order, or by any governmental or nongovernmental entity or person because of, or in connection with, the current or future presence, suspected presence, release or suspected release of a Hazardous Substance in or into the air, soil, groundwater, surface water or soil vapor at, on, about, under or within the Mortgaged Property (or any portion thereof), Mortgagors shall, within thirty (30) days after written demand for performance thereof by Mortgagee (or such shorter period of time as may be required under any applicable law, regulation, order or agreement), commence to perform, or cause to be commenced, and thereafter diligently prosecuted to completion, all such Remedial Work. All Remedial Work shall be performed by one or more contractors, approved in advance in writing by Mortgagee, and under the supervision of a consulting engineer approved in advance in writing by Mortgagee. All costs and expenses of such Remedial Work shall be paid by Mortgagors, including, without limitation, the charges of such contractor(s) and/or the consulting engineer and Mortgagee's reasonable attorneys' fees and costs incurred in connection with monitoring or review of such Remedial Work. In the event Mortgagors shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Mortgagee may, but shall not be required to, cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith, shall become part of the Indebtedness.

ARTICLE II EVENTS OF DEFAULT

Each of the following occurrences shall, after expiration of any applicable period to cure, constitute an "Event of Default" hereunder:

2.1 Default under the Loan Documents. The occurrence of an Event of Default as defined in the Loan Agreement, the Notes or any of the Loan Documents.

2.2 Breach of Warranty of Title. The breach of any warranty of title made by a Mortgagor hereunder.

2.3 Foreclosure. The institution of foreclosure or other enforcement proceedings by the holder of any other lien on the Mortgaged Property (without hereby implying Mortgagee's consent to any mortgage or other lien).

2.4 Sale of Mortgaged Property. A sale, assignment, conveyance, encumbrance or transfer of the Mortgaged Property, or any part thereof, or any interest therein (except leases in writing and in the ordinary course of business or as otherwise approved in writing by Mortgagee) without the prior written consent of Mortgagee, which consent may be granted or withheld by Mortgagee at its sole discretion.

ARTICLE III
ACCELERATION AND FORECLOSURE; OTHER REMEDIES

Upon any Event of Default, Mortgagee may, at its option, exercise one or more of the following rights and remedies (and any other rights and remedies available to it under any of the Loan Documents):

3.1 Acceleration. Mortgagee may declare immediately due and payable all unmatured Indebtedness secured by this Mortgage and the same shall thereupon be immediately due and payable without notice or demand.

3.2 Uniform Commercial Code ("UCC") Remedies. Mortgagee shall have and may exercise with respect to all personal property and fixtures which are part of the Mortgaged Property, all the rights and remedies accorded upon default to a secured party under the UCC as in effect in the State of Minnesota.

3.3 Foreclosure by Action or Advertisement. Mortgagee may (and is hereby authorized and empowered to) foreclose this Mortgage by action or advertisement, pursuant to the statutes of the State of Minnesota in such case made and provided, power being expressly granted to sell the Mortgaged Property at public auction and convey the same to the purchaser in fee simple and, out of the proceeds arising from such sale, to pay all Indebtedness secured hereby with interest, and all legal costs and charges of such foreclosure and the maximum attorneys' fees permitted by law, which costs, charges and fees Mortgagors agree to pay. Any real estate or interest or estate sold hereunder may be sold in one parcel, as an entirety, or in such parcels and in such manner or order as Mortgagee, in its sole discretion, may elect. In case of any sale of the Mortgaged Property pursuant to any judgment or decree of any court or at public auction or otherwise in connection with the enforcement of any of the terms of this Mortgage, Mortgagee, its successors and assigns, may become the purchaser, and for the purpose of making settlement for or payment of the purchase price, shall be entitled to deliver over and use the Notes and any claims for interest accrued and unpaid thereon, together with all other sums, with interest, advanced and unpaid hereunder, and all statutory charges for such foreclosure including maximum attorneys' fees allowed by law in order that there may be credited as paid on the purchase price the sum then due under the Notes, including principal and interest thereon and all other sums, with interest, advanced and unpaid hereunder, and all charges and expenses of such foreclosure including maximum attorneys' fees allowed by law. Mortgagors acknowledge that if Mortgagee elects to foreclose by advertisement and cause the Mortgaged Property or any part thereof to be sold at public auction, notice of such sale must be published at least once per week for six (6) successive weeks in a newspaper of general circulation and that personal notice is not required to be served upon any Mortgagor. Mortgagors further understand that in the event of such default, Mortgagee may also elect its rights under the UCC and take possession of the personal property (as defined in the Mortgage) and dispose of the same by sale or otherwise in one or more parcels provided that at least ten (10) days' prior notice of such disposition must be given, all as provided for by the UCC, as hereafter amended or by any similar or replacement statute hereafter enacted. Mortgagors further understand that under the Constitution of the United States and the Constitution of the State of Minnesota, it may have the right to notice and hearing before the Mortgaged Property may be sold and that the procedure for foreclosure by advertisement described above does not insure that notice will be given, and neither said procedure for foreclosure by

advertisement nor the UCC requires any hearing or other judicial proceeding.

EACH MORTGAGOR HEREBY CONSENTS AND AGREES TO THE FORECLOSURE AND SALE OF THE MORTGAGED PROPERTY BY ACTION PURSUANT TO MINNESOTA STATUTES CHAPTER 581 OR, AT THE OPTION OF MORTGAGEE, BY ADVERTISEMENT PURSUANT TO MINNESOTA STATUTES CHAPTER 580 (OR PURSUANT TO ANY SIMILAR OR REPLACEMENT STATUTES HEREAFTER ENACTED), WHICH PROVIDES FOR SALE AFTER SERVICE OF NOTICE THEREOF UPON THE OCCUPANT OF THE MORTGAGED PROPERTY AND PUBLICATION OF SAID NOTICE FOR SIX (6) WEEKS (OR SUCH LESSER PERIOD AS MAY BE PERMITTED BY STATUTE) IN THE COUNTY IN MINNESOTA WHERE THE MORTGAGED PROPERTY IS SITUATED; ACKNOWLEDGES THAT SERVICE NEED NOT BE MADE UPON ANY MORTGAGOR PERSONALLY (UNLESS A MORTGAGOR IS AN OCCUPANT) AND THAT NO HEARING OF ANY TYPE IS REQUIRED IN CONNECTION WITH THE SALE; AND EXCEPT AS MAY BE PROVIDED IN SAID STATUTES EXPRESSLY WAIVES ANY AND ALL RIGHT TO PRIOR NOTICE OF SALE OF THE MORTGAGED PROPERTY AND ANY AND ALL RIGHTS TO A PRIOR HEARING OF ANY TYPE IN CONNECTION WITH THE SALE OF THE MORTGAGED PROPERTY.

EACH MORTGAGOR HEREBY RELINQUISHES, WAIVES AND GIVES UP ANY AND ALL OF THE CONSTITUTIONAL RIGHTS TO NOTICE AND HEARING BEFORE SALE OF THE MORTGAGED PROPERTY AND EXPRESSLY CONSENTS AND AGREES THAT THE MORTGAGED PROPERTY MAY BE FORECLOSED BY ADVERTISEMENT AND THAT THE PERSONAL PROPERTY MAY BE DISPOSED OF PURSUANT TO THE UNIFORM COMMERCIAL CODE, ALL AS DESCRIBED ABOVE. EACH MORTGAGOR ACKNOWLEDGES THAT IT IS REPRESENTED BY LEGAL COUNSEL; THAT BEFORE SIGNING THIS DOCUMENT, THIS SECTION AND EACH MORTGAGOR'S CONSTITUTIONAL RIGHTS WERE FULLY EXPLAINED BY SUCH COUNSEL AND THAT EACH MORTGAGOR UNDERSTANDS THE NATURE AND EXTENT OF THE RIGHTS WAIVED HEREBY AND THE EFFECT OF SUCH WAIVER.

3.4 Receiver. Mortgagee shall be entitled as a matter of right, without notice and without giving bond and without regard to the solvency or insolvency of a Mortgagor, or waste of the Mortgaged Property or adequacy of the security of the Mortgaged Property, to apply for and obtain the appointment of a receiver, in accordance with the statutes and laws made and provided. The receiver shall collect the rents, and all other income of any kind; manage the Mortgaged Property so to prevent waste; execute leases within or beyond the period of receivership, pay all expenses for normal maintenance of the Mortgaged Property and perform the terms of this Mortgage and apply the rents, issues and profits in the following order to: (i) payment of the reasonable fees of said receiver; (ii) application of tenant security deposits as required by Minnesota Statutes; and (iii) as further provided in any Assignment of Rents executed by Mortgagors as further security for the Indebtedness (whether included in this Mortgage or separate instrument), including but not limited to applying the same to the costs and expenses of the receivership, including reasonable attorneys' fees, to the repayment of the Indebtedness and to the operation, maintenance, upkeep and repair of the Mortgaged Property, including payment of taxes and payment of premiums of insurance. Mortgagors hereby irrevocably consent to such appointment.

3.5 Forbearance and Other Rights of Mortgagee. Any delay by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by law or equity, shall not be a waiver of or preclude the exercise of such right or remedy or any other right or remedy hereunder or at law or in equity. The failure of Mortgagee to exercise any option to accelerate maturity of the Indebtedness secured by the Mortgage, the forbearance by Mortgagee before or after the exercise of such option, or the withdrawal or abandonment of proceedings provided for by this Mortgage shall not be a waiver of the right to exercise such option or to accelerate the maturity of such Indebtedness by reason of any past, present or future event which would

permit acceleration. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate the maturity of the Indebtedness. Mortgagee's receipt of any awards, proceeds or damages shall not operate to cure or waive default by a Mortgagor. Mortgagee may at any time, without notice, release any person liable for payment of any Indebtedness, extend the time or agree to alter the terms of payment of any of the Indebtedness, accept additional security of any kind, release any plat or map of the Mortgaged Property or the creation of any easement thereon or any covenants restricting use or occupancy thereof, or alter or amend the terms of this Mortgage in any way. No such release, modification, addition or change shall affect the liability of any person other than the person so released, for payment of any Indebtedness, nor the priority and first lien status of this Mortgage upon any Mortgaged Property not so released.

3.6 Release of and Resort to Collateral. For payment of the Indebtedness, Mortgagee may resort to any security therefor in any such order and manner as Mortgagee may elect without in any way affecting the lien and security interests hereof.

3.7 No Release Implied. No Mortgagor shall be relieved of any obligation hereunder by reason of:

3.7.1 the failure of Mortgagee to comply with any request of a Mortgagor to foreclose the lien of this Mortgage or to enforce any provisions of the other credit documents;

3.7.2 any agreement or stipulation between a Mortgagor or any subsequent owner of the Mortgaged Property and Mortgagee extending, renewing, rearranging or in any other way modifying the terms of this Mortgage without first having obtained the consent of, given notice to, or paid any consideration to, Mortgagee and in such event a Mortgagor shall continue to be liable to make payment hereunder according to the terms of such extension or modification agreement unless expressly released and discharged in writing by Mortgagee; or

3.7.3 by any other act or occurrence, save and except the complete release of this Mortgage by Mortgagee.

ARTICLE IV CONDEMNATION

4.1 Notice. Mortgagors will give Mortgagee prompt notice of any action, actual or threatened, in condemnation or eminent domain, direct or inverse.

4.2 Awards. Each Mortgagor hereby assigns, transfers, and sets over to Mortgagee the entire proceeds of any award or payment which becomes payable by reason of any taking of or damage to the Mortgaged Property, or any part or appurtenance thereof, either temporarily, permanently, in or by condemnation or other eminent domain proceedings or by reason of sale under threat thereof, or in anticipation of the exercise of the right of condemnation or other eminent domain proceedings. Mortgagors will file or prosecute in good faith and with due diligence what would otherwise be its claim in any such award or payment and cause the same to be collected and paid over to Mortgagee, and each Mortgagor irrevocably authorizes and empowers Mortgagee, which power is coupled with an interest and is irrevocable, in the name of Mortgagors or otherwise, in the event that a Mortgagor fails to do so, to file and prosecute any such claim and to collect, receipt for and retain the same. Mortgagee is authorized and empowered to collect and receive the proceeds or the award or payment, and if no Event of Default has occurred and is continuing under this Mortgage, it shall apply such proceeds, after deducting all reasonable costs, attorneys' fees and other expenses which may have been incurred by Mortgagee in collection thereof, to the restoration of the Mortgaged Property and make disbursements thereof according and subject to the provisions of the Loan

Agreement relating to the disbursement of proceeds of the Loans. Any condemnation proceeds not so applied shall be applied to the payment of the Indebtedness without prepayment premium, if any. If Mortgagee applies any condemnation award (other than an award remaining after restoration is complete) to the Indebtedness, then notwithstanding any restrictions on prepayment in the Notes, Mortgagors may prepay all (but not less than all) of the Indebtedness at any time within one hundred eighty (180) days after the date of such application.

ARTICLE V
UNIFORM COMMERCIAL CODE

5.1 Security Interest. This Mortgage shall constitute a security agreement as defined in the UCC with respect to (and Mortgagors hereby grant to Mortgagee a security interest in) all personal property and fixtures included in and/or on the Mortgaged Property. Mortgagors will pay to Mortgagee, on demand, the amount of any and all costs and expenses (including reasonable attorneys' fees and legal expenses) paid or incurred by Mortgagee in connection with the exercise of any right or remedy referred to in this Section. In any instance where a Mortgagor in its reasonable discretion determines that any item subject to a security interest under this Mortgage has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary for the operation of the Mortgaged Property, a Mortgagor may, at its expense, remove and dispose of it provided that such removal and substitution shall not impair the operating utility and unity of the Mortgaged Property. All substituted items shall become a part of the Mortgaged Property and subject to the lien of the Mortgage. Any amounts received or allowed a Mortgagor upon the sale or other disposition of the removed items of Mortgaged Property shall be applied first against the cost of acquisition and installation of the substituted items. Nothing herein contained shall be construed to prevent any tenant or subtenant from removing from the Mortgaged Property trade fixtures, furniture and equipment installed by it and removable by tenant under its terms of a lease, on the condition, however, that Mortgagors shall assure the repair of any and all damages to the Mortgaged Property resulting from or caused by the removal thereof.

5.2 Fixture Filing. From the date of its recording, this Mortgage shall be effective as a financing statement with respect to all goods constituting part of the Mortgaged Property which are or are to become fixtures related to the real estate described herein and/or other rights of any Mortgagor deemed for any purpose to be an interest in real estate. For this purpose, the following information is set forth:

5.2.1 Addresses:

Name and Address of Debtors:

Famous Dave's of America, Inc.
12701 Whitewater Drive, Suite 190
Minnetonka, MN 55343

MinWood Partners, Inc.
12701 Whitewater Drive, Suite 190
Minnetonka, MN 55343

Name and Address of Secured Party:

Choice Financial Group
2640 Eagan Woods Drive, Suite 100
Eagan, MN 55121

5.2.2 This document covers goods which are or are to become fixtures.

5.2.3 The real property to which such fixtures are or are to be attached is set forth in the Exhibits attached hereto, the record owners of which are: Famous Dave's of America, Inc., a

5.2.4 [Intentionally Omitted].

ARTICLE VI
MISCELLANEOUS

6.1 Mortgagee's Remedies Cumulative. All remedies of Mortgagee are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity and may be exercised concurrently or independently as often as the occasion therefor arises.

6.2 Successors and Assigns Bound; Captions. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective heirs, legal representatives, successors and assigns of Mortgagee and Mortgagors. The captions and headings of the Articles and Sections of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

6.3 Notices. Any notice from Mortgagee to a Mortgagor under this Mortgage shall be given pursuant to the terms of the Loan Agreement.

6.4 Governing Law; Severability. This Mortgage shall be governed by the laws of the State of Minnesota. In the event that any provision or clause of this Mortgage conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage which can be given effect without conflicting provisions and, to this end, the provisions of the Mortgage are declared to be severable.

6.5 Waiver of Appraisal, Homestead & Marshaling. Each Mortgagor hereby waives the benefit of any homestead, appraisal, evaluation, stay and extension laws now or hereafter in force. Each Mortgagor hereby waives any rights available with respect to marshaling of assets so as to require the separate sale of any portion of the Mortgaged Property, or to require Mortgagee to exhaust its remedies against a specific portion of the Mortgaged Property before proceeding against the other. Each Mortgagor represents and warrants that the Mortgaged Property is not a homestead.

6.6 Subsequent Agreements. Any agreement hereafter made by a Mortgagor and Mortgagee pursuant to this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance.

6.7 Future Advances.

6.7.1 To the extent that this Mortgage secures future advances or re-advances, the amount of such advances is not currently known. The acceptance of this Mortgage by Mortgagee, however, constitutes an acknowledgment that Mortgagee is aware of the provisions of Minnesota Statutes Section 287.05, subdivision 5, and intends to comply with the requirements contained therein.

6.7.2 The maximum principal amount of indebtedness secured by this Mortgage at any one time, excluding advances made by Mortgagee in protection of the Mortgaged Property or the lien of this Mortgage, shall be \$10,755,000.00.

6.7.3 The representations contained in this Section are made solely for the benefit of county recording authorities in determining the mortgage registry tax payable as a prerequisite to the recording of this Mortgage. Mortgagors acknowledge that such representations do not constitute or imply any agreement by Mortgagee to make any future advances to any Mortgagor.

6.8 Recording Fees and Taxes. Mortgagors shall pay all recording and filing fees and taxes, including documentary stamp taxes and intangible taxes, associated with the execution and recordation of this Mortgage and the execution and delivery of the Notes or obligations secured by this Mortgage, and all amendments and extensions hereto. Mortgagors shall pay the costs of releasing, satisfying or amending this Mortgage of record. In the event of a court decree or an enactment after the date hereof by any legislative authority of any law imposing upon Mortgagee the payment of the whole or any part of the amounts herein required to be paid by Mortgagors, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or a mortgagee's interest in the Mortgaged Property, so as to impose such imposition on Mortgagee or on the interest of Mortgagee in the Mortgaged Property, then, in any such event, Mortgagor shall bear and pay the full amount of such imposition, provided that if for any reason payment by a Mortgagor of any such imposition would be unlawful, or if the payment thereof would constitute usury or render the Indebtedness wholly or partially usurious, Mortgagee, at its option, may declare the Indebtedness with interest thereon, to be immediately due and payable, without prepayment premium, or Mortgagee, at its option, may pay that amount or portion of such imposition as renders the Indebtedness unlawful or usurious, in which event Mortgagors shall concurrently therewith pay the remaining lawful and non-usurious portion or balance of said imposition.

6.9 Indemnification by Mortgagors. Mortgagors shall bear all loss, expense (including attorneys' fees) and damages (and agree to jointly and severally indemnify and hold harmless Mortgagee and each of its agents) recovered against Mortgagee or any of its agents, servants and employees because of bodily injuries, including death at any time resulting therefrom and/or because of damages to property of Mortgagee or other (including loss of use) from any cause whatsoever, arising out of, incidental to, or in connection with the construction and/or operation of the Mortgaged Property and any improvement located thereon or arising by reason of the presence of Hazardous Substances, asbestos, PCBs, petroleum products, volatile hydrocarbon on the Mortgaged Property or in any improvements located thereon or releases thereof from the Mortgaged Property, whether or not due to any act of omission or commission, including negligence of a Mortgagor or a Mortgagor's employees, servants or agents, and whether or not due to any act of omission or commission of Mortgagee or its employees, servants or agents. Each Mortgagor's liability hereunder shall not be limited to the extent of insurance carried by or provided by a Mortgagor or subject to any exclusions from coverage in any insurance policy. The obligations of Mortgagors under this Section shall survive the payment of the Notes.

6.10 Modification or Termination. Each Mortgagor, for itself and for all future owners of the Mortgaged Property, agrees that this Mortgage may be modified, varied, extended, renewed or reinstated at any time by agreement between the holder of this Mortgage and Mortgagors or the then owner of the Mortgaged Property, without notice to, or the consent of, any subordinate mortgagee, judgment creditor or lienor, and any such modification, variance, extension, renewal or reinstatement shall be binding upon such subordinate mortgagee, judgment creditor or lienor with the same force and effect as if said subordinate mortgagee, judgment creditor or lienor had affirmatively consented thereto. It is the intention of Mortgagors and Mortgagee that any modification shall maintain the same lien priority as the original Mortgage.

6.11 Descriptive Headings. The descriptive headings used herein are for convenience in reference only and they are not intended to have any effect whatsoever in determining the rights or obligations of Mortgagors or Mortgagee. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

6.12 Counterparts. This Mortgage may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute but one and the same instrument. Executed copies of the signature pages of this Mortgage sent by facsimile or transmitted electronically in either Tagged Image File Format ("TIF") or Portable Document Format ("PDF") shall

be treated as originals, fully binding and with full legal force and effect, and the parties waive any rights they may have to object to such treatment. Any party delivering an executed counterpart of this Mortgage by facsimile, TIFF or PDF also shall deliver a manually executed counterpart of this Mortgage, but the failure to deliver a manually executed counterpart should not affect the validity, enforceability, and binding effect of this Mortgage. The pages of any counterpart of this Mortgage containing any party's signature or the acknowledgement of such party's signature hereto may be detached therefrom without impairing the effect of the signature or acknowledgement, provided such pages are attached to any other counterpart identical thereto except having additional pages containing the signatures or acknowledgements thereof of other parties.

6.13 Definitions. Any capitalized terms not defined herein shall have the same meaning as defined in the Loan Agreement.

6.14 Multiple Mortgages. This Mortgage has been executed by multiple obligors who are referred to herein individually and collectively and interchangeably as "Mortgagor" or "Mortgagors". Unless specifically stated to the contrary, the words "Mortgagor" or "Mortgagors" as used in this Mortgage, including without limitation all representations, warranties and covenants, shall include all Mortgages, jointly and severally. Mortgages understand and agree that, with or without notice to any Mortgagor, Mortgagee may:

- 6.14.1 make one or more additional secured or unsecured loans or otherwise extend additional credit with respect to any other Mortgagor;
- 6.14.2 with respect to any other Mortgagor, alter, compromise, renew, extend, accelerate or otherwise change one or more times the time for payment or other terms of any indebtedness, including increases or decreases of the rate of interest on any indebtedness;
- 6.14.3 exchange, enforce, waive, subordinate, fail or decide not to perfect and release any security, with or without the substitution of new collateral;
- 6.14.4 release, substitute, agree not to sue, or deal with any one or more of Mortgages or any other Mortgagor's sureties, endorsers or other guarantors on any terms or in any manner Mortgagee may choose;
- 6.14.5 determine how, when and what application of payments and credits shall be made on any Indebtedness;
- 6.14.6 apply such security and direct the order or manner of sale of any collateral, including without limitation, any non-judicial sale permitted by the terms of the controlling security agreement or deed of trust, as Mortgagee, in its sole and absolute discretion, may determine;
- 6.14.7 exercise or refrain from exercising any rights against any Mortgagor or others or otherwise act or refrain from acting;
- 6.14.8 settle or compromise any Indebtedness; and
- 6.14.9 subordinate the payment of all or any part of any of Mortgages' indebtedness to Mortgagee to the payment of any liabilities which may be due Mortgagee or others.

6.15 Amended and Restated Mortgage. This Mortgage shall amend, restate and supersede in full the

Original Mortgage.

EACH MORTGAGOR HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY UNDER ANY ACTION OR PROCEEDING ARISING DIRECTLY OR INDIRECTLY OUT OF THIS MORTGAGE, THE LOAN DOCUMENTS, THE LOAN TRANSACTION GENERALLY, INCLUDING ANY CLAIMS FOR ATTORNEYS' FEES, AND ALL DOCUMENTS INCIDENT THERETO.

[This space intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, Mortgagors have caused this Mortgage to be duly executed as of the day and year first above written.

Mortgagors:

FAMOUS DAVE'S OF AMERICA, INC.,
a Minnesota corporation

/s/ Jeffery Crivello
By: Jeffery Crivello
Its: Chief Executive Officer

MINWOOD PARTNERS, INC.,
a Delaware corporation

/s/ Jeffery Crivello
By: Jeffery Crivello
Its: Chief Executive Officer

STATE OF MINNESOTA)
) ss.
COUNTY OF Hennepin)

The foregoing instrument was acknowledged before me on June 18, 2019, by Jeffery Crivello, as Chief Executive Officer of Famous Dave's of America, Inc., a Minnesota corporation, and as Chief Executive Officer of MinWood Partners, Inc., a Delaware corporation, on behalf of each corporation.

Notary Stamp:

/s/ Sheryl Hove
Notary Signature

[Mortgagor Signature Page to Amended and Restated Mortgage, Security Agreement and Fixture Financing Statement dated June 20, 2019, granted by Famous Dave's of America, Inc., and MinWood Partners, Inc., as Mortgagors, to Choice Financial Group, as Mortgagee.]

Mortgagee:

CHOICE FINANCIAL GROUP, a North Dakota
banking corporation doing business as Choice Bank

/s/ Bryan P. Frandrup
By: Bryan P. Frandrup
Its: Vice President

STATE OF MINNESOTA)
) ss.
COUNTY OF Dakota)

The foregoing instrument was acknowledged before me on June 20, 2019, by Bryan P. Frandrup, as Vice President of Choice Financial Group, a North Dakota banking corporation doing business as Choice Bank, on behalf thereof.

Notary Stamp:

/s/ Brandolyn J Bordthausen
Notary Signature

[Mortgagee Signature Page to Amended and Restated Mortgage, Security Agreement and Fixture Financing Statement dated June 20, 2019, granted by Famous Dave's of America, Inc., and MinWood Partners, Inc., as Mortgagors, to Choice Financial Group, as Mortgagee.]

This document was drafted by:

Fafinski Mark & Johnson, P.A. (NMB)
775 Prairie Center Drive, Suite 400
Eden Prairie, MN 55344
952-995-5000

EXHIBIT A
LEGAL DESCRIPTION

Parcel 1 (fee title owner is MinWood Partners, Inc., a Delaware corporation):

Lot 2; The West 45 feet of Lot 3, Block 1, Tower Hill, Hennepin County, Minnesota.
Torrens Property.

Being registered as is evidenced by Certificate of Title No. 1042205.

Parcel 2 (fee title owner is Famous Dave's of America, Inc., a Minnesota corporation, and MinWood Partners, Inc., a Delaware corporation):

That part of the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 35, Township 118, North Range 22, West of the 5th Principal Meridian, lying Northeasterly of the Northeasterly line of State Trunk Highway Number 55, being bounded on the West by a line described as follows:

Beginning at a point in the North line of said Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ distant 353.99 feet West of the Northeast corner of said Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$; thence running South 15 degrees 35 minutes West 184.45 feet more or less to a point in the Northerly right-of-way line of State Trunk Highway Number 55;

And being bounded on the East by a line described as follows:

Beginning at a point in the North line of said Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$, 250.15 feet West of the Northeast corner of said Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$; thence running South 15 degrees and 35 minutes West 242.31 feet or less to a point in the Northerly right-of-way line of State Trunk Highway Number 55;

For the purpose of this description, the North line of said Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ is assumed to be a due East and West line.

ALSO: That part of the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 35, Township 118, Range 22, described as follows:

Commencing at a point on the North line of said Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$, distant 146.31 feet West of the Northeast corner of said Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$; thence continuing West along said North line 103.84 feet; thence running South 15 degrees 35 minutes West 242.31 feet, more or less to a point in the Northerly right of way line of State Trunk Highway Number 55; thence running Southeasterly along said Northerly right of way line 100 feet; thence running North 15 degrees 35 minutes East 270.15 feet more or less to the point of beginning;

EXCEPTING therefrom the Southwesterly 30 feet measured at right angles from the Northeasterly line of Trunk Highway Number 55;

For the purpose of this description the North line of said Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ is assumed to be a due East and West line, Hennepin County, Minnesota.

Abstract Property.

Parcel 3 (fee title owner is MinWood Partners, Inc., a Delaware corporation):

Lot 2, Block 1, Reliance City Center, Washington County, Minnesota.

Abstract Property.

Parcel 4 (fee title owner is Famous Dave's of America, Inc., a Minnesota corporation, and MinWood Partners, Inc., a Delaware corporation):

Lot 3, Block 1, RIVERDALE VILLAGE FOURTH ADDITION, Anoka County, Minnesota.

Torrens Property.

Being registered as is evidenced by Certificate of Title No. 106672.

Property Addresses:

14601 Highway 7, Minnetonka, MN 55345 (Parcel 1)

11308 Highway 55, Plymouth, MN55441 (Parcel 2)

1940 Donegal Drive, Woodbury, MN 55125 (Parcel 3)

3211 Northdale Blvd NW, Coon Rapids, MN 55448 (Parcel 4)

EXHIBIT B
PERMITTED ENCUMBRANCES

All Parcels:

1. Real estate taxes payable in the second-half of 2019 and thereafter.
2. Rights or claims of tenants, as tenants only, in possession under unrecorded leases.

Parcel 1:

1. Subject to the drainage easement as shown on plat. (As to Lot 2).
2. Subject to utility and drainage easements as shown on plat.
3. Resolution vacating drainage and utility easements over the East 7 feet of Lot 2 and the West 7 feet of Lot 3 recorded as Document No. 1341621.
4. Drainage and utility easement recorded as Document No. 1341622.
5. Retaining Wall Agreement recorded as Document No. 1565815.
6. Terms and Conditions of the Conditional Use Permit recorded as Document No. 2834710.

Parcel 2:

1. Easement Agreement recorded as Document No. 3518708.
2. Easement Agreement recorded as Document No. 3593237.
3. Easement Agreement recorded as Document No. 3593238.
4. Easement Agreement recorded as Document No. 3638981.
5. Easement Agreement recorded as Document No. 3639113.
6. Terms and Conditions of the Resolution recorded as Document No. 4789923.
7. Conditional Use Permit recorded as Document No. 4790648.
8. Terms and Conditions of the Resolution recorded as Document No. 6885261.
9. Grant of Permanent Easement for Public Street recorded as Document No. 6885266.
10. Grant of Permanent Easement for Creek recorded as Document No. 6885267.
11. Grant of Permanent Easement for Drainage and Utility recorded as Document No. 6885268.

Parcel 3:

1. Drainage and utility easements as shown on the plat of Reliance City Center Washington County

Highway Right of Way Plat No. 27 recorded as Document No. 405440 and Right of Way Plat recorded as Document No. 367896.

2. Agreement as to Access to Valley Creek Road recorded as Document No. 548073.
3. Roadway, Utility and Access Easement Agreement recorded as Document No. 663300.
4. Public Roadway and Utility Easement Agreement recorded as Document No. 738465.
5. Storm Water Drainage and Utility Easement Agreement recorded as Document No. 739818.
6. Public Roadway Easement Agreement recorded as Document No. 752645.
7. Declaration of Reciprocal Easements, Covenants and Use Restrictions recorded as Document No. 857260, Amended by Document Nos. 888201 and 978869.
8. Terms and Conditions of the Special Use Permit recorded as Document No. 867006.
9. Terms and Conditions of the Special Use Permit recorded as Document No. 867186.
10. Declarations of Restrictions recorded as Document No. 926081.

Parcel 4:

1. Subject to drainage and utility easements as shown on this plat, RIVERDALE VILLAGE FOURTH ADDITION, filed as Document No. 360862 on October 13, 2000.
2. Subject to the easements for drainage and utility purposes only as shown on the plat, RIVERDALE VILLAGE, filed as Document No. 331446 on March 31, 1999.
3. Subject to the right of the State of Minnesota to erect temporary snow fences upon the lands adjacent to Trunk Highway 242 as evidenced by Final Certificate dated December 30, 1964, recorded March 30, 1965, in Book 672 on page 539, in the office of the Anoka County Register of Deeds.
4. Vacation of the Snow Fence Easements recorded in Document No. 118550, rerecorded as Document No. 294476.
5. South Driveway Easement Agreement recorded as Document No. 1739668 in Abstract records only.

