

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the Quarterly Period Ended March 29, 2020

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Commission File Number 001-39053



BBQ HOLDINGS, INC.

(Exact Name of Registrant as Specified in its Charter)

Minnesota

State or Other Jurisdiction of
Incorporation or Organization

83-4222776

I.R.S. Employer Identification No.

12701 Whitewater Drive, Suite 290
Minnetonka, MN

Address of Principal Executive Offices

55343

Zip Code

Registrant's Telephone Number, Including Area Code **(952) 294-1300**

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	BBQ	The Nasdaq Global Market

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large Accelerated Filer

Accelerated Filer

Non-accelerated Filer

Smaller Reporting Company

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.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes No

As of May 11, 2020, 9,282,105 shares of the registrant's Common Stock were outstanding.

BBQ HOLDINGS, INC.
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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

BBQ HOLDINGS, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
MARCH 29, 2020 AND DECEMBER 29, 2019
(in thousands, except per share data)
(Unaudited)

ASSETS

Current assets:	March 29, 2020	December 29, 2019
Cash and cash equivalents	\$ 8,013	\$ 5,325
Restricted cash	971	761
Accounts receivable, net of allowance for doubtful accounts of \$176,000 and \$132,000, respectively	5,099	4,379
Inventories	2,434	1,346
Prepaid income taxes and income taxes receivable	264	264
Prepaid expenses and other current assets	1,210	1,356
Assets held for sale	2,842	2,842
Total current assets	20,833	16,273
Property, equipment and leasehold improvements, net	37,466	19,756
Other assets:		
Operating lease right-of-use assets	71,930	25,962
Goodwill	690	640
Intangible assets, net	10,458	2,213
Deferred tax asset, net	1,610	6,646
Other assets	1,590	1,591
	<u>\$ 144,577</u>	<u>\$ 73,081</u>

LIABILITIES AND SHAREHOLDERS' EQUITY

Current liabilities:		
Accounts payable	\$ 7,097	\$ 3,967
Current portion of lease liabilities	6,989	4,230
Current portion of long-term debt and financing lease obligations	2,020	616
Accrued compensation and benefits	1,360	2,694
Other current liabilities	8,217	4,975
Total current liabilities	25,683	16,482
Long-term liabilities:		
Lease liabilities, less current portion	69,505	26,957
Long-term debt, less current portion	12,922	6,258
Other liabilities	1,245	1,610
Total liabilities	109,355	51,307
Shareholders' equity:		
Common stock, \$.01 par value, 100,000 shares authorized, 9,282 and 9,272 shares issued and outstanding on March 29, 2020 and December 29, 2019, respectively	93	93
Additional paid-in capital	7,993	7,856
Retained earnings	28,130	14,423
Total shareholders' equity	36,216	22,372
Non-controlling interest	(994)	(598)
Total equity	35,222	21,774
	<u>\$ 144,577</u>	<u>\$ 73,081</u>

See accompanying notes to condensed consolidated financial statements.

CONSOLIDATED STATEMENTS OF OPERATIONS
MARCH 29, 2020 AND MARCH 31, 2019
(in thousands, except per share data)
(Unaudited)

	Three Months Ended	
	March 29, 2020	March 31, 2019
Revenue:		
Restaurant sales, net	\$ 20,318	\$ 10,314
Franchise royalty and fee revenue	2,524	3,204
Franchisee national advertising fund contributions	282	409
Licensing and other revenue	346	266
Total revenue	23,470	14,193
Costs and expenses:		
Food and beverage costs	6,754	3,360
Labor and benefits costs	7,721	3,957
Operating expenses	6,241	3,169
Depreciation and amortization expenses	1,045	264
General and administrative expenses	3,032	2,517
National advertising fund expenses	282	409
Asset impairment, estimated lease termination charges and other closing costs, net	173	407
Pre-opening expenses	25	—
Gain on disposal of property, net	(477)	(6)
Total costs and expenses	24,796	14,077
(Loss) income from operations	(1,326)	116
Other income (expense):		
Interest expense	(210)	(71)
Interest income	134	54
Gain on bargain purchase	14,364	—
Total other income (expense)	14,288	(17)
Income before income taxes	12,962	99
Income tax benefit (expense)	349	(17)
Net income	13,311	82
Net loss attributable to non-controlling interest	396	—
Net income attributable to shareholders	\$ 13,707	\$ 82
Income per common share:		
Basic net income per share attributable to shareholders	\$ 1.50	\$ 0.01
Diluted net income per share attributable to shareholders	\$ 1.49	\$ 0.01
Weighted average shares outstanding - basic	9,121	9,085
Weighted average shares outstanding - diluted	9,202	9,189

See accompanying notes to condensed consolidated financial statements.

BBQ HOLDINGS, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY
MARCH 29, 2020
(in thousands)
(Unaudited)

	<u>Common Stock</u>		<u>Additional</u>	<u>Retained</u>	<u>Total</u>	<u>Non-controlling</u>	<u>Total</u>
	<u>Shares</u>	<u>Amount</u>	<u>Paid-in</u>	<u>Earnings</u>	<u>Shareholders'</u>	<u>Interest</u>	<u>Equity</u>
			<u>Capital</u>		<u>Equity</u>		
Balance - December 29, 2019	9,272	\$ 93	\$ 7,856	\$ 14,423	\$ 22,372	\$ (598)	\$ 21,774
Issuance of restricted common stock	10	0	—	—	0	—	0
Stock-based compensation			137	—	137	—	137
Net income (loss)	—	—	—	13,707	13,707	(396)	13,311
Balance - March 29, 2020	<u>9,282</u>	<u>\$ 93</u>	<u>\$ 7,993</u>	<u>\$ 28,130</u>	<u>\$ 36,216</u>	<u>\$ (994)</u>	<u>\$ 35,222</u>

See accompanying notes to condensed consolidated financial statements

BBQ HOLDINGS, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
MARCH 29, 2020 AND MARCH 31, 2019
(in thousands)
(Unaudited)

	Three Months Ended	
	March 29, 2020	March 31, 2019
Cash flows from operating activities:		
Net income	\$ 13,311	\$ 82
Adjustments to reconcile net income to cash flows provided by operations:		
Depreciation and amortization	1,045	264
Stock-based compensation	137	83
Net gain on disposal of property	(477)	(6)
Asset impairment, estimated lease termination charges and other closing costs (gain), net	—	386
Gain on bargain purchase	(14,364)	—
Deferred income taxes	(399)	—
Other non-cash items	(19)	33
Changes in operating assets and liabilities:		
Accounts receivable, net	(720)	764
Other assets	781	53
Accounts payable	3,130	(9)
Accrued and other liabilities	(2,687)	(24)
Cash flows (used for) provided by operating activities	<u>(262)</u>	<u>1,626</u>
Cash flows from investing activities:		
Proceeds from the sale of assets	—	6
Purchases of property, equipment and leasehold improvements	(949)	(221)
Payments for acquired restaurants	(3,969)	(3,841)
Advances on notes receivable	—	(150)
Payments received on note receivable	12	—
Cash flows used for investing activities	<u>(4,906)</u>	<u>(4,206)</u>
Cash flows from financing activities:		
Proceeds from long-term debt	8,101	—
Payments for debt issuance costs	(35)	(15)
Payments on long-term debt and financing lease obligations	—	(137)
Cash provided by (used for) financing activities	<u>8,066</u>	<u>(152)</u>
Increase (decrease) in cash, cash equivalents and restricted cash	2,898	(2,732)
Cash, cash equivalents and restricted cash, beginning of period	6,086	12,440
Cash, cash equivalents and restricted cash, end of period	<u>\$ 8,984</u>	<u>\$ 9,708</u>
Supplemental Disclosures		
Cash paid for interest, net	\$ (15)	\$ 11
Non-cash investing and financing activities:		
(Decrease) increase in accrued property and equipment purchases	—	(35)
Gift card liability assumed pursuant to acquisitions	3,968	—

See accompanying notes to condensed consolidated financial statements.

BBQ HOLDINGS, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(1) Basis of Presentation

Basis of Presentation

On September 17, 2019 a holding company reorganization was completed in which Famous Dave's of America, Inc. ("FDA") became a wholly owned subsidiary of the new parent holding company named BBQ Holdings, Inc. ("BBQ Holdings"). As used in this Form 10-Q, "Company", "we" and "our" refer to BBQ Holdings and its wholly owned subsidiaries. BBQ Holdings was incorporated on March 29, 2019 under the laws of the State of Minnesota, while FDA was incorporated in Minnesota on March 14, 1994. The Company develops, owns and operates restaurants under the name "Famous Dave's", "Clark Crew BBQ", "Granite City Food & Brewery" and "Real Urban Barbecue." Additionally, we franchise restaurants under the name "Famous Dave's". As of March 29, 2020, there were 124 Famous Dave's restaurants operating in 31 states, Canada, and the United Arab Emirates, including 30 Company-owned restaurants and 94 franchise-operated restaurants. The first Clark Crew BBQ restaurant opened in December 2019 in Oklahoma City, Oklahoma. On March 9, 2020, we purchased 18 Granite City Food & Brewery restaurants ("Granite City Acquisition") in connection with a Chapter 11 bankruptcy filing. On March 16, 2020, we purchased one Real Urban Barbecue restaurant located in Vernon Hills, Illinois.

These accompanying financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") and Securities and Exchange Commission ("SEC") Rules and Regulations. The information furnished in these condensed consolidated financial statements include normal recurring adjustments and reflect all adjustments, which are, in the opinion of management, necessary for a fair presentation. Certain information and footnote disclosures normally included in financial statements prepared in accordance with GAAP have been condensed or omitted. These unaudited financial statements represent the condensed consolidated financial statements of the Company and its subsidiaries as of March 29, 2020 and December 29, 2019, and for the three months ended March 29, 2020 and March 31, 2019. The results for the three months ended March 29, 2020 are not necessarily indicative of the results to be expected for the full fiscal year or any other interim period. These condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto included in BBQ Holding, Inc.'s Annual Report on Form 10-K for the fiscal year ended December 29, 2019 as filed with the SEC on March 27, 2020.

In March 2020, the World Health Organization declared the outbreak of a novel coronavirus ("COVID-19") as a pandemic. As a result, public health measures were taken to minimize exposure to the virus. These measures, some of which are government-mandated, have been implemented globally resulting in a dramatic decrease in economic activity. "Stay-at-home" orders with the exception of conducting certain essential functions, quarantines, travel restrictions and other governmental restrictions to reduce the spread of COVID-19 have had an adverse impact on the Company's business. All of the Company's restaurants have been operating on a take-away, mobile pick-up and delivery basis only in order to protect its employees and customers from the spread of the COVID-19 pandemic and to comply with the government mandates.

The full impact of the COVID-19 outbreak continues to evolve as of the date of this report. Management has delayed making certain rent payments on its leased properties and is currently negotiating rent abatement and/or deferment with its landlords. For the Company's franchisees, the Company is deferring their March and April royalties. On April 30, 2020, two of the Company's wholly-owned operating subsidiaries received funding in connection with "Small Business Loans" under the federal Paycheck Protection Program provided in Section 7(a) of the Small Business Act of 1953, as amended by the Coronavirus Aid, Relief and Economic Security Act, as amended from time to time (the "Paycheck Protection Program"). Pursuant to the terms of the Business Loan Agreements and Promissory Notes the Company borrowed approximately \$13.0 million in the aggregate (see Note 17). The duration of the disruption on global, national, and local economies cannot be reasonably estimated at this time. However, should the existence of the COVID-19 pandemic continue for an extended period, our future business operations, including the results of operations, cash flows and financial position will be significantly affected. We continue to monitor the economic impact of the COVID-19 pandemic, as well as mitigating emergency assistance programs, such as the Coronavirus Aid, Relief, and Economic Security Act, on us, our customers, and our vendors. Remote work arrangements have been established for our employees to the extent possible in order to maintain financial reporting systems.

Due to the rapid development and fluidity of this situation, the Company cannot determine the ultimate impact that the COVID-19 pandemic will have on the Company's consolidated financial condition, liquidity, and future results of operations, and therefore any prediction as to the ultimate material adverse impact on the Company's consolidated financial condition, liquidity, and future results of operations is uncertain.

BBQ HOLDINGS, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Reclassifications

Certain prior period amounts have been reclassified to conform to the current period's presentation. These reclassifications did not have an impact on the reported net income for any of the periods presented.

Income Taxes

The Company maintains a federal deferred tax asset ("DTA") in the amount of \$1.6 million and \$6.6 million as of March 29, 2020 and December 29, 2019, respectively. The primary cause of the change in the balance was due to the tax effect on the bargain purchase gain related to the Granite City Acquisition March 2020. The Company evaluates the DTA on a quarterly basis to determine whether current facts and circumstances indicate that the DTA may not be fully realizable. As of March 29, 2020, the Company concluded that the DTA is fully realizable and that no further valuation allowance was necessary; however, the Company will continue to evaluate the DTA on a quarterly basis until the DTA has been fully utilized.

The following table presents the Company's effective tax rates for the periods presented:

	Three Months Ended	
	March 29, 2020	March 31, 2019
Effective tax rate	%	%
	(2.7)%	17.2 %

The Company provides for income taxes based on its estimate of federal and state income tax liabilities. These estimates include, among other items, effective rates for state and local income taxes, allowable tax credits for items such as taxes paid on reported tip income, estimates related to depreciation and amortization expense allowable for tax purposes, and the tax deductibility of certain other items. The Company's estimates are based on the information available at the time that the Company prepares the income tax provision. The Company generally files its annual income tax returns several months after its fiscal year-end. Income tax returns are subject to audit by federal, state, and local governments, generally years after the tax returns are filed. These returns could be subject to material adjustments due to differing interpretations of the tax laws.

Restricted cash and marketing fund

The Company has a system-wide Marketing Development Fund, to which most Company-owned restaurants, in addition to the majority of franchise-operated restaurants, contribute a percentage of net sales, currently for use in public relations and marketing development efforts. The funds held in this account are used in part to reimburse the Company for its marketing and digital services activities on behalf of the Famous Dave's brand. As the assets held by this fund are considered to be restricted, the Company reflects the cash related to this fund within restricted cash and reflect the liability within accounts payable on its condensed consolidated balance sheets. The Company had approximately \$971,000 and \$761,000 in this fund as of March 29, 2020 and December 29, 2019, respectively.

Assets Held for Sale

As of March 29, 2020, the Company had assets held for sale of approximately \$2.8 million related to an owned property for which the Company entered into an agreement to sell the property for a contract purchase price of \$3.6 million.

Concentrations of Credit Risk

As of March 29, 2020, the Company had a receivable from one franchisee in the amount of \$653,000, and from another franchisee in the amount of \$485,000. A portion of these receivables was reserved.

Net income per common share

Basic net income per common share ("EPS") is computed by dividing net income by the weighted average number of common shares outstanding for the reporting period. Diluted EPS equals net income divided by the sum of the weighted average number of shares of common stock outstanding plus all additional common stock equivalents, such as stock options and restricted stock units, when dilutive.

BBQ HOLDINGS, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

<i>(in thousands, except per share data)</i>	Three Months Ended	
	March 29, 2020	March 31, 2019
Net income per share – basic:		
Net income attributable to shareholders	\$ 13,707	\$ 82
Weighted average shares outstanding - basic	9,121	9,085
Basic net income per share attributable to shareholders	<u>\$ 1.50</u>	<u>\$ 0.01</u>
Net income per share – diluted:		
Net income attributable to shareholders	\$ 13,707	\$ 82
Weighted average shares outstanding - diluted	9,202	9,189
Diluted net income per share attributable to shareholders	<u>\$ 1.49</u>	<u>\$ 0.01</u>

There were approximately 228,197 and 179,000 stock options as of March 29, 2020 and March 31, 2019, respectively that were not included in the computation of diluted EPS because they were anti-dilutive.

(2) Restaurant Acquisitions

On March 16, 2020, the Company completed the acquisition of the assets and operations of a Real Urban Barbeque restaurant in Vernon Hills, Illinois from Real Urban Barbeque VH LLC. The contract purchase price of the restaurant was approximately \$45,000, exclusive of closing costs plus the assumption of the lease, gift card and certain other liabilities. The assets acquired and the liabilities assumed were considered to be immaterial and were provisionally recorded at estimated fair values based on information available, including an ROU asset and offsetting liability of approximately \$714,000.

On February 11, 2020, the Company entered into an Asset Purchase Agreement with Granite City Food & Brewery Ltd. (“Granite City”) to acquire certain assets associated with Granite City restaurants in connection with the Chapter 11 filing of Granite City. The Granite City Acquisition was approved by the Bankruptcy Court at a hearing on February 21, 2020. The purchase price for the assets purchased was \$3,650,000 plus certain assumed liabilities including gift card liability and cure costs. On March 9, 2020, the Company closed the Granite City Acquisition with cash on hand and borrowing under its existing loan agreement with Choice Bank.

The Granite City Acquisition was accounted for using the purchase method of accounting in accordance with ASC 805 “Business Combinations” and, accordingly, the condensed consolidated statements of operations include the results of these operations from the date of acquisition. The assets acquired and the liabilities assumed were provisionally recorded at estimated fair values based on information available as of the end of the first quarter of fiscal 2020.

The following table presents the provisional allocation of assets acquired and liabilities assumed for the Granite City Acquisition:

<i>(in thousands)</i>	
Assets acquired:	
Cash and cash equivalents	\$ 128
Inventory	980
Property, plant, equipment and leasehold improvements, net	17,818
Lease right-of-use asset, net of unfavorable lease value	50,968
Identifiable intangible assets, net	8,329
Total identifiable assets acquired	<u>78,223</u>
Liabilities assumed:	
Gift card liability	(3,923)
Lease liability	(50,968)
Deferred tax liability	(4,985)
Net assets acquired	<u>18,346</u>
Gain on bargain purchase	14,364
Total cash consideration	<u>\$ 3,982</u>

BBQ HOLDINGS, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Unaudited pro forma results of operations for the three months ended March 29, 2020 and March 31, 2019, as if the Company had acquired the Granite City operations at the beginning of each period presented is as follows. The pro forma results include estimates and assumptions which management believes are reasonable. However, pro forma results are not necessarily indicative of the results that would have occurred if the business combination had been in effect on the dates indicated, or which may result in the future.

	Three Months Ended	
	March 29, 2020	March 31, 2019
<i>(in thousands)</i>		
Pro forma revenues	\$ 35,874	\$ 31,617
Pro forma net income attributable to shareholders	\$ 13,602	\$ 391
Basic pro forma net income per share attributable to shareholders	\$ 1.50	\$ 0.04
Diluted pro forma net income per share attributable to shareholders	\$ 1.48	\$ 0.04

(3) Prepaid Expenses and Other Current Assets

Prepaid expenses and other current assets consisted of the following at:

<i>(in thousands)</i>	March 29, 2020	December 29, 2019
Prepaid expenses and deferred costs	\$ 495	\$ 405
Prepaid insurance	715	951
Prepaid expenses and other assets	\$ 1,210	\$ 1,356

(4) Property, Equipment and Leasehold Improvements, net

The increase in property, equipment and leasehold improvements was primarily due to the Granite City Acquisition described in Note 2. Property, equipment and leasehold improvements, net, consisted of the following:

<i>(in thousands)</i>	March 29, 2020	December 29, 2019
Land, buildings, and improvements	\$ 23,959	\$ 28,185
Furniture, fixtures, equipment and software	40,843	17,880
Décor	586	584
Construction in progress	351	483
Accumulated depreciation and amortization	(28,273)	(27,376)
Property, equipment and leasehold improvements, net	\$ 37,466	\$ 19,756

(5) Intangible Assets, net

The Company has intangible assets that consist of liquor licenses, database, trademarks and patents, and reacquired franchise rights, net. The liquor licenses and trademarks/logos are indefinite-lived assets and are not subject to amortization. Reacquired franchise rights are amortized to depreciation and amortization expense on a straight-line basis over the remaining life of the reacquired franchise agreement. The database is amortized over three years.

BBQ HOLDINGS, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

The increase in intangible assets was due to the Granite City Acquisition described in Note 2. Intangible assets consisted of the following:

<i>(in thousands)</i>	<u>March 29, 2020</u>	<u>December 29, 2019</u>
Reacquired franchise rights, net	1,683	1,788
Goodwill	690	640
Liquor licenses	837	425
Trademark/Logos/Patents	7,688	-
Database	250	-
Intangible assets, net	<u>\$ 11,148</u>	<u>\$ 2,853</u>

(6) Other Current Liabilities

Other current liabilities consisted of the following at:

<i>(in thousands)</i>	<u>March 29, 2020</u>	<u>December 29, 2019</u>
Gift cards payable	\$ 5,828	\$ 2,360
Accrued expenses	1,321	1,874
Asset retirement obligations and lease reserves	6	6
Sales tax payable	911	584
Deferred franchise fees	151	151
Other current liabilities	<u>\$ 8,217</u>	<u>\$ 4,975</u>

(7) Other Liabilities

Other liabilities consisted of the following at:

<i>(in thousands)</i>	<u>March 29, 2020</u>	<u>December 29, 2019</u>
Deferred rent	\$ 30	\$ —
Deferred franchise fees	817	1,165
Miscellaneous other liabilities	169	216
Asset retirement obligations	3	3
Accrual for uncertain tax position	6	6
Long-term lease reserve	—	—
Long-term deferred compensation	220	220
Other liabilities	<u>\$ 1,245</u>	<u>\$ 1,610</u>

(8) Long-Term Debt and Financing Lease Obligations

On June 20, 2019, the Company entered into a Loan Agreement among the Company and Choice Financial Group. The Loan Agreement provides for a term loan in the principal amount of up to \$24.0 million and is evidenced by a promissory note. The note has a maturity date of June 20, 2025. The first year of the note 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

BBQ HOLDINGS, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

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.

Debt outstanding under the above referenced promissory note consisted of the following as of the periods presented:

<i>(in thousands)</i>	<u>March 29, 2020</u>	<u>December 29, 2019</u>
Term Loan	\$ 15,025	\$ 6,924
Less: deferred financing costs	(83)	(50)
Less: current portion of long-term debt	(2,020)	(616)
Long-term debt, less current portion	<u>\$ 12,922</u>	<u>\$ 6,258</u>

The weighted-average interest rate of long-term debt outstanding as of March 29, 2020 and December 29, 2019 was 5.0%.

The Company is subject to various financial and non-financial covenants on this debt, including a debt-service coverage ratio. As of March 29, 2020, the Company was compliant with all of its covenants.

(9) Leases

The Company leases the property for its corporate headquarters, most of its Company-owned stores, and certain office and restaurant equipment. The Company determines if an arrangement is a lease at inception. Operating leases are included in operating lease right-of use ("ROU") assets, current portion of operating lease liabilities, and operating lease liabilities in its consolidated balance sheets.

Lease expense for lease payments is recognized on a straight-line basis over the lease term. The components of lease expense for the period presented is as follows:

<i>(in thousands)</i>	Three Months Ended	
	March 29, 2020	
Operating lease cost	\$	1,596
Short-term lease cost		31
Total lease cost	<u>\$</u>	<u>1,627</u>

BBQ HOLDINGS, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Supplemental cash flow information related to leases for the period presented is as follows:

<i>(in thousands)</i>	Three Months Ended March 29, 2020
Cash paid for amounts included in the measurement of lease liabilities:	
Operating cash flows from operating leases	\$ 1,791
Right-of-use assets obtained in exchange for new operating lease liabilities	51,682
Weighted-average remaining lease term of operating leases (in years)	11
Weighted-average discount rate of operating leases	5.26

(10) Revenue Recognition

Deferred revenue liabilities consist primarily of franchise fees which are recognized straight-line over the life of the agreements, and area development fees which are deferred until a new restaurant is opened pursuant to the agreement. The following table illustrates estimated revenues expected to be recognized in the future related to unsatisfied performance obligations as March 29, 2020:

<i>(in thousands)</i> Fiscal Year		
2020	\$	83
2021		109
2022		107
2023		102
2024		93
Thereafter		474
Total	\$	968

The following table reflects the change in contract liabilities between March 29, 2020 and December 29, 2019:

<i>(in thousands)</i>		
Balance, December 29, 2019	\$	1,318
Revenue recognized		(350)
Balance, March 29, 2020	\$	968

(11) Stock-based Compensation

Effective May 5, 2015, the Company adopted the 2015 Equity Plan (the “2015 Plan”), pursuant to which it may grant stock options, stock appreciation rights, restricted stock, restricted stock units, performance shares, performance stock units and other stock and cash awards to eligible participants. The Company also maintains an Amended and Restated 2005 Stock Incentive Plan (the “2005 Plan”). The 2005 Plan prohibits the granting of options pursuant to the 2005 plan after May 12, 2015, the tenth anniversary of the date the 2005 Plan was approved by the Company’s shareholders. Nonetheless, the 2005 Plan will remain in effect until all outstanding incentives granted thereunder have either been satisfied or terminated. As of March 29, 2020, there were 89,661 shares available for grant pursuant to the 2015 Plan.

Stock options granted to employees and directors generally vest over two to five years, in monthly or annual installments, as outlined in each agreement. Options generally expire ten years from the date of grant. Compensation expense equal to the grant date fair value of the options is recognized in general and administrative expense over the applicable service period.

The Company utilizes the Black-Scholes option pricing model when determining the compensation cost associated with stock options issued using the following significant assumptions:

- Stock price – Published trading market values of the Company’s common stock as of the date of grant.
- Exercise price – The stated exercise price of the stock option.
- Expected life – The simplified method as outlined in ASC 718.
- Expected dividend – The rate of dividends that the Company expects to pay over the term of the stock option.
- Volatility – Actual volatility over the most recent historical period equivalent to the expected life of the option.

BBQ HOLDINGS, INC. AND SUBSIDIARIES
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- Risk-free interest rate – The daily United States Treasury yield curve rate.

The Company recognized stock-based compensation expense in its consolidated statements of operations for the three months ended March 29, 2020 and March 31, 2019, respectively, as follows:

<i>(in thousands)</i>	Three Months Ended	
	March 29, 2020	March 31, 2019
Stock options	\$ 72	\$ 60
Restricted stock	65	23
	<u>\$ 137</u>	<u>\$ 83</u>

Information regarding the Company's stock options is summarized below:

<i>(number of options in thousands)</i>	Number of Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life in Years
Options outstanding at December 29, 2019	452	\$ 6.71	
Granted	120	4.27	
Forfeited or expired	(22)	5.01	
Options outstanding at March 29, 2020	<u>550</u>	<u>\$ 6.24</u>	<u>5.9</u>

Information regarding the Company's restricted stock is summarized below:

<i>(number of awards in thousands)</i>	Number of Awards	Weighted Average Award Date Fair Value	Weighted Average Remaining Contractual Life in Years
Unvested at December 29, 2019	143	\$ 5.00	
Granted	10	3.40	
Vested, outstanding	(14)	4.71	
Unvested at March 29, 2020	<u>139</u>	<u>\$ 4.91</u>	<u>2.9</u>

	Three Months Ended	
	March 29, 2020	March 31, 2019
Weighted-average fair value of options granted during the period	\$ 1.86	\$ 2.33
Expected life (in years)	4.7	5.5
Expected dividend	\$ —	\$ —
Expected stock volatility	51.21 %	50.31 %
Risk-free interest rate	1.6 %	2.5 %

BBQ HOLDINGS, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(12) Asset Impairment, Estimated Lease Termination and Other Closing Costs

The following is a summary of asset impairment, estimated lease termination and other closing costs for the three months ended March 29, 2020 and March 31, 2019. These costs are included in asset impairment, estimated lease termination and other closing costs in the consolidated statements of operations.

<i>(dollars in thousands)</i>	Three Months Ended	
	March 29, 2020	March 31, 2019
Asset impairments, net	\$ —	\$ 348
Lease termination charges and related costs	117	20
Restaurant closure expenses	56	39
Asset impairment, estimated lease termination charges and other closing costs	<u>\$ 173</u>	<u>\$ 407</u>

(13) Fair Value Measurements

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.

The carrying amounts of cash and cash equivalents reported in the consolidated balance sheets approximates fair value based on current interest rates and short-term maturities. The carrying amount of accounts receivable approximates fair value due to the short-term nature of accounts receivable. The Company believes that the carrying amount of long-term debt approximates fair value due to the variable interest rate on the Company's long-term debt, as well as that there has been no significant change in the credit risk or credit markets since origination.

The Company had no assets measured at fair value in its condensed consolidated balance sheets as of March 29, 2020 and December 29, 2019, except for the assets recorded at fair value in conjunction with restaurant acquisitions. See Note 2 – *Restaurant Acquisition*.

(14) Variable Interest Entities

A variable interest holder is considered to be the primary beneficiary of a variable interest entity ("VIE") if it has the power to direct the activities of a VIE that most significantly impact the entity's economic performance and has the obligation to absorb losses of, or the right to receive benefits from, the entity that could potentially be significant to the VIE. Once an entity is determined to be a VIE, the primary beneficiary is required to consolidate the entity. The Company has an installment agreement with one of its franchisees as the result of refranchising its Lincoln, Nebraska restaurant. This franchisee is a VIE; however, the owners of the franchise operations are the primary beneficiaries of the entities, not the Company. Therefore, the franchise operations are not required to be consolidated in the Company's consolidated financial statements.

On November 1, 2017, the Company sold its Frederick, Maryland restaurant. Pursuant to the terms of the Frederick Agreement, the Company remained the primary obligor of the lease. As of March 29, 2020, the amount of future lease payments for which the Company would be liable in the event of a default are approximately \$348,000. The present value of future minimum lease payments net of expected sublease receipts was recorded as an asset impairment in fiscal year 2019.

BBQ HOLDINGS, INC. AND SUBSIDIARIES
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On July 18, 2018, the Company and Clark Championship Products LLC (“Clark”), an entity owned by Travis Clark, became members of Mercury BBQ LLC (“Mercury”) for the purposes of building out and operating the inaugural Clark Crew BBQ restaurant in Oklahoma City, Oklahoma (the “Restaurant”). Clark will own 80% of the units outstanding of Mercury and the Company will own 20% of the units outstanding of Mercury. Mercury shall be governed by three managers, two of which will be appointed by the Company and one of which will be appointed by Clark. Also in July 2019, the Company entered into a secured promissory note with Mercury which was amended in October 2019. This promissory note as amended (the “Loan”) was in the amount of \$3.9 million, the proceeds of which are required to be used for the build out of the Restaurant. The Loan bears interest at a rate of 8% per annum and requires payments of 100% of the excess monthly cash flows until the Loan and all interest accrued thereon is repaid. The Loan requires a balloon payment of unpaid principal and accrued interest on July 15, 2025 and may be prepaid at any time. Also on July 18, 2018, the Company and Clark entered into an intellectual property license agreement (the “License Agreement”) pursuant to which Clark granted to the Company an exclusive license to use and sublicense the patents, trademarks, trade names, service marks, logos and designs related to Clark Crew BBQ restaurants and products. The term of the License Agreement is indefinite and may only be terminated by mutual written consent, unless the Company breached the License Agreement.

Because the Company has provided more than half of the subordinated financial support of Mercury and control Mercury via its representation on the board of managers, the Company has concluded that Mercury is a VIE, of which the Company is the primary beneficiary and must consolidate Mercury. Mercury generated a net loss of approximately \$496,000 during the first quarter of 2020, of which \$396,000 was recorded as non-controlling interest on our consolidated financial statements. As of March 29, 2020, Mercury’s assets included approximately \$3.1 million of property, equipment and leasehold improvements, a \$2.0 million ROU asset and \$62,000 of inventory. The liabilities recognized as a result of consolidating Mercury BBQ’s results of operations do not represent additional claims on the general assets of BBQ Holdings, Inc.; rather, they represent claims against the specific assets of the Mercury BBQ’s. Conversely, assets recognized as a result of consolidating the Mercury BBQ’s results of operations do not represent additional assets that could be used to satisfy claims against the general assets of BBQ Holdings.

(15) Litigation

In the normal course of business, the Company is involved in a number of litigation matters that are incidental to the operation of the business. These matters generally include, among other things, matters with regard to employment and general business-related issues. The Company currently believes that the resolution of any of these pending matters will not have a material adverse effect on its financial position or liquidity, but an adverse decision in more than one of the matters could be material to its consolidated results of operations.

(16) Related Party Transactions

Anand D. Gala is a franchisee of the Company and currently serves as a director of the Company. Mr. Gala is the Founder, President and Chief Executive Officer of Gala Holdings International, a diversified holding company that conducts consulting, restaurant development and management operations.

Charles Davidson is a franchisee of the Company and is the beneficial owner of approximately 18.2% of the Company’s common stock as of the date that these financial statements were available to be issued, by virtue of his ownership interest in Wexford Capital.

The following table outlines amounts received from related parties during the three months ended March 29, 2020, and March 31, 2019:

<i>(in thousands)</i>	Three Months Ended	
	March 29, 2020	March 31, 2019
Revenues and NAF contributions - Anand Gala	\$ 344	\$ 388
Revenues and NAF contributions - Charles Davidson	166	77

The following table outlines accounts receivable from related parties as of March 29, 2020 and December 29, 2019:

<i>(in thousands)</i>	March 29, 2020	December 29, 2019
	Accounts receivable, net - Anand Gala	\$ 344
Accounts receivable, net - Charles Davidson	111	77

BBQ HOLDINGS, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(17) Subsequent Events

On April 30, 2020, FDA and Granite City, Inc. (“GC”), wholly-owned operating subsidiaries of the Company received funding in connection with “Small Business Loans” under the Paycheck Protection Program. Pursuant to the terms of the Promissory Notes dated as of April 30, 2020, by FDA and GC in favor of Choice Financial Group, a bank operating out of the state of North Dakota, FDA borrowed \$7,225,200 original principal amount, which was funded on May 1, 2020 whereas GC borrowed \$5,810,800 original principal amount, which was funded on May 1, 2020 (“PPP Loans”). The PPP Loans bear interest at 1% per annum and mature in two years from the date of disbursement of funds under the PPP Loans respectively. Interest and principal payments under the PPP Loans will be deferred for a period of six months. Under certain circumstances, all or a portion of the PPP Loans may be forgiven, however, there can be no assurance that any portion of the PPP Loans will be forgiven and that FDA or GC would not be required to repay the PPP Loans in full.

The PPP Loans contain certain covenants which, among other things, restrict the borrower’s use of the proceeds of the PPP Loans to the payment of payroll costs, interest on mortgage obligations, rent obligations and utility expenses, require compliance with all other loans or other agreements with any creditor of the borrower, to the extent that a default under any loan or other agreement would materially affect the borrower’s ability to repay the PPP Loans and limit the ability of the borrower to make certain changes to its ownership structure.

The COVID-19 pandemic has caused a disruption to our business. The full impact of the COVID-19 outbreak continues to evolve as of the date of this report, and due to the rapid development and fluidity of the situation, we are not able to determine the ultimate impact it will have on our financial condition. Same store sales at our Famous Dave’s restaurants decreased 29% while same store sales at our Granite City restaurants decreased 83% during the four weeks ended April 25, 2020. While some states and municipalities have allowed restaurants to begin opening dining rooms, restrictions limiting the number of guests continues to limit the amount of revenue generated. It is uncertain when additional locals will allow in-restaurant dining to resume and at what capacity. We have taken measures to mitigate our downturn in sales, including reducing labor and renegotiating rents on our restaurant properties.

BBQ HOLDINGS, INC. AND SUBSIDIARIES

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Overview

On September 17, 2019 a holding company reorganization was completed in which Famous Dave’s of America, Inc. (“FDA”) became a wholly owned subsidiary of the new parent holding company named BBQ Holdings, Inc. (“BBQ Holdings”). As used in this Form 10-Q, “Company”, “we” and “our” refer to BBQ Holdings and its wholly owned subsidiaries. BBQ Holdings was incorporated on March 29, 2019 under the laws of the State of Minnesota, while FDA was incorporated in Minnesota on March 14, 1994. We develop, own and operate restaurants under the name “Famous Dave’s”, “Clark Crew BBQ”, “Granite City Food & Brewery” and “Real Urban Barbecue.” Additionally, we franchise restaurants under the name “Famous Dave’s”. As of March 29, 2020, there were 124 Famous Dave’s restaurants operating in 31 states, Canada, and the United Arab Emirates, including 30 Company-owned restaurants and 94 franchise-operated restaurants. The first Clark Crew BBQ restaurant opened in December 2019 in Oklahoma City, Oklahoma. On March 9, 2020, we purchased 18 Granite City Food & Brewery restaurants located in 11 states. On March 16, 2020, we purchased one Real Urban Barbecue restaurant located in Vernon Hills, Illinois.

In March 2020, the World Health Organization declared the outbreak of a novel coronavirus (“COVID-19”) as a pandemic. As a result, public health measures were taken to minimize exposure to the virus. These measures, some of which are government-mandated, have been implemented globally resulting in a dramatic decrease in economic activity. “Stay-at-home” orders with the exception of conducting certain essential functions, quarantines, travel restrictions and other governmental restrictions to reduce the spread of COVID-19 have had an adverse impact on our business. All of our restaurants have been operating on a take-away, mobile pick-up and delivery basis only in order to protect our employees and customers from the spread of the COVID-19 pandemic and to comply with the government mandates.

Due to the rapid development and fluidity of this situation, the full impact of the COVID-19 outbreak continues to evolve as of the date of this report. As such, we cannot determine its ultimate impact.

The following table summarizes the changes in the number of Company-owned and franchise-operated restaurants for the periods presented:

	BBQ Holdings	
	Three Months Ended March 29, 2020	Three Months Ended March 31, 2019
Company-owned restaurants:		
Famous Dave's	30	17
Granite City Food & Brewery	18	—
Real Urban Barbecue	1	—
Clark Crew BBQ (Note 14)	1	—
End of period	<u>50</u>	<u>17</u>
% of system	34 %	12 %
Franchise-operated restaurants:		
Famous Dave's	94	127
Real Famous BBQ	1	—
End of period	<u>95</u>	<u>127</u>
% of system	66 %	88 %
System end of period total	<u><u>145</u></u>	<u><u>144</u></u>

Fiscal Year

Our fiscal year ends on the Sunday closest to December 31st. Our fiscal year is generally 52 weeks; however, it periodically consists of 53 weeks. Fiscal year 2020, ending January 3, 2021, will have 53 weeks while fiscal year 2019 which ended December 29, 2019 included 52 weeks.

BBQ HOLDINGS, INC. AND SUBSIDIARIES**Revenue**

Our revenue consists of restaurant sales, franchise-related revenue and licensing, and other revenue. Our franchise-related revenue is comprised of three separate and distinct earnings processes: area development fees, initial franchise fees, and continuing royalty and national advertising fund payments. Currently, our domestic area development fee consists of a one-time, non-refundable payment of approximately \$10,000 per restaurant in consideration for the services we perform in preparation of executing each area development agreement. For our foreign area development agreements, the one-time, non-refundable payment is negotiated on a per development basis and is determined based on the costs incurred to arrange for the sale of that development area. Currently, our initial, non-refundable, franchise fee for domestic growth is \$45,000 per restaurant. Finally, franchisees are also required to pay us a monthly royalty equal to a percentage of their net sales. Licensing revenue includes royalties from a retail line of business, including sauces, rubs, marinades and seasonings. Other revenue includes opening assistance and training we provide to our franchise partners.

Costs and Expenses

Restaurant costs and expenses include food, beverage and merchandise costs; labor and benefits costs; and operating expenses, which include occupancy costs, repair and maintenance costs, supplies, advertising and promotion. Certain of these costs and expenses are variable and will increase or decrease with sales volume. The primary fixed costs are restaurant management, operations, and catering support salaries, occupancy and insurance costs.

General and Administrative Expenses

General and administrative expenses include all corporate and administrative functions to support future growth. Salaries and benefits, legal fees, accounting fees, professional consulting fees, travel, rent and general insurance are major items in this category. We also provide franchise services for which the revenue is included in other revenue and the expenses are included in general and administrative expenses.

Results of Operations – the three months ended March 29, 2020 compared to the three months ended March 31, 2019.

The following discussion and analysis of financial condition and results of operations should be read in conjunction with the accompanying unaudited condensed consolidated financial statements and notes, and the audited consolidated financial statements and notes included in our Annual Report on Form 10-K for the fiscal year ended December 29, 2019.

The following table presents items in our unaudited condensed consolidated statements of operations as a percentage of net restaurant sales or total revenue, as indicated, for the periods presented:

	Three Months Ended	
	March 29, 2020	March 31, 2019
Food and beverage costs ⁽¹⁾	33.2 %	32.6 %
Labor and benefits costs ⁽¹⁾	38.0 %	38.4 %
Operating expenses ⁽¹⁾	30.7 %	30.7 %
Restaurant level operating margin ⁽¹⁾⁽³⁾	(2.0)%	(1.7)%
Depreciation and amortization expenses ⁽²⁾	4.5 %	1.9 %
General and administrative expenses ⁽²⁾	12.9 %	17.7 %
(Loss) income from operations ⁽²⁾	(5.6)%	0.8 %

(1) As a percentage of restaurant sales, net

(2) As a percentage of total revenue

(3) Restaurant level margins are equal to restaurant sales, net, less restaurant level food and beverage costs, labor and benefit costs, and operating expenses.

Same Store Net Sales

It is our policy to include in our same store net sales base, restaurants that are open year-round and have been open at least 24 months. Reacquired and refranchised restaurants are removed from the same store net sales base until the new ownership has been in place for at least 12 months. Same store net sales for Company-owned restaurants for the three months ended March 29, 2020 decreased 6.8% compared to the three months ended March 31, 2019. As of March 29, 2020 and March 31, 2019, there were 14

BBQ HOLDINGS, INC. AND SUBSIDIARIES

restaurants in the same store sales base. Same store net sales for franchise-operated restaurants for the three months ended March 31, 2020 decreased 13.1% compared to the three months ended March 31, 2019.

The overarching cause of the decrease in same store sales relates to the effects of the outbreak of a novel coronavirus (COVID-19). As a result of this pandemic, public health measures were taken to minimize exposure to this virus. These measures, many of which are government-mandated, have virtually eliminated dine-in business at our restaurants. As a result, we have seen an increase in our To-Go business, but a disproportionate decrease in our dine-in business.

Total Revenue

Our components of and changes in revenue consisted of the following for the three months ended March 29, 2020 and March 31, 2019:

<i>(dollars in thousands)</i>	Three Months Ended			
	March 29, 2020	March 31, 2019	\$ Change	% Change
Revenue:				
Restaurant sales, net	\$ 20,318	\$ 10,314	\$ 10,004	97.0 %
Franchise royalty and fee revenue	2,524	3,204	(680)	(21.2)%
Franchisee national advertising fund contributions	282	409	(127)	(31.1)%
Licensing and other revenue	346	266	80	30.1 %
Total revenue	\$ 23,470	\$ 14,193	\$ 9,277	65.4 %

Restaurant Sales, net

The increase in year-over-year restaurant sales, net for the three months ended March 29, 2020 was primarily a result of the acquisition of restaurants in Colorado and Arizona and the Granite City Acquisition, offset in part of the decrease in same-store sales.

On a weighted basis, for the three months ended March 29, 2020 compared to the three months ended March 31, 2019, Dine-In same store sales at Company-owned Famous Dave's restaurants decreased by 18.4%, while To-Go same store net sales at Company-owned Famous Dave's restaurants increased by 8.4%, driven by third-party delivery sales and curb-side pickup due to the unavailability of dine-in options as a result of the COVID-19 pandemic.

Same store sales at our Granite City restaurants decreased 71.1% during the three weeks ended March 29, 2020 compared to the three weeks ended March 31, 2019 under prior ownership. This decrease was due to the closure of our dining rooms as of March 15, 2020.

Franchise-Related Revenue, including national advertising fund contributions

Franchise-related same store net sales decreased by 13.1%, for the three months ended March 29, 2020 compared to the three months ended March 31, 2019. The decrease year over year net sales was due primarily to the elimination of the dine-in option for our guests due to the COVID-19 pandemic.

Licensing and Other Revenue

For the three months ended March 29, 2020, licensing and other revenue grew 30.1% to \$346,000 compared to the same period of fiscal 2019. Licensing and other revenue is primarily related to royalties earned on the sale of Famous Dave's branded sauces, rubs, and other consumer packaged goods.

Average Weekly Net Sales and Operating Weeks

The following table shows Famous Dave's Company-owned and franchise-operated average weekly net sales and Famous Dave's Company-owned and franchise-operated operating weeks for the periods presented:

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	Three Months Ended	
	March 29, 2020	March 31, 2019
Average Weekly Net Sales (AWS):		
Franchise-Operated ⁽¹⁾	\$ 40,547	\$ 46,043
Company-Owned	42,767	43,623
Full-Service	44,297	46,054
Counter-Service	34,812	37,214
Operating Weeks:		
Franchise-Operated	1,223	1,573
Company-Owned	403	236

⁽¹⁾ AWS for franchise-operated restaurants are not our revenues and are not included in our consolidated financial statements. We believe that disclosure of comparable restaurant net sales for franchise-operated restaurants provides useful information to investors because historical performance and trends of Famous Dave's franchisees relate directly to trends in franchise royalty revenues that we receive from such franchisees and have an impact on the perceived success and value of the Famous Dave's brand. It also provides a comparison against which management and investors can analyze the extent to which Company-owned restaurants are realizing their revenue potential.

Average weekly sales at our Granite City restaurants were \$22,994 for the three weeks ended March 29, 2020 compared to \$79,474 for the three weeks ended March 31, 2019 under prior ownership. We acquired these restaurant effective March 9, 2020 and closed the dining rooms one week later due to COVID-19. There were 54 operating weeks for the Granite City restaurants for each of the periods presented.

Food and Beverage Costs

Our food and beverage costs consisted of the following for the three months ended March 29, 2020 and March 31, 2019:

	Three Months Ended			
	March 29, 2020	March 31, 2019	\$ Change	% Change
<i>(dollars in thousands)</i>				
Food and beverage costs	\$ 6,754	\$ 3,360	\$ 3,394	101.0 %

Food and beverage costs for the three months ended March 29, 2020 and March 31, 2019 represented approximately 33.2% and 32.6% of net restaurant sales, respectively. This year-over-year increase, as a percentage of net restaurant sales, was primarily driven by the acquisition of restaurants in Colorado and Arizona and the Granite City Acquisition. A portion of the increase in food and beverage costs as a percentage of revenue relates to the decrease in sales and traffic due to closed dining rooms and the related waste of perishable items in inventory. Management continues to work to address and reduce these costs as we better understand the COVID-19 related environment.

Labor and Benefits Costs

Our labor and benefits costs consisted of the following for the three months ended March 29, 2020 and March 31, 2019:

	Three Months Ended			
	March 29, 2020	March 31, 2019	\$ Change	% Change
<i>(dollars in thousands)</i>				
Labor and benefits costs	\$ 7,721	\$ 3,957	\$ 3,764	95.1 %

Labor and benefits costs for the three months ended March 29, 2020 and March 31, 2019, represented approximately 38.0% and 38.4% of net restaurant sales, respectively. The year-over-year decrease during the three months ended March 29, 2020, as a percentage of net restaurant sales, was primarily driven by a concerted effort by management to increase efficiency at the restaurants. While we benefited from these efficiencies through the first two months of the quarter, we did see increased labor costs with the Granite City Acquisition primarily due to management performing the majority of the labor as the restaurants converted from Dine-In to To-Go service as dining room closures were mandated as a result of COVID-19.

BBQ HOLDINGS, INC. AND SUBSIDIARIES**Operating Expenses**

Our operating expenses consisted of the following for the three months ended March 29, 2020 and March 31, 2019:

<i>(dollars in thousands)</i>	Three Months Ended			
	March 29, 2020	March 31, 2019	\$ Change	% Change
Operating expenses	\$ 6,241	\$ 3,169	\$ 3,072	96.9 %

Operating expenses for the three months ended March 29, 2020 and March 31, 2019 represented approximately 30.7% net restaurant sales.

Depreciation and Amortization

Depreciation and amortization expense for the three months ended March 29, 2020 and March 31, 2019 was \$1.0 million and \$264,000, respectively. The increase in depreciation expense was due to improvements made to and the acquisition of additional locations.

General and Administrative Expenses

Our general and administrative expenses consisted of the following for the three months ended March 29, 2020 and March 30, 2019:

<i>(dollars in thousands)</i>	Three Months Ended			
	March 29, 2020	March 31, 2019	\$ Change	% Change
General and administrative expenses	\$ 3,032	\$ 2,517	\$ 515	20.5 %

General and administrative expenses for the three months ended March 29, 2020 and March 31, 2019 represented approximately 12.9% and 17.7% of total revenues, respectively. The decrease in general and administrative expenses due primarily to improved efficiencies. We anticipate we will experience an increase in general and administrative expenses in the near term and we fully integrate the operations of the 18 Granite City restaurants we acquired in March 2020.

BBQ HOLDINGS, INC. AND SUBSIDIARIES***Asset Impairment, Estimated Lease Termination and Other Closing Costs***

The following is a summary of the asset impairment, estimated lease termination and other closings costs we incurred for the periods presented:

<i>(dollars in thousands)</i>	Three Months Ended	
	March 29, 2020	March 31, 2019
Asset impairments, net	\$ —	\$ 348
Lease termination charges and related costs	117	20
Restaurant closure expenses	56	39
Asset impairment, estimated lease termination charges and other closing costs	<u>\$ 173</u>	<u>\$ 407</u>

Income Tax Expense

Income tax benefit for the three months ended March 29, 2020 was approximately \$357,000, or 2.7% of our pretax income. Income tax expense for the three months ended March 31, 2019 was approximately \$17,000, or 17.2% of our pretax income.

Basic and Diluted Net Income per Common Share Attributable to Shareholders

Net income attributable to shareholders for the three months ended March 29, 2020 was approximately \$13.7 million, or \$1.51 and \$1.50 per basic and diluted share, respectively. The basic and diluted weighted-average number of common shares outstanding for the three months ended March 29, 2020 were approximately 9,083,000 and 9,164,000, respectively. Net income for the three months ended March 31, 2019 was approximately \$82,000, or \$0.01 per basic and diluted share. The basic and diluted weighted-average number of common shares outstanding for the three months ended March 31, 2019 was approximately 9,085,000 and 9,189,000, respectively.

Financial Condition, Liquidity and Capital Resources

Our balance of unrestricted cash and cash equivalents was approximately \$8.0 million and \$5.3 million as of March 29, 2020 and December 29, 2019, respectively. We used cash to purchase one Real Urban Barbeque restaurant in Illinois and 18 Granite City restaurants in 11 states. We were able to build cash by delaying payments to our vendors as a means to combat the effect of the COVID-19 pandemic.

On June 20, 2019 we entered into a loan agreement with our lender, Choice Financial Group. The loan agreement provides for a term loan in the principal amount of up to \$24.0 million. The term loan has a maturity date of June 20, 2025. As of March 30, 2020, the term loan had an outstanding balance of approximately \$15.0 million.

Our current ratio, which measures our immediate short-term liquidity, was 0.8 as of March 29, 2020, compared to 1.0 as of December 29, 2019. The current ratio is computed by dividing total current assets by total current liabilities.

Net cash used in operating activities for the three months ended March 29, 2019 was approximately \$262,000, which reflects net income of approximately \$13.3 million reduced primarily by the \$14.4 million non-cash bargain purchase gain on the Granite City Acquisition. Changes in operating assets and liabilities for the three months ended March 29, 2020 primarily included cash inflows from an increase in accounts payable of \$3.1 million. These cash inflows were partially offset by cash outflows related to a decrease in other accrued liabilities of \$2.7 million.

Net cash provided by operating activities for the three months ended March 31, 2019 was approximately \$1.6 million, which reflects net income of approximately \$82,000 increased by non-cash charges of approximately \$785,000. Changes in operating assets and liabilities for the three months ended March 31, 2019 primarily included cash inflows for accounts receivable of \$743,000 and other assets of \$53,000. These cash inflows were partially offset by cash outflows related to a decrease in accounts payable of \$9,000 and a decrease in accrued and other liabilities of \$24,000.

Net cash used for investing activities was approximately \$4.9 million for the three months ended March 29, 2020, related to payments for acquired restaurants of \$4.0 million and the purchase of property, equipment and leasehold improvements of \$949,000. Net cash used for investing activities was approximately \$4.2 million for the three months ended March 31, 2019, related to payments for acquired restaurants of \$3.8 million, advances on notes receivable of \$150,000 and the purchase of property, equipment and leasehold improvements of \$221,000, partially offset by proceeds from the sale of fixed assets of \$6,000.

BBQ HOLDINGS, INC. AND SUBSIDIARIES

Net cash provided by financing activities for the three months ended March 29, 2020 was approximately \$8.1 million which was related to the proceeds from our loan with Choice Bank. Such funds were used to fund operations and acquisitions. Net cash used for financing activities for the three months ended March 31, 2019 of \$152,000, primarily related to the debt repayments of \$137,000 and payments for debt issuance costs of \$15,000.

We are subject to various financial and non-financial covenants on our long-term debt, including a debt-service coverage ratio. As of March 29, 2020, we were in compliance with all of our covenants.

The COVID-19 pandemic has caused a disruption to our business. The full impact of the COVID-19 outbreak continues to evolve as of the date of this report, and due to the rapid development and fluidity of the situation, we are not able to determine the ultimate impact it will have on our financial condition. Same store sales at our Famous Dave's restaurants decreased 29% while same store sales at our Granite City restaurants decreased 83% during the four weeks ended April 26, 2020. We have taken measures to mitigate our downturn in sales, including reducing labor and renegotiating rents on our restaurant properties. Additionally, on April 30, 2020, FDA and GC, wholly-owned operating subsidiaries of our company, received funding in connection with "Small Business Loans" under the Paycheck Protection Program. Pursuant to the terms of the Promissory Notes dated as of April 30, 2020, by FDA and GC in favor of Choice Financial Group, FDA borrowed \$7,225,200 original principal amount, which was funded on May 1, 2020, whereas GC borrowed \$5,810,800 original principal amount, which was funded on May 1, 2020 ("PPP Loans"). The PPP Loans bear interest at 1% per annum and mature in two years from the date of disbursement of funds under the PPP Loans respectively. Interest and principal payments under the PPP Loans will be deferred for a period of six months. Under certain circumstances, all or a portion of the PPP Loans may be forgiven, however, there can be no assurance that any portion of the PPP Loans will be forgiven and that FDA or GC would not be required to repay the PPP Loans in full.

The PPP Loans contain certain covenants which, among other things, restrict the borrower's use of the proceeds of the PPP Loans to the payment of payroll costs, interest on mortgage obligations, rent obligations and utility expenses, require compliance with all other loans or other agreements with any creditor of the borrower, to the extent that a default under any loan or other agreement would materially affect the borrower's ability to repay the PPP Loans and limit the ability of the borrower to make certain changes to its ownership structure.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements that either have, or are reasonably likely to have, a current or future effect on our financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that is material to investors.

Critical Accounting Policies

Our significant accounting policies are described in Note 1 – *Nature of Business and Significant Accounting Policies* to the condensed consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 29, 2019. Except as disclosed in Note 1 "Basis of Presentation" to the accompanying notes to the consolidated financial statements, there have been no updates to our critical accounting policies.

BBQ HOLDINGS, INC. AND SUBSIDIARIES

Forward-Looking Information

BBQ Holdings makes written and oral statements from time to time, including statements contained in this Quarterly Report on Form 10-Q regarding its business and prospects, such as projections of future performance, statements of management's plans and objectives, forecasts of market trends and other matters that are forward-looking statements within the meaning of Sections 27A of the Securities Act of 1933 and Section 21E of the Securities Act of 1934. Statements containing the words or phrases "will likely result", "anticipates", "are expected to", "will continue", "is anticipated", "estimates", "projects", "believes", "expects", "intends", "target", "goal", "plans", "objective", "should" or similar expressions identify forward-looking statements which may appear in documents, reports, filings with the SEC, news releases, written or oral presentations made by our officers or other representatives to analysts, shareholders, investors, news organizations, and others, and discussions with our management and other Company representatives. For such statements, including those contained in this report, we claim the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995.

Our future results, including results related to forward-looking statements, involve a number of risks and uncertainties that are difficult to predict, including but not limited to those identified herein under Part II, Item 1A. "Risk Factors" and under Part I, Item 1A. "Risk Factors" of our Annual Report on Form 10-K for the fiscal year ended December 29, 2019. No assurance can be given that the results reflected in any forward-looking statements will be achieved. Any forward-looking statements made by us or on our behalf speak only as of the date on which such statement is made. Our forward-looking statements are based upon assumptions that are sometimes based upon estimates, data, communications and other information from suppliers, government agencies and other sources that may be subject to revision. We do not undertake any obligation to update or keep current either (i) any forward-looking statements to reflect events or circumstances arising after the date of such statement, or (ii) the important factors that could cause our future results to differ materially from historical results or trends, results anticipated or planned by us, or which are reflected from time to time in any forward-looking statement which may be made by us or on our behalf.

Additional Information on BBQ Holdings

We are currently subject to the informational requirements of the Securities Exchange Act of 1934, as amended. As a result, we are required to file periodic reports and other information with the SEC, such as annual, quarterly and current reports, proxy and information statements. You are advised to read this Quarterly Report on Form 10-Q in conjunction with the other reports, proxy statements and other documents we file from time to time with the SEC. If you would like more information regarding BBQ Holdings, our SEC filings are also available to the public free of charge at the SEC's website. The address of this website is <http://www.sec.gov>. Our most current SEC filings, such as our annual, quarterly and current reports, proxy statements and press releases are available to the public free of charge on our website.

The address of our website is <http://www.bbq-holdings.com>. Our website is not intended to be, and is not, a part of this Quarterly Report on Form 10-Q. We will provide electronic or paper copies of our SEC filings (excluding exhibits) to any BBQ Holdings shareholder free of charge upon receipt of a written request for any such filing. All requests for our SEC filings should be sent to the attention of Investor Relations at BBQ Holdings, Inc., 12701 Whitewater Drive, Suite 290, Minnetonka, MN 55343.

Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Not applicable to smaller reporting companies.

Item 4. CONTROLS AND PROCEDURES

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of our disclosure controls and procedures, as such term is defined under Rule 13a-15(e) promulgated under the Securities Exchange Act of 1934, as amended, as of the end of the period covered by this report. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures are effective.

There has been no change in our internal control over financial reporting during the quarterly period covered by this report that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting, except for the following.

PART II. OTHER INFORMATION

Item 1. LEGAL PROCEEDINGS.

The information contained in Note 15 – *Litigation* of the notes to the accompanying consolidated financial statements included in this Quarterly Report on Form 10-Q is incorporated by reference into this Item 1. Except as set forth therein, as of the end of the period covered by this Quarterly Report on Form 10-Q, we are not a party to any material pending legal proceedings.

Item 1A. RISK FACTORS.

The most significant risk factors applicable to the Company are described in Part I, Item 1A. “Risk Factors” of our Annual Report on Form 10-K for the year ended December 29, 2019, filed with the SEC on March 27, 2020, as updated by this Part II, Item 1A “Risk Factors” and our subsequent filings with the Securities and Exchange Commission. There have been no material changes from the risk factors previously disclosed in our Annual Report on Form 10-K except as noted below.

Item 5. OTHER INFORMATION

On May 8, 2020, Mr. Joseph M. Jacobs notified the Company that he is resigning from the Board of Directors effective immediately due to the demands on his businesses arising out of the COVID-19 pandemic. Mr. Jacobs has confirmed to the Company’s Board that his resignation is not the result of any disagreement on any matter relating to the Company’s operations, policies or practices.

Item 6. EXHIBITS

<u>Exhibit Number</u>	<u>Description</u>
10.1*	Asset Purchase Agreement, dated February 11, 2020 among the Company and Granite City Food & Brewery Ltd. and its related entities
10.2*	First Amendment to Asset Purchase Agreement, dated February 21, 2020 to Asset Purchase Agreement, dated February 11, 2020
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS	Inline XBRL Instance Document
101.SCH	Inline XBRL Schema Document
101.CAL	Inline XBRL Calculation Linkbase Document
101.LAB	Inline XBRL Label Linkbase Document
101.PRE	Inline XBRL Presentation Linkbase Document
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document
Exhibit 104	Cover Page Interactive Data File – the cover page interactive data file does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.

*Schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The registrant will furnish copies of any such schedules to the Securities and Exchange Commission upon request.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

BBQ HOLDINGS, INC.
("Registrant")

Dated: May 13, 2020

By: /s/ Jeffery Crivello
Jeffery Crivello
Chief Executive Officer and Director
(Principal Executive Officer)

Dated: May 13, 2020

/s/ James G. Gilbertson
James G. Gilbertson
Chief Financial Officer and Secretary
(Principal Financial Officer and Principal Accounting Officer)

ASSET PURCHASE AGREEMENT

among

BBQ ACQUISITION, INC.

as “Buyer,”

and

GRANITE CITY FOOD & BREWERY LTD.

and

THOSE PERSONS LISTED ON SCHEDULE A

as “Sellers”

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Leases

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Financials

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “**Agreement**”), dated as of February 11, 2020 (the “**Execution Date**”), is made by and among those persons listed on Schedule A attached to this Agreement (each individually, “**Seller**”, and collectively, “**Sellers**”), and BBQ Acquisition, Inc., a Minnesota corporation, its successors and assignees (“**Buyer**”). Unless otherwise set forth in this Agreement, capitalized terms used in this Agreement are defined or cross-referenced in Article X.

RECITALS

WHEREAS, Sellers own and operate a portfolio of two restaurant brands, Granite City Food & Brewery (the “**Granite City Business**”) and Cadillac Ranch (the “**Cadillac Ranch Business**” and together with the Granite City Business, the “**Business**”);

WHEREAS, on December 16, 2019 (the “**Petition Date**”), Sellers commenced voluntary cases under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Minnesota (the “**Bankruptcy Court**”);

WHEREAS, this Agreement will constitute an APA (as such term is defined in the Bidding Procedures);

WHEREAS, Buyer desires to purchase the Acquired Assets and assume the Assumed Liabilities from Sellers, and Sellers desire to sell, assign, transfer and deliver to Buyer the Acquired Assets together with the Assumed Liabilities, all in the manner and subject to the terms and conditions set forth in this Agreement;

WHEREAS, the transactions contemplated by this Agreement (the “**Transactions**”) will be consummated pursuant to a Sale Order in accordance with Sections 105, 363, 365, 1146 and all other applicable provisions of the Bankruptcy Code and the Transactions and this Agreement are subject to the approval of the Bankruptcy Court;

WHEREAS, pursuant to the Bidding Procedures, Sellers conducted an Auction (as such term is defined in the Bidding Procedures) to determine the highest and otherwise best offer for the Acquired Assets; and

WHEREAS, the Transactions are subject to the approval of the Bankruptcy Court and will be consummated only pursuant to the Sale Order to be entered by the Bankruptcy Court.

NOW, THEREFORE, in consideration of the foregoing and their respective representations, warranties, covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Sellers and Buyer agree as follows:

ARTICLE I. PURCHASE AND SALE OF THE ACQUIRED ASSETS

Section 1.1 Transfer of Acquired Assets.

At the Closing, and upon the terms and conditions set forth in this Agreement and pursuant to sections 105, 363 and 365 of the Bankruptcy Code, each Seller will sell, assign, transfer and deliver to Buyer, and Buyer will purchase from each Seller, all of such Seller's right, title and interest in, to and under the following properties, assets and rights used primarily by Sellers in connection with the operation of the Granite City Business free and clean of all Liens (other than Permitted Liens and Assumed Liabilities) (collectively the "**Acquired Assets**"):

- (a) All real property: (i) owned by any Seller, including but not limited to Seller's facility in Ellsworth, IA; or (ii) leased to any Seller pursuant to the Real Property Leases listed on Schedule 1.1(a), to which such Seller is a party, including all Leasehold Improvements thereon owned by any Seller (collectively, the "**Leased Real Property**");
- (b) All cash, cash equivalents and similar cash items at each Leased Real Property location on the Closing Date in cash registers, safes, strongboxes and lock boxes consistent with past practice;
- (c) All Inventory (other than alcoholic beverage inventories in jurisdictions where the Law does not permit Buyer to take title to such inventories until it obtains the requisite Liquor License approvals from the relevant Governmental Authority; provided, however, Sellers shall transfer, assign, convey and deliver to Buyer such alcoholic beverage inventories in each instance upon issuance of the relevant Liquor License approval or other authorization from the relevant Governmental Authority (whichever occurs first));
- (d) All tangible personal property, including machinery, equipment, furniture, fixtures, office equipment, computer hardware, computers, computer equipment, tools, information technology infrastructure, supplies, office supplies, and other tangible personal property of any kind owned by Sellers, and all warranties and licenses of Sellers thereunder or related thereto;
- (e) All prepaid expenses of Sellers related to the Acquired Assets ("**Prepaid Expenses**");
- (f) All deposits paid or held by Sellers related to or arising from the Acquired Assets, including, without limitation, any deposits under the Real Property Leases ("**Acquired Deposits**"), but excluding Utility Deposits;
- (g) The Contracts listed on Schedule 1.1(g) to which any Seller is a party (collectively, the "**Acquired Contracts**");
- (h) All permits, authorizations and licenses (collectively, the "**Permits**") issued to any Seller by any Government, to the extent assignable, arising out of or relating to the Acquired Assets, other than alcohol permits (including Liquor Licenses) in

jurisdictions where the Law does not permit Buyer to take title to such Permits until it obtains the requisite approvals from the pertinent Governmental Authority (in which case Sellers shall transfer, assign, convey and deliver to Buyer such Permits in each instance upon issuance of the requisite approvals from the relevant Governmental Authority);

- (i) All insurance benefits, rights and proceeds arising from or relating to any event or incident that affects, impacts or alters any Acquired Asset between the Execution Date and the Closing Date;
- (j) All cars, trucks, forklifts, other industrial vehicles and other motor vehicles owned by Sellers;
- (k) All Intellectual Property owned by Sellers for the Granite City Business, including the items set forth on Schedule 4.1(l);
- (l) All Improvements;
- (m) All marketing materials;
- (n) All rights to the telephone and facsimile numbers, websites, URLs, internet domain names, social media accounts, and email addresses used by Sellers;
- (o) All Records, related to the Acquired Assets and Assumed Liabilities, other than Records related to income Taxes of Sellers (provided that Sellers are entitled to retain copies of all Records);
- (p) All goodwill associated with the Granite City Business or the Acquired Assets, including all goodwill associated with the Intellectual Property Rights owned by Sellers and all rights under any confidentiality agreements executed by any third party for the benefit of any of Sellers to the extent relating to the Acquired Assets and/or the Assumed Liabilities (or any portion thereof);
- (q) All rights of Sellers under noncompete or non-solicitation agreements with current or former employees, directors, consultants, independent contractors and agents of any of Sellers to the extent relating to the Acquired Assets and/or the Assumed Liabilities (or any portion thereof);
- (r) All other rights, demands, claims, credits, allowances, rebates or other refunds (including any vendor or supplier rebates) and rights in respect of promotional allowances or rights of setoff (whether or not known or unknown or contingent or non-contingent), other than against Sellers, arising out of or relating to the Granite City Business as of the Closing;
- (s) All rights under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers, contractors and any other Person to the extent relating

to equipment purchased, products sold, or services provided, to Sellers or to the extent affecting any Acquired Assets and/or Assumed Liabilities;

- (t) Except as otherwise excluded under Section 1.2, all rights, claims, rights of offset, causes of action, lawsuits, judgments and other claims or demands of any nature against any third party arising out of, and only with respect to, the Acquired Assets or Assumed Liabilities;
- (u) all other assets that are related to or used in connection with the Acquired Assets or the Granite City Business (but excluding all of the Excluded Assets); and
- (v) All Avoidance Actions.

Notwithstanding anything herein to the contrary and in addition to Buyer's designation rights pursuant to Section 1.6, Buyer may, from time to time (but in no event later than sixty (60) days following the Closing Date) (such period, the "**Designation Rights Period**"), amend the Acquired Assets so as to include additional assets in its sole and absolute discretion (except that Buyer may not add as an Acquired Asset anything specifically listed as an Excluded Asset below); provided, however, that (i) Buyer shall be solely responsible for all cost and expenses associated with any asset which is designated as an Acquired Asset pursuant to this section, (ii) no such addition shall result in any adjustment to the Purchase Price and (iii) Sellers shall remain liable under any Leased Real Property which is designated as an Acquired Asset pursuant to this section unless and until a particular Real Property Lease is assumed and assigned to Buyer. Furthermore, Buyer may, from time to time, remove any Acquired Asset from this Section 1.1 in its sole and absolute discretion until the period ending sixty (60) days following the Closing Date and elect to treat such Contract, Permit or other asset as an Excluded Asset; provided, however, that no such removal will result in any adjustment to the Purchase Price.

Section 1.2 Excluded Assets.

Notwithstanding anything to the contrary in this Agreement, each Seller will retain its right, title and interest in, to and under all of its properties, assets and rights not otherwise an Acquired Asset (collectively, the "**Excluded Assets**"), including:

- (a) Except as set forth in Section 1.1(b), all Sellers' cash, checks, cash equivalents, and cash in-transit;
- (b) All trade accounts receivable of Sellers in existence as of the Closing Date (collectively, the "**Accounts Receivable**");
- (c) All amounts and funds (rebates and dividends) on account of, accrued by or due to Sellers pursuant to any agreement or arrangement with such companies for all periods prior to the Closing not included in Section 1.1(r) (collectively, the "**Rebates**");

- (d) All equity ownership interests in each Seller;
- (e) All rights to refunds of or credits for Taxes of Sellers previously paid by Sellers prior to the Closing Date, and any records relating to Taxes of Sellers;
- (f) Subject to Section 1.1(i), all insurance premiums, policies, contracts and coverage obtained by Sellers and all rights to insurance proceeds or other Contracts of insurance or indemnity (or similar agreement) recoveries;
- (g) All rights of and benefits to Sellers under this Agreement, the Ancillary Agreements or any other agreements or instruments otherwise delivered, executed or made in connection with this Agreement;
- (h) The Contracts to which any Seller is a party that is not an Acquired Contract;
- (i) All Utility Deposits;
- (j) The assets listed on Schedule 1.2;
- (k) Corporate seals, minute books, charter documents, stock transfer records, record books, original Tax and financial records and such other files, books and records relating to any of the Excluded Assets or to the organization, existence or capitalization of any Seller; and
- (l) All of Sellers' rights, title and interest in, to and under the properties, assets and rights used primarily by Sellers in connection with the operation of the Cadillac Ranch Business and located at a Cadillac Ranch restaurant location.

Section 1.3 Assumption of Liabilities.

At the Closing, Buyer will assume, and thereafter pay, perform and discharge when due, the following liabilities of Sellers (collectively, the "**Assumed Liabilities**"):

- (a) All liabilities and obligations under the Acquired Contracts, including, without limitation, all cure costs required to be paid pursuant to Section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Acquired Contracts (such cure costs are, collectively, the "**Cure Costs**");
- (b) All liabilities and obligations in respect of any gift cards, gift certificates, loyalty programs or similar items relating to the Business;
- (c) All liabilities and obligations under the Worker Adjustment and Retraining Notification Act of 1988, or similar state or local law regarding employee terminations, if any, arising out of or resulting solely from layoffs or termination of employees in the Granite City Business by Buyer after the Closing;

- (d) All liabilities and obligations related to accrued store-level bonuses, vacation days, sick days or other paid time-off, that is earned or accrued by, but not yet payable to, employees, officers, directors or contractors of Sellers that Buyer hires as an employee as part of this Transaction;
- (e) All accrued but unpaid Property Taxes, if any, related to or arising from the ownership of the Acquired Assets;
- (f) All liability for (i) accrued but unbilled or not due rent charges arising under the Leased Real Property, including adjustments, reconciliations and indemnity obligations and (ii) all cure costs required to be paid pursuant to Section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Leased Real Property, whether arising prior to or following the Petition Date; and
- (g) Those liabilities and obligations assumed by or made the responsibility of Buyer as set forth elsewhere in this Agreement.

Section 1.4 Excluded Liabilities.

Notwithstanding anything to the contrary in this Agreement, each Seller will retain, and remain liable and obligated for any of its respective liabilities not otherwise included in the Assumed Liabilities and the Parties expressly acknowledge and agree that Buyer shall not assume, be obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for any liabilities of Sellers of any nature, whether existing on the Closing Date or arising thereafter, other than the Assumed Liabilities (all such liabilities that Buyer is not assuming being referred to collectively as the “**Excluded Liabilities**”), including without limitation:

- (a) Any liability arising from or related to the Excluded Assets, including without limitation the Excluded Contracts;
- (b) Any and all claims, charges, lawsuits and causes of action based on:
 - (i) age, race, color, sex (including sexual harassment), national origin, ancestry, disability, religion, sexual orientation, marital status, parental status, veteran status, military status, citizenship status, genetic information, source of income, entitlement to benefits, or any other status protected by local, state or federal laws, constitutions, regulations, ordinances or executive orders;
 - (ii) violations of personnel policies, handbooks or any covenant of good faith and fair dealing or breaches of any written or implied contract of employment; violations of public policy or common law, including, but not limited to, claims for: personal injury; invasion of privacy; retaliatory or wrongful discharge; whistle blowing; negligent hiring, retention or supervision; defamation; intentional or negligent infliction of emotional distress and/or mental anguish; intentional interference with contract;

negligence; detrimental reliance; loss of consortium to you or any member of your family; and/or promissory estoppel;

- (iii) obligations for any reason to pay damages, expenses, litigation costs (including attorneys' fees), wages, bonuses, commissions, disability, retirement or welfare benefits, unemployment or worker's compensation, vacation pay and sick pay, compensatory damages, penalties, liquidated damages, punitive damages, other payments, and/or interest; any obligations for compensation or payments in connection with any ideas, information, inventions, processes, procedures, systems, methods, intellectual property or other materials that may have been developed, produced, created, designed, modified, improved, enhanced or revised, including, without limitation, any trademarks, service marks, trade dress, copyrights, patents and/or trade secrets;
 - (iv) violations of any applicable foreign, federal, state or local law currently in effect relating to pollution, the protection of the environment or natural resources; and
 - (v) violations of any other federal, state or local law to the extent arising prior to the Closing Date, including, but not limited to, the Age Discrimination in Employment Act, 29 U.S.C. Section 621 et seq., as amended, Title VII of the Civil Rights Act of 1964, as amended in 1991, the Civil Rights Act of 1866, as amended (42 U.S.C. Section 1981), the Civil Rights Act of 1991, as amended (42 U.S.C. Section 1981a), the Americans with Disabilities Act, as amended, the Employee Retirement Income Security Act, as amended, the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, the Worker Adjustment and Retraining Notification Act of 1988, the Family and Medical Leave Act, as amended, the Uniformed Services Employment and Reemployment Rights Act, the Genetic Information Nondiscrimination Act, the Fair Labor Standards Act, the Equal Pay Act, the National Labor Relations Act, the Fair Credit Reporting Act, the Immigration Reform Control Act, the Occupational Safety and Health Act, the Sarbanes-Oxley Act, and the Employee Polygraph Protection Act.
- (c) All Employee Benefit Plan liabilities and obligations, including, without limitation, for continuation coverage under any Employee Benefit Plan pursuant to the requirements of Section 4980B of the Code and COBRA, and all liabilities and obligations of Sellers relating to employees, former employees, persons laid-off or on inactive status, or their respective dependents, heirs or assigns, who have received, who are receiving as of the Closing Date, or who are or could become eligible to receive any short-term or long-term disability benefits or any other benefits of any kind arising out of or related in any way to the employment of persons by Sellers.

- (d) Any liabilities and obligations that relate solely to Sellers' Corporate Level operations and employees;
- (e) Any liability for Taxes, including but not limited to income, franchise, sales, or similar, arising out of or resulting from Sellers' operations prior to the Closing Date;
- (f) Except as otherwise provided for herein, any liability and obligation that arises out of Seller's operations prior to the Closing Date;
- (g) Except as set forth in Section 1.3(d), all liabilities and obligations related to any wages, bonuses or other compensation or benefits, including without limitation, vacation days, sick days or other paid time-off, that is earned or accrued by, or with respect to, employees, officers, directors or contractors of Sellers prior to the Closing;
- (h) All liabilities and obligations under the Worker Adjustment and Retraining Notification Act of 1988, or similar state or local law regarding employee terminations, if any, arising out of or resulting solely from layoffs or termination of employees by Seller or related to any business other than the Granite City Business; and
- (i) Any liabilities and obligations that relate primarily to the Cadillac Ranch Business.

Section 1.5 Assumption and Assignment of Contracts.

- (a) Schedule 1.5(a) (the "**Acquired Contract List**") sets forth a list of all Contracts to which a Seller is a party and which Buyer has designated to be included as an Acquired Contract, together with estimated Cure Costs for each Acquired Contract. From and after the Execution Date until the date of the auction contemplated by the Bidding Procedures, Sellers shall make such additions, deletions, and amendment to Schedule 1.5(a) as Buyer shall request in writing. Any such deleted Contract shall be deemed to no longer be an Acquired Contract. Any such added Contract shall be deemed an Acquired Contract. Only Contracts listed on Schedule 1.5(a) shall be designated as an Acquired Contract or Acquired Asset and any Contract of Sellers not listed on Schedule 1.5(a) shall be deemed "**Rejected Contracts.**" For the avoidance of doubt, in the event that any Leased Real Property is deemed a Rejected Contract, all assets of Sellers to the extent related to such Leased Real Property shall become Excluded Assets.
- (b) In connection with the assumption and assignment to Buyer of any Acquired Contract that is executory pursuant to this Section 1.5, the Cure Costs, necessary to cure all defaults, if any, and to pay all actual or pecuniary losses that have resulted from such defaults under the Acquired Contracts, shall be paid by Buyer at the Closing, as part of the Total Consideration in Section 2.1.

- (c) Sellers shall use their respective commercially reasonable efforts to obtain an order of the Bankruptcy Court to assign the Acquired Contracts to Buyer (the “**Assumption Approval**”) on the terms set forth in this Section 1.5. In the event Sellers are unable to assign any such Acquired Contract to Buyer pursuant to an order of the Bankruptcy Court, then the Parties shall use their commercially reasonable efforts to obtain, and to cooperate in obtaining, all Consents from Governmental Authorities and third parties necessary to assume and assign such Acquired Contracts to Buyer, including, in the case of Buyer, paying any applicable Cure Costs; provided, however, that Sellers’ obligations hereunder shall only continue until the Chapter 11 Cases are closed or dismissed.

Section 1.6 Designation Rights.

- (a) During the Designation Rights Period, Sellers shall (A) not reject any Contract unless such Contract is expressly designated by Buyer in writing as an Excluded Contract under Section 1.5, Buyer fails to pay amounts owed with respect to such Contract in accordance with subsection (b) of this Section 1.6 (after having been afforded written notification and an opportunity to cure such failure in accordance with this Agreement) or unless otherwise agreed to in writing by Buyer and (B) hold all Permits and other assets specified by Buyer in writing in abeyance pending designation for assignment or exclusion by Buyer in accordance with this Section 1.6.
- (b) Any Contract not designated by Buyer in writing as either an Assumed Contract on the Assumed Contract List, or an Excluded Contract by express notice of the same, and any Permits and other assets designated in writing by Buyer, in each case prior to Closing, shall constitute a “**Designation Rights Asset.**” Buyer shall have the right, by written notice to Sellers within the Designation Rights Period, to specify that (A) any Designation Rights Asset that is a Contract shall be held by the Sellers and not rejected pursuant to Section 365 of the Bankruptcy Code for the duration of the Designation Rights Period or earlier as provided in this Section 1.6, and (B) any Designation Rights Asset that is not a Contract shall be held by Sellers in abeyance during the Designation Rights Period pending designation for assignment or exclusion by Buyer in accordance with this Section 1.6. With respect to any Designation Rights Asset, (i) Buyer shall be solely responsible for and directly pay for all costs associated with the continuation, operation or holding by Sellers of such Designation Rights Asset, for the period from the Closing through the earlier of (A) the end of the Designation Rights Period and (B) the date of Sellers’ receipt of written notice from Buyer designating the assignment or exclusion of such Designation Rights Asset, including but not limited to, the reasonable attorney fees and costs arising from preparing, filing and arguing a motion to extend the time period under Section 365(d)(4)(B) of the Bankruptcy Code, (ii) for the avoidance of doubt, all consideration received by Sellers in respect of, and other benefits deriving from, such Designation Rights Asset (including Designation Rights Assets sold or assigned to third parties in accordance with clause (c) below) shall be promptly

delivered to Buyer, (iii) if such Designation Rights Asset is a Real Property Lease and if Buyer is granted access to and uses such property prior to designating such Real Property Lease as an Assumed Contract, Buyer shall purchase insurance (including liability and casualty policies) covering such real property consistent with Buyer's past practices and shall name Sellers, landlords, managing agents and other required parties as additional parties under such policies, and (iv) the foregoing shall not affect the validity of the transfer to Buyer of any other Acquired Asset whether or not related to such Designation Rights Asset. For the avoidance of doubt, Buyer shall retain the right to use all furniture, equipment, supplies and Inventory at any restaurant that is a Designation Rights Asset, and to receive one hundred percent (100%) of the proceeds from the sale or use of such furniture, equipment, supplies and Inventory, in each case during the Designation Rights Period. In the event that the costs associated with any Designation Rights Asset exceed the designation rights budget (a "**Designation Cost Overage**"), Buyer shall not be liable for such Designation Cost Overage, other than as a result of damage or destruction of any Real Property Lease or as a result of the Buyer's gross negligence or willful misconduct.

- (c) As to each Designation Rights Asset, as soon as practical after receiving further written notice(s) (each, a "**Designation Notice**") from Buyer during the Designation Rights Period requesting assumption, assignment and sale of any Designation Rights Asset to Buyer or a third party, Sellers shall, subject to Buyer or such third party demonstrating adequate assurance of future performance thereunder and Buyer or such third party paying all Cure Costs to the extent required by Section 365 of the Bankruptcy Code, take all actions required by the Sale Order or otherwise that are reasonably necessary to seek to assume, assign and sell to Buyer or such third party the applicable Designation Rights Asset pursuant to Section 363 of the Bankruptcy Code and, if such Designation Rights Asset is a Contract, Section 365 of the Bankruptcy Code.
- (d) Following the earlier of (A) the end of the Designation Rights Period and (B) the date of Sellers' receipt of written notice from Buyer designating the exclusion of a Designation Rights Asset, a Designation Rights Asset shall be deemed to be an Excluded Asset for all purposes under this Agreement except with respect to Buyer's obligations to pay all amounts associated with such Designation Rights Asset as expressly required by Section 1.6(b) above.
- (e) Sellers and Buyer agree and acknowledge that the covenants set forth in this Section 1.6 shall survive the Closing.
- (f) Notwithstanding anything in this Agreement to the contrary, on the date any Designation Rights Asset is assumed, assigned and sold to Buyer or its designee pursuant to this Section 1.6, such Designation Rights Asset shall be deemed an Acquired Asset for all purposes under this Agreement and no further consideration (except for the applicable Cure Costs with respect to Designation Rights Assets that

are Contracts) shall be required to be paid for any Designation Rights Asset that is assumed, assigned and sold to Buyer or its designee.

- (g) Sellers shall use reasonable best efforts to extend the deadline for assumption or rejection of any Designation Rights Asset that is a Real Property Lease for the maximum permitted period of time under Section 365 of the Bankruptcy Code.
- (h) If the Parties hereto intend for any Assumed Contracts or other assets relating to a specific restaurant that is a Designation Rights Asset to be transferred to Buyer at Closing (and all conditions specified in Article VI have been met with respect to such assets) but Buyer has not obtained Liquor License approvals necessary to sell alcohol at such restaurant and applicable Law prohibits the operation of such restaurant (including the sale of alcohol at such restaurant) pursuant to the terms of a Management Agreement to be entered into in form reasonably satisfactory to Buyer and Sellers, then any Assumed Contracts or other assets associated with such restaurant shall be deemed to be Designation Rights Assets as of the Closing for all purposes and in all respects. Buyer shall notify Sellers of all Assumed Contracts and other assets that Buyer believes may be subject to this Section 1.6(h) prior to the Closing Date; provided, that all Assumed Contracts and other assets associated with such restaurant shall not be deemed to be Designation Rights Assets at Closing if the Liquor License approvals for the applicable restaurant are obtained by Buyer prior to or at Closing, and Sellers shall provide Buyer with a revised designation rights budget reflecting the foregoing one (1) day prior to the Closing Date. Notwithstanding anything to the contrary herein, with respect only to Assumed Contracts or other assets deemed to be Designation Rights Assets at Closing pursuant to this Section 1.6(h), Buyer shall have the option to extend the Designation Rights Period for an additional thirty (30) days upon written notice to Sellers no later than ten (10) days prior to the date on which the Designation Rights Period would otherwise end.

ARTICLE II. CONSIDERATION

Section 2.1 Purchase Price.

The aggregate consideration for the Acquired Assets will be: an aggregate amount in cash equal to Three Million Six Hundred Fifty Thousand Dollars (\$3,650,000.00) (the “**Unadjusted Purchase Price**”) subject to adjustment for the Price Adjustment Costs (as adjusted, the “**Final Purchase Price**”); *plus* (b) the assumption by Buyer of the Assumed Liabilities (such assumption, together with the Final Purchase Price, the “**Total Consideration**”).

Section 2.2 Deposit.

- (a) Simultaneously with the execution of this Agreement, Buyer and Sellers shall execute the Escrow Agreement and Buyer shall deposit with the Escrow Agent cash in immediately available federal funds by wire transfer to an account designated by

the Escrow Agent, an amount equal to Seven Hundred Ninety-Two Thousand Five Hundred Dollars (\$792,500.00) (the “**Deposit**”), to be applied as provided in Section 2.2. The Deposit shall be held in escrow by the Escrow Agent in an interest-bearing bank account.

- (b) The Parties shall cause the Escrow Agent to disburse the Deposit and interest earned thereon to Sellers (i) at the Closing as a credit against the Purchase Price, or (ii) if this Agreement is terminated pursuant to Section 7.1(b). Except as described in the previous sentence, the Parties shall cause the Escrow Agent to return the Deposit to Buyer within two (2) Business Days after any termination of the Agreement pursuant to Section 7.1.

Section 2.3 Purchase Price Adjustment.

- (a) As promptly as practicable, but in no event later than twenty (20) days prior to the Closing Date, Sellers will prepare and deliver to Buyer a calculation of:
 - (i) The estimate of the amount of cash to be transferred pursuant to Section 1.1(b) (“**Store Cash**”);
 - (ii) Accrued but unpaid rent under the Acquired Contracts prorated as between the parties through the Closing Date for the month in which Closing occurs (“**Rent Costs**”); and
 - (iii) Accrued but unpaid Property Taxes prorated as between the parties through the Closing Date (“**Property Tax Costs**” and together with the Rent Costs shall be referred to as the “**Property Costs**”).
- (b) If Buyer disagrees with Sellers’ calculation of Store Cash, Rent Costs and/or Property Tax Costs (collectively “**Price Adjustment Costs**”), Buyer may, within ten (10) days after receipt of the Price Adjustment Costs, deliver a notice to Sellers disagreeing with such calculation and setting forth Buyer’s calculation of such amount (“**Buyer’s Notice**”). Buyer’s Notice will specify those items or amounts as to which Buyer specifically disagrees and the reasons for Buyer’s disagreements, and Buyer will be deemed to have agreed with all other items and amounts contained in the Price Adjustment Costs.
- (c) If Buyer’s Notice is duly delivered, Buyer and Sellers will work in good faith and use their commercially reasonable efforts to reach agreement on the disputed items or amounts in order to determine, as may be required, the amount of Price Adjustment Costs as of the close of business on the Closing Date. If Buyer and Sellers are unable to reach such agreement within five (5) days from Sellers’ receipt of Buyer’s Notice, the Bankruptcy Court will determine the amount of the disputed items and the final Price Adjustment Costs; and the Closing Date will be extended

until such time as the Bankruptcy Court determines the amount of the disputed items and the final Price Adjustment Costs.

- (d) Buyer and Sellers will, and will cause their respective Related Persons to, cooperate and assist in the calculation of Price Adjustment Costs, and in the conduct of the reviews referred to in this Section 2.2, including, without limitation, making available, to the extent necessary, their respective books, records, work papers and personnel. All amounts to be determined pursuant to this Section 2.2 will be determined in accordance with generally accepted accounting principles in the United States consistently applied using Sellers' historical methodologies and practices.
- (e) The date upon which the Price Adjustment Costs will be deemed final will be the earlier to occur of the following: (i) Buyer's failure to provide a Buyer's Notice within ten (10) days of its receipt of the Price Adjustment Costs from Sellers; (ii) the mutual written agreement of Buyer and Sellers; or (iii) a final determination by the Bankruptcy Court in accordance with Section 2.3(c).
- (f) The Final Purchase Price will be equal to the Unadjusted Purchase Price less the Price Adjustment Costs.

Section 2.4 Closing Payments

At the Closing, Buyer will pay the Final Purchase Price as follows:

- (a) by instruction to the Escrow Agent to release the Deposit, by wire transfer of immediately available funds to an account specified by Sellers, or by the Bankruptcy Court, as the case may be; and
- (b) by wire transfer of immediately available funds of the remaining balance of the Final Purchase Price (after credit for the Deposit) to an account specified by Sellers, or the Bankruptcy Court, as the case may be.

Section 2.5 Payment of Price Adjustment Costs.

Following the Closing Date (and no sooner than the Closing Date), Buyer will pay the Cure Costs as determined by the Bankruptcy Court in the Assignment Order directly to the appropriate counterparties to the Acquired Contracts when due, for each of the Acquired Contracts sold, assigned and transferred to it, and Seller shall pay to Buyer the Rent Costs and the Property Tax Costs upon the entry by the Bankruptcy Court of an Assignment Order for each Acquired Contract. On the Closing Date, Buyer shall pay to Seller the amount of the Store Cash.

Section 2.6 Transaction Taxes.

All Taxes (excluding income taxes), including without limitation all state and local Taxes (excluding income taxes) in connection with the transfer of the Acquired Assets and all recording and filing fees (collectively, "**Transaction Taxes**"), that may be imposed by reason of the sale, transfer, assignment and delivery of the Acquired Assets, and that are not exempt under §1146(a) of the Bankruptcy Code, will be borne by Buyer. Buyer and

Sellers will cooperate to (a) determine the amount of Transaction Taxes payable in connection with the transactions contemplated under this Agreement; (b) provide all requisite exemption certificates; and (c) prepare and file any and all required Tax Returns for or with respect to such Transaction Taxes with any and all appropriate Government taxing authorities.

Section 2.7 Purchase Price Allocation. Buyer and Sellers agree to allocate the Total Consideration and all other relevant items among the Acquired Assets in accordance with Section 1060 of the Code and the treasury regulations thereunder.

ARTICLE III. CLOSING AND DELIVERIES

Section 3.1 Closing.

The consummation of the transactions contemplated by this Agreement (the “**Closing**”) will take place on the fifth Business Day following the satisfaction or waiver by the appropriate party of all the conditions contained in Article VI or on such other date or at such other time as may be mutually agreed to by the parties (the “**Closing Date**”) and will be effective as of 12:01 a.m. on the Closing Date, but will in no event occur later than thirty (30) days following the approval of the Sale Order by the Bankruptcy Court. Subject to such different procedures agreed upon by the parties, the Closing will take place via a “paper” close wherein Buyer and Sellers will exchange such documents and instruments or copies thereof sufficient to effect the Closing by electronic or other means without the use of a “roundtable” closing at a particular location. All proceedings to be taken and all documents to be executed and delivered by all parties at the Closing will be deemed to have been taken and executed simultaneously and no proceedings will be deemed to have been taken nor documents executed or delivered until all have been taken, executed and delivered.

Section 3.2 Sellers’ Deliveries.

Each Seller, or Sellers collectively, as the case may be, will deliver to Buyer at or prior to the Closing or such other time as set forth in this Agreement in a form reasonably acceptable to Buyer:

- (a) A bill of sale, in form reasonably acceptable to Buyer and Sellers, for all of the Acquired Assets that are tangible personal property;
- (b) An agreement for the assumption of the Acquired Contracts and Assumed Liabilities, in form reasonably acceptable to Buyer and Sellers;
- (c) For all intangible Acquired Assets, including all Acquired Contracts, (i) an agreement of assumption and assignment for each registered trademark, registered copyright and domain name, respectively, transferred or assigned hereby and for each pending application therefor, or (ii) an Assignment Order effecting the same, in each case in form reasonably acceptable to Buyer and Sellers;
- (d) A certificate, dated as of the Closing Date, signed by its Secretary, certifying to the accuracy of the matters set forth in Section 6.2(a);

- (e) Originals (or, to the extent originals are not available, copies) of all Acquired Contracts (together with all material amendments, supplements or modifications thereto) to the extent not already located at the offices of Seller;
- (f) Physical possession of all of the Acquired Assets capable of passing by delivery with the intent that title in such Acquired Assets shall pass by and upon delivery;
- (g) Certificates of title and title transfer documents to all titled motor vehicles included within the Acquired Assets;
- (h) If deemed necessary by Buyer, a Transition Services Agreement in form reasonably acceptable to Buyer and Sellers;
- (i) A Management Services Agreement in form reasonably acceptable to Buyer and Sellers;
- (j) A duly executed IRS Form W-9 from each Seller and a non-foreign affidavit from each Seller dated as of the Closing Date, sworn under penalty of perjury and in form and substance required under Treasury Regulations issued pursuant to Section 1445 of the IRC stating that such Seller is not a “foreign person” as defined in Section 1445 of the IRC;
- (k) The officer’s certificate required by Section 6.2; and
- (l) Such other agreements, documents or instruments of assignment and transfer that Buyer may reasonably request; the form and substance of which are acceptable to Sellers.

Section 3.3 Buyer’s Deliveries.

Buyer will deliver to Sellers at or prior to the Closing or such other time as set forth:

- (a) The Final Purchase Price in accordance with Section 2.4;
- (b) A duly executed counterpart of Buyer to each of the documents listed in Section 3.2(b), (c), (h) and (i);
- (c) A certificate, dated as of the Closing Date, signed by its Secretary, certifying the accuracy of the matters set forth in Section 6.1(a); and
- (d) Such other agreements, documents or instruments of assignment and transfer that Sellers may reasonably request; the form and substance of which are acceptable to Buyer.

ARTICLE IV. REPRESENTATIONS AND WARRANTIES

Section 4.1 Representations and Warranties of Each Seller.

Each Seller severally represents and warrants to Buyer as of the Execution Date and the Closing Date as follows:

- (a) **Organization of Sellers; Good Standing.** Each Seller is a corporation or limited liability company, as applicable, duly organized, validly existing and in good standing under the laws of the state of its incorporation or formation, as applicable, and has, subject to the necessary authority from the Bankruptcy Court, all requisite corporate or limited liability company (as applicable) power and authority to own, lease and operate its assets and to carry on its business as now being conducted and is duly qualified or licensed to do business and is in good standing in each jurisdiction where the character of its business or the nature of its properties makes such qualification or licensing necessary. Seller is duly qualified to do business as a foreign corporation or foreign limited liability company and is in good standing in every jurisdiction in which the Business is conducted.
- (b) **Authorization and Validity.** Subject to the Bankruptcy Court's entry of the Sale Order, (i) Seller has all requisite power and has been duly authority to enter into this Agreement and any Ancillary Agreements to which Seller is a party and to perform its obligations under this Agreement and under the Ancillary Agreements; and (ii) this Agreement constitutes Seller's valid and binding obligation, enforceable against Seller in accordance with its respective terms.
- (c) **No Conflict or Violation.** The execution, delivery and performance by Seller of this Agreement and any Ancillary Agreements to which Seller is a party does not violate or conflict with any provision of Seller's certificate of incorporation or bylaws or similar organizational documents; and, subject to the Bankruptcy Court's entry of the Sale Order, does not violate any provision of law, or any order, judgment or decree of any court or Government applicable to Seller or any of its properties or assets; or violate or result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contract to which Seller is party or by which Seller is bound or to which any of Seller's properties or assets is subject.
- (d) **Title to Assets.** Seller owns, and has good, valid, and marketable title to or, with respect to leased locations, a valid leasehold interest in, all of the Acquired Assets owned by it free and clear of all Liens (other than Assumed Liabilities and Permitted Liens) to the maximum extent permitted by Section 363 of the Bankruptcy Code.
- (e) **Consents and Approvals.** With the exception of the Bankruptcy Court issuing a Sale Order approving this Agreement, no consent, waiver, authorization or approval of any Person or declaration, filing or registration with any Government is required in connection with the execution and delivery by Seller of this Agreement or any Ancillary Agreement to which Seller is a party or the performance by Seller of its obligations under this Agreement or under the Ancillary Agreements.

- (f) Litigation. Other than the bankruptcy proceeding, there are no claims, actions, suits, proceedings or investigations pending, threatened in writing, involving or against Seller, the Acquired Assets or any Related Person of Seller, that could affect the ability of Seller to consummate the transactions contemplated by this Agreement, each Ancillary Agreement or seek to prevent, enjoin, alter or materially delay the Transactions.
- (g) Compliance with Law. The business of Sellers is being conducted in all material respects in compliance with all applicable laws and orders promulgated by any Government applicable to Sellers.
- (h) Books and Records. The books and records of Sellers, all of which have been made available to Buyer, are complete and correct and have been maintained in accordance with sound business practices. The minute books of Sellers contain accurate and complete records of all meetings, and actions taken by written consent of, the stockholders, the board of directors and any committees of the board of directors of Sellers, and no meeting, or action taken by written consent, of any such stockholders, board of directors or committee has been held for which minutes have not been prepared and are not contained in such minute books. At the Closing, all of those books and records will be in the possession of Sellers.
- (i) Employees and Employment Matters. No Seller is a party to or bound by any collective bargaining agreement covering the Current Employees (as determined as of the date of this Agreement and the Closing) or former employees of Sellers, nor is there any ongoing strike, walkout, work stoppage, or other material collective bargaining dispute affecting any Seller with respect to the Granite City Business. To the knowledge of Sellers', there is no organizational effort being made or threatened by or on behalf of any labor union with respect to the Current Employees (as determined as of the date of this Agreement). Within ten (10) days of the date hereof, Sellers shall make available to Buyer a list of all Current Employees.
- (j) Employee Benefit Plan.
 - (i) Schedule 4.1(j) sets forth a complete and accurate list of Sellers' Employee Benefit Plans. Sellers have provided to, or made available to, Buyer true and correct copies of each Employee Benefit Plan (including all plan documents and amendments thereto). Each Employee Benefit Plan has been established, maintained, funded and administered in material compliance with its terms and all applicable requirements of ERISA, the Code, and other applicable Laws. Each Employee Benefit Plan which is intended to be qualified within the meaning of Code § 401(a) is so qualified and has received a favorable determination letter from the Internal Revenue Service upon which it may rely, or is comprised of a master or prototype plan that has received a favorable opinion letter from the Internal Revenue Service, and to the knowledge of Sellers nothing has occurred that is

reasonably likely to adversely affect the qualified status of such Employee Benefit Plan. No Employee Benefit Plan is subject to Title IV or Section 302 of ERISA or Section 412 of the Code, and no Seller or any ERISA Affiliate contributes to or has any liability with respect to any such plan.

- (ii) No Seller or ERISA Affiliate is a party to any Multiemployer Plan. As of the date of this Agreement, no Seller or ERISA Affiliate has incurred any unsatisfied withdrawal liability with respect to any Multiemployer Plan, and no Seller or ERISA Affiliate is bound by any contract or has any liability described in Section 4204 of ERISA.
 - (iii) All payments, premiums, contributions, distributions, reimbursements or accruals for all periods (or partial periods) ending prior to or as of the Closing Date shall have been timely made in accordance with the terms of the applicable Employee Benefit Plan and applicable Law.
 - (iv) As of the date hereof, there is no pending or, to the knowledge of Sellers, threatened, legal proceeding relating to any Employee Benefit Plan.
 - (v) Notwithstanding any requirements imposed by the COBRA regulations or otherwise, Sellers shall retain responsibility for all Employee Benefit Plan liabilities and obligations, including, without limitation, for continuation coverage under any Employee Benefit Plan pursuant to the requirements of Section 4980B of the Code and COBRA, and all liabilities and obligations of Sellers relating to employees, former employees, persons laid-off or on inactive status, or their respective dependents, heirs or assigns, who have received, who are receiving as of the Closing Date, or who are or could become eligible to receive any short-term or long-term disability benefits or any other benefits of any kind arising out of or related in any way to the employment of persons by Sellers. Provided, however, that Sellers are retaining such responsibility only so long as Sellers maintain a group health plan.
- (k) Liquor Licenses. Schedule 4.1(k) sets forth a complete and correct list as of the date of this Agreement of all liquor licenses included in the Acquired Assets (including beer and wine licenses) held or used by each Seller, including the Person in whose name such license is issued, issuing agency and location (collectively, the “**Liquor Licenses**”). Each of the Sellers is in material compliance with all applicable Laws with respect to the sale of liquor and all alcoholic beverages and has the right to sell liquor at retail for consumption within each of the restaurant locations of such Seller, subject to and in accordance with all applicable provisions of the Liquor Licenses. To the knowledge of Sellers, since January 1, 2018, (a) there have been no legal proceedings brought or threatened to be brought by or before a Governmental Authority in respect of any such Liquor License, (b) no such Liquor License is

subject to any due but unpaid tax obligation owed to a Governmental Authority, the outstanding nature of which would preclude transfer of such Liquor License from any of the Sellers to Buyer, and (c) no such Liquor License has been threatened by a Governmental Authority to be revoked, limited or not renewed.

(l) Intellectual Property Rights.

(i) Schedule 4.1(l) sets forth an accurate and complete list of (i) all registered Intellectual Property Rights included in the Acquired Assets, and (ii) all material Contracts pursuant to which any Seller obtains the right to use any Intellectual Property Rights. Sellers own all such registered Intellectual Property free and clear of all Liens (except for Permitted Liens), and all such registered Intellectual Property is valid, subsisting and, to the knowledge of Sellers, enforceable, and is not subject to any outstanding Order adversely affecting Sellers' use thereof or rights thereto. Except as set forth in Schedule 4.1(l)(i), there exist no pending or, to the knowledge of Sellers, threatened challenges to the ownership and use by Sellers of such Intellectual Property Rights, nor any alleged infringements of such Intellectual Property Rights by third parties. None of the Intellectual Property Rights included in the Acquired Assets have been licensed by Sellers to any other Person.

(ii) Except as set forth on Schedule 4.1(l)(ii), to the knowledge of Sellers, none of the use of the Intellectual Property Rights included in the Acquired Assets, the conduct of the Granite City Business as currently conducted, nor any of the products sold or services provided by Sellers or any of their Affiliates in connection therewith, infringes upon or otherwise violates the intellectual property rights of any other Person.

(m) Environmental Matters. Other than as may be set forth in the reports described on Schedule 4.1(m), Sellers have not received written notice from any Governmental Authority or third party of any violation of or failure to comply with any environmental Laws (x) with respect to the Leased Real Property which, to the knowledge of Sellers, remains uncorrected, or (y) of any obligation to undertake or bear the cost of any remediation with respect to the Leased Real Property, which to the knowledge of Sellers, remains unperformed.

(n) Data Security. Other than as may be set forth on Schedule 4.1(n), Sellers have not received any notice, written, oral or otherwise, from any bank, payment processor, Governmental Authority or other third party of any successful or attempted network intrusion, data breach, hack, loss of customer data, loss of customer credit card data or similar intrusion or loss of data. Other than as may be set forth on Schedule 4.1(n), Sellers have not found or been notified of any malicious software, malware, malicious code on any of Seller's point of sale terminals, front of house computers, back of house computers or other computers.

(o) Contracts.

- (i) Schedule 4.1(o) sets forth an accurate list, as of the date hereof, of all Contracts to which a Seller is a party with respect to the Business as of the date hereof (and Sellers have made available, or within ten (10) days of the date hereof shall make available, to Buyer true and complete copies of all such Contracts).
- (ii) Except as to matters which would not reasonably be expected to have a material adverse effect on the Business, each of the Contracts is in full force and effect and is the legal, valid and binding obligation of the applicable Seller and of the other parties thereto, enforceable against each of them in accordance with its terms and, upon consummation of the Transactions, shall continue in full force and effect without penalty or other adverse consequence. Except as previously disclosed to Buyer or otherwise arising out of pre-Petition Date obligations, no Seller is in default under any Contract, nor, to the knowledge of Sellers, is any other party to any Contract in breach of or default thereunder, and no event has occurred that with the lapse of time or the giving of notice or both would constitute a breach or default by any Seller or any other party thereunder. Except as previously disclosed to Buyer (i) no party to any of the Contracts has exercised any termination rights with respect thereto, and (ii) no party has given written notice of any significant dispute with respect to any Contract. Sellers have and will transfer to Buyer at the Closing, good and valid title to the Acquired Contracts, free and clear of all Liens other than Permitted Liens.

(p) Real Property.

- (i) The (i) Leased Real Property and (ii) brewing facility located in Ellsworth, Iowa, constitutes all of the real property used by Sellers in connection with the Granite City Business.
- (ii) Sellers do not own any real property (other than Improvements being acquired hereunder and the brewing facility located in Ellsworth, Iowa).
- (iii) To the knowledge of Sellers, none of the Leased Real Property is subject to an eminent domain or condemnation proceeding.
- (iv) Schedule 4.1(p) lists each Real Property Lease. Sellers have delivered (or otherwise made available) to Buyer a correct and complete copy of each Real Property Lease.
- (v) Sellers have a valid, binding and enforceable leasehold interest under each of the Real Property Leases under which any Seller is a lessee, free and clear of all Liens other than Permitted Liens. Sellers have all certificates of

occupancy and Permits of any Governmental Authority necessary or useful for the current use and operation of each Real Property Lease, and Sellers have fully complied with all material conditions of the Permits applicable to them. Except as to matters which would not reasonably be expected to have a material adverse effect, no default or violation, or event that with the lapse of time or giving of notice or both would become a default or violation, has occurred in the due observance of any Permit.

- (vi) Sellers have not received any notice from any insurance company that has issued a policy with respect to any Real Property Lease requiring performance of any structural or other repairs or alterations to such Real Property Lease. Sellers do not own or hold, nor is any Seller obligated under or a party to, any option, right of first refusal or other contractual right to purchase, acquire, sell, assign or dispose of any real estate or any portion thereof or interest therein, except as may be set forth under the Real Property Leases.

(q) Taxes.

- (i) Each Seller has timely filed all material Tax returns required to be filed by it with the appropriate Governmental Authorities in all jurisdictions in which such Tax returns are required to be filed (taking into account any extension of time to file granted or to be obtained on behalf of such Seller); (ii) all Taxes shown as due on such Tax returns and all other material Taxes otherwise due and owing by Sellers or their Affiliates have been timely paid (other than any Taxes not due as of the date of the filing of the Bankruptcy Case as to which subsequent payment was prohibited by reason of the Bankruptcy Case); and (iii) each Seller has withheld and paid over to the appropriate Governmental Authority all Taxes which it is required to withhold from amounts paid or owing to any employee, vendor, customer, stockholder, creditor or other Person;
- (ii) No Seller is a foreign person within the meaning of Code Section 1445, and Buyer shall not be required to withhold any amount for Taxes of Sellers from the Purchase Price or other consideration provided herein;
- (iii) There are no Liens for Taxes on any of the Acquired Assets, other than Liens for Property Taxes not yet due and payable;
- (iv) No Seller has waived any statute of limitations with respect to any Taxes relating to the Granite City Business or agreed to any extension of time for filing any Tax return with respect to the Granite City Business which has not been filed or consented to extend to a date later than the regular statutory date in which any Tax may be assessed or collected by any Governmental Authority, and to the knowledge of Sellers, no Tax audit, contest,

examination, or other proceeding with respect to, or relating to, the Taxes of the Granite City Business is ongoing or planned;

- (v) No Seller has any branch, permanent establishment, office, or other place of business outside the United States, and the Granite City Business has solely been operated in the United States;
 - (vi) Each Seller and each subsidiary thereof has properly classified for Tax purposes any service providers as employees or independent contractors;
 - (vii) None of the Acquired Assets (i) is property that is required to be treated as being owned by any other Person pursuant to the “safe harbor lease” provisions of Section 168(f)(8) of the Code, (ii) is “tax-exempt use property” within the meaning of Section 168(h) of the Code, or (iii) directly or indirectly secured any debt the interest of which is tax-exempt under Code Section 103(a); or
 - (viii) No Acquired Contract or assumed employee obligation (i) provides for nonqualified deferred compensation within the meaning of Code Section 409A (and similar state or local law) that is not compliant with Code Section 409A (and similar state or local law) or (ii) gives rise to any “parachute payment” that is not deductible under Code Section 280G or subject to excise tax under Code Section 4999.
- (r) Financial Statements. Schedule 4.1(r) contains the unaudited consolidated balance sheet of the Business as of June 25, 2019 (the “**Balance Sheet**”) and the related unaudited statement of operations for the six month period then ended. The financial statements referred to in the foregoing sentence are collectively referred to as the “**Financial Statements.**” The Financial Statements have been prepared from the books and records of Sellers on an accrual basis consistent with Sellers’ internal accounting practices. Such Financial Statements were prepared in accordance with GAAP.

Section 4.2 Representations and Warranties of Buyer.

Buyer represents and warrants to Sellers as of the Execution Date and the Closing Date as follows:

- (a) Corporate Organization. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Minnesota and has all requisite corporate power and authority to own its properties and assets and to conduct its business as now conducted.
- (b) Authorization and Validity. Buyer has all requisite corporate power and authority to enter into this Agreement and any Ancillary Agreement to which Buyer is a party and to perform its obligations under this Agreement and under the Ancillary Agreement. The execution and delivery of this Agreement and any Ancillary

Agreement to which Buyer is a party and the performance of Buyer's obligations under this Agreement and under the Ancillary Agreements have been, or on the Closing Date will be, duly authorized by all necessary corporate action of Buyer, and no other corporate proceedings on the part of Buyer are necessary to authorize such execution, delivery and performance. This Agreement has been, and any Ancillary Agreement to which Buyer is a party has been duly executed by Buyer and constitutes Buyer's valid and binding obligations, enforceable against it in accordance with their respective terms.

- (c) No Conflict or Violation. The execution, delivery and performance by Buyer of this Agreement and any Ancillary Agreement to which Buyer is a party does not violate or conflict with any provision of Buyer's certificate of incorporation or bylaws or similar organizational documents; violate any provision of law, or any order, judgment or decree of any court or Government applicable to Buyer or any of its properties or assets; or violate or result in a breach of or constitute (with due notice or lapse of time or both) a default under any material Contract to which Buyer is party or by which Buyer is bound or to which any of Buyer's properties or assets is subject.
- (d) Consents and Approvals. No consent, waiver, authorization or approval of any Person or declaration, filing or registration with any Government is required in connection with the execution and delivery by Buyer of this Agreement or any Ancillary Agreement to which Buyer is a party or the performance by Buyer of its obligations under this Agreement or under the Ancillary Agreements.
- (e) Adequate Assurances Regarding Acquired Contracts. As of the Closing, Buyer will be capable of satisfying the conditions contained in Sections 365(b) and 365(f) of the Bankruptcy Code with respect to the Acquired Contracts.
- (f) Litigation. There are no claims, actions, suits, proceedings or investigations pending, threatened in writing or against Buyer, or any Related Person of Buyer, that could affect the ability of Buyer to consummate the transactions contemplated by this Agreement and each Ancillary Agreement.
- (g) Adequacy of Funds. Buyer has cash on hand, existing availability under existing lines of credit, or other immediately available financial resources sufficient to pay the Unadjusted Purchase Price, Cure Cost, and all other obligations under Section 1.3(d) at the Closing.

Section 4.3 Warranties Are Exclusive.

The parties acknowledge that the representations and warranties contained in this Article IV are the only representations or warranties given by the parties and that all other express or implied warranties are disclaimed. Without limiting the foregoing, Buyer acknowledges that, except for the representations and warranties contained in Section 4.1, the Acquired Assets are conveyed "AS IS," "WHERE IS" and "WITH ALL FAULTS" and that all warranties of merchantability or fitness for a particular

purpose are disclaimed. WITHOUT LIMITING THE FOREGOING, BUYER ACKNOWLEDGES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN SECTION 4.1, SELLERS AND THEIR RELATED PERSONS AND AFFILIATES HAVE MADE NO REPRESENTATION OR WARRANTY CONCERNING ANY (A) USE TO WHICH THE ACQUIRED ASSETS MAY BE PUT, (B) FUTURE REVENUES, COSTS, EXPENDITURES, CASH FLOW, RESULTS OF OPERATIONS, FINANCIAL CONDITION OR PROSPECTS THAT MAY RESULT FROM THE OWNERSHIP, USE OR SALE OF THE ACQUIRED ASSETS OR THE ASSUMPTION OF THE ASSUMED LIABILITIES OR (C) OTHER INFORMATION OR DOCUMENTS MADE AVAILABLE TO BUYER OR ITS AFFILIATES OR RELATED PERSONS. Buyer further acknowledges that Buyer has conducted, or has had an adequate opportunity to conduct, all necessary due diligence related to Sellers' business, the Acquired Assets, the Assumed Liabilities, and all such other matters relating to or affecting any of the foregoing. In proceeding with the transactions contemplated in this Agreement, except for any representations and warranties expressly set forth in Section 4.1, Buyer is doing so based solely upon its own due diligence and review, all of which has been completed to the satisfaction of Buyer, and Buyer has not relied upon any oral or written statements, representations or guaranties whatsoever, whether express or implied, made by Sellers or its agents and representatives.

ARTICLE V. COVENANTS AND OTHER AGREEMENTS

Section 5.1 Covenants of Sellers.

Sellers covenant to Buyer that, during the period from the Execution Date through and including the Closing Date or the earlier termination of this Agreement, and to the extent applicable to the Acquired Assets:

- (a) Conduct of Business Before the Closing. Except as set forth on Schedule 5.1(b) or unless otherwise agreed by Sellers and Buyer, Sellers will use commercially reasonable efforts to conduct their business in all material respects in the manner in which it has been conducted since the Petition Date and to preserve intact their respective business or organization and relationships with third parties; provided, however, that Sellers will not, without Buyer's prior approval (which such approval shall not be unreasonably withheld, conditioned or delayed), amend, exercise any option with regard to, or otherwise modify any Real Property Lease. Sellers further agree to forward all correspondence with regard to any Leased Real Property and/or Real Property Lease and to not take any action with respect to any such correspondence without first obtaining Buyer's written consent to any such action. Notwithstanding this covenant, Sellers may, with Buyer's approval not to be unreasonably withheld, take steps to wind down its operations at the locations listed on Schedule 1.1(a) so long as such steps do not increase any of the liabilities being assumed by Buyer in Section 1.3. Without limiting the generality of the foregoing, during the period from the date of this Agreement to the Closing, except as otherwise contemplated by this Agreement, set forth on Schedule 5.1(b) or as Buyer shall otherwise consent in writing, each Seller shall, and shall cause each of its respective Affiliates to, do the following: (i) pay all post-petition bills and invoices for post-petition goods or services promptly when due; (ii) notify Buyer of any material

adverse change in its condition (financial or otherwise), business, properties, assets or liabilities, or of the commencement of or any material development or disposition with respect to any material governmental complaints, investigations, or hearings (or any written threats thereof); (iii) maintain in the ordinary course customary amounts of cash, cash equivalents and similar cash items at the location of each restaurant in cash registers, safes, strongboxes and lock boxes consistent with past practice; (iv) use its commercially reasonable efforts to keep and maintain possession of and compliance with the terms of all Permits (including Liquor Licenses) necessary or required by Law to own, lease and operate its respective properties (and the Acquired Assets) and to carry on the Business or that are material to the operation of the Business or the Acquired Assets, including by taking all commercially reasonable actions and submitting all payments, applications, and filings necessary to renew any such Permit due to expire at any time before the Closing Date (or 60 days thereafter); and (v) maintain insurance coverage with financially responsible insurance companies substantially similar in all material respects to the insurance coverage maintained by the Business and Sellers on the Petition Date.

- (b) Certain Restricted Conduct. Except as set forth on Schedule 5.1(b) and except as otherwise set forth in this Agreement or as Buyer shall otherwise consent in advance in writing, during the period from the date of this Agreement to the Closing, no Seller shall, and each Seller shall cause each of its respective Affiliates not to, with respect to the Acquired Assets:
- (i) sell, lease, license, transfer, or dispose of other than in the ordinary course of business any Acquired Assets;
 - (ii) authorize or enter into any Contract, arrangement, or commitment other than a Contract that is both (x) in the ordinary course of business and (y) not a Contract that would constitute a material Contract if it were effective as of the date of this Agreement;
 - (iii) dispose of or permit to lapse any rights in, to or for the use of any material Intellectual Property Right;
 - (iv) other than in the ordinary course, authorize, undertake, make, or enter into any commitments obligating any Seller to (x) make or accelerate any capital expenditures or (y) undertake or approve any material renovation or rehabilitation of any Leased Real Property;
 - (v) (w) increase any compensation or enter into or amend any employment, severance or other agreement with any of its officers, directors or employees, (x) adopt any new Employee Benefit Plan or amend or terminate or increase the benefits under any existing Employee Benefit Plan, except for changes which are required by Law and changes which are not more

favorable to participants than provisions presently in effect, (y) hire any employee or individual independent contractor with annual compensation in excess of \$75,000, or enter into any new employment or severance agreements that would result in post-termination payments becoming due or payable upon termination of employment or of the individual independent contractor, or (z) assume or enter into any labor or collective bargaining agreement relating to the Business, any employee, or any Acquired Asset;

- (vi) take any action that would constitute or result in an event of default under any debtor-in-possession financing facility agreement or order, and/or cash collateral agreement;
 - (vii) permit, offer, agree or commit (in writing or otherwise) to permit, any of the Acquired Assets to become subject, directly or indirectly, to any Lien, except for Permitted Liens, Liens existing on the date of this Agreement and Liens granted before a Closing in connection with any debtor-in-possession financing facility agreement or order, and/or cash collateral agreement;
 - (viii) do any other act that would, to the knowledge of Sellers, cause any representation or warranty of any Seller in this Agreement to be or become untrue in any material respect or intentionally omit to take any action necessary to prevent any such representation or warranty from being untrue in any material respect; or authorize or enter into any Contract, agreement, or commitment with respect to any of the foregoing.
- (c) Except as set forth on Schedule 5.1(b), no Seller nor any of its Affiliates shall, with respect to the Acquired Assets: (i) except pursuant to any Order governing the use of cash collateral entered by the Bankruptcy Court in the Bankruptcy Cases, voluntarily, by operation of law, or otherwise, renew, assign, transfer, sublease, mortgage, pledge, hypothecate or otherwise encumber any lease or the leasehold estate constituting a portion of the Business upon which Buyer, Seller or an Affiliate of either has any continuing financial or other obligation (contingent or otherwise) except for Permitted Liens; (ii) renew any lease nor suffer any person other than such Seller, its employees, agents, servants and invitees to occupy or use the premises or any portion thereof, without in any case the express written consent of Buyer, which consent shall not be unreasonably withheld or (iii) terminate, amend, extend, renew, modify, breach or waive any rights under any Real Property Lease or Contract. Any attempt to do any of the foregoing without such written consent shall be null and void. If Sellers request such a consent from Buyer, the request shall be in writing specifying the terms of the renewal; the identity of the proposed assignee or sublessee; the duration of said desired sublease or renewal, the date same is to occur, the exact location of the space affected thereby and the proposed rentals on a square foot basis chargeable thereunder. Such request for Buyer consent shall

be submitted to Buyer at least three (3) days in advance of the date on which Sellers desire to make such event occur.

- (d) Cooperation. Sellers will use commercially reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary or proper, consistent with applicable law, to consummate and make effective as soon as possible the transactions contemplated by this Agreement; and assist Buyer's efforts to transfer any Permits required to own the Acquired Assets.
- (e) Sale Order. Without limiting Section 5.1(d)(ii), Sellers will use commercially reasonable efforts to obtain entry of the Sale Order by the Bankruptcy Court as soon as reasonably practicable.
- (f) D&O Policy. At or prior to the Closing, a D&O insurance policy, or similar insurance policy acceptable to the Buyer, shall be bound, at Buyer's sole expense, providing coverage to the directors and officers of Sellers prior to the Closing Date in the same amounts and for at least three (3) years following the Closing Date.
- (g) Access to Records. From the date hereof until the earlier of the termination of this Agreement or the Closing Date, Sellers shall reasonably afford, and shall cause their officers, employees, attorneys and other agents to reasonably afford, to Buyer and its counsel, accountants and other representatives, access (at reasonable times during normal business hours) to officers and other employees of Sellers for the purposes of evaluating the Granite City Business and all corporate offices, restaurants, warehouses or other facilities, properties, books, accounts, records and documents of, or relating to, the Granite City Business, subject to the terms of the Confidentiality Agreement.
- (h) Notices of Certain Events. Sellers shall promptly notify Buyer and deliver copies to Buyer of:
 - (i) any notice or other written communication from any Person alleging that the consent of such Person is or may be required in connection with the consummation of the Transactions;
 - (ii) any material written communication from any Governmental Authority in connection with or relating to the Transactions, including with respect to Liquor License approvals and any condemnation or eminent domain event affecting any of the Real Property Leases;
 - (iii) any correspondence, report or notice required to be given by Sellers to any party under a debtor-in-possession financing facility agreement or order, and/or cash collateral agreement or order, or any other related document, including any variance reports, weekly budget compliance reports, or notice of default; or

- (iv) the commencement of any actions, suits, investigations or proceedings relating to Sellers or the Granite City Business that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 4.1.
- (i) Payroll. Promptly following the Closing, the Sellers shall use the proceeds of the Purchase Price to pay all payroll expenses incurred through the date immediately prior to Closing.

Section 5.2 Name Change. Beginning six (6) months after the Closing, Sellers shall take steps necessary to effect a change in any of its corporate names to remove “Granite City” from such names. As all Intellectual Property Rights of Sellers are Acquired Assets, Sellers agree after Closing to cease use of any service marks, trademarks, trade names, logos, emblems, signs or insignia related to the Intellectual Property Rights owned by Sellers prior to Closing and, immediately after Closing, to cease holding themselves out as having any affiliation with the Granite City Business (other than for the arrangements under this Agreement and the related Agreements).

Section 5.3 Covenants of Buyer.

Buyer covenants to Sellers that, during the period from the Execution Date through and including the Closing Date or the earlier termination of this Agreement:

- (a) Cooperation. Buyer will use commercially reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary or proper, consistent with applicable law, to consummate and make effective as soon as possible the transactions contemplated by this Agreement.
- (b) Adequate Assurances Regarding Acquired Contracts and Required Orders. With respect to each Acquired Contract, Buyer will provide adequate assurance of the future performance of such Acquired Contract by Buyer. Buyer will promptly take such actions as may be reasonably requested by Sellers to assist Sellers in obtaining the Bankruptcy Court’s entry of an assumption and assignment order and any other order of the Bankruptcy Court reasonably necessary to consummate the transactions contemplated by this Agreement.

Section 5.4 Other Covenants.

- (a) Improper Receipt of Payment. From and after the Closing, (i) each Seller will promptly forward to Buyer any and all payments received by it that constitutes part of the Acquired Assets; and (ii) Buyer will promptly forward to the respective Seller any and all payments received by Buyer that constitute part of the Excluded Assets.
- (b) Bankruptcy Issues. Buyer and Seller agree that:

- (i) Filing of Sale and Bidding Procedures Motion. Sellers filed with the Bankruptcy Court a motion (the “**Bidding Procedures Motion**”) seeking, among other things, the entry of (i) the Sale Order, and (ii) an Order (the “**Bidding Procedures Order**”) approving the bidding procedures (the “**Bidding Procedures**”).
- (ii) Bankruptcy Court Approval of Sale. Sellers and Buyer shall each use their commercially reasonable efforts, and shall cooperate, assist and consult with each other, to secure the entry of an Order (the “**Sale Order**”) of the Bankruptcy Court in the Bankruptcy Cases which shall be in the form agreed by the Parties and which Sale Order (i) approves this Agreement, (ii) authorizes the sale of the Acquired Assets pursuant to Sections 363 of the Bankruptcy Code, (iii) authorizes the assumption and assignment of the Acquired Contracts pursuant to Section 365 of the Bankruptcy Code, (iv) on the Closing Date, the Acquired Assets shall be sold to Buyer free and clear of any and all Liens (except for Permitted Liens), including any liens granted during the Chapter 11 Cases, (v) authorizes the Transactions, and (vi) includes findings (x) providing that Buyer is a purchaser in good faith for fair value within the meaning of Section 363(m) of the Bankruptcy Code and entitled to the protection of Section 363(m) of the Bankruptcy Code, and (y) that the consideration for the Acquired Assets constitutes reasonably equivalent value and fair consideration; provided, however, Sellers shall be entitled to take such actions as may be required in connection with the discharge of their fiduciary duties in the Bankruptcy Cases (including soliciting higher and better offers for the Acquired Assets). In connection with the assumption and assignment of the Acquired Contracts pursuant to Section 365 of the Bankruptcy Code, Buyer shall take all actions required to provide “adequate assurance of future performance” by Buyer under the Acquired Contracts after the Closing. The Sale Order shall contain findings by the Bankruptcy Court that (a) Buyer is a good-faith buyer under section 363(m) of the Bankruptcy Code, (b) Buyer is not a successor to the Sellers, and (c) the sale of the Acquired Assets contemplated hereby did not involve any improper conduct, including collusion, and cannot be avoided under grounds set forth under section 363(n) of the Bankruptcy Code, unless in the reasonable judgment of Sellers’ professionals, after consultation with Buyer, Sellers believe there exists a factual basis that would preclude the Bankruptcy Court from making such a finding. Sellers and Buyer shall consult with one another in good faith regarding pleadings that either of them intends to file, or positions either of them intend to take, with the Bankruptcy Court in connection with or that might reasonably affect the Bankruptcy Court’s entry of the Sale Order.
- (iii) Liquor Licenses. Sellers shall seek to have included in the Sale Order a provision that immediately upon the Closing, Buyer shall be entitled to continue to sell alcoholic beverages at the premises included in the Acquired

Assets upon the same terms as Sellers were selling such alcoholic beverages until such time as Buyer has had the time and opportunity to obtain its own Liquor Licenses. Buyer and/or its parent shall indemnify the Sellers' estates for any fines, penalties or administrative claims arising from any Liquor License violations or from the purchase and/or sale of alcohol until such time as Buyer's purchase and transfer of the Liquor Licenses from Sellers to Buyer are completed.

- (c) License to Use Name. Following the Closing, in accordance with the provisions of this Section 5.4(c), Buyer agrees to grant Sellers a worldwide, royalty free, fully paid and irrevocable license to use the Intellectual Property Rights related to the Granite City brand to the extent relating to any Excluded Assets, provided that, any Seller (or any assignee thereof) using the Granite City brand name shall pay to Buyer a license fee equal to three percent (3%) of such Seller's annual gross sales. Any use of the Granite City brand name shall be subject to a mutually agreeable license agreement, which shall be entered into by Buyer with such Sellers determined by Buyer at its sole discretion.
- (d) Avoidance Actions. Buyer agrees, on behalf of itself and its successors, assigns and other legal representatives, that (1) it will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Seller, or any employee, officer, director or contractor of any Seller, on the basis of any Avoidance Action acquired by Buyer pursuant to Section 1.1(v) of this Agreement and (2) it will not transfer or assign any Avoidance Action acquired by Buyer pursuant to Section 1.1(v) of this Agreement to any other Person.

ARTICLE VI. CONDITIONS PRECEDENT TO PERFORMANCE BY PARTIES

Section 6.1 Conditions Precedent to the Performance by Sellers.

The obligation of Sellers to consummate the transactions contemplated by this Agreement is subject to the fulfillment, at or before the Closing, of the following conditions, any one or more of which, other than the condition contained in Section 6.1(c), may be waived by Sellers, in their discretion:

- (a) Representations and Warranties of Buyer. The representations and warranties of Buyer made in Section 4.2 of this Agreement, in each case, will be true and correct in all material respects as of the Execution Date and as of the Closing Date as though made by Buyer as of the Closing Date, except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties will be true and correct on and as of such earlier date.
- (b) Performance of the Obligations of Buyer. Buyer has performed in all material respects all obligations required under this Agreement and any Ancillary Agreement to which Buyer is party to be performed by Buyer on or before the Closing Date.

- (c) Governmental Consents and Approvals. The Bankruptcy Court will have entered the Sale Order and the Assignment Order, and such orders will be in full force and effect, and no order staying, reversing, modifying, vacating or amending such orders will be in effect on the Closing Date.
- (d) Closing Deliveries. Buyer will have made the deliveries contemplated under Section 3.3.

Section 6.2 Conditions Precedent to the Performance by Buyer.

The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the fulfillment, at or before the Closing, of the following conditions, any one or more of which, other than the condition contained in Section 6.2(c), may be waived by Buyer, in its discretion:

- (a) Representations and Warranties of Sellers. The representations and warranties of Sellers made in Section 4.1 of this Agreement will be true and correct in all material respects as of the Execution Date and as of the Closing Date as though made by Sellers as of the Closing Date, except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties will be true and correct on and as of such earlier date.
- (b) Performance of the Obligations of Sellers. Sellers will have performed in all material respects all obligations required under this Agreement or any Ancillary Agreement to which Sellers are party to be performed by Sellers on or before the Closing Date.
- (c) Governmental Consents and Approvals. The Bankruptcy Court will have entered the Sale Order, which shall include a waiver of the fourteen (14) day stay set forth in Rule 6004(h) of the Federal Rules of Bankruptcy Procedure, and the Assignment Order, and such orders will be in full force and effect.
- (d) Closing Deliveries. Sellers will have made the deliveries contemplated under Section 3.2.
- (e) From the date of this Agreement until the Closing Date, there shall not have occurred and be continuing any material adverse effect on the Granite City Business.
- (f) Sellers shall have delivered a certificate from an authorized officer of Sellers to the effect that each of the conditions specified in Section 6.2(a), (b) and (e) have been satisfied.
- (g) The Bankruptcy Court shall have entered the Sale Order which shall have become final and non-appealable and shall have confirmed the sale of the Acquired Assets described in this Agreement and in accordance with this Agreement to Buyer by the Seller.

ARTICLE VII. TERMINATION

Section 7.1 Conditions of Termination.

This Agreement may be terminated only in accordance with this Section 7.1. This Agreement may be terminated at any time before the Closing as follows:

- (a) By mutual consent of Sellers and Buyer;
- (b) By Sellers, by notice to Buyer, if Sellers have provided Buyer with notice of any material inaccuracy of any representation or warranty contained in Section 4.2, or of a material failure to perform any covenant or obligation of Buyer contained in this Agreement or any Ancillary Agreement to which Buyer is party, and Buyer has failed, within ten (10) Business Days after such notice, to remedy such inaccuracy or perform such covenant or provide reasonably adequate assurance to Sellers of Buyer's ability to remedy such inaccuracy or perform such covenant or obligation; provided, however, that Sellers will not have the right to terminate this Agreement under this Section 7.1(b) if Sellers are then in material breach of this Agreement;
- (c) By Sellers, if the Bankruptcy Court dismisses Sellers' Chapter 11 cases or converts the Chapter 11 cases to cases under Chapter 7 of the Bankruptcy Code; if the Bankruptcy Court confirms a Chapter 11 plan in Sellers' Chapter 11 cases; or if the Bankruptcy Court appoints a Chapter 11 trustee or an examiner with expanded powers;
- (d) By Buyer, by notice to Sellers, if Buyer has previously provided Sellers with notice of any material inaccuracy of any representation or warranty of Sellers contained in Section 4.1 or a material failure to perform any covenant or obligation of Sellers contained in this Agreement or any Ancillary Agreement to which Sellers are party, and Sellers have failed, within ten (10) Business Days after such notice, to remedy such inaccuracy or perform such covenant or provide reasonably adequate assurance to Buyer of Sellers' ability to remedy such inaccuracy or perform such covenant; provided, however, that Buyer will not have the right to terminate this Agreement under this Section 7.1(d) if Buyer is then in material breach of this Agreement;
- (e) By any party by giving written notice to the other parties if the Closing shall not have occurred on or prior to the Outside Date; provided, however, that if the Closing shall not have occurred on or before the Outside Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by Buyer or Sellers, then the breaching party may not terminate this Agreement pursuant to this Section 7.1(e);
- (f) Automatically, upon the issuance of a final and non-appealable order, decree, or ruling by a Governmental Authority to permanently restrain, enjoin or otherwise prohibit the Closing; or
- (g) By Buyer, by notice to Seller, if (i) if any of the Sellers files (y) any motion with the Bankruptcy Court seeking an order approving, or (z) any plan involving, any

Alternate Transaction; or (ii) if Sellers enter into a definitive agreement with a third party for an Alternate Transaction;

Section 7.2 Effect of Termination; Remedies.

- (a) In the event of termination pursuant to Section 7.1, this Agreement will become null and void and have no effect (other than Article VII, Article VIII and Article IX, which will survive termination), with no liability on the part of Sellers, Buyer, or their respective Affiliates or respective Related Persons, with respect to this Agreement or any Ancillary Agreement, except for any liability provided for in this Article VII.
- (b) If this Agreement is terminated pursuant to Section 7.1(a), (c), (d), (e), (f) or (g) then, within two (2) Business Days after such termination, the Deposit will be returned to Buyer, without interest.
- (c) If this Agreement is terminated pursuant to Section 7.1(b) then all right, title and interest to the Deposit will automatically vest in Sellers. The Parties hereby agree that it is impossible to determine accurately the amount of damages that Sellers would suffer if the transactions contemplated hereby were not consummated as a result of a breach of this Agreement by Buyer or termination of this Agreement pursuant to Section 7.1(b). As a result, notwithstanding anything in this Agreement to the contrary, Sellers hereby agree that, in the event of a termination of this Agreement by Sellers under Section 7.1, (i) the Deposit shall be delivered to Sellers as liquidated damages against Buyer for all liabilities of Buyer under this Agreement and (ii) such liquidated damages shall be the sole and exclusive remedy, at Law and equity, of Sellers against Buyer for Buyer's breach and such termination and Buyer shall have no further liability of any kind to Sellers, any of their Affiliates, or any third party on account of this Agreement.

Section 7.3 Exclusive Remedy; Waiver.

Prior to the Closing, the parties' sole and exclusive remedies for any claim arising out of or in connection with this Agreement will be termination in accordance with, and obtaining the remedies provided in, this Article VII. The failure by either Sellers or Buyer to pursue or foreclose on any right or remedy against the other party, by itself, will not constitute a waiver, and any waiver under this Article VII will be effective only if made in writing.

ARTICLE VIII. SURVIVAL AND INDEMNIFICATION

Section 8.1 Survival; Indemnification.

None of the representations and warranties of each Seller and of Buyer made in this Agreement will survive the Closing Date, and all of such representations and warranties will be extinguished by the Closing. All covenants and agreements of the parties contained in this Agreement will survive Closing, unless otherwise expressly stated therein. If the Closing occurs, Buyer will indemnify and hold harmless Sellers and their respective Affiliates and Related Persons against any and all losses, liability, expense or damage that result

from or arise out of the Assumed Liabilities, and will promptly pay such Assumed Liabilities as they become due and payable.

ARTICLE IX. MISCELLANEOUS

Section 9.1 Further Assurances.

At the request and the sole expense of the requesting party, Buyer or Sellers, as applicable, will execute and deliver, or cause to be executed and delivered, such documents as Buyer or Sellers, as applicable, or their respective counsel may reasonably request to effectuate the purposes of this Agreement and the Ancillary Agreements.

Section 9.2 Successors and Assigns.

This Agreement will inure to the benefit of and will be binding upon the successors and assigns of the parties to this Agreement.

Section 9.3 Governing Law; Jurisdiction.

This Agreement will be construed, performed and enforced in accordance with, and governed by, the laws of the State of Delaware (without giving effect to the principles of conflicts of laws thereof), except to the extent that the laws of such State are superseded by the Bankruptcy Code or other applicable federal law. For so long as Sellers are subject to the jurisdiction of the Bankruptcy Court, the parties irrevocably elect, as the sole judicial forum for the adjudication of any matters arising under or in connection with the Agreement, and consent to the exclusive jurisdiction of, the Bankruptcy Court.

Section 9.4 Expenses.

Except as otherwise provided in this Agreement, Sellers and Buyer will pay their own expenses in connection with this Agreement and the transactions contemplated by this Agreement, including, without limitation, any legal and accounting fees, whether or not the transactions contemplated by this Agreement are consummated.

Section 9.5 Broker's and Finder's Fees.

Neither Sellers nor Buyer has engaged any broker or finder in connection with any of the transactions contemplated by this Agreement other than Duff & Phelps Securities, LLC, as Sellers' investment banker, and Hilco Real Estate, LLC, as Sellers' leasing agent, whose fees and expenses will, as between the parties, be the sole responsibility of Sellers, and, insofar as such party knows, no other broker or other Person is entitled to any commission or finder's fee in connection with any of the transactions contemplated by this Agreement.

Section 9.6 Severability.

In the event that any part of this Agreement is declared by any court or other judicial or administrative body to be null, void or unenforceable, such provision will survive to the extent it is not so declared, and all of the other provisions of this Agreement will remain in full force and effect only if, after excluding the portion deemed to be unenforceable, the remaining terms provide for the consummation of the transactions contemplated by this Agreement in substantially the same manner as set forth on the Execution Date.

Section 9.7 Notices.

All notices, requests, demands, consents and other communications under this Agreement will be in writing and will be deemed to have been duly given: on the date of service, if served personally on the party to whom notice is to be given; on the day of transmission, if sent via facsimile transmission to the facsimile number given

below or by electronic mail to the electronic mail address given below; on the day after delivery to Federal Express or similar overnight courier or the Express Mail service maintained by the United States Postal Service addressed to the party to whom notice is to be given; or on the fifth day after mailing, if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid and properly addressed, to the party as follows:

If to Sellers:

Granite City Food & Brewery Ltd.
3600 American Boulevard West
Suite 400
Bloomington, MN 55431
Attention: Nathan G. Hjelseh
Email: nhjelseh@gcfb.net
Facsimile: (952) 215-0671

With a copy to (which will not constitute notice):

Taft Stettinius & Hollister LLP
2200 IDS Center
80 South 8th Street
Minneapolis, MN 55402
Attention: Brett D. Anderson
Email: banderson@taftlaw.com
Facsimile: (612) 977-8400

If to Buyer:

BBQ Acquisition Inc.
c/o BBQ Holdings, Inc.
12701 Whitewater Drive, Suite 290
Minnetonka, MN 55343
Attn: Michael Medved
Email: Michael.Medved@bbq-holdings.com

- (a) Any party may change its address, facsimile number or email address for the purpose of this Section 9.7 by giving the other parties written notice of its new address in the manner set forth above.

Section 9.8 Amendments; Waivers.

This Agreement may only be amended or modified, and any of the terms, covenants, representations, warranties or conditions of this Agreement may only be waived, by a written instrument executed by Buyer and Sellers, or in the case of a waiver, by the party waiving compliance. Any waiver by any party of any condition, or of the breach of any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, will not be deemed to be or construed as a furthering or

continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

Section 9.9 Public Announcements.

Promptly following the Execution Date, Sellers will make a press release in form and substance reasonably satisfactory to Sellers and Buyer regarding the transactions contemplated in this Agreement. Promptly after the Closing, the parties will make a joint press release in form and substance reasonably satisfactory to both of them regarding the transactions contemplated in this Agreement. Except as provided in the foregoing sentence, no party will make any press release or public announcement concerning the transactions contemplated by this Agreement without first coordinating their communications strategy with the other party, unless a press release or public announcement is required by law, the rules of any stock exchange, or is permitted by, or required by an order of, the Bankruptcy Court. If any such announcement or other disclosure is required by law, the rules of any stock exchange or is permitted by, or required by an order of, the Bankruptcy Court, the disclosing party will use reasonable efforts to give the non-disclosing party or parties prior notice of, and an opportunity to comment on, the proposed disclosure; provided, there will be no liability to the disclosing party for failure to notify the other party. The parties acknowledge that Sellers will file this Agreement with the Bankruptcy Court in connection with obtaining the Sale Order.

Section 9.10 Entire Agreement.

This Agreement and the Ancillary Agreements contain the entire understanding between the parties with respect to the transactions contemplated by this Agreement and supersede and replace all prior and contemporaneous agreements and understandings, oral or written, with regard to such transactions. The Recitals and all Schedules to this Agreement and any documents and instruments delivered pursuant to any provision of this Agreement are expressly made a part of this Agreement as fully as though completely set forth in this Agreement.

Section 9.11 No Third Party Beneficiaries.

Nothing in this Agreement is intended to or will confer any rights or remedies under or by reason of this Agreement on any Persons other than Sellers and Buyer and their respective successors and permitted assigns. Nothing in this Agreement is intended to or will relieve or discharge the obligator of liability of any third Persons to Sellers or to Buyer. This Agreement is not intended to give and will not give any third Persons any right of subrogation or action over or against Sellers or Buyer.

Section 9.12 Headings.

The article and section headings in this Agreement are for reference purposes only and will not affect the meaning or interpretation of this Agreement.

Section 9.13 Counterparts; Delivery.

This Agreement may be executed in counterparts, each of which will be deemed an original, and all of which will constitute the same agreement. The signature of any of the parties may be delivered and made by facsimile, portable document format (“pdf”) or other electronic means capable of creating a printable copy, and each such signature will be treated as original signatures for all purposes.

Section 9.14 Construction.

Any reference to any law will be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word

“including” means including without limitation. Any reference to the singular in this Agreement will also include the plural and vice versa. The phrase “to which any Seller is a party,” or similar construction, is intended to limit the applicable listing of any items, properties, assets, or Contracts to only those items that a Seller actually owns or to which any Seller is actually a party, as the case may be, and is meant to exclude any listed property or Contract otherwise.

Section 9.15 Bulk Sales.

Buyer waives compliance with any laws governing bulk sales, including any applicable provisions of the Uniform Commercial Code.

ARTICLE X. DEFINITIONS

As used in this Agreement, the following terms have the following meanings:

“**Accounts Receivable**” has the meanings set forth in Section 1.2(b).

“**Acquired Assets**” has the meaning set forth in Section 1.1.

“**Acquired Contracts**” has the meaning set forth in Section 1.1(g).

“**Acquired Deposits**” has the meaning set forth in Section 1.1(f).

“**Affiliate**” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under direct or indirect common control with such Person.

“**Agreement**” has the meaning set forth in the Preamble.

“**Allocation Adjustment Notice**” has the meaning set forth in Section 2.7.

“**Ancillary Agreements**” means the Confidentiality Agreement, any bill of sale, assignment or assumption agreement, transition services agreement, management services agreement or other related agreements by and between Sellers and Buyer effecting or evidencing the transactions contemplated under this Agreement.

“**Assignment Order**” means an order of the Bankruptcy Court pursuant to Sections 105 and 365 of the Bankruptcy Code, which order will (i) authorize the assumption by Sellers and assignment to Buyer of the Acquired Contracts, (ii) establish the Cure Costs relating to the Acquired Contracts, and (iii) provide that Buyer has demonstrated adequate assurance of future performance under the Acquired Contracts.

“**Assumed Liabilities**” has the meaning set forth in Section 1.3.

“**Avoidance Actions**” shall mean all claims and causes of action arising under Sections 502, 510, 541, 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code, or under related state or federal statutes and common law, including fraudulent transfer laws, or under applicable non-bankruptcy law arising out of the same set of facts, and the net proceeds from any of the foregoing.

“**Backup Bid**” has the meaning set forth in Error! Reference source not found.

“**Backup Bidder**” has the meaning set forth in Error! Reference source not found.

“**Balance Sheet**” has the meaning set forth in Section 4.1(r).

“**Bankruptcy Code**” has the meaning set forth in the Recitals.

“**Bankruptcy Court**” has the meaning set forth in the Recitals.

“**Bidding Procedures**” has the meaning set forth in Section 5.4(b)(i).

“**Bidding Procedures Motion**” has the meaning set forth in Section 5.4(b)(i).

“**Bidding Procedures Order**” has the meaning set forth in Section 5.4(b)(i).

“**Business**” has the meaning set forth in the Recitals.

“**Business Day**” means any day other than Saturday, Sunday and any day that is a federal legal holiday.

“**Buyer**” has the meaning set forth in the Preamble.

“**Buyer’s Notice**” has the meaning set forth in Section 2.3(b).

“**Cadillac Ranch Business**” has the meaning set forth in the Recitals.

“**Closing**” has the meaning set forth in Section 3.1.

“**Closing Date**” has the meaning set forth in Section 3.1.

“**COBRA**” means Part 6 of Subtitle B of Title I of ERISA.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Confidentiality Agreement**” means the confidentiality agreement Buyer executed in conjunction with its review of Sellers’ records.

“**Contract**” means any contract, agreement, lease or sublease, license or sublicense, instrument, indenture, commitment or undertaking, whether in written form or otherwise.

“**Corporate Level**” means, as applicable, any assets, properties, expenses, costs, commitments, Contracts, obligations, liabilities or other operational activities or items conducted or owned by Sellers primarily for the collective benefit of all restaurant locations and their employees, including, but not limited to, all Sellers’ Employee Benefit Plans, if any, and all liabilities and obligations of Sellers thereunder.

“**Cure Costs**” has the meaning set forth in Section 1.3(a).

“**Current Employees**” means all employees of Sellers employed immediately prior to the discharge of employees required by the closing of the Transactions, whether active or not (including those on short-term disability, leave of absence, paid or unpaid, or long-term disability).

“**Deposit**” has the meaning set forth in Section 2.2(a).

“**Designation Cost Overage**” has the meaning set forth in Section 1.6(b).

“**Designation Notice**” has the meaning set forth in Section 1.6(c).

“**Designation Rights Asset**” has the meaning set forth in Section 1.6(b).

“**Designation Rights Period**” has the meaning set forth in Section 1.1.

“**Employee Benefit Plans**” means (i) all employee benefit plans as defined in section 3(3) of ERISA; (ii) all compensation, pay, severance pay, salary continuation, bonus, incentive, stock option, retirement, pension, profit sharing or deferred compensation plans, Contracts, programs, funds or arrangements of any kind; and (iii) all other employee benefit plans, programs, funds or arrangements (whether written or oral, qualified or nonqualified, funded or unfunded, foreign or domestic, currently effective or terminated, and whether or not subject to ERISA) and any trust, escrow or similar agreement related thereto, whether or not funded.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**Escrow Agent**” means Wilmington Trust, N.A.

“**Excluded Assets**” has the meaning set forth in Section 1.2.

“**Excluded Contracts**” means any Contract to which a Seller is a party that is not an Acquired Contract.

“**Excluded Liabilities**” has the meaning set forth in Section 1.4.

“**Execution Date**” has the meaning set forth in the Preamble.

“**Final Purchase Price**” has the meaning set forth in Section 2.1.

“**Financial Statements**” has the meaning set forth in Section 4.1(r).

“**Government**” means any agency, division, subdivision or governmental or regulatory authority, or any adjudicatory body thereof, of the United States or any state or territory thereof.

“**Governmental Authority**” means any federal, state, local, municipal, foreign, supranational or other governmental or quasi-governmental authority of any nature (including any governmental

agency, branch, bureau, commission, department, official or entity and any court or other tribunal), or any administrative, executive, judicial, legislative, police, regulatory or Taxing Authority, or arbitral body.

“Granite City Business” has the meaning set forth in the Recitals.

“Improvements” means all leasehold improvements located, placed, constructed or installed on or under any parcel of Leased Real Property, including all utilities, fire protection, security, surveillance, telecommunications, computer, wiring, cable, heat, exhaust, ventilation, air conditioning, electrical, mechanical, plumbing and refrigeration systems, facilities, lines, installations and conduits.

“Intellectual Property Rights” means all of Sellers’ intellectual property, including: (i) patents, patent applications and patent rights; (ii) trademarks (registered and at common law), trademark registrations and applications, trade names, logos, trade dress, brand names, service marks (registered and at common law), service mark registrations and applications, websites, domain names and other indicia of source and all goodwill associated therewith (subject to those restrictions under the Franchise Agreements); (iii) works of authorship, copyrights, copyright registrations and applications for registration, and moral rights; (iv) know-how, trade secrets, customer lists, proprietary information, proprietary processes and formulae, databases and data collections; (v) all source and object code, software, algorithms, architecture, structure, display screens, layouts, inventions, development tools; (vi) all documentation and media constituting, describing or relating to the above, including manuals, memoranda and records; and (vii) all other intellectual property rights related to the Granite City Business.

“Inventory” means all supplies, goods, finished goods, materials, raw materials, work in process, perishable inventory and stock in trade owned by any Seller, whether or not prepaid, and wherever located, held or owned, including all fresh and frozen foodstuffs, alcoholic beverages, non-alcoholic beverages, disposable paper goods (such as napkins and paper towels), silverware, plates and dining ware, cups, glassware, mugs, cooking utensils, packaging materials, ingredients soaps and detergents, condiments, retail merchandise, replacement and spare parts and fuels and other similar items.

“Law” means any law, statute, regulation, rule, code, constitution, ordinance, treaty, rule of common law, or Order of, administered or enforced by or on behalf of, any Governmental Authority.

“Leased Real Property” has the meaning set forth in Section 1.1(a).

“Leasehold Improvements” means those fixtures, structures and other improvements located on any Leased Real Property used in the operation of Sellers’ business.

“Lien” means, with respect to any property or asset, any mortgage, deed of trust, lien (statutory or otherwise), hypothecation, pledge, security interest, claim, encumbrance, restriction, charge, instrument, preference, priority, option, or right of first refusal, of any kind or nature, whether

secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, recorded or unrecorded, contingent or non-contingent, material or non-material, known or unknown (including real property, tangible property and intangible property and including any “Lien” as defined in the Bankruptcy Code).

“**Liquor Licenses**” has the meaning set forth in Section 4.1(k).

“**Outside Date**” means the date that is one hundred twenty (120) days following the Execution Date.

“**Permits**” has the meaning set forth in Section 1.1(h).

“**Permitted Liens**” means (i) Liens granted by Buyer at or after the Closing in connection with any financing of Buyer related to the purchase of the Acquired Assets pursuant to this Agreement (but not including Liens related to any Leased Real Property); (ii) non-monetary Liens that do not materially interfere with the ability of Buyer to own and operate the Acquired Assets in substantially the manner as operated immediately prior to the execution of this Agreement; (iii) Liens that arise under zoning, building codes, land use and other similar laws, none of which would materially interfere with the ownership or operation by Buyer of any of the Acquired Assets following the Closing in substantially the manner as owned and operated immediately prior to the execution of this Agreement; (iv) Liens for Taxes not yet due and payable in respect of Acquired Assets; and (v) with respect to leased or licensed property, the terms and conditions of the lease or license applicable thereto.

“**Person**” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or Government.

“**Petition Date**” has the meaning set forth in the Recitals.

“**Prepaid Expenses**” has the meaning set forth in Section 1.1(e).

“**Price Adjustment Costs**” has the meaning set forth in Section 2.3(b).

“**Property Costs**” has the meaning set forth in Section 2.3(a)(iii),

“**Property Tax Costs**” has the meaning set forth in Section 2.3(a)(iii).

“**Property Taxes**” means all real estate and personal property Taxes, and other related assessments and fees, arising from the Acquired Assets.

“**Real Property Lease**” means any lease arrangement or agreement for the Leased Real Property identified and included in the Acquired Contracts.

“**Rebates**” has the meaning set forth in Section 1.2(c).

“Records” means the books, records, information, ledgers, files, invoices, documents, work papers, correspondence, lists (including customer lists, supplier lists and mailing lists), plans (whether written, electronic or in any other medium), drawings, designs, specifications, creative materials, advertising and promotional materials, marketing plans, studies, reports, data and similar materials related to the Granite City Business.

“Rejected Contracts” has the meaning set forth in Section 1.5(a).

“Related Person” means, with respect to any Person, all present directors, officers, members, managers, stockholders, employees, controlling persons, agents, professionals, attorneys, accountants, lenders, investment bankers or representatives of any such Person.

“Rent Costs” has the meaning set forth in Section 2.3(a)(ii).

“Sale Order” means an order of the Bankruptcy Court approving the sale and transfer of the Acquired Assets and Assumed Liabilities to Buyer pursuant to Sections 105 and 363 of the Bankruptcy Code, which order will include: (i) authorization of the assumption by Sellers and assignment to Buyer of the Acquired Contracts; (ii) terms and conditions consistent with the terms and conditions of this Agreement; and (iii) such other terms and conditions acceptable to Sellers and Buyer.

“Seller” and **“Sellers”** have the meaning set forth in the Preamble.

“Store Cash” has the meaning set forth in Section 2.3(a)(i).

“Tax Return” means any report, return, information return, filing or other information, including any schedules, exhibits or attachments thereto, and any amendments to any of the foregoing required to be filed or maintained in connection with the calculation, determination, assessment or collection of any Taxes (including estimated Taxes).

“Taxes” means all taxes, however denominated, including any interest, penalties or additions to tax that may become payable in respect thereof, imposed by any Government, whether payable by reason of contract, assumption, transferee liability, operation of law or Treasury Regulation Section 1.1502-6(a) (or any predecessor or successor thereof or any analogous or similar provision under state, local or foreign law), which taxes will include all income taxes, payroll and employee withholding, unemployment insurance, social security (or similar), sales and use, excise, franchise, gross receipts, occupation, real and personal property, stamp, transfer, workmen’s compensation, customs duties, registration, documentary, value added, alternative or add-on minimum, estimated, environmental (including taxes under Section 59A of the Code) and other assessments or obligations of the same or a similar nature, whether arising before, on or after the Closing Date.

“Total Consideration” has the meaning set forth in Section 2.1.

“Transaction Taxes” has the meaning set forth in Section 2.6.

“Transactions” has the meaning set forth in the Recitals.

“Transition Services Agreement” means a transition services agreement in a form acceptable to Buyer and Sellers, which requires Sellers to provide certain services requested by Buyer during a transition period in exchange for Buyer’s direct payment of costs associated therewith (or the reimbursement by Buyer of Seller’s direct costs associated therewith) and ensuring that all administrative expenses of Sellers created by virtue of providing such transition services are paid.

“Unadjusted Purchase Price” has the meaning set forth in Section 2.1.

“Utility Deposits” means all utility deposits paid by Sellers prior to the Closing Date and all rights to the refund of all or any portion thereof.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have caused this Asset Purchase Agreement to be executed as of the Execution Date.

BUYER:

BBQ Acquisition, Inc.

By:

Name: Jeff Crivello

Title: CEO

SELLERS:

Granite City Food & Brewery Ltd.

By:

Richard H. Lynch, President

Granite City – Arkansas, Inc.

By:

Richard H. Lynch, President

Granite City – Orland Park, Inc.

By:

Richard H. Lynch, President

Granite City – Creve Coeur, Inc.

By:

Richard H. Lynch, President

[Signature Page - Asset Purchase Agreement]

Granite City – Rockford, Inc.

By:
Richard H. Lynch, President

Granite City – Peoria, Inc.

By:
Richard H. Lynch, President

Granite City of Indiana, Inc.

By:
Richard H. Lynch, President

Granite City of Ohio, Inc.

By:
Richard H. Lynch, President

Granite City Restaurant Operations, Inc.

By:
Richard H. Lynch, President

Granite City of Kansas, Ltd.

By:
Richard H. Lynch, President

Granite City of Maryland, Inc.

By:
Richard H. Lynch, President

[Signature Page - Asset Purchase Agreement]

Schedule A

Sellers

1. Granite City Food & Brewery Ltd., a Minnesota corporation.
2. Granite City – Arkansas, Inc., an Arkansas corporation.
3. Granite City – Orland Park, Inc., an Illinois corporation.
4. Granite City – Creve Coeur, Inc., a Missouri corporation.
5. Granite City – Rockford, Inc., an Illinois corporation.
6. Granite City – Peoria, Inc., an Illinois corporation.
7. Granite City of Indiana, Inc., an Indiana corporation.
8. Granite City of Ohio, Inc., a Ohio corporation.
9. Granite City Restaurant Operations, Inc., a Minnesota corporation.
10. Granite City of Kansas, Ltd., a Kansas corporation.
11. Granite City of Maryland, Inc., a Minnesota corporation.

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FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT (this “**Amendment**”) dated as of February 21, 2020 (the “**Effective Date**”), is made by and among those persons listed on Schedule A attached to this Amendment (each individually, “**Seller**”, and collectively, “**Sellers**”), and BBQ Acquisition, Inc., a Minnesota corporation, its successors and assignees (“**Buyer**”).

RECITALS

A. Sellers and Buyer are parties to that certain Asset Purchase Agreement dated February 11, 2020 (the “**Asset Purchase Agreement**”), pursuant to which Buyer agreed to purchase certain assets and assume certain liabilities of the Granite City Business (as defined in the Asset Purchase Agreement).

B. Sellers and Buyer desire to amend the Asset Purchase Agreement as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

1. **Amendment to Asset Purchase Agreement.** Sellers and Buyer agree that the Asset Purchase Agreement shall be amended as follows:

(a) Schedule 1.1(a) shall be replaced in its entirety with the Schedule 1.1(a) attached hereto.

(b) Schedule 1.1(g) shall be amended to add the following item:

License Agreement, dated as of January 11, 2011, by and between Granite City Food & Brewery Ltd. and Caffé Connection, Inc.

(c) Schedule 1.2 shall be amended to delete item 2, which item reads as follows:

The portion of the master lease of the Sellers to the extent related to the restaurant located at 15085 119th St., Olathe, KS 66062.

2. **Terms of Asset Purchase Agreement.** Except as expressly set forth in this Amendment, all other terms and provisions of the Asset Purchase Agreement will remain in full force and effect.

3. **Miscellaneous.** This Amendment constitutes the entire agreement among the parties and supersedes any prior understandings, agreements, or representations among the parties, written or oral, that may have related in any way to the subject matter hereof. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Amendment delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Amendment.

IN WITNESS WHEREOF, the undersigned have executed this Amendment to be effective as of the Effective Date.

BUYER:

BBQ Acquisition, Inc.

By: /s/ Jeff Crivello
Name: Jeff Crivello
Title: CEO

SELLERS:

Granite City Food & Brewery Ltd.

By: /s/ Richard H. Lynch
Richard H. Lynch, President

Granite City – Arkansas, Inc.

By: /s/ Richard H. Lynch
Richard H. Lynch, President

Granite City – Orland Park, Inc.

By: /s/ Richard H. Lynch
Richard H. Lynch, President

Granite City – Creve Coeur, Inc.

By: /s/ Richard H. Lynch
Richard H. Lynch, President

[Signature Page – First Amendment to Asset Purchase Agreement (GC-Assets Only)]

Granite City – Rockford, Inc.

By: /s/ Richard H. Lynch
Richard H. Lynch, President

Granite City – Peoria, Inc.

By: /s/ Richard H. Lynch
Richard H. Lynch, President

Granite City of Indiana, Inc.

By: /s/ Richard H. Lynch
Richard H. Lynch, President

Granite City of Ohio, Inc.

By: /s/ Richard H. Lynch
Richard H. Lynch, President

Granite City Restaurant Operations, Inc.

By: /s/ Richard H. Lynch
Richard H. Lynch, President

Granite City of Kansas, Ltd.

By: /s/ Richard H. Lynch
Richard H. Lynch, President

Granite City of Maryland, Inc.

By: /s/ Richard H. Lynch
Richard H. Lynch, President

[Signature Page – First Amendment to Asset Purchase Agreement (GC-Assets Only)]

Schedule A

Sellers

1. Granite City Food & Brewery Ltd., a Minnesota corporation.
2. Granite City – Arkansas, Inc., an Arkansas corporation.
3. Granite City – Orland Park, Inc., an Illinois corporation.
4. Granite City – Creve Coeur, Inc., a Missouri corporation.
5. Granite City – Rockford, Inc., an Illinois corporation.
6. Granite City – Peoria, Inc., an Illinois corporation.
7. Granite City of Indiana, Inc., an Indiana corporation.
8. Granite City of Ohio, Inc., a Ohio corporation.
9. Granite City Restaurant Operations, Inc., a Minnesota corporation.
10. Granite City of Kansas, Ltd., a Kansas corporation.
11. Granite City of Maryland, Inc., a Minnesota corporation.

Schedule 1.1(a)

Acquired Leased Real Property

Location	State	Landlord
St. Cloud	MN	Store Master Funding I, LLC
Sioux Falls	SD	Doug Johnson
Fargo	ND	WEST ACRES DEVELOPMENT LLP
Cedar Rapids	IA	Rainmaker Management Inc.
Davenport	IA	Store Master Funding I, LLC
Lincoln	NE	Star-West Gateway LLC c/o Starwood Retail Partners, LLC
Maple Grove	MN	Todd and Lori Hanson
Eagan	MN	Store Master Funding I, LLC
Roseville	MN	PPF RTL ROSEDALE SHOPPING CENTER LLC
Creve Coeur	MO	CAPLACO NINE INC.
Ft. Wayne	IN	Brookfield Property REIT Inc.
Troy	MI	Store Master Funding I, LLC
Franklin	TN	DRURY DEVELOPMENT CORP
Naperville	IL	Store Master Funding I, LLC
Northville	MI	The Inland Real Estate Groupo, Inc.
Zona Rosa	MO	Doug Johnson
Schaumburg	IL	Store Master Funding I, LLC
Legends	KS	Westrim Properties LLC

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CERTIFICATIONS

I, Jeffery Crivello, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of BBQ Holdings, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: May 13, 2020

By: /s/ Jeffery Crivello
Jeffery Crivello
Chief Executive Officer and Director

CERTIFICATIONS

I, James G. Gilbertson, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of BBQ Holdings, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: May 13, 2020

By: /s/ James G. Gilbertson
James G. Gilbertson
Chief Financial Officer and Secretary

**CERTIFICATION PURSUANT TO 18 U.S.C. 1350
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, each of the undersigned officers of BBQ Holdings, Inc. does hereby certify that:

- a) The Quarterly Report on Form 10-Q of BBQ Holdings, Inc. for the quarter ended March 29, 2020 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- b) Information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of BBQ Holdings, Inc.

Dated: May 13, 2020

By: /s/ Jeffery Crivello
Jeffery Crivello
Chief Executive Officer and Director
(Principal Executive Officer)

Dated: May 13, 2020

By: /s/ James G. Gilbertson
James G. Gilbertson
Chief Financial Officer and Secretary
(Principal Financial Officer and Principal Accounting Officer)
