

JURISDICTION

3. Jurisdiction and venue are proper in this Court under Article IV, Section 2(B)(1) of the Ohio Constitution and Revised Code § 2731.02.

4. Revised Code § 4313.02(C)(2) imposes a clear legal duty on Respondent to execute the Franchise and Transfer Agreement with Relator. Similarly, § 229.10 of Am. Sub. H.B. 153 orders that the Agreement “shall be executed by [Respondent] upon its completion.”

5. Despite his clear legal duty to execute the Franchise and Transfer Agreement, Respondent has refused to do so until the Ohio Supreme Court is given an opportunity to address the merits of constitutional challenges that have been made regarding the Legislation.

6. Relator therefore seeks a peremptory writ of mandamus, or in lieu thereof, an alternative writ of mandamus against Respondent, ordering him to execute the Franchise and Transfer Agreement as required by Revised Code § 4313.02(C)(2) and § 229.10 of Am. Sub. H.B. 153.

7. Exercise of the Court’s jurisdiction is necessary to allow Relator the opportunity to timely adjudicate its claim against Respondent, and to provide a swift and conclusive resolution to any and all questions regarding the constitutionality of the Legislation.

PARTIES

8. Relator JobsOhio is a nonprofit corporation duly registered to do business in the State of Ohio. JobsOhio Beverage System is a wholly-owned subsidiary of JobsOhio and is the named franchisee under the Franchise and Transfer Agreement. *See* Affidavit of Mark Kvamme (“Kvamme Aff.”) at ¶ 2 (attached hereto as Exhibit A).

9. Respondent David Goodman is the Director of the Ohio Department of Commerce (the “ODC”).

LEGISLATIVE BACKGROUND

10. In February 2011, the General Assembly passed, and the Governor signed, Am. Sub. H.B. 1, which enacted Revised Code Chapter 187, titled “JobsOhio Corporation.”

11. Chapter 187 does not create JobsOhio, but rather authorizes the Governor “to form a nonprofit corporation, to be named ‘JobsOhio,’ with the purposes of promoting economic development, job creation, job retention, job training, and the recruitment of business to this state.” R.C. § 187.01. To do so, the Governor must sign and file articles of incorporation for JobsOhio with the Secretary of State’s office. JobsOhio’s existence “shall begin upon the filing of the articles.” *Id.*

12. Subject to a limited number of exceptions listed in R.C. § 187.03, JobsOhio is to be organized and operated in accordance with R.C. Chapter 1702, the State’s nonprofit corporation law. *See* R.C. § 187.01. Generally, JobsOhio may perform any functions permitted by law. *See* R.C. § 187.03(A). Revised Code § 1702.12(F)(2), which applies to JobsOhio as a nonprofit corporation, permits JobsOhio to enter into contracts.

13. The General Assembly included in § 5 of Am. Sub. H.B. 1 a requirement that the Director of the Department of Development (the “ODOD”) “find within the [Department’s] total unexpended and unencumbered fiscal year 2011 General Revenue Fund appropriation an amount not to exceed \$1,000,000 in order to establish and operate the JobsOhio corporation.”

14. Revised Code § 187.04 provides for the Director of the ODOD “to execute a contract with JobsOhio for the corporation to assist the director and the department of development with providing services or otherwise carrying out the functions and duties of the department, including the operation and management of programs, offices, divisions, or boards, as may be determined by the director in consultation with the governor.” Before it takes effect, the contract must be approved by the Controlling Board of the State of Ohio. JobsOhio’s

function under this contract will be advisory, and, as expressly provided in the statute, ODOD will retain the exclusive authority to approve or disapprove any development contracts issued by the State.

15. In June 2011, the General Assembly passed, and the Governor signed, Am. Sub. H.B. 153, which amended certain provisions of Chapter 187 and created Chapter 4313, titled “Transfer of Enterprise Acquisition Project To JobsOhio.”

16. Revised Code Chapter 4313 authorizes JobsOhio to assume responsibility for the Liquor Enterprise throughout the State, a role that has previously been performed by the ODC’s Division of Liquor Control. To accomplish this task, R.C. § 4313.02(E) requires the Director of the Ohio Office of Budget and Management (the “OBM”) and the Director of the ODC, subject to Controlling Board approval, to enter into a contract with JobsOhio to provide for the State Division of Liquor Control’s continuing operation of the Liquor Enterprise, but at JobsOhio’s expense and subject to performance standards established in the contract. Pursuant to this contract, State employees will continue to perform many of the actual operational functions, and JobsOhio will be required to compensate the State for the performance of those functions.

17. Revised Code Chapter 4313 also provides a funding mechanism to cover JobsOhio’s ongoing expenses through a transaction involving JobsOhio and the Ohio Division of Liquor Control. Specifically, Chapter 4313 authorizes the State to transfer its “Enterprise Acquisition Project”—which the statute defines as “all or any portion of the . . . assets of the spirituous liquor distribution and merchandising operations of the division of liquor control”—(i.e., the Liquor Enterprise) to JobsOhio for a period of up to twenty-five years. *See* R.C. § 4313.02(A).

18. Under R.C. § 4313.02(A), the State may transfer to JobsOhio, and JobsOhio may accept the transfer of, the Liquor Enterprise “for a transfer price payable by JobsOhio to the [S]tate.”

19. The transfer of the Liquor Enterprise is achieved through the Franchise and Transfer Agreement.

20. The terms of the Franchise and Transfer Agreement are negotiated on behalf of the State by the Director of the OBM, in consultation with the Director of the ODC. R.C. § 4313.02(C)(2) (“The director of budget and management, in consultation with the director of commerce, may, without need for any other approval, negotiate terms of any documents, including the transfer agreement, necessary to effect the transfer and the acceptance of the transfer of the enterprise acquisition project.”).

21. Once the terms of the Franchise and Transfer Agreement have been negotiated, Chapter 4313 mandates that the Director of the OBM and the Director of the ODC execute the Franchise and Transfer Agreement with JobsOhio on behalf of the State of Ohio. *Id.* (“The director of budget and management and the director of commerce shall execute the transfer agreement on behalf of the state.”). Similarly, § 229.10 of Am. Sub. H.B. 153 orders that the Agreement “shall be executed by [Respondent] upon its completion.”

FACTUAL BACKGROUND

22. Pursuant to R.C. § 187.01, the Governor filed articles of incorporation for Relator JobsOhio on July 5, 2011, with the Secretary of State’s office. *See Kvamme Aff.* at ¶ 3. (A true and accurate copy of JobsOhio’s Articles of Incorporation is attached as Exhibit 1 to the *Kvamme Aff.*)

23. The Governor thereafter appointed nine persons to serve as the Board of Directors for Relator JobsOhio, as required by R.C. § 187.02. *See Kvamme Aff.* at ¶ 5.

24. Pursuant to § 5 of Am. Sub. H.B. 1, the ODOD set aside \$1,000,000 from its total unexpended and unencumbered fiscal year 2011 General Revenue Fund appropriation, of which a portion has been used to supply JobsOhio with office equipment, computers, and other necessities. *Id.* at ¶ 6.

25. Following its formation and pursuant to R.C. § 187.04, JobsOhio began negotiating the terms of the contract (the “Agreement for Services”) with the ODOD, setting forth JobsOhio’s duties in assisting the ODOD. *Id.* at ¶ 7. The parties finalized the terms of this Agreement for Services in January 2012. *Id.* at ¶ 8.

26. Relator JobsOhio signed the Agreement for Services on January 20, 2012. *Id.* at ¶ 9.

27. On January 30, 2012, the Controlling Board of the State approved the Agreement for Services. ODOD Director Christiane Schmenk signed and executed the Agreement for Services that same day. *Id.* at ¶ 10.

28. A true and accurate copy of the executed Agreement for Services and the Controlling Board minutes approving that agreement are attached as Exhibits 2 and 3, respectively, to the Kvamme Aff.

29. Pursuant to R.C. § 4313.02(E), Relator JobsOhio, the OBM, and the ODC also negotiated the contract to provide for the continuing operation of the Liquor Enterprise by the State’s Division of Liquor Control (the “Operations Services Agreement”). *Id.* at ¶ 13. The terms of the Operations Services Agreement were finalized in January 2012. *Id.* at ¶ 14.

30. Relator JobsOhio signed the Operations Services Agreement on January 20, 2012. *Id.* at ¶ 15.

31. As required by R.C. § 4313.02(E), the Controlling Board of the State of Ohio approved the Operations Services Agreement on January 30, 2012. *Id.* at ¶ 16.

32. A true and accurate copy of the Operations Services Agreement as signed by JobsOhio and the Controlling Board minutes approving that agreement are attached as Exhibits 4 and 3, respectively, to the Kvamme Aff.

33. In September 2011, Relator JobsOhio began negotiating the terms of the Franchise and Transfer Agreement in accordance with R.C. § 4313.02(C)(2). *Id.* at ¶ 18.

34. As required by R.C. § 4313.02(C)(2), Respondent Goodman was consulted regarding the negotiation of the terms of the Franchise and Transfer Agreement. *Id.* at ¶ 19.

35. The terms of the Franchise and Transfer Agreement have been finalized.

36. The terms of the proposed Franchise and Transfer Agreement comply with all applicable legal requirements, including those imposed by R.C. Chapter 4313.

37. Having concluded negotiation of the Franchise and Transfer Agreement, Relator JobsOhio and its wholly owned subsidiary JobsOhio Beverage System signed the Franchise and Transfer Agreement on August 7, 2012. *Id.* at ¶ 20.

38. The Director of the OBM, Timothy Keen, approved the terms of the Franchise and Transfer Agreement and then signed it on August 7, 2012. *Id.* at ¶ 21.

39. A true and accurate copy of the Franchise and Transfer Agreement signed by Relator JobsOhio and Director Keen is attached as Exhibit 5 to the Kvamme Aff.

40. Relator JobsOhio requested by letter dated August 8, 2012, that Respondent Goodman execute the Franchise and Transfer Agreement on behalf of the State of Ohio, as required by R.C. § 4313.02(C)(2). *Id.* at ¶ 23. A true and accurate copy of JobsOhio's letter to Respondent Goodman is attached as Exhibit 6 to the Kvamme Aff.

41. Relator JobsOhio received a letter from Respondent Goodman dated August 9, 2012, declining to execute the Franchise and Transfer Agreement. *Id.* at ¶ 24. A true and accurate copy of this letter (the “Refusal Letter”) is attached as Exhibit 7 to the Kvamme Aff.

42. As stated in the Refusal Letter, Respondent Goodman concluded that the Franchise and Transfer Agreement and the process by which it was negotiated comply with the Transfer Act. Respondent Goodman, however, declined to execute the Agreement due to the existence of constitutional challenges that have been made regarding the Legislation. Respondent Goodman noted that these constitutional concerns have not been addressed by any court, but that two lower courts have characterized them as “understandable” and “significant.”

43. Respondent Goodman also noted that providing the Ohio Supreme Court with the opportunity to immediately review these constitutional challenges could: (1) remove any cloud of uncertainty; (2) allow JobsOhio to move forward directly with its more than \$1.4 billion bond offering to fund the 25-year transfer; and (3) enable JobsOhio to maximize the resources available for job creation and economic development in Ohio.

44. As identified in the Refusal Letter, there are seven primary constitutional challenges that have been made regarding the Legislation:

- (1) Whether the JobsOhio Act violates Article XIII, Section 1, which forbids the General Assembly from conferring corporate powers via special act;
- (2) Whether the JobsOhio Act violates Article XIII, Section 2, which requires all corporations to be formed under the general laws;
- (3) Whether the JobsOhio Act violates Article I, Section 16, which requires the courts to be open so injured parties may obtain a remedy by due process;
- (4) Whether the Legislation authorizes the State to lend credit to a private corporation, in violation of Article VIII, Section 4;
- (5) Whether the Transfer Act would require legislative appropriations extending past a biennium, in violation of Article II, Section 22;

(6) Whether the Transfer Act would result in the State's issuing debt in excess of limits provided in Article VIII; and

(7) Whether Am. Sub. H.B. 153 violates the "one-subject rule" of Article II, Section 15.

45. None of the constitutional challenges cited in the Refusal Letter has any merit.

46. Notwithstanding that none of these constitutional challenges has any merit and that the terms of the proposed Franchise and Transfer Agreement comply with R.C. § 4313.02(G), citing his oath of office to uphold the Ohio Constitution, Respondent Goodman declined to execute the Agreement "until the Ohio Supreme Court is given an opportunity to address the merits of these claims."

47. The transfer of the franchise on the Liquor Enterprise authorized under Chapter 4313 cannot be accomplished until Respondent Goodman executes the Franchise and Transfer Agreement.

48. JobsOhio will use the profits it receives under the franchise on the Liquor Enterprise to repay the bonds it issues to pay the transfer price. JobsOhio will also use these profits to pursue the public purposes for which it was created, which include "promoting economic development, job creation, job retention, job training, and the recruitment of business to this state." R.C. § 187.01. Unless and until the Franchise and Transfer Agreement is executed, Relator JobsOhio will lack the funding to fully pursue its public purposes. Kvanme Aff. at ¶ 25.

COUNT I (MANDAMUS)

49. Relator repeats and realleges each and every of the foregoing allegations.

50. Relator has a clear legal right to have Respondent execute the Franchise and Transfer Agreement. The Franchise and Transfer Agreement has been negotiated, approved, and

signed in accordance with R.C. § 4313.02(C)(2) by all necessary parties except Respondent Goodman.

51. Respondent Goodman has a clear legal duty to execute the Franchise and Transfer Agreement under R.C. § 4313.02(C)(2) (“The director of budget and management and the director of commerce *shall* execute the transfer agreement on behalf of the state.”) (emphasis added). Section 229.10 of Am. Sub. H.B. 153 likewise orders that the agreement “shall be executed by [Respondent] upon its completion.” Relator and Respondent have satisfied all factual and legal prerequisites to executing the Franchise and Transfer Agreement.

52. The sole reason Respondent Goodman has refused to execute the Franchise and Transfer Agreement is because there have been constitutional challenges made to the Legislation, the merits of which no court has had an opportunity to address. However, none of the potential constitutional challenges cited in the Refusal Letter has any merit whatsoever.

53. Relator has no adequate remedy in the ordinary course of the law to require Respondent Goodman to execute the Franchise and Transfer Agreement or to swiftly and conclusively resolve all potential constitutional challenges to the Legislation.

54. If Respondent does not execute the Franchise and Transfer Agreement, Relator and all citizens of Ohio will suffer irreparable harm. Without the profits generated as a result of the Franchise and Transfer Agreement, Relator cannot fully and immediately implement all planned activities for advancing Ohio’s economic interests and creating jobs.

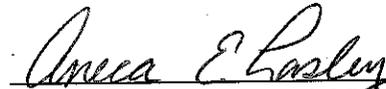
55. Relator is therefore entitled to a writ of mandamus ordering Respondent Goodman to execute the Franchise and Transfer Agreement.

WHEREFORE, Relator prays for judgment against Respondent as follows:

(a) In regard to Count I, that a peremptory writ of mandamus, or in lieu thereof, an alternative writ of mandamus, be issued to Respondent Goodman finding that the Legislation is constitutional and ordering Respondent to execute the Franchise and Transfer Agreement on behalf of the State, in accordance with R.C. § 4313.02(C)(2); and

(b) For any and all other relief as this Court deems just and equitable.

Respectfully submitted,



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Attorneys for Relator JobsOhio

Exhibit A

3. JobsOhio came into legal existence on July 5, 2011, when the Governor of Ohio filed articles of incorporation for JobsOhio, pursuant to Revised Code § 187.01. A true and accurate copy of JobsOhio's articles of incorporation is attached as Exhibit 1.

4. As stated in the articles of incorporation, JobsOhio "is organized, and at all times shall be operated, for the purposes of promoting economic development, job creation, job retention, job training, and the recruitment of business to the State of Ohio, as set forth in Section 187.01 of the Ohio Revised Code."

5. After filing the articles of incorporation for JobsOhio, the Governor appointed nine persons to serve as the Board of Directors for JobsOhio.

6. Pursuant to Section 5 of Am. Sub. H.B. 1, the Ohio Department of Development was required to set aside \$1,000,000 from its unexpended and unencumbered fiscal year 2011 General Revenue Fund appropriation to assist JobsOhio with transition and start-up costs. A portion of this money has been used to supply JobsOhio with office equipment, computers, and other necessities.

7. Section 187.04 of the Ohio Revised Code requires the Director of Development to "execute a contract with JobsOhio for the corporation to assist the director and the department of development with providing services or otherwise carrying out the functions or duties of the department." In fulfillment of this requirement, JobsOhio and the Department of Development negotiated a contract (the "Agreement for Services") detailing JobsOhio's role in assisting the Department of Development in bringing capital investment and employment opportunities to the State.

8. In January 2012, the parties finalized the terms of the Agreement for Services.

9. JobsOhio signed the Agreement for Services on January 20, 2012.

10. As required by R.C § 187.04, the Controlling Board of the State of Ohio approved the Agreement for Services on January 30, 2012; Director of Development Christiane Schmenk executed the Agreement for Services that same day.

11. True and accurate copies of the executed Agreement for Services and the Controlling Board minutes approving that agreement are attached hereto as Exhibits 2 and 3, respectively.

12. As a means of facilitating the State's transfer of its spirituous liquor merchandising and distribution operations (the State's "Liquor Enterprise") to JobsOhio, R.C. § 4313.02(E) states that JobsOhio, the Director of Budget and Management, and the Director of Commerce shall enter into a contract "for the continuing operation by the [D]ivision of [L]iquor [C]ontrol of spirituous liquor distribution and merchandising."

13. In accordance with R.C. § 4313.02(E), JobsOhio, the Ohio Office of Budget and Management and the Ohio Department of Commerce negotiated the terms of a contract (the "Operations Services Agreement"), to provide for the continuing operation of the Liquor Enterprise by the State's Division of Liquor Control.

14. In or about January 2012, the terms of the Operations Services Agreement were finalized.

15. JobsOhio signed the Operations Services Agreement on January 20, 2012.

16. As required by R.C § 4313.02(E), the Controlling Board of the State of Ohio approved the Operations Services Agreement on January 30, 2012.

17. True and accurate copies of the Operation Services Agreement as signed by JobsOhio, and Controlling Board minutes approving that agreement are attached hereto as Exhibits 4 and 3, respectively.

18. In accordance with R.C. § 4313.02(C)(2), in September 2011, JobsOhio and the Ohio Office of Budget and Management began negotiating the terms of an agreement pursuant to which the State of Ohio will grant to JobsOhio (or its nonprofit affiliate), in exchange for a payment from JobsOhio to the State, a franchise on the State's Liquor Enterprise for up to 25 years (the "Franchise and Transfer Agreement").

19. Over the course of these negotiations, the Director of the Ohio Department of Commerce, David Goodman, was consulted regarding the terms of the Franchise and Transfer Agreement.

20. JobsOhio signed the Franchise and Transfer Agreement on August 7, 2012.

21. Director Keen approved the terms of the Franchise and Transfer Agreement and signed it on August 7, 2012.

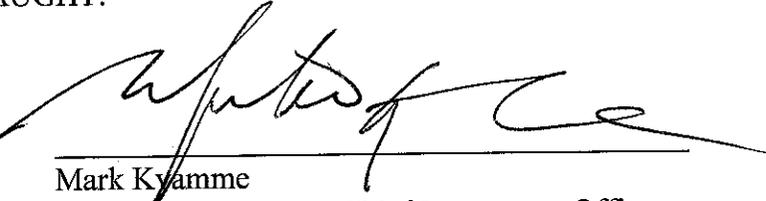
22. A true and accurate copy of the Franchise and Transfer Agreement signed by JobsOhio and Director Keen is attached hereto as Exhibit 5.

23. On August 8, 2012, JobsOhio sent a letter to David Goodman enclosing a copy of the Franchise and Transfer Agreement signed by JobsOhio and Director Keen and requesting that Director Goodman execute the Franchise and Transfer Agreement on behalf of the State of Ohio, as required by to R.C. § 4313.02(C)(2). A true and accurate copy of this letter is attached hereto as Exhibit 6.

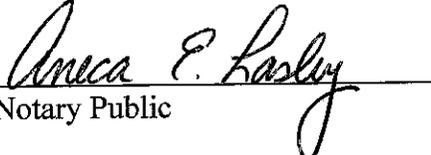
24. JobsOhio received a letter from David Goodman dated August 9, 2012, refusing to execute the Franchise and Transfer Agreement. A true and accurate copy of this letter is attached hereto as Exhibit 7.

25. JobsOhio intends to use profits earned on the liquor franchise to pursue the public purposes for which JobsOhio was created, which include "promoting economic development, job creation, job retention, and the recruitment of business to this state." R.C. § 187.01. Unless and until the Franchise and Transfer Agreement is executed, JobsOhio lacks the funding to fully pursue its public purposes.

FURTHER AFFIANT SAYETH NAUGHT.


Mark Kvamme
President and Interim Chief Investment Officer
of JobsOhio

Sworn to before me and subscribed in my presence by Mark Kvamme on this 9th day of August, 2012.


Notary Public



ANECA E. LASLEY
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.

Exhibit 1



DATE:	DOCUMENT ID	DESCRIPTION	FILING	EXPED	PENALTY	CERT	COPY
07/06/2011	201118601515	DOMESTIC ARTICLES/NON-PROFIT (ARN)	125.00	100.00	.00	.00	.00

Receipt

This is not a bill. Please do not remit payment.

CT CORPORATION SYSTEM
1300 EAST NINTH STREET
CLEVELAND, OH 44114

STATE OF OHIO CERTIFICATE

Ohio Secretary of State, Jon Husted

2032191

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

JOBSOHIO

and, that said business records show the filing and recording of:

Document(s)
DOMESTIC ARTICLES/NON-PROFIT

Document No(s):
201118601515



United States of America
State of Ohio
Office of the Secretary of State

Witness my hand and the seal of
the Secretary of State at Columbus,
Ohio this 5th day of July, A.D.
2011.

Ohio Secretary of State





Prescribed by:

Ohio Secretary of State
Central Ohio: (614) 466-3910
Toll Free: 1-877-SOS-FILE (1-877-767-3453)

www.sos.state.oh.us
e-mail: busserv@sos.state.oh.us

Expedite this Form: (select one)	
<input checked="" type="radio"/> Yes	PO Box 1390 Columbus, OH 43216 <small>** Requires an additional fee of \$160 **</small>
<input type="radio"/> No	PO Box 870 Columbus, OH 43216

INITIAL ARTICLES OF INCORPORATION
(For Domestic Profit or Nonprofit)
Filing Fee \$125.00

RECEIVED

JUL 05 2011

THE UNDERSIGNED HEREBY STATES THE FOLLOWING:

SECRETARY OF STATE

(CHECK ONLY ONE (1) BOX)

<input type="checkbox"/> (1) Articles of Incorporation Profit (113-ARP) ORC 1701	<input checked="" type="checkbox"/> (2) Articles of Incorporation Nonprofit (114-ARN) ORC 1702	<input type="checkbox"/> (3) Articles of Incorporation Professional (170-ARP) Profession ORC 1785
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Complete the general information in this section for the box checked above.

FIRST: Name of Corporation JobsOhio

SECOND: Location Columbus Franklin
(City) (County)

Effective Date (Optional) _____
(mm/dd/yyyy) Date specified can be no more than 90 days after date of filing. If a date is specified, the date must be a date on or after the date of filing.

Check here if additional provisions are attached

Complete the information in this section if box (2) or (3) is checked. Completing this section is optional if box (1) is checked.

THIRD: Purpose for which corporation is formed
Please see attached.

Complete the information in this section if box (1) or (3) is checked.

FOURTH: The number of shares which the corporation is authorized to have outstanding (Please state if shares are common or preferred and their par value if any)

_____	_____	_____
(No. of Shares)	(Type)	(Par Value)

(Refer to instructions if needed)

Completing the information in this section is optional

FIFTH: The following are the names and addresses of the individuals who are to serve as initial Directors.

(Name)

(Street) *NOTE: P.O. Box Addresses are NOT acceptable.*

(City) _____
(State) _____
(Zip Code)

(Name)

(Street) *NOTE: P.O. Box Addresses are NOT acceptable.*

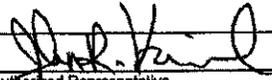
(City) _____
(State) _____
(Zip Code)

(Name)

(Street) *NOTE: P.O. Box Addresses are NOT acceptable.*

(City) _____
(State) _____
(Zip Code)

REQUIRED
Must be authenticated
(signed) by an authorized
representative
(See Instructions)



July 5, 2011
Date

Authorized Representative
John R. Kasich
(print name)

Authorized Representative

Date

(print name)

Authorized Representative

Date

(print name)

ATTACHMENT TO OHIO SECRETARY OF STATE FORM 532**Additional Provisions of Initial Articles of Incorporation of JobsOhio****ARTICLE III***Purposes*

3.1 **Purposes.** Subject to all the terms and conditions set forth in these Articles of Incorporation (these "*Articles*"), the Corporation is organized, and at all times shall be operated, for the purposes of promoting economic development, job creation, job retention, job training, and the recruitment of business to the State of Ohio as set forth in Section 187.01 of the Ohio Revised Code. In carrying out the foregoing purposes, the Corporation shall be organized and shall operate exclusively as an organization described in Section 501(c)(4) of the Internal Revenue Code of 1986, as amended (the "*Code*") pursuing charitable and educational purposes to promote the common good and general welfare of the residents of the State of Ohio. All references in these Articles to sections of the Code shall be construed to refer both to such section of the Code and to the regulations promulgated thereunder (the "*Treasury Regulations*"), as they now exist or may hereafter be amended, and to the corresponding provisions of any future Federal tax code and the Treasury Regulations thereunder. Unless otherwise defined in these Articles, all terms used in these Articles in reference to sections of the Code or Treasury Regulations shall have the meaning ascribed to those terms under the Code or Treasury Regulations, as the case may be.

3.2 **General Authority.** Subject to the terms and conditions hereinafter set forth, in carrying on activities to promote the purposes set forth in Section 3.1 above, the Corporation shall have all of the powers that may be conferred upon nonprofit corporations formed under Chapter 187 of the Ohio Revised Code and the applicable provisions of Chapter 1702 of the Ohio Revised Code (together, the "*Ohio Nonprofit Corporation Law*").

3.3 **Limitations.** Notwithstanding any other provision of these Articles:

(a) The Corporation may not carry on any activities not permitted to be carried on by a corporation exempt from Federal tax under Section 501(a) of the Code by reason of being an organization described in Section 501(c)(4) of the Code.

(b) No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to its members, directors, trustees, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay Reasonable Compensation for services rendered, and to make payments and distributions in furtherance of the purposes set forth in ARTICLE III hereof. As used in this and other provisions of these Articles, the term "*Reasonable Compensation*" shall have the meaning set forth in Section 53.4958-4(b)(1)(ii) of the Treasury Regulations.

(c) The Corporation may not directly or indirectly participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office, including, without limitation, making any contribution to any campaign committee, political party, legislative campaign fund, political action committee, or political contributing entity for any purpose

whatsoever. For purposes of the preceding sentence, "contribution," "campaign committee," "political party," "legislative campaign fund," "political action committee," and "political contributing entity" shall include both the meanings set forth in the Code and the meanings set forth in Section 3517.01 of the Ohio Revised Code.

ARTICLE IV

Membership and Actions by the Governor

4.1 Membership. The Corporation is a membership organization, and the Corporation may have one or more classes of members, including having the members of the board of directors of the Corporation (collectively, the "**Board**," and each member, a "**Director**") serve as the members of the Corporation. Except to the extent otherwise provided in the Ohio Nonprofit Corporation Law, the number of classes of membership in the Corporation, the qualifications, if any, for membership in any class of membership in the Corporation, and the rights and privileges, including whether a particular class of membership has voting rights, and the circumstances under which those voting rights may be exercised, of the various classes of membership in the Corporation, shall be as are from time to time set forth in the Corporation's code of regulations (the "**Code of Regulations**").

4.2 Actions by the Governor. To the extent the Governor of the State of Ohio (the "**Governor**") is authorized under these Articles or the Code of Regulations to take an action required to be taken by the Governor under any provision of Chapter 187 of the Ohio Revised Code, those actions shall be taken by the Governor acting in his or her official capacity as the Governor of the State of Ohio.

ARTICLE V

Board of Directors

5.1 Authority of the Board. Except as otherwise provided by Chapters 187 and 1702 of the Ohio Revised Code and any other applicable laws of the State of Ohio or these Articles, all corporate powers and authority of the Corporation shall be exercised, its business and affairs conducted, and its property managed, by or under the direction of the Board. Without limiting the generality of the foregoing, the Board shall:

- (a) Adopt one (1) or more resolutions providing for compensation of the chief investment officer referred to in Section 187.01(E) of the Ohio Revised Code (the "**Chief Investment Officer**");
- (b) Approve an employee compensation plan for the Corporation recommended by the Chief Investment Officer;
- (c) Approve a contract with the Ohio Director of Development for the Corporation to assist the Ohio Director of Development and the Ohio Department of Development with providing services or otherwise carrying out the functions or duties of the Ohio Department of Development, including the operation and management of programs, offices, divisions, or boards, as may be determined by the Ohio Director of Development in consultation with the Governor;

- (d) Approve all major contracts for services recommended by the Chief Investment Officer;
- (e) Establish an annual strategic plan and standards of measure to be used in evaluating the Corporation's success in executing such plan;
- (f) Establish a conflicts of interest policy that complies with Section 187.06 of the Ohio Revised Code;
- (g) Hold a minimum of four (4) Board meetings per year at which a quorum of the Board is physically present (with such meetings being subject to divisions (C), (D), and (E) of Section 187.03 of the Ohio Revised Code), and such other meetings, at which a Director's physical presence is not required, as may be necessary;
- (h) Establish a records retention policy and present the policy, and any subsequent changes to the policy, at a meeting of the Board at which a quorum is required to be physically present;
- (i) Adopt standards of conduct for the Directors; and
- (j) When reviewing or approving property or compensation transactions, follow procedures reasonably calculated to establish the presumption set forth in Section 53.4958-6(a) of the Treasury Regulations, that any payment for a transfer of property, or the right to use property, is within the range of Fair Market Value and that any payment of compensation for services is within the range of Reasonable Compensation. As used in this and other provisions of these Articles, the term "*Fair Market Value*" shall have the meaning set forth in Section 53.4958-4(b)(1)(i) of the Treasury Regulations.

5.2 Number. The Board shall consist of nine (9) Directors to be appointed by the Governor. Each Director must satisfy the qualifications prescribed by the Ohio Revised Code.

5.3 Appointment and Term of Directors. The Governor shall appoint the initial Directors within sixty (60) days after filing these Articles with the Ohio Secretary of State (the date of filing these Articles, the "*Effective Date*"). Of the initial Directors, two (2) shall be for a term ending one (1) year after the Effective Date, two (2) shall be for a term ending two (2) years after the Effective Date, and five (5) shall be for a term ending four (4) years after the Effective Date. Following the initial appointments, the Governor shall appoint Directors to terms of office of four (4) years, with each term of office ending on the same day of the same month as did the term that it succeeds.

5.4 Resignation and Vacancy. Any Director may resign at any time by giving written notice to the Chairperson of the Board (the "*Chair*"). A resignation shall take effect at the time specified in the written notice and, unless otherwise specified, shall become effective upon delivery. The acceptance of any resignation shall not be necessary to make it effective unless so specified in the written notice. If any Director dies, resigns, is removed for Misconduct (as defined in Section 5.5), or if the Director's status changes such that any of the requirements of the Ohio Revised Code are no longer met, then that Director's seat on the Board shall become immediately vacant. The Governor shall forthwith fill any vacancy created by death, resignation,

removal for Misconduct, or disqualifying change in status by appointment for the remainder of the term of office of the vacated seat.

5.5 Removal. A majority of the disinterested Directors is authorized to remove any Director for Misconduct. As used in these Articles, the term "*Misconduct*" shall mean any behavior by a Director that reasonably indicates that the Director has failed to perform his or her fiduciary duties to the Corporation, has failed to comply with the requirements of these Articles, the Code of Regulations or any of the Corporation's conflicts of interest or ethical policies, has failed to meet his or her obligations as a director under Ohio law, has been convicted of a felony, or has otherwise engaged, through act or omission, in similar behaviors that a majority of the disinterested Directors reasonably determines warrants removal for Misconduct. A majority of the disinterested Directors shall have sole authority to determine whether a Director should be removed from office on the basis of Misconduct.

5.6 No Director Compensation; Reimbursement of Expenses. A Director shall not receive any compensation from the Corporation for his or her services to the Corporation in his or her capacity as a Director. However, Directors may be reimbursed for actual and necessary expenses incurred in connection with services performed for the Corporation. Any such reimbursement for actual and necessary expenses shall be made pursuant to a reimbursement policy adopted by the Board that meets the requirements of an "accountable plan" within the meaning of Section 1.62-2(c)(2) of the Treasury Regulations.

ARTICLE VI

Committees of the Board

6.1 Committees. The Corporation shall have an Audit Committee to be comprised of Directors, an Executive Committee to be comprised of Directors, and a Compensation Committee to be comprised of Directors. In addition, the Board may, by resolution, designate one (1) or more other committees, which committees shall have and exercise the power and authority of the Board to the extent provided in such resolution. The designation of a committee and the delegation thereto of such authority shall not operate to relieve the Board or any individual Director of any responsibility imposed by law. Except as otherwise provided by the Ohio Nonprofit Corporation Law, each committee shall serve at the pleasure of the Board and shall be subject to the control and direction of the Board, which may alter or reverse the actions of any committee.

6.2 Audit Committee. The Audit Committee shall consist of that number of members as determined by the Board. The Board shall elect each member of the Audit Committee, and each elected member shall serve for a term determined by the Board. Each member of the Audit Committee shall be a Director. Notwithstanding the foregoing, such member shall serve by reason of his or her service as a Director, and the resignation or removal of such member as a Director shall automatically terminate such member's membership as a member of the Audit Committee. The Audit Committee shall be responsible for hiring an independent certified public accountant to perform a financial audit of the Corporation at least once every year. The Audit Committee may serve such other purposes and perform such other functions as may be assigned by the Board from time to time.

6.3 Executive Committee. The Executive Committee shall consist of that number of members as determined by the Board. The Board shall elect each member of the Executive Committee, and each elected member shall serve for a term determined by the Board. Each member of the Executive Committee shall be a Director. Notwithstanding the foregoing, such member shall serve by reason of his or her service as a Director, and the resignation or removal of such member as a Director shall automatically terminate such member's membership as a member of the Executive Committee. The Executive Committee may serve such purposes and perform such other functions as may be assigned by the Board from time to time, including, without limitation, the power to make decisions on behalf of the Board during the periods between meetings, and such actions by the Executive Committee shall be ratified at the next meeting of the Board.

6.4 Compensation Committee. The Compensation Committee shall consist of that number of members as determined by the Board. The Board shall elect each member of the Compensation Committee, and each elected member shall serve for a term determined by the Board. Each member of the Compensation Committee shall be a Director. Notwithstanding the foregoing, such member shall serve by reason of his or her service as a Director, and the resignation or removal of such member as a Director shall automatically terminate such member's membership as a member of the Compensation Committee. The Compensation Committee shall be responsible for reviewing any plan of compensation for the Corporation's employees recommended by the Chief Investment Officer and for making recommendations regarding any such plan of compensation to the Board for their action under Section 5.1(b) of these Articles. In addition, the Compensation Committee shall review compensation arrangements and property transactions with both employees and independent contractors of the Corporation. When reviewing or approving property or compensation transactions, the Compensation Committee shall follow procedures reasonably calculated to establish the presumption set forth in Section 53.4958-6(a) of the Treasury Regulations that any payment for a transfer of property, or the right to use property, is within the range of Fair Market Value and that any payment of compensation for services is within the range of Reasonable Compensation.

ARTICLE VII

Officers

7.1 Officers. The officers of the Corporation (the "*Officers*") shall be the Chair, the Chief Investment Officer, a President, a Treasurer, and a Secretary. All Officers must be Directors. With the exception of the Chair, whose appointment is governed by Section 7.2, below, and the Chief Investment Officer whose appointment is governed by Section 7.3, below, the Officers shall be appointed by the Board and shall serve at the pleasure and direction of the Board. A Director may simultaneously hold more than one office in the Corporation.

7.2 The Chair. The Chair shall be appointed by the Governor. The Chair shall preside at all meetings of the Board. The Chair shall have such other authorities and duties as are specified in the Ohio Nonprofit Corporation Law, delegated by these Articles, the Code of Regulations, or as may be delegated from time to time by the Board.

7.3 Chief Investment Officer. The Chief Investment Officer shall be appointed by the recommendation of the Board and the approval of the Governor. The Chief Investment Officer

shall serve at the pleasure of the Board; shall be the chief executive officer of the Corporation; shall develop and recommend to the Board an employee compensation plan; shall have the ultimate responsibility for implementing the decisions of the Board and for supervising the management, administration, and operation of the Corporation; and shall have and may exercise the powers and authority normally vested in a chief executive officer, including, without limitation, the power to execute contracts, to spend Corporation funds, and to hire employees on behalf of the Corporation. The Chief Investment Officer shall prepare and submit a report of the Corporation's activities pursuant to Section 187.03(F) of the Ohio Revised Code. The Chief Investment Officer shall have such other authorities and duties as are delegated by, and may be delegated from time to time by, the Board.

7.4 Non-Officer Positions. In addition to the Officer positions specified in Section 7.1 above, the Board may create such other non-officer positions for individuals serving in certain capacities within the Corporation, and the Board may create titles to designate such positions, such as chief operating officer, chief financial officer, chief information officer, vice president, assistant vice president, assistant secretary, assistant treasurer, or such other titles as the Board may deem necessary or appropriate under the circumstances. A Director may hold a non-officer position, but an individual need not be a Director to hold a non-officer position.

7.5 Resignation, Removal, and Vacancies. The Chair may resign at any time by giving written notice to the Governor. Any other Officer of the Corporation may resign at any time by giving written notice to the Chair. Unless otherwise specified in the written notice, a resignation shall be effective upon delivery. The acceptance of any resignation shall not be necessary to make it effective unless so specified in the written notice. Any Officer may be removed, with or without cause, at any time by the Board. Except for the Chair and Chief Investment Officer, the Board shall fill any vacancy among the Officers. Any vacancy in the office of Chair shall be filled by the appointment of a successor by the Governor. Any vacancy in the office of Chief Investment Officer shall be filled by the appointment of a successor upon the recommendation of the Board and the approval of the Governor. Any Chief Investment Officer so appointed shall serve at the pleasure of the Board. Unless otherwise determined by the Governor with respect to the Chair and the Chief Investment Officer, or unless otherwise determined by the Board with respect to the other officer positions, any Officer so appointed or elected shall complete the unexpired term of the vacancy being filled.

ARTICLE VIII

Dissolution

8.1 Events of Dissolution and Procedures. The Corporation shall be dissolved upon the occurrence of either of the following events: (a) the approval of the dissolution of the Corporation by the Board; or (b) the occurrence of any event which causes the mandatory dissolution of the Corporation pursuant to Chapter 187 of the Ohio Revised Code.

8.2 Procedures Upon Dissolution. Upon the dissolution of the Corporation, the Board shall follow any procedures required at the time under Chapter 187 of the Ohio Revised Code, including, without limitation, any separate procedures set forth in Chapter 187 of the Ohio Revised Code subsequent to the filing of these Articles with the Ohio Secretary of State, and any other procedures required at the time by other applicable law. In addition, the procedures for

dissolution may include any other procedures, not inconsistent with the foregoing, that may be appropriate under the circumstances. No dissolution shall take effect until the Corporation has made adequate provision for the payment of any outstanding bonds, notes, or other obligations.

8.3 Distribution of Assets upon Dissolution. Upon the dissolution of the Corporation, the Board shall, after paying or making provision for the payment of all liabilities of the Corporation, distribute all residual assets of the Corporation by making distribution to one (1) or more Qualified Nonprofit Corporations (as defined in Section 8.4, below) designated by the Board to be used by such Qualified Nonprofit Corporation solely for one (1) or more of the purposes set forth in ARTICLE III hereof.

8.4 Definition of Qualified Nonprofit Corporation. A "*Qualified Nonprofit Corporation*" shall mean a nonprofit corporation that meets all of the following criteria: (a) is formed under Chapter 187 of the Ohio Revised Code; (b) has its principal place of business in the State of Ohio; (c) has been in existence for a continuous period of at least sixty (60) calendar months ending on the date of the distribution, or if the Corporation has not been in existence for a continuous period of at least sixty (60) calendar months at the date of distribution, for a continuous period of calendar months equal to at least the period of time the Corporation has been in existence; and (d) is an organization exempt from Federal income tax under Section 501(a) of the Code because it is either an organization described in Section 501(c)(4) of the Code or an organization described in Section 501(c)(3) of the Code.

ARTICLE IX *Amendment*

These Articles or the Code of Regulations may be amended from time to time by the Board. No such amendment may eliminate or modify any provisions of these Articles that are required by Chapter 187 of the Ohio Revised Code; and all such amendments must otherwise be consistent with the applicable provisions of the Ohio Nonprofit Corporation Law. Any amendment of ARTICLE VIII that is permitted by the preceding sentence shall require the affirmative unanimous vote of all nine (9) members of the Board. All other amendments shall be approved by the affirmative vote of two thirds (2/3) of the members of the Board. Any amendment to these Articles or the Code of Regulations shall become effective on the date of its adoption unless such amendment shall otherwise provide.

Exhibit 2

AGREEMENT FOR SERVICES

This Agreement For Services (this "Agreement"), is dated as of this 30th day of January 2012, by and between the Director of Development of the State of Ohio (including any successor thereto, "ODOD"), and JobsOhio, an Ohio nonprofit corporation ("JobsOhio"). This Agreement has ODOD Agreement Control Number of ADMN 12-024. ODOD and JobsOhio are sometimes referred to in this Agreement together as the "Parties" and each individually as a "Party".

Background Information

- A. JobsOhio is an Ohio non-profit corporation created and existing under Ohio Revised Code (ORC) Chapter 1702.
- B. ORC Section 187.04 directs the Director of ODOD (the "Director") to execute a contract for services with JobsOhio to assist the Director by providing services or otherwise carrying out the functions or duties of ODOD, including the operation and management of programs, all as may be determined by the Director.
- C. The parties desire to enter into this Agreement in order to outline the services to be provided to ODOD by JobsOhio in consideration for the payments under this Agreement.

Provisions

NOW, THEREFORE, in consideration of the foregoing and the respective representations and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. Controlling Board Approval. Pursuant to ORC Sections 127.16(B) and 187.04, this Agreement shall not be valid and enforceable until the Controlling Board of the State of Ohio (the "Controlling Board") has approved the expenditure of funds pursuant to the terms of this Agreement. As a result, funds in an amount not to exceed Three Million Dollars (\$3,000,000) (the "Funds") have been made available to JobsOhio by the Controlling Board Action No. DEV _____-12 dated _____, 2012, for the purposes of securing the services of JobsOhio, as more specifically described in this Agreement, including any and all exhibits attached hereto and incorporated herein by reference, as amended from time to time. The Funds include the initial payment of One Million Dollars (\$1,000,000) (the "Initial Payment") authorized by Section 5 of Amended Substitute House Bill No. 1 of the 129th Ohio General Assembly, as amended by Section 605.10 of the Amended Substitute House Bill No. 153 (collectively, the "JobsOhio Bill"), which will be paid pursuant to Section 5(a) below, as well as the additional funds due pursuant to Section 5(b) below, all as payment for the services described herein.

2. Statement of Work by Both Parties.

- (a) ODOD and JobsOhio shall each, pursuant to and in accordance with ORC Chapter 187, undertake the work and activities for each such Party that is set forth in Exhibit I, ("**Scope of Work**"), which is attached hereto, made a part hereof, and incorporated herein by reference as if fully rewritten herein.
- (b) JobsOhio shall consult with the personnel of ODOD and with other appropriate persons, agencies, or instrumentalities, as necessary, to ensure a complete understanding of the work and satisfactory completion thereof.

3. ODOD's Instructions. ODOD may, through its Director or another authorized ODOD representative, from time to time as it determines appropriate and necessary, communicate to JobsOhio in writing reasonable instructions and requests, consistent with the Scope of Work, concerning the specific work to be performed by JobsOhio under this Agreement. Upon receipt of such communication and within a reasonable time, JobsOhio shall comply with such instructions and fulfill such requests to the reasonable satisfaction of ODOD. It is expressly understood by the Parties that such instructions and requests are for the sole purpose of assisting with the performance of the specific tasks requested and to ensure satisfactory completion of the Scope of Work.

4. Term of Agreement/Renewal. This Agreement shall be binding upon the Parties and shall commence on July 5, 2011 (the "**Effective Date**") and shall expire on June 30, 2013 (the "**Project Completion Date**"); provided, however, this Agreement shall not take effect until it is approved by the Controlling Board. The period from the Effective Date to the Project Completion Date shall be the "**Term**" of the Agreement. This Agreement may be renewed upon written agreement of the Parties, with the understanding that (i) only the compensation outlined in Section 5(b) would apply during any such renewal period and (ii) as part of any such renewal or extension the Parties shall update the Scope of Work as well as updating the scorecard, measurement dates, metrics and strategic plan in accordance with the terms of this Agreement.

5. Compensation. In support for and in consideration of the services provided and to be provided by JobsOhio pursuant to the terms herein, ODOD agrees to pay to JobsOhio the following:

- (a) Within a reasonable period following approval by the Controlling Board, the balance of the Initial Payment, recognizing that the amount payable hereunder shall be reduced by an amount equal to One Hundred Ninety-One Thousand Seven Hundred Seventy-Eight Dollars and 93/100 (\$191,778.93), for the items outlined in the Report to the Controlling Board dated August 17, 2011 attached as Exhibit II and such further amounts advanced by ODOD for services to be rendered by JobsOhio, as outlined in future reports submitted to the Controlling Board, shall be paid to JobsOhio (the "**Balance**"). The Balance shall be paid within thirty (30) days of ODOD's receipt of an invoice from JobsOhio.
- (b) For services provided for the administration of the Direct 166, Ohio Enterprise Bond Fund, Research & Development Loan, Innovation Ohio Loan programs, ODOD shall

pay JobsOhio on a monthly basis, beginning March 30, 2012 or such later date agreed upon by the parties, the commitment fees and application fees paid by any borrowers to ODOD during the preceding month, consistent with the fee structure established by the Director in accordance with governing laws, provided that such fee schedule shall be increased or decreased upon the recommendation of JobsOhio with the consent of the Director, but in an amount not to exceed Two Million Dollars (\$2,000,000). The fees due JobsOhio under this subsection shall be due no later than thirty (30) days after ODOD's receipt of an invoice from JobsOhio that details the commitment and application fees paid by any and all proposed borrowers during the preceding month.

JobsOhio shall not be otherwise compensated by ODOD for services rendered hereunder, except as expressly set forth herein or pursuant to a written amendment signed by both Parties.

6. Metrics and Strategic Plan.

- (a) No later than 60 days after the execution of this contract, JobsOhio will deliver to ODOD a written operating guidelines document outlining processes and procedures for the services to be provided hereunder and implementing the items included in the Scope of Work.
- (b) No later than March 1, 2013 and March 1st of each year thereafter, the Parties agree to update the Scope of Work and metrics, which when initialed by both Parties shall then supersede the original Exhibits I and III and become a part of this Agreement and incorporated herein by reference as if fully rewritten herein without further action of the Parties. The Parties may, at their option, update the Scope of Work and metrics on March 1, 2012, but shall not be obligated to do so.
- (c) No later than March 1st, 2012 and March 1st of each year thereafter, JobsOhio shall deliver to ODOD an updated Strategic Plan as well as the annual results of the metrics referenced in Exhibit III, which shall include the items required under ORC 187.03(F). JobsOhio shall not implement any such Strategic Plan unless and until it has been approved by the Director of ODOD after the Director has consulted with the Governor of the State of Ohio concerning the Plan.

7. Exclusivity. During the Term, JobsOhio agrees to provide the services covered by this Agreement exclusively for ODOD and the JobsOhio network, as defined in the Jobs Ohio Network Program Fiscal Year 2012 Requests for Proposal issued by the Third Frontier Commission (the "JobsOhio Network"), a copy of which has been provided to JobsOhio. JobsOhio agrees that it shall not perform services for any other party unless and until JobsOhio has obtained ODOD's prior written approval, which shall not be unreasonably withheld. During the Term, ODOD agrees to procure the services described in Exhibit I only from JobsOhio and the JobsOhio Network, as such network may be modified from time to time, and shall not procure those services from any other party unless and until ODOD has obtained JobsOhio's prior written approval, which approval shall not be unreasonably withheld, subject to ODOD's obligation to work with existing governmental authorities.

8. Resolution of Differences/Termination.

(a) Matters of difference between the Parties arising under this Agreement shall initially be referred to the applicable JobsOhio General or Project Manager and ODOD's Chief of Business Services Division. If these individuals are unable to resolve the matter(s) of difference within ten (10) business days after the matter was referred to them, they shall be submitted to JobOhio's Chief Operating Officer and ODOD's Assistant Director for resolution. If these individuals are unable to resolve the matter(s) of difference within an additional ten (10) business days, the matter(s) shall be submitted to JobOhio's Chief Investment Officer and ODOD's Director. All individuals to whom matters of difference are referred under this paragraph shall use their best efforts to resolve those matter(s).

(b) ODOD may terminate this Agreement in accordance with any of the following provisions:

(i) upon ninety (90) days written notice to JobsOhio if JobsOhio materially fails to perform the work and activities set forth in Exhibit I and if JobsOhio materially fails to meet the targeted goals set forth herein and in Exhibit III as updated pursuant to Section 6 herein, unless there are economic or other circumstances beyond JobOhio's reasonable control that in the judgment of a reasonable person would excuse such failure, and the matters are not resolved through the process outlined in subsection (a) above;

(ii) upon written notice to JobsOhio if a law is enacted and takes effect that directs ODOD to terminate this Agreement in accordance with this Agreement's terms and provisions; or

(iii) Upon written notice if a state or federal law enforcement officer, agency or other investigative authority, or a state or federal court, provides the Governor of the State of Ohio with an investigative report produced by such officer, agency, authority or court, a court ruling, that the Governor reasonably deems reliable and provides clear and convincing evidence of an act or omission by a director or officer of JobsOhio, in the course and scope of his or her duties and responsibilities at JobsOhio, constituting either a crime punishable as a felony or a material violation of applicable law (such a crime or violation, a "Violation"), and, after reviewing the report or ruling, the Governor, in his or her reasonable judgment after consultation with legal counsel determines that such Violation:

(A) has resulted or is likely to result in a material financial loss to the JobsOhio; or

(B) (1)involved a material violation of (1) JobsOhio's conflict of interest policy, as it may be amended from time to time, (2) any other applicable corporate governance or ethics policy which Jobs Ohio may enact, (3) state or federal securities laws, or (4) any other ethical, fiduciary or corporate governance standards, rules or

regulations applicable to JobsOhio or its business under Ohio or federal law or rule, and (II) which has materially adversely affected the ability of JobsOhio to act in a manner consistent with its stated purpose set forth in its Organizational Documents.

9. Maintenance of Records. JobsOhio shall maintain its records regarding this Agreement, including its records of the Funds and the services it provided to ODOD under the Scope of Work, the use of the Funds, financial reports, job creation and retention statistics, and all other information pertaining to JobsOhio's performance of its obligations under this Agreement, in accordance with its records retention policy and for at least three (3) years after the last day of the Term or such earlier termination date as may be applicable. JobsOhio also agrees that any records requested by ODOD, its agents or other appropriate State agencies or officials with respect to any costs, audit disallowances, or matters of difference between ODOD and JobsOhio shall be maintained until that matter is resolved by the Parties.

10. Designation of Records to be Made Available to the Public. JobsOhio and ODOD hereby agree that JobsOhio shall, no later than December 31, 2012 and by each December 31st thereafter following a year in which this Agreement was in effect, submit the following records for that prior fiscal year to ODOD, which records shall be kept on file by ODOD and made available to the public under the same conditions as are public records under ORC Section 149.43:

- (a) JobsOhio's federal income tax returns, as filed, or any requests for extensions, if accepted by the Internal Revenue Service; in the event that JobsOhio's federal income tax return for a tax year is not filed by December 31st following the end of such tax year, JobsOhio shall provide that federal income tax return to ODOD within 15 days of its filing with the Internal Revenue Service.
- (b) The quarterly reports of actual or in-kind expenditures for the travel, meals or lodging of any public official or employee, as described in ORC Section 187.03(B)(3), provided that notwithstanding anything herein, such reports shall be made available quarterly, commencing March 31, 2012 as more fully described in Section 11 below.
- (c) The annual total compensation paid to each officer and employee of JobsOhio. The Parties agree that this information may be transmitted electronically to ODOD, with supporting documentation to be available upon the written request of ODOD.
- (d) A copy of the audit report for each financial audit of JobsOhio performed by an independent certified public accountant pursuant to ORC Section 187.01(J).
- (e) Records of any fully executed incentive proposal, subject to the redaction of trade secret information protected under existing statutory provisions. The Parties agree that this shall be in the form of summary spreadsheets to include reasonable detail as agreed upon by the Parties of the incentive proposals, with supporting documentation to be available upon the written request of ODOD.
- (f) Records pertaining to the monitoring of commitments made by incentive recipients.

- (g) Any records that may be required of JobsOhio under any other applicable provision of the Ohio Revised Code, but in no event shall the provision obligate JobsOhio to provide records related to any private funds expended in relation to the performance of services herein.
- (h) The employee acknowledgements required under Section 27 below.
- (i) The conflict of interest policy adopted pursuant to ORC Section 187.01(F)(6).
- (j) The records retention policy required under ORC Section 187.01(F)(8).
- (k) The standards of conduct for the Directors of JobsOhio, as required under ORC Section 187.01(F)(9).
- (l) The whistleblower policy adopted by JobsOhio.
- (m) The conflict acknowledgements required under ORC Section 187.06(G).
- (n) All recommendations provided by JobsOhio to ODOD in furtherance of the services provided herein.
- (o) A copy of the minutes of all meetings described in ORC Sections 187.03(C) not otherwise closed to the public.

The foregoing list is not intended to obligate JobsOhio to submit duplicates of documents that have already been delivered to ODOD and remain current, and JobsOhio shall only be obligated to submit updates to documents already on file with ODOD. As of the date of this Agreement, ODOD acknowledges that JobsOhio has already submitted to ODOD the conflict of interest policy, the records retention policy, the standards of conduct for the Directors of JobsOhio, and the whistleblower policy referenced in subsections (i), (j), (k), and (l), respectively.

11. Other Reporting Requirements.

- (a) On a quarterly basis starting on March 31, 2012 and on the last day of each third month thereafter, JobsOhio shall file with ODOD written reports of actual or in-kind expenditures for the travel, meals or lodging of any public official or employee as described in ORC Section 187.03(B)(3).
- (b) ODOD prepared and submitted to the Controlling Board of the State of Ohio (the “**Controlling Board**”) on August 17, 2011 a report detailing the use of the portion of the Initial Payment that has been expended through August 12, 2011. ODOD shall submit to the Controlling Board a report not later than every six months thereafter detailing JobsOhio’s use of the funds remaining from the Initial Payment until all of the Initial Payment has been fully expended for legally authorized purposes pursuant to governing law or JobsOhio determines it will no longer requests additional amounts of those Funds,

which will be documented in a writing to ODOD. JobsOhio also agrees to submit to ODOD any and all supporting documentation reasonably requested by ODOD to document such expenditures so that ODOD can prepare those reports to the Controlling Board.

(c) JobsOhio agrees to immediately notify the Director upon learning of (i) the existence of any material legal, judicial or regulatory proceedings affecting JobsOhio or a matter that is not covered by JobsOhio's comprehensive general liability insurance referred to in Section 15 below, either of which, if adversely determined, would cause a material adverse change in the business, prospects, assets or condition (financial or otherwise) of JobsOhio and its ability to perform the services herein, or (ii) any other event or condition causing a material adverse change in the business, prospects, assets or condition (financial or otherwise) of JobsOhio and its ability to perform the services herein.

12. Inspection and Copying. At any time during normal business hours and upon not less than twenty-four (24) hours prior written notice, JobsOhio shall make available to ODOD, its agents or those other State agencies or officials authorized by law, all books and records regarding this Agreement which are in the possession or control of JobsOhio, including, but not limited to, records of personnel referenced in Section 10 above. ODOD may review, inspect and make copies of such books and records in such a manner as not to interfere unreasonably with the normal business operations of JobsOhio. JobsOhio shall, at its own cost and expense, segregate from JobsOhio's other records those records to be made available for review, inspection or copying pursuant to this Section.

13. Certification of Funds. It is expressly understood by the Parties that none of the rights, duties, or obligations described in this Agreement shall be binding on either Party until the provisions of ORC Section 126.07 have been complied with and all necessary funds are made available and forthcoming from the appropriate State agencies, and, when required, any such expenditure of funds is approved by the Controlling Board. ODOD shall provide JobsOhio with written evidence of any Controlling Board action within thirty (30) days after the date on which that action is taken by the Controlling Board.

14. Equal Employment Opportunity. Pursuant to ORC Section 125.111, JobsOhio agrees that JobsOhio, any subcontractor of JobsOhio, and any person acting on behalf of JobsOhio or subcontractor of JobsOhio, shall not discriminate, by reason of race, color, religion, sex, age, disability, military status, national origin, or ancestry against any citizen of this State in the employment of any person qualified and available to perform work under this Agreement. JobsOhio further agrees that JobsOhio, any subcontractor of JobsOhio and any person acting on behalf of JobsOhio or any subcontractor of JobsOhio shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Agreement on account of race, color, religion, sex, age, disability, military status, national origin or ancestry.

15. Liability and Bonds. During the Term of this Agreement, JobsOhio shall obtain and maintain for itself, comprehensive general liability insurance with a minimum of Three Million

Dollars (\$3,000,000) combined single limit for claims that may arise from its operations related to this Agreement, whether such claim is made during or after the expiration/termination of the Agreement. Before commencing his/her duties or receiving any monies, each employee of JobsOhio that handles checks or monies from applicants shall be covered by a fidelity/surety bond to JobsOhio and ODOD in the penal sum of not less than \$100,000 or such other amount as may be agreed by the parties, such fidelity/surety bond to be conditioned upon the faithful performance of the duties of the office, to be executed by sureties satisfactory to JobsOhio and ODOD, provided that in the alternative, JobsOhio may provide insurance covering theft and loss in form, substance and amount reasonably satisfactory to the Director. Evidence of insurance and the bonds shall be provided to ODOD and that insurance shall contain a clause to the effect that cancellations, reductions, or restrictions shall not be made without thirty (30) days prior written notice to ODOD. JobsOhio shall provide ODOD an annual update of the required insurance coverage and bonds for each calendar year this Agreement is in effect.

16. Indemnification. JobsOhio agrees to indemnify and to hold ODOD and the State of Ohio and their employees harmless from and against any and all claims of third parties for personal injury or damages to property arising from JobsOhio's performance or non-performance of its obligations under or activities in furtherance of this Agreement, which claims are attributable to JobsOhio's own negligent acts or omissions or those of its trustees, officers, employees, subcontractors, suppliers, or agents utilized by JobsOhio while acting under this Agreement, including, but not limited to claims made under the Fair Labor Standards Act or under any other federal or state law involving wages, overtime, or employment matters and any claims involving patents, copyrights, and trademarks. JobsOhio shall bear all costs incurred by ODOD and the State of Ohio defending against any such claims, but in no event shall the indemnification by JobsOhio under this paragraph include or cover liability for special, indirect, incidental, economic, consequential or punitive damages, regardless of the legal theory under which such damages are sought. ODOD agrees that the insurance provided for in Section 15 shall be the sole source of payment of the indemnification obligations under this Section.

17. Ethics Laws. JobsOhio, by executing this Agreement, certifies that it is and covenants that it shall remain in compliance with the applicable State of Ohio ethics (ORC Chapter 102), campaign financing (ORC Chapter 3517, including but not limited to divisions (I) and (J) of Section 3517.13 and Section 187.12), and lobbying (ORC Sections 101.70 and 121.60 et seq.) laws.

18. No Conflict of Interest. JobsOhio shall adopt and maintain a conflict of interest policy consistent with that recommended by the Internal Revenue Service for tax-exempt entities and complying with the provisions of ORC Section 187.06. No employee, officer, or Board member of JobsOhio, subcontractor of JobsOhio or employee, officer or Board member of any such subcontractor of JobsOhio, or public official who exercises any functions or responsibilities in connection with the review or approval of any work completed under this Agreement shall, prior to the completion of such work, voluntarily or involuntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge or fulfillment of his or her functions or responsibilities with respect to the completion of the work contemplated under this Agreement. Any such person, who, prior to or after the execution of this Agreement, acquires any personal interest, involuntarily or voluntarily, shall immediately disclose that interest to JobsOhio and ODOD in writing. Thereafter, such person shall not participate in any

action affecting the work under this Agreement unless ODOD or the Ohio Ethics Commission determines that, in light of the personal interest disclosed, such person's participation in that action would not be contrary to the Ethics laws.

19. Drug-Free Workplace Compliance. In the event that work performed pursuant to the terms of this Agreement will be done while on State property, JobsOhio hereby certifies that all of its employees, while working on State property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

20. No Outstanding Liabilities. JobsOhio represents and warrants to ODOD that JobsOhio does not owe: (1) any delinquent taxes to the State of Ohio or a political subdivision of the State of Ohio; (2) any moneys to the State of Ohio or a state agency for the administration or enforcement of any environmental laws of the State of Ohio; and (3) any other moneys to the State of Ohio, a state agency or a political subdivision of the State of Ohio that are past due, whether or not the amounts owed are being contested in a court of law.

21. Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization. JobsOhio agrees to certify its compliance with ORC Section 2909.33.

22. No Unresolved Findings of Recovery. JobsOhio warrants that it is not subject to an unresolved finding for recovery under ORC Section 9.24. If this warranty is determined to be false, this Agreement is void *ab initio* and JobsOhio must immediately repay to ODOD any Funds paid to it under this Agreement.

23. Adherence to State and Federal Laws and Regulations. JobsOhio agrees to comply with all applicable federal, state, and local laws related to JobsOhio's performance of this Agreement. JobsOhio accepts full responsibility for payment of all unemployment compensation, insurance premiums, workers' compensation premiums, all income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by JobsOhio in the performance of the terms of this Agreement.

24. No Agency/Joint Venture Relationship. The relationship of the Parties under this Agreement shall be that of independent contractors, and nothing in this Agreement shall or shall be deemed to create a partnership, joint venture, franchise, representative/agency or employment relationship between the Parties. JobsOhio shall have no power or authority to bind the State of Ohio or ODOD, or to assume or create an obligation or responsibility, expressed or implied, on behalf of the State of Ohio or ODOD or in their names, nor shall JobsOhio represent to any person that it has any such power or authority.

25. Confidentiality. As used herein, "**Confidential Information**" means any and all information provided by one Party to the other Party, whether in written, electronic or oral form, and including without limitation, proprietary information, customer information, which is, by its nature, the type of information that a prudent business person would maintain as confidential, and trade secrets as protected in the State by operation of ORC Sections 1333.61 to 1333.69. In the event either Party visits any of the offices of the other Party, Confidential Information shall also include such information that may come to the visiting Party's knowledge by observation or otherwise as a result of any such visit. Each party acknowledges that

Confidential Information may include personal or proprietary information relating to businesses or individuals doing or potentially doing business in Ohio. Each party shall use Confidential Information only in connection with the purposes set forth herein. Each party agrees to use reasonable efforts to safeguard Confidential Information and to prevent the unauthorized, negligent or inadvertent disclosure of Confidential Information. "Reasonable efforts" means efforts not less than those the one party employs to protect its own Confidential Information and, in any event, efforts not less than those a prudent business person would take to protect his or her own confidential and proprietary information. No Party shall, without the prior written approval of the other Party, directly or indirectly disclose Confidential Information to any person or business entity except to its own employees and representatives, including, without limitation, attorneys, accountants and financial advisors on a need-to-know basis for the purposes contemplated by this Agreement.

Without limiting the generality of the foregoing, if either Party experiences any breach of data security that exposes the Confidential Information to disclosure or unauthorized use, that Party agrees to bear all costs to notify every individual whose Confidential Information may have been compromised and in cases where JobsOhio experiences that breach of data, JobsOhio agrees that shall also hold ODOD harmless from any claim arising from or related to such breach, subject to the limitations in Section 16.

26. Due Diligence for Potential Projects. JobsOhio agrees to undertake appropriate due diligence prior to presenting any economic development packages to ODOD or consummating any economic development transaction.

27. Employees Not State Employees/Employee Acknowledgements. JobsOhio acknowledges and agrees that, consistent with the provisions of ORC Sections 124.01(F) and 145.012, its employees are not and shall not be deemed to be "public employees" as defined in ORC Section 145.01(A). In furtherance thereof, JobsOhio agrees to have each of its employees execute an acknowledgement to that effect and obtain from each of its employees their consent to provide copies to ODOD or the Ohio Public Employees Retirement System, upon the written request of either of them.

28. No Commingling of Funds/No Equity Investments. JobsOhio agrees that it shall not commingle the payment of Funds being made hereunder by ODOD or received by JobsOhio as part of the loan application process, shall separately maintain and account for such Funds pursuant to the provisions of ORC 187.07 and shall not grant, lend or loan any of those Funds to, or engage in a joint ownership of or obtain stock in any company, association or corporation using those Funds in accordance with governing laws. JobsOhio further agrees to cause its officers and employees to comply with the provisions of ORC 187.08 and shall forward to ODOD on a daily basis all fees due ODOD as part of the application process.

29. Data Sharing. Notwithstanding the terms of Section 25 above, the parties acknowledge that sharing of certain information and access to each party's databases will be required in order for the parties to perform their respective duties under this Agreement and the use of such databases shall be consistent with the provisions of any underlying license agreement and in all such cases, the confidentiality and use of any such information and database shall also

be in accordance with the provisions of Section 25 above.

30. Limited License. JobsOhio hereby grants to ODOD a limited license to use its name and logo only and expressly in the style and for the purpose of informing the public of the services provided hereunder by JobsOhio. JobsOhio acknowledges that ODOD has heretofore granted a sublicense of this grant to the participants in the JobsOhio Network. ODOD hereby assigns to JobsOhio, on a non-exclusive basis, the sublicense rights granted by ODOD to the participants in the JobsOhio Network, it being the intention of the parties that JobsOhio may take such actions as may be necessary to enforce or modify those rights. ODOD further agrees that it shall, upon the request of JobsOhio, take such actions as may be necessary or appropriate to permit JobsOhio to directly license the JobsOhio name and logo to participants in the JobsOhio Network, including but not limited to notifying such participants that, upon execution of an agreement with JobsOhio that JobsOhio shall have the right, in the place of ODOD to enforce such rights, except that this provision shall not financially obligate ODOD to incur any out-of-pocket expenses.

31. License to Use/Permission to Modify Trade Secret ROI Calculation. ODOD hereby grants to JobsOhio a limited license to use, and grants its permission for JobsOhio to modify, ODOD's Return on Investment ("ROI") calculator, which JobsOhio acknowledges is a trade secret maintained by ODOD and subject to the terms of the confidentiality provisions of Section 25 above. JobsOhio further agrees that any such modified ROI calculator shall be owned by ODOD, and that JobsOhio shall have a perpetual license to use the modified ROI calculation in furtherance of the services provided to ODOD herein or its overall mission.

32. Update to Exhibits. The parties may update the exhibits to this Agreement from time to time in accordance with and pursuant to this Agreement to more accurately reflect the operational matters without further approval of the Controlling Board so long as there is no increase in the amount of Funds to be paid to JobsOhio pursuant to Section 5 above. Notwithstanding the foregoing, any renewal would require Controlling Board approval.

33. Agreement Binding on Parties; No Personal Liability. All covenants, obligations and agreements of the JobsOhio and ODOD contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of ODOD in other than their official capacity or of any individual person who is an officer, director or employee of JobsOhio other than in their capacity as an officer, director or employee, and no ODOD official executing this Agreement, nor any individual person executing this Agreement on behalf of JobsOhio, shall be liable personally by reason of the covenants, obligations or agreements of ODOD or JobsOhio contained in this Agreement.

34. Closeout Report. Within sixty (60) days after the termination or expiration of this Agreement, JobsOhio shall submit to ODOD a closeout report setting forth the pending projects related to JobsOhio's administration of ODOD's loan program or negotiation of pending tax credits or grants as well as a reasonable detailed description of the status of each project at the time of termination or expiration. JobsOhio shall further cooperate in transferring the services back to ODOD and continuing the license to use the technology covered under the data sharing

provisions of Section 29 of this Agreement. This provision of this Section shall survive the expiration or termination of this Agreement.

35. Miscellaneous.

(a) *Governing Law.* This Agreement shall be governed by the laws of the State of Ohio as to all matters, including but not limited to matters of validity, construction, effect and performance.

(b) *Forum and Venue.* All actions regarding this Agreement shall be brought in a court of competent subject matter jurisdiction in Franklin County, Ohio.

(c) *Entire Agreement.* This Agreement and its exhibits and any documents referred to herein constitute the complete understanding of the Parties and merge and supersede any and all other discussions, agreements and understandings, either oral or written, between the Parties with respect to the subject matter hereof.

(d) *Severability.* Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision of this Agreement.

(e) *Conflict of Provisions.* Should it be determined that a provision within this Agreement conflicts with a provision set forth in Exhibit I, Scope of Work, then the language of Exhibit I, Scope of Work shall control as being the more specific terms and conditions of this Agreement.

(f) *Notices.* All notices, consents, demands, requests and other communications which may or are required to be given hereunder shall be in writing and shall be deemed duly given if personally delivered or sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses set forth hereunder or to such other address as the other Party hereto may designate in written notice transmitted in accordance with this provision.

In case of ODOD, to:
Ohio Department of Development
Attention: Director
P.O. Box 1001
Columbus, Ohio 43216-1001

In case of JobsOhio, to:
JobsOhio
Office of Chief Investment Officer
41 S. High Street, Suite 2240
Columbus, Ohio 43215

Notwithstanding the foregoing, ordinary communications regarding the services being provided by JobsOhio may be sent by electronic mail or other means of communications to the designated representatives of ODOD and JobsOhio.

(g) *Amendments or Modifications.* Either Party may at any time during the Term request amendments or modifications of this Agreement. Requests for amendments or modifications of this Agreement shall be in writing and shall specify the requested change(s) and the reason for such change(s). Should the Parties consent to modification of this Agreement, then an amendment shall be drawn, approved, and executed in the same manner as the approval and execution of the Agreement.

(h) *Forbearance; No Waiver.* No act of forbearance or failure to insist on the prompt performance by a Party of its obligations under this Agreement, either express or implied, shall be construed as a waiver by the other Party of any of its rights hereunder.

(i) *Pronouns; Singular and Plural.* The use of any gender pronoun shall be deemed to include both genders, and the use of the singular shall be deemed to include the plural, and vice versa, whenever the context so requires.

(j) *Headings.* Section headings contained in this Agreement are inserted for convenience only and shall not be deemed to be a part of this Agreement.

(k) *Successors and Assignment.* This Agreement shall be binding upon JobsOhio and its subsidiaries and ODOD and its successors. The Parties may only assign this Agreement with the consent of the other; provided, however, that nothing in this Agreement shall prevent JobsOhio from assigning its rights, duties and obligations under this Agreement to a subsidiary in which JobsOhio is its sole member so long as such subsidiary has signed an assumption agreement and a copy has been provided to ODOD, but in any such event, JobsOhio shall still be responsible for the performance of the services outlined in this Agreement.

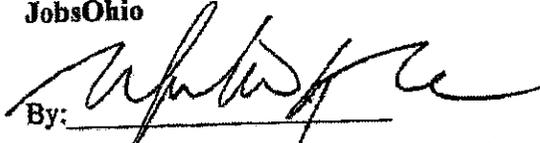
(l) *Counterparts.* This Agreement may be executed in two or more counterparts,

[Space intentionally left blank]

each of which will be deemed an original, but which together will constitute one and the same instrument. Delivery of an executed signature page to this Agreement by facsimile or other electronic transmission (including documents in Adobe PDF format) will be effective as delivery of a manually executed counterpart to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the last day and year set forth below.

JobsOhio

By: 

Title: President / Interim Chief Investment Officer

Date: 1/20/12

Director of Development of the State of Ohio,

By: 

Christiane Schmenk, Director

Date: 1/30/12

Exhibits:

Exhibit I – Scope of Work

Exhibit II – Controlling Board Letter

Exhibit III - Metrics



**Department of
Development**

Exhibit II – Controlling Board Letter

John R. Kasich, Governor

Christiane Schmenk, Director

August 17, 2011

Randy Cole, President
State of Ohio Controlling Board
30 E. Broad St., 34th Floor
Columbus, OH 43215-3457

Dear President Cole:

Amended Substitute House Bill No. 1 of the 129th Ohio General Assembly (the "JobsOhio Bill"), established the JobsOhio non-profit corporation. Section 5 of the JobsOhio Bill allows the Ohio Department of Development (ODOD) to use up to \$1 million of the department's General Revenue Funds for JobsOhio transition and startup costs. ODOD is required to provide semi-annual reports to the Controlling Board detailing the use of these funds, until they are depleted.

This table provides you with the reportable information through August 12, 2011.

Item	Cost
Desktop Computers	\$1,628.97
Laptop Computers	\$14,090.59
Monitors	\$1,798.00
Software	\$4,371.70
Other Computer Peripherals	\$1,663.85
Multifunction Machines	\$10,131.00
Insurance	\$68,000.00
Total:	\$101,684.11

ALI 195527 Appropriation Remaining: \$898,315.89

*All costs are reported on an accrual basis.

Please contact me if you have any questions about this report. I look forward to providing you with a second report in February. Thank you.

Sincerely,

Christiane Schmenk
Director

77 South High Street
P.O. Box 1001
Columbus, Ohio 43216-1001 U.S.A.
614 | 466 2480
800 | 848 1300
www.development.ohio.gov

The State of Ohio is an Equal Opportunity Employer and Provider of ADA Services

Exhibit I
Scope of Work

1. JobsOhio will be the forward face of economic development in Ohio, focusing on bringing new capital investment and jobs to Ohio through a statewide jobs and business retention and expansion program and a targeted, aggressive jobs and business attraction program. JobsOhio will lead the State's economic development strategy, company interactions and project management. The primary measures of success with respect to these programs will be the State's cumulative (as calculated on an annual basis) and defined in the attached Exhibit III/JobsOhio Metrics:
 - a. Net new jobs created;
 - b. New payroll for jobs created;
 - c. Jobs retained to Ohio;
 - d. Retained payroll;
 - e. New capital investment; and
 - f. Return on investment.

2. JobsOhio will work in cooperation with ODOD to build the JobsOhio Network, including:
 - a. Providing initial and ongoing training to JobsOhio Network partners;
 - b. Developing protocols and providing oversight of the regional project management process for the JobsOhio Network, including fair representation of jobs and business retention, expansion and attraction projects within each region;
 - c. Coordinating regional economic development research activities;
 - d. Coordinating statewide sales and marketing activities and messaging;
 - e. Overseeing the coordination of a statewide retention and expansion effort; and
 - f. Conducting ongoing assessments of the JobsOhio Network including supporting the development and tracking of metrics that will be used to evaluate network participants.And ODOD will provide to the JobsOhio network:
 - a. Funding as determined and approved by and through the Ohio Third Frontier Commission;
 - b. Review JobsOhio's Evaluations/assessments of identified metrics; and
 - c. Referral of all economic development leads/projects to JobsOhio.

3. JobsOhio will assist the Director of ODOD in performing the Director's functions and duties by developing, operating and managing the economic development process from start to closing. JobsOhio will jointly develop and adopt policies/processes outlining how ODOD and JobsOhio will interact during the deal-making process in accordance with operating guidelines agreed upon by the parties. Highlights of the process are:
 - a. All economic development leads and projects will be led by JobsOhio in cooperation with the JobsOhio network, consistent with the terms of their respective grant agreements with the Ohio Third Frontier Commission and their agreements with JobsOhio including, but not limited to the Code of Conduct developed by JobsOhio for all members of the JobsOhio network. This includes:
 - i. Pro-active sales and lead generation;
 - ii. Business retention and expansion; and
 - iii. New business attraction.
 - b. Steps of the process include:
 - i. Identification of projects/conversion of leads into projects.
 - ii. Initial assessment of project needs.

Exhibit I
Scope of Work

- iii. Structuring and negotiation of incentives, including providing recommendations to the Director of ODOD on suggested State incentives to be made with public funds in accordance with ODOD's eligibility requirements. State programs that can be serviced by JobsOhio may include but are not limited to:
 - 1. Loans, including Direct 166, Ohio Enterprise Bond Fund, Research & Development Loan and Tax Credit Program, Innovation Ohio Loan Program, and others as may be deemed appropriate by the Director of ODOD and JobsOhio;
 - 2. Grants, including any training, infrastructure or other state or federal business development grants administered by ODOD;
 - 3. Tax Credits, including the Job Creation Tax Credit, the Job Retention Tax Credit programs and the Datacenter Sales and Use Tax Exemption; and
 - 4. Other programs, as and if applicable.
 - iv. ODOD will be responsible for the administration of all compliance and reporting for public funds and JobsOhio will collaborate with ODOD on any future joint management of compliance and reporting.
 - v. JobsOhio will work directly with the various departments, agencies and commissions and other entities of the state of Ohio on the resolution of business and economic development issues, keeping ODOD apprised of these outreach activities in a manner agreed upon in the operating guidelines between ODOD and JobsOhio.
4. JobsOhio will develop and operate a state-wide Customer Relationship Management (CRM) system (initially, this will be provided under SalesForce.com) that will allow streamlined management of all projects in the lead and project sales funnel. These activities will include:
- a. JobsOhio will develop system specifications and policies (including confidentiality and data integrity policies) for the JobsOhio Network CRM.
 - b. JobsOhio will maintain the state-wide system including ongoing software program updates and user support for regional JobsOhio Network partners.
 - c. JobsOhio and JobsOhio Network partners will be responsible for all lead and project data, and JobsOhio will insure that all records contain up to date information.
 - d. In the policies/processes developed and adopted under #3 above and any subsequent process/protocol documents, any incentives committing public funds will be formally approved by the ODOD Director and/or that Director's delegate.
 - e. JobsOhio will work with each company to accurately complete the application and review.
 - f. JobsOhio will provide ODOD with access to the CRM.
 - g. ODOD will provide access to ongoing project information/files, subject to confidentiality provisions outlined in the Services Agreement.
 - h. ODOD will provide JobsOhio with access to CRM program management tools, including Pivotal and Portfol, under appropriate confidentiality and license agreements.
 - i. ODOD will provide company specific Financial Assistance Applications, subject to applicable law and the confidentiality provisions outlined in the Services Agreement to which this Exhibit I is attached.

Exhibit I
Scope of Work

- j. ODOD and JobsOhio will protect the confidentiality of each party's data/information where permitted or required by law. ODOD and JobsOhio recognize that from time to time they may be required to provide information to other State agencies; in such event, they will work cooperatively to preserve the confidentiality of such data/information to the extent practicable.
5. JobsOhio will cooperate with ODOD to conduct ongoing industry and business research, including:
- a. Industry specific research in Ohio's targeted businesses and industries as identified by JobsOhio with concurrence from ODOD and the Governor's Office. This research will include:
 - i. Information regarding Ohio's existing portfolio of businesses and industries, and key industry data; and
 - ii. Inventory of Ohio assets by business/industry.
 - b. ODOD will provide research support when requested for mutually agreed upon projects, including tax analysis and comparisons.
6. JobsOhio will develop an annual Strategic Plan.
- a. Required elements for that Plan include:
 - i. Business/Industry Strategy, with an evaluation of each business/industry group and its sub-sectors, including forecasting of trends and Ohio's value proposition for each;
 - ii. When appropriate, an assessment of the business climate and recommendations on improvements for the expansion of Ohio's targeted business/industry groups;
 - iii. Policy and program recommendations;
 - iv. Statewide sales plan;
 - v. Statewide marketing plan; and
 - vi. Use of JobsOhio Network.
 - b. JobsOhio shall publish that Strategic Plan annually and on a mutually agreed upon date, after approval from the JobsOhio Board, ODOD and the Governor.
 - c. ODOD will provide support and input on a coordinated communications and marketing plan.
 - d. ODOD will provide services for collateral materials at cost.
7. Required reports and meetings:
- a. Reports for expenditures made under ORC Section 187.03 shall be filed every six months with ODOD until the entire \$1 million appropriation is expended or JobsOhio notifies ODOD in writing that addition funds will not be required from this funding source.
 - b. JobsOhio will publish Annual Reports in accordance with ORC Section 187.03, which may be consolidated with the annual Strategic Plan, as provided in Section 6 of the Agreement
 - c. JobsOhio and ODOD leadership will meet weekly regarding all project related items.

Exhibit III JobsOhio Metrics

Annual JobsOhio Metrics:

A Metrics (leading metrics):

- 1) **Net new jobs created** - *Net new jobs is defined as the total number of new jobs committed to be created within three years by companies expanding or locating in Ohio, and where JobsOhio or the JobsOhio Network played a role in the location or expansion process, less any jobs lost from Ohio in retention projects where JobsOhio or the JobsOhio Network played a role. ('Played a role' is defined as having been listed as a prospect or client in JobsOhio's CRM program and 'jobs lost' are defined/tracked as jobs at risk.)*
- 2) **New payroll** - *Total new payroll attracted to the state from new jobs committed to be created within the first three years and throughout the term of any incentives provided to the company.*
- 3) **Jobs retained to Ohio** - *Total jobs retained to Ohio where JobsOhio or the JobsOhio Network played a role, and the project was listed as a prospect or client. ("Jobs retained" is defined as jobs that are at risk of being lost from Ohio, either through permanent layoff or relocated out of state.)*
- 4) **Retained payroll** - *Total payroll of retained employees.*
- 5) **New capital investment** - *New capital investment (machinery, equipment, land purchases, building acquisition or construction, and any other capitalized expenditure) in Ohio committed within the first three years of the project*
- 6) **Return on Investment** - *Total state return on investment (ROI), average break even point for the state, total local ROI, and total lifetime investment (as defined by the contract period)*

B Metrics (additional/supporting metrics):

- 1) **Total number of projects won** - *(reported as clients)*
- 2) **Total number of projects closed not requiring state incentives** - *(where JobsOhio or the JobsOhio Network played a role)*
- 3) **Total number of retention and expansion calls completed on an annual basis** - *(by JobsOhio or the JobsOhio Network Partners)*
- 4) **Customer Satisfaction Survey** - *(measurement of satisfaction of services provided by JobsOhio and the JobsOhio Network to its customers and partners, including companies and entities receiving assistance, regional and local economic development partners, and other third party providers of economic development services that have received services through JobsOhio or its Network Partners, such as site selection consultants.)*

Exhibit 3

CONTROLLING BOARD

OHIO OFFICE OF BUDGET AND MANAGEMENT

MINUTES OF THE JANUARY 30, 2012 MEETING

President Randy Cole, called the Controlling Board meeting to order at 1:33 p.m. Serving on the Controlling Board were Senator Widener, Representative Jay Hottinger, Senator Shannon Jones, Representative Ron Amstutz, Senator Tom Sawyer and Representative Clayton Luckie.

The minutes of the January 9, 2012 meeting were distributed. A motion to approve the minutes was made by Senator Sawyer, seconded by Senator Jones and approved by the Board members.

Attached is the January 30, 2012 meeting agenda. President Cole stated that the following items were revised. Item 2, AGO0100194-12 a vendor, Tucker, Ellis & West LLP was added to the vendor list for \$50,000. Item 24, DEV0101741 the amount changed in ALI 195527 from \$808,006.07 to \$808,221.07 and the amount in ALI 195625 from \$2M each fiscal year to \$300,000 in FY12 and \$1,700,000 in FY13. The total amount changed from \$2,808,006.07 to \$2,808,221.07. The vendor information changed from \$2,808,006.07 in FY12 to \$1,108,221.07 and from \$2M in FY13 to \$1,700,000 in FY13. These changes were also reflected in the summary paragraph and questions. Item 30, DMH0100232-12-In the funding information the Fund Code changed from 3B00 to 4X50 and the ALI from 335617 to 333607. President Cole stated Item 32, DEV0101901 was withdrawn at the request of the agency.

A motion for blanket approval of all items not held for questions was made by Senator Sawyer, seconded by Senator Jones and approved by the Board members.

The following items were discussed and acted upon as stated.

Item 3, AGO0100195-12 was held by Senator Sawyer. Senator Sawyer asked what reliable funding stream the agency is working to establish instead of using the Controlling Board Emergency Purposes fund. Christina Frass, Chief Financial Officer, Office of the Ohio Attorney General stated they have been working closely with OBM to find a more permanent solution, but to get through FY12 this is the only option available to us. Senator Sawyer asked how the progress was going with OBM. Ms. Frass stated that the progress is good. The item was approved without objection.

Item 4, AUD0100012-12 was held by Senator Widener. Senator Widener asked for an explanation of the request and the fee requested. Rob Brundrett, Director of Legislative Affairs, Office of the Auditor of State stated that the fee will be \$64 per hour. Currently, the fees are set by an outside study we had for our cost allocations and that was approved by the Department of Health and Human Services. This fee is \$61 an hour. We have another proposal in for the increase to \$64 but that has not been approved by the Department of Health and Human Services. We are currently only charging at \$61 an hour. Senator Widener asked if these fees were being paid by state agencies and/or local governments. Mr. Brundrett stated this is strictly an amount for state agencies. Senator Widener asked to address the hiring of new personnel. Mr. Brundrett said that the agency will need fourteen new hires to help with the performance audits. Senator Widener asked if they are permanent full time employees. Mr. Brundrett stated that they will be permanent full time employees. We also have grad student fellows that are part-time. Representative Luckie asked how many will be full time employees. Mr. Brundrett stated thirteen and one will be part time. The item was approved without objection.

RELATOR'S EXHIBIT

3

CONTROLLING BOARD

OHIO OFFICE OF BUDGET AND MANAGEMENT

prices to help cover the debt. Director Goodman stated that this relationship in this contract, our responsibilities and requirements are no different than what we currently have on the 166 funds. Representative Luckie asked if the 166 loan money will come back to the state to replenish the fund or will it stay with JobsOhio. Director Schmenk said that the State with JobsOhio is maintaining the Facilities Establishment Fund and the revolving loans will go back into that fund and not to JobsOhio. Representative Luckie said he has concerns about taking the functions out of the state and give it to a third party when it comes down to having safeguards in place for minority participation.

Representative Hottinger asked if the goals with JobsOhio have been set yet in regards to the net new jobs or the annual payroll. Director Schmenk stated they did not have those goals solidified. JobsOhio is presenting it draft strategic plan to its board of directors this week. They will then supply to us a draft of the strategic plan. Representative Hottinger asked if those will be public information. Director Schmenk confirmed. Representative Hottinger asked for a total number of employees with the department today in comparison to last year at this time. Director Schmenk stated that she believes the department will be 30-40% smaller. Representative Hottinger asked for an explanation on the process of getting out of the contract with JobsOhio. Director Schmenk said there are some specific steps laid out in the contract. Step one is for the head of the department's business services to meet with the project manager of JobsOhio; step two involves the assistant director of development to meet with the CFO of JobsOhio. There is a continuum of steps that provides many opportunities to find a common resolution to prevent things from escalating. There are also ways for the contract to be terminated if there is a material failure to provide the services and if the legislature sees fit to change the law.

Senator Sawyer asked if the Liquor Control employees remain state employees. Director Goodman confirmed. Senator Sawyer asked for an explanation on how the contract deals with public records and how we plan to reconcile differences of opinion. Director Goodman stated that all public records issues will be the same. Anything that we do as a state entity will be open to the public as it relates to the business the department maintains, the merchandising and the regulatory functions. If there are issues that go into what JobsOhio does with their responsibilities, they are allowed to object. Senator Sawyer asked for further explanation on provision thirty one and the whether the administration's return-on-investment calculator is a trade of secret. Director Schmenk stated that they have maintained that the return-on-investment calculations are trade secrets because they typically involve information that has always been protected in these types of incentives. For example, the particular number of jobs ahead of time and the rates of pay associated with those jobs. We believe the contract has not changed the type of information that is being protected. It may be used in a different formula but its information that has been protected in the past. Senator Sawyer stated that there are potentially two dimensions to this. Some of it may deal with it in our capacity to compete with other states and the other could be the ability of those we are trying to attract to use the formula to try to squeeze our negotiations internally. How much of one or the other is part of the thinking? Director Schmenk stated that we are always conducting a balancing act when we are thinking through what incentives to offer a company. We need to maintain the ability to draw the line if something does not make sense for our taxpayers. We will continue to always find that balancing act and try to make a wise decision to make sure these types of assistance programs have a net benefit for our taxpayers. Senator Sawyer stated that knowing how this public/private partnership is progressing is enormously important. Senator Sawyer asked for thoughts on how we as legislators can evaluate how the departments and JobsOhio are doing. Director Schmenk stated that she believes they will be reporting very regularly to members of the legislature on how we are doing. This is a new model for Ohio, but has been practiced on the local level in several Ohio counties. The key is to continue to evaluate and report how things are working. Senator Sawyer asked if

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Items 39-40, DMH0100233-12 and DMH0100234-12 were held as a group by Senator Widener. Senator Widener asked why the out of state companies were chosen for the purchase of food. Holly Jones, Budget Analyst, Ohio Department of Mental Health stated that these offers come to the department with deep discounts and a great savings. When the offer comes to us it is very time limited to make the purchase. If we do not take advantage of the opportunities the vendors will offer these deals to other state correctional facilities. Senator Widener asked if the department receives an offer from the out of state vendor do they in turn contact the in state vendor to see if they will match the price. Ms. Jones stated that they would do a market analysis to make sure that it is a savings. Usually these are items that are not offered by other Ohio companies. Senator Widener asked how the department would purchase these items if they were not a special offer. Ms. Jones said usually these are leftover canned and frozen fruits and vegetables that are available to our central warehouse for purchase after a large supermarket estimates their own needs for the items.

Representative Luckie asked if Ohio trucking would be used to move the purchases around the state. Ms. Jones stated that OSS has done extensive research on the trucking issue because of the cost and they are looking for ways to make sure this is the most efficient way to do business. We can provide additional information for you.

Representative Amstutz asked for an explanation for this type of procurement and what other approaches could be used and why those approached were not chosen. Ms. Jones stated that Tiffin Paper Co. is not a sole source it is a source vendor. We have used another paper vendor and are using Tiffin more this year because they are offering \$4 less per case than the other company. These are not on state term contract. The first step is to go with company on term, when we need to buy off term contract is when we start soliciting bids. These items were approved without objection.

Item 48 , DPS0100139-12 was held by Senator Sawyer. Senator Sawyer asked for a brief history of the request. Nancy Dragani, Ohio EMA Executive Director, Department of Public Safety stated in 2004 the Ohio Association of Chiefs of Police (OACP) received the first of three federal sub-grants through Ohio EMA to establish the Ohio Local Law Enforcement Information Sharing Network (OLLEISN). In 2006 after a federal monitoring visit, a state audit and an internal audit we changed our monitoring practices in our grants management and subsequently uncovered some potential issues with the management of the OACP sub grants. After talking with the Federal Emergency Management Agency (FEMA), the grantee, we hired an auditing firm in 2009 and followed by an internal audit from FEMA's Inspector General. That was completed this summer and on November 14 we received a bill for collection letter from FEMA for \$4,046,781.06. We intend to appeal a portion of that in which we believe we have documentation to support the findings. The appeal amount is \$1,144,441.06. The balance of \$2,909,084.64 is what we are requesting with this CB item. Senator Sawyer asked for an explanation on why the department is seeking to use Emergency Purposes funds, GRF. Director Dragani stated that after discussion with the Governor's office and the Controlling Board President this is the appropriate fund available to repay the FEMA. Senator Sawyer asked if the department had any plans in repaying the GRF. Director Dragani stated that the department and her agency do not have the funds to repay this. Senator Sawyer asked if OACP plans to repay the state. Director Dragani stated that they have reviewed OACP financial records and they do not have the ability to repay this amount. In fact to pursue them would force them into bankruptcy. Senator Sawyer asked for a brief explanation on the decision to travel to Turkey for the purposes of administrating this grant. Director Dragani stated the intent of the that sub-grant was to build a partnership with the Turkish National Police as well as other Middle Eastern countries. Part of that was to travel to Turkey and members

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With no further business before the board, the meeting was adjourned at 3:19 p.m.

Respectfully submitted,

Katherine Nickey
Controlling Board Executive Secretary

01/30/2012 Minutes approved by the Board

Exhibit 4

OPERATIONS SERVICES AGREEMENT

by and among

**THE DEPARTMENT OF COMMERCE
OF THE STATE OF OHIO,**

**THE OFFICE OF BUDGET AND MANAGEMENT
OF THE STATE OF OHIO,**

JOBSOHIO

and

JOBSOHIO BEVERAGE SYSTEM

January 20, 2012

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OPERATIONS SERVICES AGREEMENT

This OPERATIONS SERVICES AGREEMENT (this "Agreement") is entered into as of this 20th day of January, 2012 and shall be effective on the Effective Date, by and among JOBSOHIO BEVERAGE SYSTEM, an Ohio nonprofit corporation (the "Franchisee"), the sole member of which is JobsOhio, an Ohio nonprofit corporation ("JobsOhio"), the STATE OF OHIO, DEPARTMENT OF COMMERCE, ACTING FOR ITS DIVISIONS OF ADMINISTRATION AND LIQUOR CONTROL ("DLC"), and the STATE OF OHIO, OFFICE OF BUDGET AND MANAGEMENT ("OBM"), both administrative departments of the State of Ohio under ORC Chapter 121. Hereinafter, DLC, OBM, JobsOhio (for purposes of Sections 7.1 and 8.9) and the Franchisee shall each be referred to as a "Party" and collectively, as the "Parties," the State of Ohio shall be referred to as the "State," and OBM and DLC shall collectively be referred to as the "State Parties."

RECITALS:

- A. Pursuant to Ohio Revised Code ("ORC") § 4301.10, DLC has the exclusive right to purchase, merchandise, and sell Spirituous Liquor (as defined in ORC § 4301.01(B)(5)) in the State.
- B. Pursuant to the Constitution and the laws of the State, and particularly ORC Chapter 4313, the State Parties will enter into that certain Franchise and Transfer Agreement with the Franchisee (the "Transfer Agreement"), (i) granting the Franchisee the exclusive right to procure and sell Spirituous Liquor and perform certain merchandising activities related thereto, other than the Excluded Regulatory Activities (defined below) and the Statutory Merchandising Activities (defined below), in the State (the "Franchise") and (ii) transferring certain assets, rights and interests related thereto (identified therein as the "Transferred Assets") to the Franchisee, each effective upon the Effective Date (defined below) for the duration of the Term (defined below) (items (i) and (ii), collectively with the After-Acquired Assets, the "Liquor Business"). "After-Acquired Assets" means those rights and assets acquired by the Franchisee during the Term that are used solely or primarily in connection with the operation of the Franchise.
- C. It is a condition to the consummation of the Transfer Agreement, and provided by ORC § 4313.02(E), that the Parties enter into this Agreement for the provision of the Services (defined below) by DLC to the Franchisee for the continuing operations of the Liquor Business.
- D. The Franchisee desires to engage DLC, and DLC desires to be engaged, to provide the Services and to enter into the other arrangements provided or contemplated herein, subject to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby, agree as follows:

ARTICLE I - SERVICES

1.1 Scope of Services. As of the Effective Date, and subject to the terms and conditions of this Agreement, the Franchisee hereby engages DLC to provide, or cause to be provided to the Franchisee, those certain procurement, distribution, merchandising, management and other

operational services, as well as the necessary facilities, administrative support and personnel, for the ongoing operation of the Liquor Business, which are identified in Exhibit A hereto (which may be modified, supplemented and/or amended at any time and from time to time upon mutual agreement of the Parties and reflected on a substitute Exhibit A, a copy of which shall be delivered in writing to each of the Parties) (collectively, the “Services”). In consideration of DLC’s performance of such Services, the Franchisee will pay DLC the Services Fee (defined below) in the manner set forth in Section 2.1.

1.2 Standards of Performance. DLC will render the Services to Franchisee: (a) in a manner consistent with the Expense Budget (defined below) and the Business Plan (defined below) and (b) in compliance with all applicable federal, state, and local laws, rules, and regulations; *provided, however*, that, although included in the Services to be provided by DLC to Franchisee, the performance of the “Statutory Merchandising Activities” identified in Exhibit B hereto will at all times remain under the ultimate control, management, and supervision of DLC, in its sole discretion. Franchisee acknowledges that its input into DLC’s performance of such Statutory Merchandising Activities is limited to the right to consult with, and make recommendations to, DLC during the Expense Budget Review and Business Plan processes set forth in Sections 2.3 and 4.1 hereof.

1.3 Limitations and Exclusions. For the avoidance of doubt, the Services do not, and will not, include, and Franchisee shall not be obligated to pay any amounts related to, any activity related to the regulation, licensure, or enforcement of the sale or use of Spirituous Liquor, beer, wine or mixed beverages in the State, including those activities identified in Exhibit C hereto (collectively, the “Excluded Regulatory Activities”). Franchisee acknowledges that such Excluded Regulatory Activities will be performed by DLC and the State, in compliance with applicable laws, in their sole discretion, without consultation with, or the consent or approval of, Franchisee. Furthermore, subject to the exclusive nature of the Franchise, nothing contained in this Agreement will prevent or prohibit any of the State Parties from (a) providing the Services, (b) using information or data related to, or derived from, the Services or the Liquor Business in conducting their other respective duties, operations, and activities, or (c) providing similar services to other persons, State agencies, or business entities (collectively, the “State Operations”).

ARTICLE II - SERVICES FEE

2.1 Services Fee. In accordance with the provisions of this Article II and Section 4.2, Franchisee will pay, or cause to be paid, all of the direct and indirect costs and expenses incurred by DLC in rendering the Services and performing its obligations hereunder (“Services Fee”). The Services Fee will include payment for, in accordance with and subject to the provisions hereof: (a) all ordinary and recurring costs and expenses of rendering the Services and any related reasonable allocations of overhead, time, or expense by the State or any of its agencies to DLC in connection with rendering such Services (“Ordinary Operating Expenses”), (b) all extraordinary, non-recurring costs and expenses of rendering the Services and/or operating the Liquor Business (“Extraordinary Expenses”), and (c) all capital expenditures necessary and appropriate for the performance of the Services and/or the operation of the Liquor Business (“Capital Expenditures”).

2.2 Cost Reporting. DLC will cooperate in good faith with Franchisee to provide periodic and transparent cost reporting of the actual Services Fee incurred by DLC hereunder (“Cost Reporting”), including the Ordinary Operating Expenses, Extraordinary Expenses, and Capital Expenditures. DLC will provide such Cost Reporting to Franchisee (i) no less than quarterly and (ii) in such form, substance and detail as Franchisee and DLC may mutually agree.

2.3 Ordinary Operating Expenses.

(a) Estimated Expense Budgets. For each Budget Period (defined below), DLC will prepare and deliver to Franchisee a budget (the "Expense Budget") containing: (i) the reasonably anticipated Ordinary Operating Expenses of DLC in rendering the Services and performing its obligations hereunder during such Budget Period ("Estimated Expenses"), (ii) the annualized Estimated Expenses, in reasonable detail, for each Fiscal Year of such Budget Period, and (iii) a payment schedule dividing the total Estimated Expenses for such Budget Period into no less than four periodic payments and specifying the amount and due date of each such payment (the "Estimated Expense Payments"). For purposes of this Agreement, "Fiscal Year" means the fiscal year of DLC, which begins on July 1st of each calendar year and ends on June 30th of the subsequent calendar year. The Parties hereby acknowledge and agree that each Expense Budget will not include any amounts related to the Excluded Regulatory Functions.

(b) Initial Expense Budget. As of the Effective Date, DLC has delivered a copy of the initial Expense Budget to Franchisee for the Budget Period indicated in Section 2.3(c) below ("Initial Expense Budget"). Such Initial Expense Budget will be deemed approved by the Parties at the Effective Date.

(c) Expense Budget Periods. The Initial Expense Budget has been prepared for the period beginning on the Effective Date and ending on June 30, 2013, and each subsequent Expense Budget will be prepared for a two-year period coinciding with the then current State budget biennium period (each, a "Budget Period").

(d) Expense Budget Principles. The Initial Expense Budget has been, and all subsequent Expense Budgets will be, prepared using the practices, methodologies, and assumptions mutually agreed upon, in writing, by Franchisee and DLC ("Budget Principles"). As of the Effective Date, DLC has delivered a copy of such Budget Principles to Franchisee. The Parties acknowledge that the Budget Principles used to prepare each Expense Budget will likely change over the course of the Term and such Budget Principles will be modified, as needed, by mutual agreement of Franchisee and DLC.

(e) Estimated Expense Payments. Commencing on the Effective Date, and no later than the 1st day of each calendar quarter during each applicable Budget Period (defined below) thereafter, Franchisee will pay DLC the Estimated Expense Payment identified in the applicable Expense Budget. If this Agreement terminates on a day other than the last day of a calendar quarter, the amount of any Estimated Expense Payment payable by the Franchisee under this Section 2.3 will be prorated on a daily basis.

(f) Payment Adjustments. No later than 60 days after the end of each Fiscal Year, DLC will (i) review the final Cost Reporting for such Fiscal Year, (ii) calculate the actual amount of the Ordinary Operating Expenses for such Fiscal Year, (iii) provide to the Franchisee a reasonably detailed statement of calculations used in determining such Ordinary Operating Expenses and (iv) determine whether the actual amount of the Ordinary Operating Expenses was more or less than the aggregate amount of the Estimated Expense Payments made by the Franchisee during such Fiscal Year and whether such difference (if any) results in an over-payment or under-payment of the Ordinary Operating Expenses by the Franchisee (an "Adjustment Amount"). If DLC determines that an over-payment has been made by the Franchisee, then DLC will credit such Adjustment Amount against the Franchisee's next quarterly Estimated Expense Payment. If DLC determines that an

under-payment has been made by the Franchisee, then the Franchisee will pay such Adjustment Amount to DLC no later than 31 days after receipt of DLC's written notice and calculation of such under-payment.

(g) Expense Budget Review and Updates. No later than 180 days prior to the expiration of each Budget Period, the Franchisee and DLC will meet and, in good faith, commence (i) a review of the Cost Reporting for the Ordinary Operating Expenses prepared to-date during the current Budget Period, and (ii) discussions of the reasonably anticipated Ordinary Operating Expenses for the upcoming Budget Period (the "Expense Budget Review"). No later than 90 days prior to the expiration of each Budget Period, DLC will provide the Franchisee with its proposed Expense Budget for the upcoming Budget Period, which Expense Budget will conform to DLC's estimate of the reasonably anticipated Ordinary Operating Expenses for such upcoming Budget Period.

(h) Budget Acceptance/Rejection. Each Expense Budget will be accepted or rejected by the Franchisee in its entirety. In the event the Franchisee disagrees with DLC's proposed Expense Budget for the upcoming Budget Period, the Franchisee may, within 15 days of its receipt of the proposed Expense Budget, provide DLC with written notice of its rejection of such Expense Budget, including a detailed statement of items in dispute ("Dispute Notice"). If the Franchisee does not provide a Dispute Notice within such 15-day period, (i) such Expense Budget will become effective, in its entirety as proposed by DLC, for such Budget Period, and (ii) beginning on the first day of the new Budget Period, the Franchisee will commence payment of the Estimated Expense Payments provided for in such Expense Budget.

(i) Dispute Resolution. If the Franchisee timely provides a Dispute Notice, the Executives (defined below) of the Franchisee and DLC will meet, consult with one another, in good faith, and attempt to resolve their disagreement over the proposed Expense Budget by accepting or modifying such Expense Budget, as needed, within 30 days of the date of the Dispute Notice. If the Franchisee and DLC cannot reach a resolution to accept or modify such Expense Budget, in its entirety, by the start of the upcoming Budget Period, then, until such time as the Franchisee and DLC otherwise agree on an Expense Budget, the Franchisee will continue to pay DLC the amount of the Estimated Expense Payments in the Expense Budget for the prior Budget Period (excluding any non-recurring or extraordinary items contained therein); *provided, however*, that such Estimated Expense Payments will be multiplied by the sum of one (1) *plus* the Inflation Multiple. "Inflation Multiple" means one and one-half (1.5) *multiplied by* the percentage change, year over year from the most recent December to December period, in the Consumer Price Index (Urban Wage Earners and Clerical Workers Services, Midwest Region, 1982-84 = 100), as published by the United States Department of Labor, Bureau of Labor Statistics, such successor index as may be published by the United States Department of Labor, Bureau of Labor Statistics, or such substitute index as may be mutually agreed upon by the Franchisee and DLC, *provided that*, if the Inflation Multiple is less than zero, then the Inflation Multiple shall equal zero. If Franchisee and DLC subsequently agree upon a new Expense Budget, in its entirety, then the Estimated Expense Payments set forth in the new Expense Budget will be applied retroactively to the beginning of such Budget Period (after accounting for any adjustments or increases already in effect). For purposes of this Agreement, "Executives" means the Director and Chief Financial Officer of the Department of Commerce, the Superintendent of DLC, and the Chief Investment Officer, Chief Operating Officer, and Chief Financial Officer of Franchisee.

(j) Acknowledgement. Franchisee and DLC acknowledge that each Expense Budget will be subject, to the extent required by applicable law, to the State's regular biennial appropriations process. With respect to such appropriations process:

- (i) DLC will include in its biennial appropriation request to OBM the amounts needed to support the Expense Budget for such Budget Period, and OBM will include in its biennial budget estimates that it prepares and submits to the Governor the amounts needed to support the Expense Budget for such Budget Period, each as provided in the ORC and any other applicable provisions of law.
- (ii) If the appropriations authorized by the State are not sufficient to support the Expense Budget, then: (A) DLC will re-submit any necessary appropriations requests to the OBM, which will submit such supplemental requests to the appropriate State authority, and (B) the Parties will otherwise cooperate in good faith with one another, to the extent possible, to cause the Services to be provided.
- (iii) If DLC is unable to provide all or any portion of the Services to the Franchisee as a result of insufficient appropriations from the State, the Franchisee may, at its sole cost and expense and subject to applicable law, obtain or arrange for the provision of that portion of the Services for which DLC is unable to provide and DLC's provision of such Services hereunder shall be waived until additional appropriations for such Services are approved by the State.

2.4 Extraordinary Expenses.

(a) Permitted Expenses. Any Extraordinary Expense (a) in an amount less than 2% of the total Estimated Expenses for that Fiscal Year, individually or 4% of the total Estimated Expenses for that Fiscal Year, in the aggregate ("Threshold Amount") and (b) reasonably necessary for the performance of the Services or the operation of the Liquor Business, may be made by DLC without the prior approval of the Franchisee.

(b) Pre-Approved Expenses. Any Extraordinary Expense in an amount greater than the Threshold Amount will require the prior approval of the Franchisee; *provided, however*, that Franchisee must provide DLC with written notice of its disapproval ("Disapproval Notice") of such Extraordinary Expense within 20 days of its receipt of DLC's request to make such Extraordinary Expense. If the Franchisee does not provide a Disapproval Notice to DLC within such 20-day period, then DLC may undertake such Extraordinary Expense without the Franchisee's approval.

(c) Dispute Resolution. If (i) JobsOhio provides a timely Disapproval Notice, (ii) the Franchisee and DLC cannot agree upon the need to undertake an Extraordinary Expense requested by DLC within 30 days of the date of such Disapproval Notice, and (iii) DLC believes, in good faith, that such Extraordinary Expense is reasonably necessary for the performance or improvement of the Services, then (A) the Executives will meet, consult with one another, in good faith, and attempt to resolve the matters identified in the Disapproval Notice, and (B) until such time as an agreement is reached among the Executives, (1) no Extraordinary Expense shall be undertaken and the Franchisee will not be required to make any payment for such Extraordinary Expense, and (2) if the failure to undertake such Extraordinary Expense would reasonably be expected to have a material adverse

effect on the Liquor Business and/or DLC's ability to perform a Service or Services, DLC's compliance with Section 1.2 shall be waived only with respect to such Service or Services.

(d) Payment of Expenses. In addition to the Estimated Expense Payments, during each Fiscal Year, the Franchisee will provide DLC with an annual allowance for Extraordinary Expenses in amount equal to 4% of the total Estimated Expenses for such Fiscal Year ("Allowance"). Such Allowance will be paid to DLC, in full, no later than 15 days after the beginning of each Fiscal Year (or on the Effective Date in the case of the remaining portion of the first Fiscal Year of the Initial Budget Period) and held by DLC in a separate DLC fund number: 5LC0 (the "Allowance Fund"), subject to the terms of this Section 2.4. At any time during the applicable Budget Period, DLC shall be entitled to pay for any Extraordinary Expense permitted or approved under Sections 2.4(a) or 2.4(b) above by drawing upon the Allowance. If the amount of any Extraordinary Expense permitted or approved under Sections 2.4(a) or 2.4(b) above is greater than the then-current funds balance in the Allowance Fund, then the Franchisee will, upon written request from DLC, pay the amount not covered by the funds in the Allowance Fund to DLC no later than 30 days after its receipt of such request from DLC.

(e) Replenishment of Allowance. No later than 30 days after the end of each Fiscal Year, DLC will provide the Franchisee with a copy of the account statement for the Allowance Fund as of June 30th of such Fiscal Year. Any balance remaining in the Allowance Fund at the end of the Fiscal Year shall be credited against the Franchisee's payment of the Allowance for the upcoming Fiscal Year.

ARTICLE III - FRANCHISEE OBLIGATIONS

At all times during the Term, the Franchisee will comply with the following obligations in connection with its operation of the Liquor Business and the performance of its obligations under this Agreement:

3.1 Gross Receipts Account. The Franchisee will initially engage the services of KeyBank, National Association (together with its successors and assigns, the "Depository Bank"), to serve as the primary initial depository institution for revenues received from the Liquor Business, subject to the engagement of a replacement Depository Bank approved by Franchisee, upon not less than eight weeks prior notice to DLC. The Franchisee will establish and maintain a separate account (the "Gross Receipts Account") for the collection of all gross revenue and applicable taxes collected by the Liquor Business from the sale of Spirituous Liquor in the State during the Term ("Gross Revenue"). The Franchisee will enter into an arrangement under which the Depository Bank will conduct nightly sweeps of all Gross Revenue from each Agency Store's (defined in Exhibit A) designated bank account into the Gross Receipts Account. The Parties acknowledge that the Gross Receipts Account and Gross Revenue are not controlled by DLC. The Franchisee will deposit into or disburse from the Gross Receipts Account only funds related to the Liquor Business and will not commingle funds from its other operations or activities with the Gross Revenue in the Gross Receipts Account. The Parties will cooperate and coordinate in good faith with one another in connection with the provision of information and activities with respect to the Gross Receipts Account maintained in the possession of the Depository Bank, including, but not limited to, conducting the cash management processes of the Liquor Business in a manner generally consistent with Schedule A-2 attached to Exhibit A hereto (which Schedule A-2 may be modified, supplemented and/or amended at any time and from time to time upon mutual agreement of the Parties and reflected on a substitute Schedule A-2, a copy of which shall be delivered in writing to each of the Parties). The

Parties acknowledge that the Franchisee will be engaging a different financial institution to act as trustee for any of its Obligations (as defined in the Transfer Agreement).

3.2 Third Party Vendors.

(a) Vendor Arrangements. The Assigned Contracts (as defined in the Transfer Agreement) transferred to the Franchisee pursuant to the Transfer Agreement include contracts with Vendors (defined in Exhibit A) of the Liquor Business (such contracts with Vendors, the "Assigned Vendor Contracts"). The Parties acknowledge that, although the Franchisee assumed all of the liabilities and obligations under such Assigned Vendor Contracts as of the Effective Date, DLC will be responsible for supervising compliance of the contracting parties with the terms of such Assigned Vendor Contracts; *provided, however*, that upon (i) the expiration or earlier termination of any such Assigned Vendor Contract or (ii) a need for any new or additional Vendor services for the operation of the Liquor Business (which are not otherwise covered by the Assigned Vendor Contracts), the Franchisee will be solely responsible for negotiating and securing, at its own cost and expense, new contractual arrangements for such Vendor services (the "New Vendor Contract"). The Franchisee will provide DLC with a written copy of any proposed New Vendor Contract no later than 30 days prior to the effective date of such New Vendor Contract. For the avoidance of doubt, as of the Effective Date, the Franchisee will also be responsible for negotiating and entering into its own arrangements (contractual or otherwise) with Spirituous Liquor manufacturers for the procurement and purchase of Spirituous Liquor for the Liquor Business. All New Vendor Contracts in effect as of the date of termination of this Agreement will be deemed Transferred Assets under the Transfer Agreement and subject to the provisions of Section 17.7 of the Transfer Agreement.

(b) Disbursements to Third Parties. Upon receipt of the periodic Commission Payment Instructions (defined in Exhibit A) and periodic Vendor Payment Instructions (defined in Exhibit A) from DLC (in accordance with Exhibit A), the Franchisee will be responsible for approving such Instructions and paying the amounts provided for in such Instructions to such third party recipients as and when such amounts are due and payable. The Franchisee will make or cause to be made Commissions and Vendor Payment disbursements, and provide DLC with an electronic record of those payments no later than the same day on which such disbursements are made.

3.3 Financial Statements; Taxes; Tax Returns.

(a) Financial Statements. The Franchisee will create and maintain the financial reporting data, systems and processes, accounting controls, and financial statements (including balance sheets, profit and loss statements, and cash flow statements) issued in connection with, relating to, or arising out of, the ownership of the Liquor Business and/or the performance of the Services hereunder (the "Financial Statements"); *provided, however*, that DLC will provide the Franchisee with accurate, complete, and current Cost Reporting in accordance with Section 2.2. Franchisee will provide DLC with true, correct, accurate and complete copies of its (i) unaudited, interim Financial Statements no later than 30 days after their preparation and (ii) audited Financial Statements no later than 60 days after the end of each Fiscal Year.

(b) Taxes. At all times during the Term, (i) DLC shall be responsible for determining all the amount of, and providing the Franchisee with specific instructions for the remission of, any sales or gallonage taxes (under ORC §§ 4301.12, 4301.421, 4301.424, 5739.02, 5739.021, 5739.023, and 5739.026) and any other Spirituous Liquor tax owing to any taxing authority in any jurisdiction in connection with, relating to, or arising out of, the ownership or operation of the Liquor Business from

time to time (the "Liquor Taxes"), in accordance with the process identified in Schedule A-1 attached hereto, and (ii) the Franchisee shall be responsible for determining the amount of, and remitting, and certifying any other types of tax owing to any taxing authority in any jurisdiction in connection with, relating to, or arising out of, the ownership or operation of the Liquor Business, the Franchise, the Transferred Assets, the After-Acquired Assets, the Gross Revenue, or the performance of the Services hereunder (other than corporate income taxes or other taxes of any State Party related to such State Party's receipt of the Services Fees paid hereunder) (collectively with the Liquor Taxes, "Taxes"). Franchisee will pay, or cause to be paid, all Taxes to the appropriate taxing authority as such Taxes become due and payable, and will provide DLC with copies of all of its Tax payment receipts within 30 days of delivery of such payment receipts; *provided that* Liquor Taxes will be paid by Franchisee in accordance with Schedule A-1.

(c) Tax Returns. Commencing on January 1, 2013 with respect to calendar year 2012, and continuing during the Term for all subsequent tax periods thereafter, the Franchisee will be solely responsible for, and will file when due, all Tax returns and related documentation (such as Form 1099s to Vendors) and will provide DLC with true, correct, accurate and complete copies of all of its filed Tax returns and related documentation within 30 days of filing the same.

3.4 Compliance.

(a) Compliance with Laws. The Franchisee will perform its obligations under this Agreement in compliance with all applicable federal, state, and local laws and regulations.

(b) Compliance with Contracts. In addition, to the extent not already delegated to DLC and included in the Services, the Franchisee will comply with the terms of all of its contractual relationships entered into in connection with, arising out of, or related to the Franchise, Agency Stores, Transferred Assets, or this Agreement, including, but not limited to the Assigned Vendor Contracts and New Vendor Contracts ("Contract Obligations"). If (i) the Franchisee is in breach of any of its Contract Obligations and has not cured such breach within 30 days of its occurrence, and (ii) such breach has an effect on the Liquor Business that is materially adverse to DLC's ability to perform any of the Services or any of its other obligations hereunder, then, upon not less than 10 days prior notice to the Franchisee, (A) DLC may elect to cure such breach on the Franchisee's behalf and offset all reasonable expenses incurred by DLC in curing such breach against the Allowance and (B) until such breach is reasonably cured, DLC's compliance with the provisions of Section 1.2 shall be waived, but only with respect to the specific Service(s) affected under clause (ii) above.

3.5 Insurance. The Franchisee will obtain and maintain for itself customary and adequate insurance for the operation of the Liquor Business, including, but not limited to:

(a) comprehensive general liability insurance with a minimum Three Million Dollars (\$3,000,000) combined single limit for claims that may arise from activities related to this Agreement, the Franchise, or the Transferred Assets; and

(b) a special form policy of insurance (formerly known as all-risk insurance) covering all equipment, furniture, leasehold improvements and betterments, furnishings, contents, merchandise, inventory, trade fixtures, signs, and other personal property of Franchisee related to the Franchise in an amount equal to one hundred percent (100%) of the replacement cost thereof.

DLC will be named as an additional insured under each policy described above if and to the extent that the State has an insurable interest. The Franchisee will provide DLC with evidence of such insurance coverage no later than the Effective Date. Such insurance coverage will require no less than 30 days' prior written notice to DLC of any cancellations of, reductions in, or restrictions upon such coverage. The Franchisee will provide DLC with updated evidence of coverage no less than 30 days prior to the expiration of each coverage period.

3.6 Access; Information Sharing. The Franchisee will provide each State Party with such access to, and use of, the Transferred Assets and the information and data generated by the operation of the Liquor Business (including, without limitation, Spirituous Liquor sales information) as such State Party believes is reasonably necessary to render the Services, perform its obligations hereunder, or perform its State Operations. All such information and data provided by the Franchisee will be true, correct, accurate, complete and current as of the date provided. Each Party acknowledges that the use of any such information and data will be in accordance with the provisions of Section 5.1.

ARTICLE IV - BUSINESS PLAN; CAPITAL EXPENDITURES

4.1 Business Plan. The Parties acknowledge the mutually advantageous goal of developing a business plan for the continued growth and improvement of the Liquor Business (the "Business Plan"). In furtherance of that goal, the Franchisee and DLC agree that the Executives of both the Franchisee and DLC will meet no less than quarterly to review the performance, profitability and operating efficiency of the Liquor Business. As soon as practicable following the Effective Date, the Franchisee and DLC agree to meet to develop the initial Business Plan for the Liquor Business, which Business Plan shall be implemented on July 1, 2012 and be operative through June 30, 2013. Each Business Plan thereafter will cover no less than a three year period and will coincide with DLC's Fiscal Years. For example, the Business Plan may cover a period from July 1, 2013 through June 30, 2016, while the next Business Plan may cover a period from July 1, 2014 through June 30, 2017. DLC acknowledges that during the Business Plan development and review processes, the Franchisee may make recommendations about the manner in which DLC renders the Services and DLC's Statutory Merchandising Activities hereunder. The Franchisee acknowledges that DLC has and will retain the sole and ultimate discretion and authority for deciding whether and to what extent any of the Franchisee's recommendations will be included in the Business Plan. DLC shall implement any recommendations it determines to include in the Business Plan related to the foregoing activities. The Excluded Regulatory Activities will not be included in or addressed by the Business Plan. The Franchisee and DLC will update and revise the Business Plan no less than annually, and will promptly provide updated copies of the same to the other Parties hereto.

The Parties acknowledge that the Business Plan will, to the extent mutually agreed by the Franchisee and DLC, incorporate and reflect plans for the modernization of the inventory control system used by the Liquor Business for its wholesale liquor distribution operations.

4.2 Capital Expenditures.

(a) **Approval and Planning.** All capital expenditures that are necessary and appropriate for the performance and improvement of the Services or the operation of the Liquor Business ("Capital Expenditures") will require the approval of Franchisee, which approval will not be unreasonably conditioned, withheld, or delayed. Capital Expenditures will be (i) provided for as a

part of the applicable Business Plan to the extent possible, and (ii) undertaken by DLC in a manner consistent with such Business Plan (to the extent provided for in such Plan).

(b) Payment: Coordination. Capital Expenditures will be paid for separately by Franchisee in a manner mutually agreed upon by Franchisee and DLC. Franchisee and DLC will cooperate and consult with one another, in good faith, to plan and coordinate the funding of all such Capital Expenditures.

(c) Capital Assets. For purposes of this Agreement, all capital assets, properties, rights, or improvements acquired through such Capital Expenditures are referred to herein as "Capital Assets."

(d) Shared Assets. Capital Expenditures for Capital Assets that are to be shared with other State agencies or used for State Operations or any Statutory Merchandising Activities or Excluded Regulatory Activities other than rendering the Services ("Shared Assets"), will be allocated between DLC and such other agency or agencies or between the Services and such State Operations or such Statutory Merchandising Activities or Excluded Regulatory Activities, and such allocations will be included in the applicable Business Plan. Franchisee will only be obligated to pay for that portion of any Capital Expenditure allocated to DLC (or its subcontractors) and related to the Services. The ownership interest in any Shared Assets acquired through such Capital Expenditures will be held by DLC or such other agency or agencies; *provided, however*, that DLC hereby grants (or shall cause the applicable State agency or agencies to grant) Franchisee a non-exclusive, limited license to use such Shared Assets in the operation of the Liquor Business, at no cost, during the Term.

(e) Owned Assets. The ownership of Capital Assets other than the Shared Assets, which are acquired through such Capital Expenditures ("Owned Assets") will be owned by Franchisee; *provided, however*, that (x) Franchisee hereby grants DLC a limited license to use such Owned Assets in the performance of its obligations hereunder, at no cost, during the Term, and (y) such Owned Assets will be deemed Transferred Assets under the Transfer Agreement and be transferred back to DLC upon termination of that agreement based upon the unamortized useful life of such Owned Assets.

(f) Dispute Resolution. If (i) Franchisee and DLC cannot agree upon the need to undertake a Capital Expenditure requested by DLC or they disagree about the proper allocation of a Shared Asset and such disagreement results in a delay in acquiring such Shared Asset, and (ii) DLC believes, in good faith, that such Capital Expenditure is necessary for the performance or improvement of the Services, then (A) the Executives will meet, consult with one another, in good faith, and attempt to resolve their disagreement over the need to undertake a Capital Expenditure and (B) until such time as an agreement is reached among the Executives, (1) no Capital Expenditure shall be undertaken and the Franchisee will not be required to make any payment for such Capital Expenditure, and (2) if the failure to undertake such Capital Expenditure would reasonably be expected to have a material adverse effect on the Liquor Business and/or DLC's ability to perform a Service or Services, DLC's compliance with Section 1.2 shall be waived only with respect to such Service or Services.

ARTICLE V - MUTUAL COVENANTS

5.1 Books and Records. Each Party will maintain its records regarding this Agreement, including its records of the Services Fee Cost Reporting, financial reports and statements, and all other material information pertaining to the Liquor Business and each Party's performance of its obligations hereunder ("Books and Records") consistent with the relevant record retention policies of the State Parties and the State, *provided that* each Party will maintain all tax returns of the Liquor Business and all materials related thereto (including, without limitation, all materials that would be used in the preparation of or filed in connection with a Form 990 filed with the Internal Revenue Service) for a period of not less than eight (8) years following the date of filing for each respective tax return. Furthermore, the Franchisee agrees to preserve and maintain any Books and Records requested by any State Party, its agents, or other appropriate State agencies or officials, in connection with any matter in dispute between DLC and the Franchisee related to or arising out of this Agreement, until such time as the matter is finally resolved. The Franchisee acknowledges that DLC is subject to the Ohio Public Records Act, ORC §149.43, et seq. Upon receipt of a public records request under ORC §149.43, et seq. or a request for records pursuant to a legal proceeding, in connection with any of the Books and Records, DLC shall promptly notify the Franchisee of such request, and the Franchisee may, at its option and expense, dispute the disclosure of the requested information by seeking injunctive relief against such request or through other available legal process. DLC agrees not to disclose any specific Books and Records that the Franchisee has previously identified as a proprietary trade secret of the Franchisee without giving prior notice to the Franchisee. DLC is required by ORC §149.43 to provide prompt inspection or copies within a reasonable period of time of such Books and Records in response to a proper public records request, subject to determination in DLC's sole discretion of DLC's rights and duties contained in ORC §149.43, et seq. Notwithstanding the above or any other provision of this Agreement, the release of public records in compliance with Ohio law will not be deemed a breach of this Agreement.

5.2 Inspection & Audit Rights. At any time during normal business hours and upon at least 48 hours prior written notice (unless the Party to which such notice is given is in default under the Transfer Agreement, in which case shorter notice may be given), each Party will make available to any other Party, its agents, or representatives, or other appropriate State agencies or officials, the Books and Records which are in the possession or control of such Party. The requesting Party may, at its own cost and expense, review, and inspect such Books and Records in such a manner as not to interfere unreasonably with the normal business operations of the other Party; *provided, however*, that the use of any such Books and Records will be in accordance with the provisions of Section 5.1.

ARTICLE VI - TERM & TERMINATION

6.1 Term. This Agreement will become effective on the Closing Date (as defined in the Transfer Agreement) (the "Effective Date") and continue in force and effect until the expiration or termination of the Transfer Agreement, unless it is terminated earlier pursuant to Section 6.2 below. The commencement and effectiveness of this Agreement is subject to the Closing under the Transfer Agreement (as defined therein).

6.2 Cross-Termination. This Agreement is co-terminus with the Transfer Agreement and will terminate immediately upon the effective date of any termination of the Transfer Agreement. No Party shall have any right to terminate this Agreement for any other reason, including as a result of another Party's material breach under Section 6.3.

6.3 Breach; Remedies. If a Party materially breaches any of its obligations under this Agreement and does not cure such breach to the reasonable satisfaction of the non-breaching Parties

within 90 days of notice of such breach from a non-breaching Party ("Breach Notice"), then any non-breaching Party will be entitled to pursue all available remedies at law or in equity (including, as applicable, an action seeking mandamus, under ORC § 2731.01); *provided, however*, that if the breaching Party has initiated an adequate remedy within such 90-day period and at all times thereafter is diligently pursuing such adequate remedy to the reasonable satisfaction of the non-breaching Parties, then such remedies will not be available to any non-breaching Party for a period of 180 days after the date of the Breach Notice. For the avoidance of doubt, in the event a receiver is appointed, DLC may elect, in its sole discretion, not to terminate this Agreement and to transfer, convey, or assign the obligations of Franchisee under this Agreement to the receiver, to continue in full force and effect upon the terms set forth in this Agreement.

6.4 Effects of Termination. Upon termination of this Agreement, Franchisee will (a) pay DLC any unpaid Services Fees incurred prior to the effective date of such termination, and (b) provide, in coordination and cooperation with DLC and the Master Trustee, for the transition of all banking functions related to the Liquor Business (including the collection of Gross Revenue, and the payment of Commissions, Taxes, and Vendor Payments) from the Franchisee's Gross Receipts Account to an account designated by DLC in accordance with Sections 17.6 and 17.7 of the Transfer Agreement. For purpose of this Agreement, the "Master Trustee" means the trustee, or any successor trustee, under that certain Master Trust Indenture entered into by the Franchisee with respect to its Obligations (as defined in the Transfer Agreement).

6.5 Survival. Upon termination of this Agreement, the provisions and obligations set forth in Sections 3.3, 3.4, 3.6, 5.1, 5.2, 6.4, 6.5, ARTICLE VII - and ARTICLE VIII - of this Agreement will survive indefinitely, unless a shorter period of survival is expressly stated therein.

ARTICLE VII - INDEMNIFICATION

JobsOhio and Franchisee will, jointly and severally, indemnify, defend, and hold harmless DLC and its respective employees and agents ("Indemnitees") from and against any claims, actions, demands, lawsuits, costs and expenses (including reasonable attorneys' fees and costs of defense), damages, liabilities, and losses ("Damages") arising out of, or in connection with (a) any third-party claim for damages against the DLC and its respective employees and agents resulting from the Franchisee's failure to pay the Services Fee when due hereunder or (b) any employment related claims or matters, including workers' compensation claims, arising out of or related to the employment of, or services or activities performed by, DLC Personnel in connection with this Agreement, *provided that* neither the Franchisee nor JobsOhio will be obligated to provide indemnification for Damages to the extent such Damages result from the bad faith, gross negligence, or willful misconduct of any State Party hereto. Notwithstanding anything in this Agreement to the contrary, in no event shall the aggregate liability of JobsOhio for claims for indemnification pursuant to this Agreement exceed that portion of the Liquor Business Profits actually distributed to JobsOhio by Franchisee, if any.

ARTICLE VIII - MISCELLANEOUS

8.1 Definitions. Terms not otherwise defined herein, shall have the meaning ascribed to them under the Transfer Agreement.

8.2 Acknowledgement. DLC acknowledges that under certain applicable circumstances, the provisions of Sections 14.5(c) and (d) of the Transfer Agreement may apply, and may result in additional rights, obligations and remedies of the Parties under the Transfer Agreement.

8.3 Independent Contractor. DLC, DLC Personnel, and each of their designees will perform DLC's duties and obligations under this Agreement as independent contractors. Nothing contained in this Agreement will be construed as creating an employer/employee, agency, partnership, joint owner or joint venture relationship between Franchisee and DLC or any DLC Personnel. Franchisee acknowledges that DLC has the full power and authority to undertake the provision of the Services by any means, method and manner it, in its sole discretion, reasonably exercised, deems appropriate.

8.4 Use of Other State Entities. DLC, in its discretion, may make arrangements with other State agencies, departments, and divisions, for the performance of any portion of the Services to be provided by it hereunder; *provided, however*, that no such arrangement shall take effect unless DLC has provided the Franchisee with at least 30 days prior written notice of such arrangement. DLC shall be responsible for supervising such third party's performance of such Services.

8.5 Force Majeure. No party will be in breach of this Agreement if such Party is prevented from performing any of its obligations hereunder as a result of a physical occurrence or condition outside of its reasonable control, including, without limitation, acts of God, nuclear emergency, fire, flood or similar cataclysmic occurrence, earthquake, landslide, tsunami, hurricane, tornado, snow storm or any other unusually severe weather condition, explosion, accident, riot, strike, civil disturbance, act of terrorism or other act of public enemy, blockade, insurrection, war, sabotage, governmental taking or condemnation. Such occurrences and conditions shall expressly exclude any changes in State laws, rules, or regulations.

8.6 Notices. All notices which are required or permitted to be given by any Party under this Agreement will be sent by registered or certified mail, postage prepaid, by overnight express courier, by electronic mail (read receipt requested), by facsimile transmission or personal hand delivery, properly addressed to the other party at the addresses below or such other contact person or addresses as any party may, from time to time, specify to the other party by similar notice.

If to DLC, at:

Ohio Department of Commerce
77 S. High Street, 23rd Floor
Columbus, Ohio 43215
Attn: Director
Fax: 614.220.7113
Email: david.goodman@com.state.oh.us

with a copy to:

Ohio Department of Commerce
77 S. High Street, 23rd Floor
Columbus, Ohio 43215
Attn: Chief Legal Counsel
Fax: 614.644.7063
Email: donell.grubbs@com.state.oh.us

and with a copy to:

Ohio Department of Commerce,
Division of Liquor Control
6606 Tussing Road
Reynoldsburg, OH 43068
Attn: Superintendent
Fax: 614.995.4047
Email: Bruce.Stevenson@com.state.oh.us

If to OBM, at:

Ohio Office of Budget and Management
30 E. Broad Street, 34th Floor
Columbus, OH 43215
Attn: Director
Fax: 614.728.9295
Email: tim.keen@obm.state.oh.us

with a copy to:

Ohio Office of Budget and Management,
Legal Division
30 E. Broad Street, 34th Floor
Columbus, OH 43215
Attn: Chief Legal Counsel
Fax: 614.728.9295
Email: robin.rose@obm.state.oh.us

If to Franchisee, at:

Franchisee
41 S. High Street, Suite 2210
Columbus, Ohio 43215
Attn: Mark D. Kvamme
Fax: 614.469.1049
Email: kvamme@jobs-ohio.com

with a copy to:

Franchisee
41 S. High Street, Suite 2210
Columbus, Ohio 43215
Attn: Kristopher Wahlers
Fax: 614.469.1049
Email: wahlers@jobs-ohio.com

If to JobsOhio, at:

JobsOhio
41 S. High Street, Suite 2210
Columbus, Ohio 43215
Attn: Mark D. Kvamme, Interim President and Chief Investment Officer
Fax: 614.469.1049
Email: kvamme@jobs-ohio.com

with a copy to:

JobsOhio
41 S. High Street, Suite 2210
Columbus, Ohio 43215
Attn: Kristopher Wahlers, General Counsel
Fax: 614.469.1049
Email: wahlers@jobs-ohio.com

Notices sent by registered or certified mail will be effective upon receipt. Notices sent by overnight express courier will be effective on the following day. Notices sent by electronic mail will be effective upon confirmation of receipt by return read receipt. Notices sent by hand delivery will be effective upon delivery (*provided that* a delivery receipt is signed by the recipient).

8.7 Binding Effect; Assignment. This Agreement will inure to the benefit of, and be binding upon, each of the Parties hereto and their respective successors in interest and permitted assigns. Neither this Agreement, nor any of the rights, interests, or obligations hereunder, may be assigned by any Party without the consent of all other Parties hereto, other than (a) an assignment by the Franchisee to (i) a wholly owned subsidiary, and/or (ii) any lender of the Franchisee as collateral security for the Transaction Bonds, *provided, further, that*, in each such case, the Franchisee will continue to be fully responsible for all of its obligations under this Agreement, or (b) an assignment by DLC to a receiver as set forth in Section 6.3.

8.8 Third Party Beneficiaries. This Agreement will not be construed as creating or conferring any rights, claims or remedies in favor of, or impose any obligation upon, any third party. The promises and covenants contained herein are for the sole benefit of the Parties hereto, and in the case of Article VII, the Indemnitees.

8.9 Amendment. Neither this Agreement, nor any provision hereof, will be amended, modified, discharged, supplemented, or terminated, unless undertaken in a writing signed by the Parties to this Agreement.

8.10 Waiver; Remedies. The waiver by a Party of the observance or breach of any term, condition or obligation under this Agreement by any other Party hereto will not be a waiver of any other required observance or subsequent breach, whether similar in nature or otherwise. Neither the failure of a Party to exercise or any delay of such party in exercising, any right, power, benefit or privilege hereunder, nor any single or partial exercise of any right, power, benefit or privilege hereunder, will preclude any other or future exercise by such Party of any such right, power, benefit or privilege hereunder. The rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights or remedies available to any Party at law or in equity.

8.11 Severability. If any term or provision of this Agreement or the performance of any such term or provision shall be invalid, illegal or unenforceable, such invalid, illegal or unenforceable term or provision shall be deemed enforceable to the fullest extent permitted by law, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not be affected thereby.

8.12 Construction; Interpretations. As used in this Agreement and required by the context, the singular and plural shall be deemed to include all genders; words importing persons shall include partnerships, corporations, limited liability companies, and other business associations; and the terms "herein," "hereof" and "hereunder" or other similar terms, refer to this Agreement as a whole and not only to the particular sentence, subsection or section in which any such term may be employed. Whenever in this Agreement the word "including" is used, the entire provision in which such word appears shall be read as if the phrase "including, without limitation," had been used. If any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by all of the Parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

8.13 Entire Agreement. This Agreement and the exhibits hereto, in conjunction with the Transfer Agreement, constitute the entire agreement among the Parties relating to the matters identified herein and therein and supersede all prior agreements, discussions, negotiations, representations and warranties (whether verbal or written) between the Parties relating to all such matters. The exhibits referenced in this Agreement are a part of and are each incorporated in their entirety into this Agreement by reference.

8.14 Governing Law. This Agreement and any claim, controversy or action arising out of or relating to this Agreement, will be governed by and construed in accordance with the laws of the State of Ohio, without regard to conflict of law principles that would result in the application of the laws of any other jurisdiction, and shall be deemed an agreement executed in the State of Ohio.

8.15 Venue; Submission to Jurisdiction. Each Party irrevocably agrees that any legal action or proceeding arising out of or relating to this Agreement or the Transfer Agreement or for recognition and enforcement of any judgment in respect hereof or thereof brought by any other Party hereto or its successors or permitted assigns may be brought and determined in the courts situated in Franklin County, Ohio. For any such legal action or proceeding, each Party hereby irrevocably submits, on behalf of itself and in respect of its property, generally and unconditionally, to the exclusive jurisdiction of the aforesaid courts.

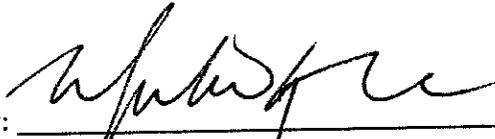
8.16 WAIVER OF JURY TRIAL. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSFER AGREEMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HEREBY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE TRANSFER AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.16.

8.17 Counterparts; Electronic Signature. This Agreement may be executed in multiple counterparts, all of which will be considered one and the same Agreement, and each of which will become effective when all other counterparts have been signed and delivered to the other Parties hereto. A facsimile, electronic or portable document format (PDF) copy of a signature to this Agreement will be deemed an original signature hereto.

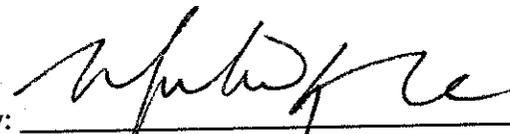
[Signature Page Follows]

IN WITNESS WHEREOF, a duly authorized representative of each party hereto has executed this Operations Services Agreement as of the Effective Date.

JOBSONHIO BEVERAGE SYSTEM

By: 
Mark D. Kvamme,
Authorized Representative

**SOLELY WITH RESPECT TO SECTIONS 7.1 AND 8.9,
JOBSONHIO**

By: 
Mark D. Kvamme,
Interim President and Chief Investment Officer

**STATE OF OHIO, DEPARTMENT OF COMMERCE,
ACTING FOR ITS DIVISIONS OF ADMINISTRATION
AND LIQUOR CONTROL**

By: _____
David Goodman,
Director

**STATE OF OHIO, OFFICE OF BUDGET AND
MANAGEMENT**

By: _____
Timothy S. Keen,
Director

Exhibit A

Services¹
(effective as of 12/13/11)

The following constitute the Services to be provided by DLC to, and on behalf of, the Franchisee, the costs and expenses of which will be included in the Services Fee paid by the Franchisee. Each of the Services identified on this Exhibit A shall be rendered in accordance with and subject to the applicable provisions of this Agreement.

1. Facilities

- DLC will obtain or provide appropriate facilities for the provision of the Services hereunder, including administrative office space ("Facilities"). All real property used or held for use by DLC in rendering the Services hereunder will be owned or leased by DLC or the Ohio Department of Administrative Services ("DAS") on behalf of DLC (as applicable) pursuant to a valid and binding leasehold or fee simple interest in such real property. DLC (or DAS on its behalf) will (a) exercise complete and exclusive control over the operation, maintenance, and acquisition or disposition of such Facilities, (b) determine the price, rent, and other lease or ownership related costs, charges, and expenses to be paid for such Facilities, (c) maintain and perform all obligations under any leases for such Facilities (including arranging for appropriate insurance coverage (through available State insurance coverage options), housecleaning services, Facilities security services, and maintenance and repair services).
- DLC will be responsible for paying all real property taxes and assessments, all utilities, and all taxes on the personal property of DLC located at such Facilities, when such amounts are due and payable; provided, however, that the costs associated therewith will be included in the Expense Budget.
- DLC will provide such office furniture and equipment, office supplies and postage and other personal property, necessary and appropriate for performing the Services.

2. Personnel

- DLC will (by hiring State employees and contractors) provide, supervise, and manage all personnel necessary and appropriate for rendering the Services and performing its other obligations hereunder, including, but not limited, administrative and support staff (including deputy directors, superintendent, assistants, a PIO, and other management, human resources, financial, legal and information technology staff), agency operations staff, and Agency Store auditors.
- All personnel engaged by DLC to render services in connection with this Agreement will, at all times, be employees or contractors of the State ("DLC Personnel"). DLC will, in its sole

¹ The defined terms used but not defined in this Exhibit A shall have the meaning ascribed to them in the body of this Agreement. For the avoidance of doubt, Services indicating that DLC "will provide," "will be responsible for," "will obtain," or "will pay" will be rendered by DLC on behalf of Franchisee and the cost and expense of such items will be advanced to DLC through the Estimated Expense Payments.

discretion, (a) exercise complete and exclusive control over DLC Personnel, including the right to hire or terminate such Personnel at any time, and (b) determine the salaries, incentive compensation, wages, employee benefits, health and welfare plans, retirement and pension plans, and labor relations policies for such DLC Personnel. DLC will be responsible for collecting and remitting all unemployment compensation, all insurance and workers' compensation premiums, and all tax and payroll withholdings, required for DLC Personnel, when such amounts are due and payable; provided, however, that the costs associated therewith will be included by DLC in the Expense Budget.

- DLC will provide, or subcontract for, the human resources services and activities necessary to support DLC Personnel and the performance of the Services hereunder, including the provision, coordination, and administration of all State employee benefit plans, health and welfare plans, retirement and/or pension plans, and payroll services.
- DLC will keep all employee personnel, benefits, and payroll records required by the State, in accordance with the State's applicable record retention policies.
- DLC will train all DLC Personnel (in coordination with the Franchisee when necessary), including training of its Agency Store auditors and its information technology and financial services support staff.

3. Cash Management

- DLC will provide Cost Reporting as set forth in the Agreement and basic controlling functions for the Services, including the oversight, management, and coordination of inventory purchasing, accounts payable, accounts receivable, credit/collection, sales activity, and external and internal auditing activities.
- In conjunction with the Franchisee's nightly sweeps of Gross Revenue from Agency Store accounts to the Gross Receipts Account, DLC will conduct Agency Store sales polling on a daily basis, and will collect, process, and report such polling information to the appropriate Franchisee and DLC Personnel for their use, audit or review in connection with their respective obligations hereunder.
- DLC will, at periodic intervals mutually agreed to by the Franchisee and DLC, provide third party disbursement processing instructions to the Franchisee and/or the Depository Bank (as appropriate) for making disbursements to (a) the paper bag vendors, warehouse vendors, transportation carriers, Spirituous Liquor manufacturers, the Depository Bank and such other third party Liquor Business vendors ("Vendors") as are mutually agreed upon by the Franchisee and DLC (the "Vendor Payments"), in accordance with the terms of the applicable Assigned Vendor Contracts, New Vendor Contracts and/or any invoicing documentation issued by such third party vendor (the "Vendor Payment Instructions"), and (b) all State agency liquor stores (the "Agency Stores") for their respective commissions ("Commissions") in accordance with the terms of their respective Agency Store Contracts (defined below) (the "Commission Payment Instructions").
- DLC and Franchisee will perform their respective Liquor Tax calculation, reporting and payment obligations in accordance with the process enumerated on Schedule A-1 attached to

this Exhibit A.

- DLC will provide any other cash management functions mutually agreed upon by the Franchisee and DLC. DLC and the Franchisee will coordinate with one another to undertake the cash flow processes identified in the diagram attached to this Exhibit A as Schedule A-2 in the manner indicated therein.

4. **Audit/Reconciliation.**

- DLC's audit personnel will make personal visits to each Agency Store (a) not less than once every 90 days for a compliance review and assessment and (b) not less than twice per year to conduct a physical audit of the Spirituous Liquor inventory at each such location using a hand held scanner and paper documentation to calculate the inventory on hand. Upon completion of each audit the auditor will reset the Agency Store's point of sale system (including the LiquorBase PC or equivalent application) and report any difference to DLC agency operations staff. DLC will use the information generated by such audit process in the performance of its other obligations hereunder and will promptly provide a copy of the results of such audit to the Franchisee.
- DLC agency operations staff will, not less than daily, reconcile the Agency Store sales information it has collected with the results of its Agency Store audits. DLC will use the information generated by such audit process in the performance of its other obligations hereunder and will promptly provide a copy of the results of any such reconciliation to the Franchisee and instruct the Franchisee on the need for any refunds to Agency Stores or deductions for inventory losses.
- DLC will provide State vehicles to its audit personnel for the performance of their responsibilities hereunder. DLC will maintain, repair and insure such vehicles (through available State insurance coverage options). DLC will also cover all travel expenses related thereto.

5. **Information Technology**

- DLC will provide its own information technology systems, telecommunications systems, hardware, mainframe operating systems, and software necessary and appropriate for rendering the Services, including, but not limited to, a data center, a systems network (including backup and recovery systems and security systems), desktops, laptops, thin client VDI units, encrypted flash drives, printers, scanners, email and handheld phone services, employee and ERP applications, an inventory tracking system, a point of sale system (including the LiquorBase PC application or equivalent application), and a sales polling system (including DLC's current analog polling system, with analog dial up lines, digiboards, and controllers, and the Python polling application) (collectively, the "IT Systems"). DLC will grant the Franchisee one or more licenses for the use of and access to DLC's information technology systems as may be reasonably necessary or appropriate to implement this Agreement and the Transfer Agreement.
- DLC will also (a) maintain, repair, upgrade and replace such IT Systems, (b) expand and acquire new information technology systems, and (c) make any approved capital expenditures

thereto.

- DLC may contract with any other State agency, department, or division or any other third party service provider for all or any portion of such IT Systems.

6. Agency Operations

- Twice per calendar month, DLC will (on the Franchisee's behalf) calculate the amount of all Commissions owed to Agency Stores based upon the sales polling information and audit information results collected by DLC, and provide the appropriate Commission Payment Instructions to the Franchisee or the Depository Bank as provided above.
- DLC will (on behalf of the Franchisee) supervise and coordinate (a) Vendor compliance with the terms of any Assigned Vendor Contracts or New Vendor Contracts, (b) Agency Store compliance with the terms of the Franchisee Agency Contracts, and (c) the purchase of Spirituous Liquor inventory from manufacturers based upon price quotes received from such manufacturers. DLC will also (on behalf of the Franchisee) perform any of Franchisee's Contractual Obligations as may be mutually agreed upon by Franchisee and DLC.
- From time to time, DLC will also (directly or through its agents or other State agencies, including the Department of Administrative Services), subject to Section 8.3 of the Agreement, procure any of its own contractual arrangements as may be necessary and appropriate for the provision of the Services, other than the Assigned Vendor Contracts, New Vendor Contracts and the Franchisee Agency Contracts. DLC will supervise and perform its own obligations under all such contractual arrangements.

7. Merchandising, Marketing, & Advertising

- In coordination with each other, both DLC and the Franchisee will enter into separate bifurcated contracts regarding the rights and responsibilities of Agency Stores in connection with the merchandising and sale of Spirituous Liquor ("Agency Store Contracts"), which Agency Store Contracts will be subject to the Statutory Merchandising Activities identified on Exhibit B. The Agency Store Contracts entered into between each Agency Store and Franchisee are referred to herein as the "Franchisee Agency Contracts".
- DLC will perform and provide the Statutory Merchandising Activities identified on Exhibit B to the Franchisee.

Schedule A-1

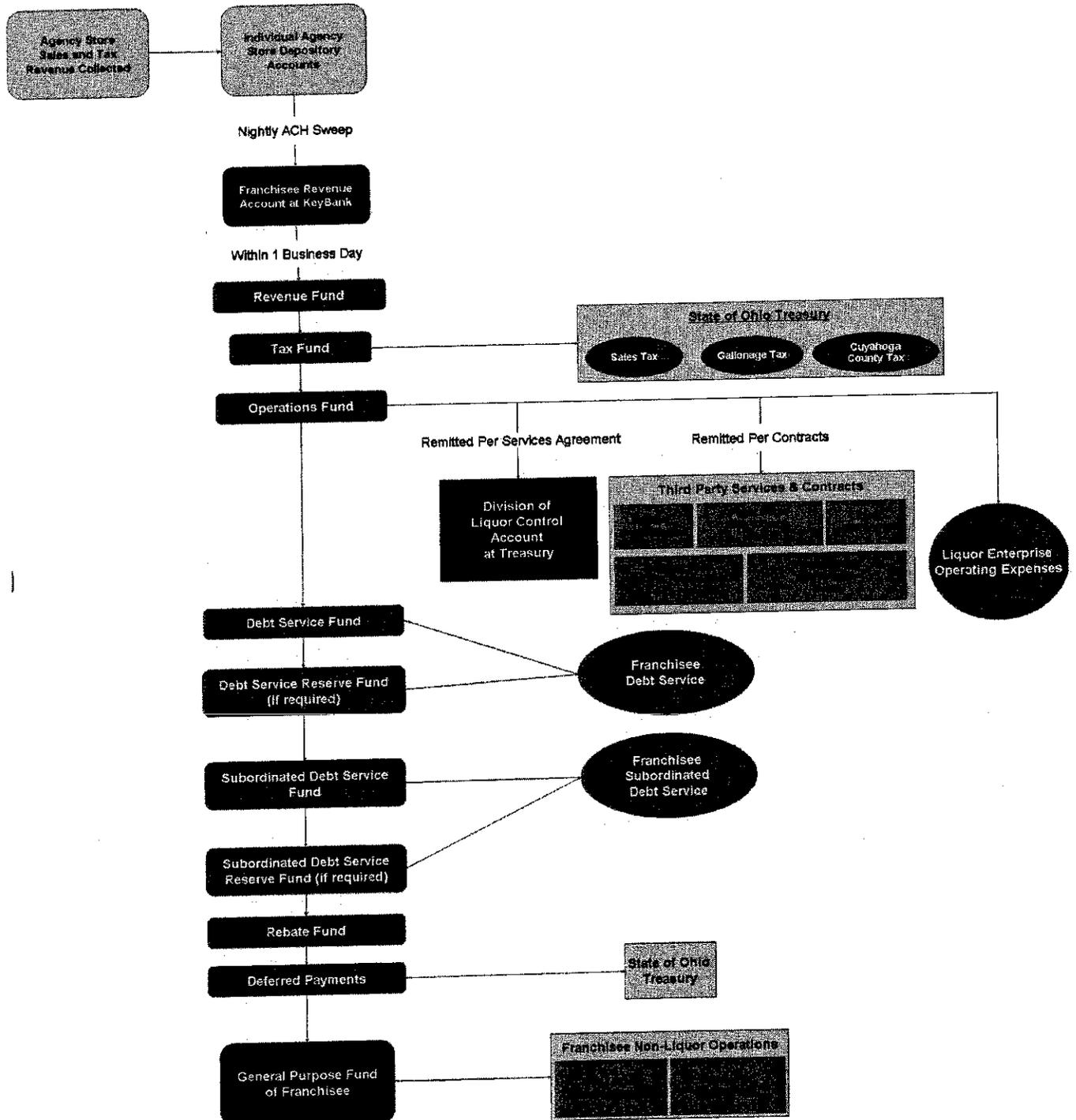
Liquor Tax Calculation, Reporting and Payment Process

1. **Tax Calculation.** DLC shall calculate Liquor Taxes (as defined in the Agreement) of the Liquor Business twice per calendar month (each, a "Tax Calculation") for the following periods: (1) 1st thru the 15th and (2) 16th thru the 30th (31st) (each, a "Tax Reporting Period").
2. **Tax Payment Schedule.** Liquor Taxes will be accrued and then paid by Franchisee (or the Master Trustee on its behalf) the calendar month following DLC's Tax Calculation. Franchisee (or the Master Trustee on its behalf) will pay such applicable Liquor Taxes on the 5th and 20th days of the calendar month following the applicable Tax Calculation.
3. **Tax Reporting.**
 - (a) Upon the close of each Tax Reporting Period, DLC, through its internal processes, will create the following reports for such Tax Reporting Period:
 - (i) Dollar Sales by Outlet Report,
 - (ii) Sales Tax by County Report,
 - (iii) Sales Tax by Outlet Report,
 - (iv) Summary of Sales, Inventory, and Gallons Report,
 - (v) Cuyahoga County Bottles & Dollars By Store Report.
 - (b) DLC will then use the information identified in the reports identified in Section 3(a) above to generate the following additional reports for such Tax Reporting Period:
 - (i) Sales Tax Report,
 - (ii) Gallonage Tax Report,
 - (iii) Memo outlining total Sales Tax, Gallonage Tax, and Cuyahoga Tax amounts due for such Tax Reporting Period.
4. **Tax Payment Instructions.** No later than 10 days after the close of each Tax Reporting Period, DLC will deliver a Liquor Tax payment instruction packet ("Payment Instructions") to the Franchisee (or the Master Trustee on its behalf), which packet will (a) include copies all of the reports listed in Section 3(b) above and (b) specifically identify the payment dates and payment amounts for each type of Liquor Tax to be paid by Franchisee for such Tax Reporting Period (each, a "Tax Payment"). DLC will also provide a copy of the Payment Instructions (and any related backup documentation) to the Department of Taxation.
5. **Payment of Liquor Taxes.** Franchisee (or the Master Trustee on its behalf) will approve, initiate and pay each Tax Payment to the Department of Taxation in accordance with the Payment Instructions by electronic funds transfer (EFT) to the main State Bank Account held by the Treasurer of State. Under no circumstance will DLC initiate or pay any Tax Payments on behalf of Franchisee (through its CICS system or otherwise).

6. Notice of Payment. Franchisee (or the Master Trustee on its behalf) will promptly notify DLC (by electronic mail, facsimile, or phone) of the initiation of each Tax Payment from its bank account ("Payment Notice").
7. Verification of Payment. Upon receipt of the Payment Notice, DLC will monitor the main State Bank Account through Key Bank and verify that such Tax Payment has been received. DLC will promptly provide confirmation of the receipt of such Tax Payment to Franchisee (by electronic mail, facsimile, or phone).
8. Certification. Once DLC has verified receipt of the Tax Payment in the main State Bank Account, DLC will initiate a Revenue document (i.e., the document showing the details of tax amounts and the funds to which they are due) in the OAKS system ("Certification") and send its Certification to the Treasurer of State. Upon receipt of the Certification, the Treasurer of State will transfer the Tax Payment from the main State Bank Account to the appropriate Department of Taxation fund or account.
9. Direct Payment Permit. Franchisee will obtain and maintain direct payment authority from the Ohio Department of Taxation for the payment of those specific taxes related to its operation of the Liquor Business (under ORC §§ 4301.12, 4301.421, 4301.424, 5739.02, 5739.021, 5739.023, and 5739.026, as applicable).
10. Conflicts. In the event and to the extent that the processes set forth on this Schedule A-1 are inconsistent with that certain Memorandum of Understanding between the Ohio Department of Taxation, the Treasurer of the State of Ohio, Franchisee and DLC (as amended from time to time), the terms of such Memorandum of Understanding will govern and control.

Schedule A-2

Cash Flow Process Diagram



Schedule A-2
(Continued)

Flow of Funds

All Liquor Business Profits shall be deposited in the Revenue Fund no later than the Business Day following receipt thereof by JobsOhio Beverage System. JobsOhio Beverage System shall make the following payments from the Revenue Fund on the dates provided in the following order of priority:

- (a) First: Into the Tax Fund, on the 5th and the 20th of each month, the amount sufficient to pay all taxes collected on the sale of spirituous liquor for the previous sales period.
- (b) Second: Into the Operations Fund, on any Business Day, the amount, together with any available amounts then on deposit therein, sufficient to pay estimated Operating Expenses of the Liquor Enterprise, including on the first Business Day of each month one-third of the payments under the Service Contract for the quarter of the Fiscal Year of which that month is a part.
- (c) Third: (1) Into the Interest Payment Account of the Debt Service Fund on the twenty-fifth of each month one-fifth of the amount necessary, after taking into account any money then on deposit in the Interest Payment Account, to provide for the interest due on the Obligations and any Related Debt on the next Interest Payment Date; (2) into the Principal Payment Account of the Debt Service Fund on the twenty-fifth of each month one-tenth of the amount necessary, after taking into account any moneys then on deposit in the Principal Payment Account, to provide for the payment of principal of the Obligations and any Related Debt, whether due to maturity or mandatory sinking fund requirements, on the next succeeding Principal Payment Date on which such principal is to be paid; provided, however, that the deposits into the Debt Service Fund for a series of Obligations or Related Debt then Outstanding may, at the discretion of the Obligated Group Agent, be discontinued at such time as the amounts then on deposit and available in the Debt Service Fund and the applicable account in the Debt Service Reserve Fund for that series of Obligations or Related Debt are sufficient to permit the purchase for cancellation or call for redemption at or before maturity all of the Obligations or Related Debt of that series then Outstanding and the Obligated Group Agent has notified the Master Trustee and the Related Debt Trustee, if any, to use such amounts to accomplish such purchase or redemption; and
- (d) Fourth: Into the accounts created or designated in the Debt Service Reserve Fund, if any, on the twenty-fifth of each month the amounts provided in any Supplemental Master Indenture or Related Debt Indenture, an amount equal to one-twelfth of the Required Reserve Deficiency, until the amount then on deposit in such Fund equals the Required Reserve; provided, however, that any Required Reserve being initially funded from moneys other than the proceeds of Obligations or Related Debt must be funded from the General Purpose Fund or other moneys outside of the Trust Estate.
- (e) Fifth: Into the Subordinated Indebtedness Debt Service Fund, (1) into the interest payment account of the debt service fund under the Subordinated Indebtedness Trust Indenture on the twenty-fifth of each month one-fifth of the amount necessary, after taking into account any money then on deposit in that interest payment account, to provide for the interest due on the Subordinated Indebtedness on the next interest payment date for the Subordinated Indebtedness; (2) into the principal payment account of the debt service fund under the Subordinated Indebtedness Trust Indenture on the twenty-fifth of each month one-tenth of the amount necessary, after taking into

account any moneys then on deposit in that principal payment account, to provide for the payment of principal of the Subordinated Indebtedness, whether due to maturity or mandatory sinking fund requirements, on the next succeeding principal payment date on which such principal is to be paid; provided, however, that the deposits into the debt service fund for a series of Subordinated Indebtedness then Outstanding may, at the discretion of the Obligated Group Agent, be discontinued at such time as the amounts then on deposit and available in the related debt service fund and the applicable account in the Debt Service Reserve Fund for that series of Subordinated Indebtedness are sufficient to permit the purchase for cancellation or call for redemption at or before maturity all of the Subordinated Indebtedness of that series then Outstanding and the Obligated Group Agent has notified the Master Trustee and the trustee under the Subordinated Indebtedness Trust Indenture, if any, to use such amounts to accomplish such purchase or redemption or if greater, the Subordinated Debt Service Charges due during that month.

(f) Sixth: Into the accounts created or designated in the Subordinated Indebtedness Debt Service Reserve Fund, if any, on the twenty-fifth of each month the amounts provided in any Subordinated Indebtedness Trust Indenture, an amount equal to one-tenth of the any deficiency in the required reserve thereunder, if any, until the amount then on deposit in such Fund equals the reserve required by the Subordinated Indebtedness Trust Indenture; provided, however, that any required reserve for Subordinated Indebtedness being initially funded from moneys other than the proceeds of Subordinated Indebtedness must be funded from the General Purpose Fund or other moneys outside of the Trust Estate.

(g) Seventh: Into the Rebate Fund, if any, the amounts and at the times, provided in any Supplemental Master Indenture or Related Debt Indenture for the payment of any Rebate Amount.

(h) Eighth: to the Deferred Payment Reserve Fund, on the twenty-fifth of each month, the monthly amount budgeted for that purpose by JobsOhio Beverage System.

(i) Ninth: Into the General Purpose Fund, on the twenty-fifth of each month, any amount of the moneys remaining in the Revenue Fund, which the Obligated Group Agent has reasonably determined taking into account additional Revenues projected to be received, will not be needed to make deposits required in First through Eighth above.

Exhibit B

Statutory Merchandising²

- Selecting spirituous liquor products, including size. Ohio Rev. Code § 4301.10(A)(1), (3), (11), .101, .17, .18, .19.
- Determining which agency locations will sell particular products. Ohio Rev. Code § 4301.10(A)(1), (3), (11).
- Controlling the purchase of spirituous liquor for distribution to agencies. Ohio Rev. Code § 4301.10(A)(1), (3), (11), (B)(2), .18.
- Reviewing and approving trucking contracts for spirituous liquor distribution purposes. Ohio Rev. Code § 4301.10(A)(1), (3), (11), (B)(2).
- Reviewing and approving warehouse contracts. Ohio Rev. Code § 4301.10(A)(1), (3), (11), (B)(2).
- Determining agency shelf sets. Ohio Rev. Code § 4301.10(A)(1), (3), (11).
- Auditing agencies for statutory compliance Ohio Rev. Code § 4301.10(A)(1), (3), (11).
- Fixing the wholesale and retail prices at which the various classes, varieties, and brands of spirituous liquor are sold (pursuant to statutory provisions, including gross profit caps). Ohio Rev. Code § 4301.10(A)(1), (3), (11), (B)(4); Ohio Admin. Code § 4301-3-01(D).
- Selecting new agency sites in a manner consistent with the Ohio Revised Code, including compliance with quota and county limits. Ohio Rev. Code § 4301.10(A)(1), (3), (11), .17(A)(1); Ohio Admin. Code § 4301-5-01.
- Fixing the amount of commissions paid to liquor contract agencies. Ohio Rev. Code § 4301.12, .16, .17(A)(1).
- Monitoring of and adherence to the statutory number of liquor agencies in a county. Ohio Rev. Code § 4301.17(A)(1).
- Processing of legislative notice for new agency location proposals, assignments of an agency contract, agency relocation proposals, or the relocation and assignment of an agency. Ohio Rev. Code § 4301.17(B).
- Notifying appropriate authorities if a proposed agency, assignment of an agency contract, or relocation of an existing agency store would cause such agency to be located within 500 feet of the school, church, library, public playground, or township park. Ohio Rev. Code § 4301.17(B).
- Processing the relocation of an agency or reassignment and relocation of an existing agency store. Ohio Rev. Code § 4301.17(B).
- Issuing non-quota C-1 and C-2 licenses for agencies. Ohio Rev. Code § 4301.17(C).
- Establishing bonding requirements for each agency. Ohio Rev. Code § 4301.17(E).
- Administering agency contracts for the sale of spirituous liquor. Ohio Rev. Code § 4301.17(C).
- Determining the location of all state liquor stores. Ohio Rev. Code § 4301.10(A)(5); Ohio Admin. Code § 4301-5-01.
- Processing of and setting standards for expansions or diminutions of permit premises. Ohio Rev. Code § 4301.10(C); Ohio Admin. Code § 4301-1-02.

² Any changes to Spirituous Liquor statutes or regulations require legislative or administrative action. DLC is authorized to update this Exhibit from time to time as a result of any such action.

- Selecting new state liquor agencies. Ohio Admin. Code § 4301-5-01.
- Approving tastings of spirituous liquor. Ohio Admin. Code § 4301:1-1-30.
- Conducting hearings pursuant to objections by legislative authorities or institutions. Ohio Rev. Code § 4301.17(B).
- Assigning retail accounts for the wholesale portion of spirituous liquor agency contract. Ohio Rev. Code § 4301.10(A)(3), (11), .17.

Exhibit C

Excluded Regulatory Activities³

- Issuing new licenses and permits for all manufacturer, wholesale distributor, and retail liquor licenses for the State. Ohio Rev. Code §§ 4301.10(A)(2), 4303.02 to .234, .24, .26, .292; Ohio Admin. Code § 4301:1-1-12.
- Processing and issuing liquor licenses pursuant to the quota and other provisions of Ohio Revised Code §§ 4301 and 4303. Ohio Rev. Code § 4303.29(B)(2), .292; Ohio Admin. Code § 4301:1-1-11.
- Conducting inspections and investigations of permit premises. Ohio Rev. Code § 4301.10(A)(1), (6)–(7).
- Administrating new location, transfer of location, and transfer of ownership applications. Ohio Rev. Code § 4303.24, .26, .29(B)(2)(b); Ohio Admin. Code § 4301:1-1-12, -14, -17.
- Reviewing qualifications of licensees, including background checks. Ohio Rev. Code §§ 121.08(K), 4303.29(A), .292(A)(1)(a); Ohio Admin. Code § 4301:1-1-19.
- Reviewing the qualifications of agencies and prospective agencies (including the physical structure, financial stability of ownership, and wet/dry status). Ohio Rev. Code § 4303.292(A)(2)(a); Ohio Admin. Code § 4301:1-1-12, -17.
- Administrating liquor license renewals. Ohio Rev. Code § 4303.271, .292.
- Issuing permits of various classes (55 classes of permits are available) including manufacturer, supplier, distributor, retailer, on premise and temporary permits. Ohio Rev. Code § 4303.02 to .234, .26.
- Enforcing hours of operation and Sunday sales. Ohio Rev. Code § 4301.10(A)(1), (4), (6), (7); Ohio Admin. Code § 4301:1-1-49.
- Reviewing local options pursuant to Ohio Revised Code § 4301.32 to .41.
- Sending notifications of permit applications to the local legislative authority and police. Ohio Rev. Code § 4303.26(A).
- Reviewing locations for violations. Ohio Rev. Code § 4301.10(A)(1), (6); Ohio Admin. Code § 4301:1-1-19.
- Overseeing and administrating various facets of beer and wine manufacturing, sale, transportation and distribution within the state, including out of state suppliers, product registrations, and territory designations. Ohio Rev. Code § 4301.10(A)(1)–(2), (4), (6)–(8), .24, .241; Ohio Admin. Code §§ 4301-2-01, 4301:1-1-03, -05, -22, -24, -28, -72, -73, -74.
- Issuing Tax Non-Renewal Orders. Ohio Rev. Code § 4303.271(D)(2)(a).
- Processing expansions or diminutions of permit premises. Ohio Rev. Code §§ 4301.10(C), 4303.27; Ohio Admin. Code § 4301-1-02.
- Approving transfers of products between permit premises. Ohio Admin. Code § 4301:1-1-46.
- Approving tastings of beer, wine, and mixed beverages. Ohio Admin. Code § 4301:1-1-30.
- Conducting hearings pursuant to objections by legislative authorities or institutions. Ohio Rev. Code § 4303.26, .271.

³ Any changes to Spirituous Liquor statutes or regulations require legislative or administrative action. DLC is authorized to update this Exhibit from time to time as a result of any such action.

Exhibit 5

FRANCHISE AND TRANSFER AGREEMENT

by and among

**THE DEPARTMENT OF COMMERCE
OF THE STATE OF OHIO,**

**THE OFFICE OF BUDGET AND MANAGEMENT
OF THE STATE OF OHIO,**

JOBSOHIO

and

JOBSOHIO BEVERAGE SYSTEM

August 7, 2012

RELATOR'S EXHIBIT

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FRANCHISE AND TRANSFER AGREEMENT

This **FRANCHISE AND TRANSFER AGREEMENT** (this "Agreement") is made and entered into as of August 7, 2012 by and among the Department of Commerce of the State of Ohio, acting on behalf of its Divisions of Liquor Control and Administration (the "DLC"), the Office of Budget and Management of the State of Ohio (the "OBM") and JobsOhio Beverage System, an Ohio nonprofit corporation ("Franchisee"), the sole member of which is JobsOhio, an Ohio nonprofit corporation ("JobsOhio"). Hereinafter, DLC, OBM, Franchisee, and JobsOhio shall each be referred to as a "Party" and collectively as the "Parties," the DLC and OBM shall collectively be referred to as the "State Parties," and Franchisee and JobsOhio shall collectively be referred to as the "Franchisee Parties." Capitalized terms not defined in this introductory paragraph or the recitals are used therein as defined in Section 1.1 of this Agreement.

WITNESSETH:

WHEREAS, in accordance with the Constitution and laws of the State of Ohio, and particularly Chapter 4313 of the Ohio Revised Code ("ORC"), the directors of each of the Department of Commerce, duly created as an administrative department of state government pursuant to Section 121.02(B) of the ORC, and the OBM, duly created and existing as an administrative department of state government pursuant to Section 121.02(A) of the ORC, are authorized and empowered to enter into this Agreement on behalf of the State of Ohio and to do or cause to be done all the acts and things herein provided or required to be done;

WHEREAS, this Agreement contemplates a transaction in which (a) the State Parties will (i) grant the Franchise relating to the Liquor Enterprise and (ii) transfer certain assets of the Liquor Enterprise, to Franchisee, in return for cash, Deferred Payments, and other consideration, and (b) Franchisee will contemporaneously contract with DLC for the continued operation and management of the Liquor Business pursuant to the DLC Services Agreement, all as authorized by ORC Chapter 4313;

WHEREAS, pursuant to Section 4313.02(A) of the ORC, this Agreement also contemplates and provides for the termination of such Franchise and the transfer back to the DLC of such capital or other assets of the Liquor Business, at no cost, as such capital or other assets then exist, no later than 25 years after the occurrence of the transfer contemplated herein; and

WHEREAS, Ohio Revised Code § 4313.02(C)(2) provides, among other things that "the director of budget and management, in consultation with the director of commerce, may, without the need for any other approval, negotiate terms of any documents, including the transfer agreement, necessary to effect the transfer of the enterprise acquisition project" and that "the director of budget and management and the director of commerce shall execute the transfer agreement on behalf of the state []". Further, Section 229.10 of Amended Substitute House Bill Number 153 of the 129th General Assembly provides that "[t]he Director of Budget and Management, in consultation with the Director of Commerce, may negotiate an initial agreement with JobsOhio, which shall be executed by the Directors of Budget and Management and Commerce upon its completion."

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties, and covenants herein contained, the Parties agree as follows.

ARTICLE 1 - DEFINITIONS AND INTERPRETATION

1.1 Definitions. Unless otherwise specified or the context otherwise requires, for the purposes of this Agreement the following terms have the following meanings:

“Acceptance Notice” has the meaning set forth in Section 3.5(c).

“Actual Delivered Working Capital” has the meaning set forth in Section 3.4(a).

“Additional Obligations” means any Franchisee Indebtedness issued after the Closing that either: (a) at the time of their issuance, are issued on terms previously approved by the Director of OBM or (b) (i) are fixed rate bonds that would be satisfied in full, in the Ordinary Course of Business, by the 25th anniversary of the Closing Date; (ii) do not involve any “credit facility,” “interest rate hedge” (each as defined in Section 9.98 of the ORC) or any Derivative Agreement (as defined in the Master Trust Indenture); (iii) at the time of their issuance, have a projected ratio of Liquor Business Profits to debt service on all Obligations, including the proposed Additional Obligations, which exceeds the Required Debt Service Ratio for each year the proposed Additional Obligations are scheduled to be outstanding; and (iv) do not limit the State Parties’ remedies under this Agreement.

“After-Acquired Assets” means those rights and assets acquired by JobsOhio during the Term of this Agreement that are used solely or primarily in connection with the operation of the Liquor Business.

“Agreement” has the meaning set forth in the introductory paragraph.

“Agency Store” means a state agency store authorized by DLC pursuant to Section 4301.17 of the ORC to sell Spirituous Liquor in the State of Ohio pursuant to an Agency Contract.

“Agency Store Bonds” has the meaning set forth in Section 6.8.

“Agency Contract” means any Retail Agency Contract, Retail Agency Contract (Sunday), Retail/Wholesale Agency Contract and Retail/Wholesale Agency Contract (Sunday) form contract between an Agency Store and the DLC governing the sale of Spirituous Liquor in substantially the same form previously provided by DLC to Franchisee (as may be amended or modified from time to time).

“Applicable Rate” means with respect to a given month, a rate equal to the sum of (i) LIBOR determined on the first Business Day of that month, plus (ii) 2.00%.

“Approval,” “approved,” “approves,” “approved by the State,” “approved by the State of Ohio” and similar expressions mean approved or consented to in writing by a State Party, the

State Parties or the State of Ohio, as the case may be, in accordance with the provisions of Section 1.2(1)(ii).

“Assigned Contracts and Contract Rights” means the contracts and contract rights set forth on the Schedule of Assigned Contracts and Contract Rights, set forth on Schedule I.

“Assignment and Assumption Agreement” means an Assignment and Assumption Agreement in a form and substance mutually satisfactory to the Parties, to be executed and delivered in connection with the Closing.

“Assumed Liabilities” has the meaning set forth in Section 2.2(a), set forth on Schedule II.

“Base Franchise Profits” means:

- (a) for the Fiscal Year ending June 30, 2013, \$257,500,000;
- (b) for any Fiscal Year ending after July 1, 2013, 103% of the Base Franchise Profits for the immediately preceding Fiscal Year, as set forth on Schedule III.

“Beneficial Rights” has the meaning set forth in Section 2.3.

“Bill of Transfer” means an instrument transferring title in, to and under the Transferred Assets in form and substance mutually satisfactory to the Parties, to be executed and delivered in connection with the Closing.

“Bond Defeasance Amount” means the aggregate amount required to defease, on the Closing Date, the Existing Liquor Enterprise Obligations in accordance with the terms of the documents under which such obligations were issued and are secured, including the costs of releasing all security interests and collateral securing such obligations.

“Bond Defeasance Escrow Agreements” means, collectively, those one or more escrow agreements necessary to consummate the defeasance of the Existing Liquor Enterprise Obligations, on the Closing Date, in accordance with the terms of the documents under which such obligations were issued and are secured.

“Bond Defeasance Escrow Trustees” means U.S. Bank National Association and The Bank of New York Mellon Trust Company, N.A.

“Bond Defeasance Payment” means an amount which is the greater of: (a) the Bond Defeasance Amount; or (b) \$800,000,000; provided, however, that if the resulting Bond Defeasance Payment does not permit Franchisee to comply with the coverage test set forth in clause (e) of the definition of Transaction Obligations, then such Bond Defeasance Payment may be reduced, but not below the amount specified in clause (a), by an amount mutually agreed to by the Parties.

“Books and Records” has the meaning set forth in Section 10.6.

“Business Day” means a day other than (a) a Saturday, Sunday or legal holiday on which banking institutions in the State or the State of New York (or such other state where the designated corporate trust office of the Master Trustee is located) are authorized or required by law to close or (b) a day on which the New York Stock Exchange is closed.

“Cash” means cash and cash equivalents (including marketable securities and short-term investments) calculated on a modified accrual basis consistent with the preparation of the Financial Statements, but excluding Unswept Sales Revenue.

“Chapter 151 Make-Whole Proceeds” has the meaning set forth in Section 14.6(b).

“Chapter 166 Make-Whole Proceeds” has the meaning set forth in Section 14.6(c).

“Chapter 151 Reserve Account” has the meaning set forth in Section 14.6(b).

“Chapter 166 Reserve Account” has the meaning set forth in Section 14.6(c).

“Closing” has the meaning set forth in Section 4.1.

“Closing Date” has the meaning set forth in Section 4.1.

“Code” means the Internal Revenue Code of 1986, as amended from time to time. Each reference to a section of the Code herein shall be deemed to include the United States Treasury Regulations, including temporary and proposed regulations, relating to such sections.

“Contemplated Transactions” means all of the transactions between any of the Parties contemplated by this Agreement.

“Controlling Board” means the Controlling Board of the State of Ohio created pursuant to Section 127.12 of the ORC.

“Constitution” has the meaning set forth in Section 6.1.

“Consultant” has the meaning set forth in Section 14.5(c)(i).

“Debt Coverage Statement” has the meaning set forth in Section 14.5(b).

“Debt Service Coverage Ratio” means the amount of Liquor Business Profits in any Fiscal Year, divided by the Required Payments for that Fiscal Year.

“Deferred Payment” has the meaning set forth in Section 3.5(a).

“Deferred Payment Amount” has the meaning set forth in Section 3.5(a).

“Deferred Payment Notice” has the meaning set forth in Section 3.5(b).

“Director of Commerce” means that officer of the State, appointed pursuant to Section 121.03 of the ORC, who administers and is the executive head of the DLC.

“Director of Budget and Management” means that officer of the State, appointed pursuant to Section 121.03 of the ORC, who administers and is the executive head of the OBM.

“Dispute Notice” has the meaning set forth in Section 3.5(d).

“DLC” has the meaning set forth in the introductory paragraph.

“DLC Services Agreement” means a Services Agreement by and among the DLC, the OBM and Franchisee in form and substance mutually satisfactory to the Parties (and approved by the Controlling Board), to be executed and delivered in connection with the Closing.

“DOD” means the Department of Development of the State of Ohio created pursuant to Section 121.02(N) of the ORC, or any successor State of Ohio agency.

“DOD Agreement” means the agreement for services between the Director of the DOD and JobsOhio.

“Draft Working Capital Statement” has the meaning set forth in Section 3.4(a).

“Effective Time” has the meaning set forth in Section 4.2.

“Encumbrance” means any mortgage, lien, judgment, execution, pledge, charge, security interest, restriction, easement, claim, trust, deemed trust or encumbrance of any nature whatsoever, whether arising by operation of Legal Requirements or otherwise created.

“Escrow Accounts” means each escrow account (however captioned) established pursuant to Section 2 of each of the Bond Defeasance Escrow Agreements.

“Estimated Working Capital” means the estimated Working Capital of the Liquor Enterprise at Closing in the amount mutually agreed upon by the Parties.

“Excess Amount” has the meaning set forth in Section 3.4(e)(i).

“Excess Chapter 151 Make-Whole Proceeds” has the meaning set forth in Section 14.6(c).

“Excess Chapter 166 Make-Whole Proceeds” has the meaning set forth in Section 14.6(d).

“Existing Liquor Enterprise Chapter 151 Make-Whole Obligations” means those certain Existing Liquor Enterprise Chapter 151 Obligations containing make-whole redemption provisions, which are further identified on Schedule XI hereto.

“Existing Liquor Enterprise Chapter 166 Make-Whole Obligations” means those certain Existing Liquor Enterprise Chapter 166 Obligations containing make-whole redemption provisions, which are further identified on Schedule XI hereto.

“Existing Liquor Enterprise Chapter 151 Obligations” means all of the Revitalization Project Bonds and Bond Anticipation Notes issued by the Treasurer of the State of Ohio under

Section 151.40 of the ORC, as such are outstanding as of the Effective Time. Such obligations are further identified on Schedule IV hereto.

“Existing Liquor Enterprise Chapter 166 Obligations” means all of the Development Assistance Bonds and Bond Anticipation Notes issued by the Treasurer of the State of Ohio under Section 166.08 of the ORC, as such are outstanding as of the Effective Time. Such obligations are further identified on Schedule IV hereto.

“Existing Liquor Enterprise Make-Whole Obligations” means all of the Existing Liquor Enterprise Chapter 151 Make-Whole Obligations and the Existing Liquor Enterprise Chapter 166 Make-Whole Obligations.

“Existing Liquor Enterprise Obligations” means all of the Existing Liquor Enterprise Chapter 151 Obligations and the Existing Liquor Enterprise Chapter 166 Obligations.

“Financial Statements” has the meaning set forth in Section 6.5.

“Fiscal Year” means (a) any twelve-month period beginning on July 1 of any calendar year and ending on June 30 of the following calendar year, or (b) such other consecutive twelve-month period designated from time to time in an officer’s certificate delivered to the Master Trustee as the fiscal year for the member or members of the Obligated Group which control the Liquor Business.

“Franchise” means the exclusive right to distribute, merchandise, and sell Spirituous Liquor in the State of Ohio, and to receive all revenues and related receipts and accounts receivable related thereto, on the terms and conditions provided for under the terms of this Agreement. For avoidance of doubt, such “Franchise” does not include the Statutory Merchandising Functions or Regulatory Functions.

“Franchisee” has the meaning set forth in the introductory paragraph.

“Franchisee Contracts” has the meaning set forth in Section 17.7(a).

“Franchisee Default” has the meaning set forth in Section 17.1.

“Franchisee Indebtedness” means any indebtedness of Franchisee (including any bonds, loan agreements, notes, contracts, installment sale, reimbursement, revolving credit and standby bond purchase agreements), Ancillary Obligations (as defined in the Master Trust Indenture), Debt Obligations (as defined in the Master Trust Indenture), or Hedging Obligations (as defined in the Master Trust Indenture), or any combination thereof, that are secured by Liquor Business Profits.

“Franchisee Parties” has the meaning set forth in the introductory paragraph.

“GAAP” means U.S. generally accepted accounting principles as in effect from time to time, consistently applied.

“Governmental Authority” means any domestic office or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including without limitation any governmental authority, agency, department, board, commission, court, tribunal, judicial body or instrumentality of the United States or any state, municipality, county, locality or other political subdivision thereof.

“Independent Accountant” has the meaning set forth in Section 3.4(c).

“Interim Agency Store” means any Agency Store located in a county where a tax authorized by Section 307.697 of the ORC has been imposed.

“Interim Assets” means all of the assets of the Liquor Enterprise owned or used solely in connection with the operation of the Interim Agency Stores, including without limitation the Agency Contracts and Spirituous Liquor inventory located at such Interim Agency Locations as of the Effective Time.

“Interim Financial Statements” has the meaning set forth in Section 11.1(e).

“JobsOhio” has the meaning set forth in the introductory paragraph.

“JobsOhio Act” means Chapters 187 and 4313 of the ORC, as such legislation may be amended, or supplemented by additional legislation, from time to time.

“JobsOhio Conflicts of Interest Policy” means the Conflicts of Interest Policy adopted pursuant to the JobsOhio Act by the Board of Directors of JobsOhio, as amended from time to time.

“Legacy Commitment Amount” means \$100,000,000, which represents the amount of outstanding CleanOhio program commitments of the State of Ohio as of the Closing.

“Legal Requirement” means any federal, state, local, municipal or other administrative order, constitution, law, ordinance, principle of common law, regulation, or statute.

“LIBOR” means the rate per annum determined on the basis of the rate of deposits in U.S. dollars offered for a term of three months, which rate appears on the display designated on the Reuters LIBOR01 Page (or such other page as may replace the Reuters LIBOR01 Page or such other service or services as may be nominated by the British Bankers’ Association for the purpose of displaying London interbank offered rates in U.S. dollar deposits), determined at approximately 11:00 a.m., London time, on the date of determination, or if such rate is not available, another comparable rate agreed by the Franchisee and the State Parties.

“Liquor Business” means the Franchise, the Transferred Assets and the After-Acquired Assets, as owned and operated by Franchisee during the Term.

“Liquor Business Financial Statements” means the audited financial statements of Franchisee prepared in accordance with GAAP.

“Liquor Business Profits” means, for any period after the Closing Date, Liquor Business Revenues remaining after all Ordinary Course Costs and Expenses.

“Liquor Business Recommendations” means a written report containing the Consultant’s recommendations of actions that may be taken by Franchisee and the State Parties with respect to prices charged and costs incurred by the Liquor Business that would result in an amount of Liquor Business Profits for the then current Fiscal Year sufficient to attain the Minimum Debt Service Coverage Ratio for such Fiscal Year.

“Liquor Business Revenues” means the sales of the Obligated Group representing the gross sales (after application of any wholesale Spirituous Liquor discount) and applicable Taxes and governmental charges of any type collected by the Liquor Business from the sale of Spirituous Liquor, calculated on an accrual basis.

“Liquor Enterprise” means the Spirituous Liquor distribution and merchandising operations owned and operated by the State Parties immediately prior to the Effective Time, including, without limitation, inventory, real property rights, equipment, furnishings, the Spirituous Liquor distribution system including transportation, the monetary management system, warehouses, contract rights, rights to take assignment of contracts and related receipts and revenues, accounts receivable, the right to manage Spirituous Liquor distribution and merchandising in the State of Ohio and to sell Spirituous Liquor in the State of Ohio subject to the control of the DLC, and all necessary appurtenances thereto, or leasehold interests therein.

“Master Trust Indenture” means the Master Trust Indenture among Franchisee and such other entities that may join the Obligated Group (as defined therein) and the Master Trustee, as amended or supplemented from time to time.

“Master Trustee” means The Huntington National Bank, or any successor trustee thereto pursuant to the terms of the Master Trust Indenture.

“Material Adverse Effect” means any effect or change that would be materially adverse to the business, assets, condition (financial or otherwise), operating results, operations, or business prospects of the Liquor Business, taken as a whole, or to the ability of any Party to consummate timely the Contemplated Transactions.

“Maximum Annual Debt Service” means, at the time of computation, the greatest Required Payments on the Obligations for the then-current or any future Fiscal Year, *provided, that* in calculating Maximum Annual Debt Service, Required Payments with respect to Balloon Obligations (as defined in the Master Trust Indenture), Balloon Subordinated Indebtedness (as defined in the Master Trust Indenture), Variable Rate Indebtedness, Discount Indebtedness (as defined in the Master Trust Indenture) or Derivative Indebtedness (as defined in the Master Trust Indenture) shall be determined in accordance with Sections 512, 513, 514 and 515, respectively, of the Master Trust Indenture.

“Minimum Debt Service Coverage Ratio” means, for any Fiscal Year, the ratio of Liquor Business Profits to the Required Payments that are to be paid from Liquor Business Profits in that Fiscal Year on Obligations then outstanding equal to 1.35x.

“Most Recent Fiscal Year End” has the meaning set forth in Section 6.5.

“Objection Notice” has the meaning set forth in Section 3.4(b).

“Obligations” means any outstanding Transaction Obligations and any outstanding Additional Obligations, each issued in compliance with their respective parameters set forth herein.

“Obligated Group” means the Franchisee, and any other member who is admitted to the Obligated Group from time to time pursuant to Section 505 of the Master Trust Indenture.

“OBM” has the meaning set forth in the introductory paragraph.

“Offering Circular” means the Offering Circular relating to the Transaction Obligations, substantially in the form of the Preliminary Offering Circular, with such modifications, completions, changes and supplements as may be approved by the original purchaser and Franchisee.

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

“Ordinary Course Costs and Expenses” means any obligations incurred by the Obligated Group, in its sole and absolute discretion, for costs of goods sold (calculated on a first-in first-out basis, including an appropriate allocation of freight costs by the case), as well as administrative and other operating costs and expenses of running the Liquor Business in the Ordinary Course of Business and all Taxes or governmental charges of any type imposed on the Liquor Business. Any amounts due pursuant to the Service Agreement and any depreciation (incurred in connection with the activities and operations of the Liquor Business) shall be included in Ordinary Course Costs and Expenses. Notwithstanding anything to the contrary, any costs or expenses (a) incurred in connection with or incidental to the non-Liquor Business activities and operations, if any, of the Obligated Group, (b) related to and including Required Payments, or (c) related to and including any amortization, impairment or depreciation (or alternative method of expensing) of the Franchise, Transferred Assets, goodwill or any combination thereof, are excluded.

“Ordinary Course of Business” means the ordinary course of business consistent with past custom and practice (including with respect to quantity and frequency) or, in the case of operating the Franchise, in a manner consistent with the Expense Budget (as defined in the DLC Services Agreement), or Business Plan (as defined in the DLC Services Agreement) for such activity.

“Organizational Documents” means: (a) the articles or certificate of incorporation and the code of regulations of a corporation; (b) the partnership agreement and any statement of partnership of a general partnership; (c) the limited partnership agreement and the certificate of limited partnership of a limited partnership; or (d) any charter or similar document adopted or filed in connection with the creation, formation, or organization of a Person. The term “Organizational Documents” also includes any amendment to any of the foregoing.

“Other Commitments” means all outstanding indebtedness of Franchisee, including any bonds, loan agreements, notes, contracts, reimbursement, and standby bond purchase agreements related thereto, or any combination thereof, but excluding Obligations.

“Party” and “Parties” have the meanings set forth in the introductory paragraph.

“Payment Instructions” has the meaning set forth in Section 4.3.

“Permitted Franchisee Encumbrance” means an Encumbrance that is identified by Franchisee in writing to the State Parties after the Effective Date.

“Permitted State Encumbrance” means any rights of the State Parties under this Agreement, including those set forth in Section 17.7.

“Permitted Transitional Activities” means the non-Liquor Business business, activities or operations conducted by the Franchisee as of the date hereof and as of the Closing Date.

“Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, any other business entity or a Governmental Authority.

“Preliminary Offering Circular” means the Preliminary Offering Circular relating to the Transaction Obligations.

“Proceeding” means any action, arbitration, audit, hearing, investigation, litigation, or suit (whether civil, criminal, administrative, investigative, or informal) commenced, brought, conducted, or heard by or before, or otherwise involving any Governmental Authority or arbitrator.

“Regulatory Functions” means those functions of the DLC set forth on Schedule VII attached hereto.

“Representative” means, with respect to a particular Person, any director, officer, employee, agent, consultant, advisor, or other representative of such Person, including legal counsel, accountants and financial advisors.

“Required Debt Service Ratio” means a Debt Service Coverage Ratio of at least 1.50, calculated based on a projected annual growth rate of Liquor Business Profits that is not more than 50% of the compound average annual growth rate of Liquor Business Profits for the most recent ten-year period, whether the Franchise was held by Franchisee for that entire ten-year period or not, and provided, that, only with respect to any years of the ten-year period that occurred pre-Closing, the foregoing calculations shall be made utilizing the figures set forth on Schedule V.

“Required Payment” means any amount required to be paid under or upon an Obligation, whether at maturity, by acceleration, upon proceeding for redemption or otherwise, including without limitation, principal, interest, premium, Derivative Agreement Payments (as defined in the Master Trust Indenture), Derivative Agreement Termination Payments (as defined in the

Master Trust Indenture), amounts due under a reimbursement agreement, standby bond purchase agreement, or similar ancillary agreement, and the purchase price of Related Debt (as defined in the Master Trust Indenture) tendered or deemed tendered for purchase pursuant to the terms of a Related Debt Indenture (as defined in the Master Trust Indenture).

“Retained Assets and Functions” means all assets, properties, rights and functions of the Liquor Enterprise not included in the Liquor Business, including (a) the assets set forth on Schedule VIII attached hereto and (b) the Regulatory Functions.

“Reversion Date” has the meaning set forth in Section 17.7(a).

“Revitalization Program” has the meaning set forth in Section 3.6(a).

“Revitalization Purposes” has the meaning set forth in Section 3.6(a).

“Shared Contract” has the meaning set forth in Section 2.4.

“Shortfall Amount” has the meaning set forth in Section 3.4(e)(ii).

“Spirituos Liquor” has the meaning set forth in Section 4301.01(B)(5) of the ORC.

“Spirituos Liquor Profits” means all receipts of the State Parties representing the gross profit on the sale of Spirituous Liquor during any period prior to the Effective Time, as referred to in division (B)(4) of Section 4301.10 of the ORC, less the costs, expenses, and working capital reserve provided for therein, but excluding the sum required by the second paragraph of Section 4301.12 of the ORC (as in effect as of the Closing Date).

“State Contracts” means the agreements to which either the DLC or the OBM is a party relating to the Liquor Enterprise, including the Assigned Contracts and Contract Rights.

“State Default” has the meaning set forth in Section 17.3.

“State Information” has the meaning set forth in Section 16.2(b).

“State Parties” has the meaning set forth in the introductory paragraph.

“State Transaction Expense Amount” means the amount certified to JobsOhio by OBM to be the State’s costs and expenses (including third party expenses) related to the Contemplated Transactions.

“State of Ohio” means the State of Ohio.

“Statutory Merchandising Functions” are those functions set forth on Schedule IX attached hereto.

“Tax” or “Taxes” means any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code Section 59A), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real

property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, whether computed on a separate or consolidated, unitary or combined basis or in any other manner, including any interest, penalty, or addition thereto, whether disputed or not.

“Tax Expiration Date” has the meaning set forth in Section 2.7.

“Term” means the period commencing on the Closing Date and expiring on (a) the 25th anniversary of the Closing Date or (b) the earlier termination of this Agreement, as herein provided.

“Transaction Documents” means all other agreements, instruments, documents and certificates to be executed and delivered, if such delivery is provided for in this Agreement, by any Party in connection with the consummation of the Contemplated Transactions.

“Transaction Obligations” means any Franchisee Indebtedness issued in connection with the Closing that: (a) is fixed rate; (b) does not involve any “credit facility” or “interest rate hedge” (both as defined in Section 9.98 of the ORC), or Derivative Agreement; (c) will be satisfied in full, in the Ordinary Course of Business, by the 25th anniversary of the Closing Date; (d) has debt service that is structured to be approximately equal for every year in which principal is amortized, which shall begin no later than the third Fiscal Year in which such indebtedness is outstanding; (e) has a pro forma Debt Service Coverage Ratio for each Fiscal Year that is projected to be not less than 2.0 during the applicable term of such indebtedness; (f) has a true interest cost that will be no greater than an amount approved in writing by the Director of Budget and Management prior to the marketing and pricing of such indebtedness; and (g) has basic bond documents drafts and a corresponding set of numbers and cash flows all of which have been approved by the Director of Budget and Management prior to submission to and review thereof by the credit rating agencies.

“Transfer Consideration” has the meaning set forth in Section 3.1.

“Transferred Assets” means all right, title and interest of the State Parties in, to and under those specific assets listed on Schedule X attached hereto.

“Unpaid Charges” has the meaning set forth in Section 3.3.

“Unswep Sales Revenue” means any gross profit receipts of the Liquor Business collected by the Agency Stores on sales of Spirituous Liquor pursuant to the Agency Store Contracts that remain in the possession of the Agency Stores and have not yet been swept out of such Agency Store bank accounts by DLC as of the Effective Time.

“Variable Rate Indebtedness” means Indebtedness that bears interest at a variable, adjustable or floating rate.

“Violation” has the meaning set forth in Section 17.5(b).

“Work Plan” has the meaning set forth in Section 14.5(c)(iii).

“Working Capital” of the Liquor Enterprise means the sum of: (a) liquor accounts receivable, current assets, including sales receivable, Unswept Sales Revenue, prepaid expenses, liquor inventory, and paper bag inventory, each calculated on a modified accrual basis, less (b) liquor and related third party accounts payable and accrued liabilities, each calculated on a modified accrual basis, as well as liabilities relating to workers compensation claims of DLC employees consistent with the calculation of Working Capital set forth on Schedule VI. For the avoidance of doubt, “Working Capital” excludes all Cash of the Liquor Enterprise, all deposits and amounts in respect of Existing Liquor Enterprise Obligations and employee payroll and related costs (including payroll, related taxes, and fringe benefits).

“Working Capital Holdback Amount” means \$5,000,000.

“Year-End Financial Statements” has the meaning set forth in Section 6.5.

“501(c)(3) Organization” means an organization described in Section 501(c)(3) of the Code, or a successor statutory section of similar purpose, that is exempt from tax under Section 501(a) of the Code.

1.2 Interpretation.

(a) Number and Gender. In this Agreement words in the singular include the plural and vice versa and words in one gender include all genders.

(b) Headings. The division of this Agreement into articles, sections and other subdivisions are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and shall not be considered part of this Agreement.

(c) References to this Agreement. The words “herein,” “hereby,” “hereof,” “hereto” and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular portion of it. The words “Section,” “paragraph,” “sentence,” “clause,” “Schedule,” or “Exhibit” mean and refer to the specified section, paragraph, sentence, clause, schedule or exhibit of or to this Agreement.

(d) References to Any Person. A reference in this Agreement to any Person at any time refers to such Person’s permitted successors and assignees.

(e) Meaning of Including. In this Agreement, the words “include,” “includes” or “including” mean “include without limitation,” “includes without limitation” and “including without limitation,” respectively, and the words following “include,” “includes” or “including” shall not be considered to set forth an exhaustive list.

(f) Meaning of Discretion. In this Agreement, the word “discretion” with respect to any Person, unless specifically modified, means the sole and absolute discretion of such Person.

(g) Meaning of Notice. In this Agreement, the word "notice" means "written notice" unless specified otherwise.

(h) Consents and Approvals. Unless specified otherwise, wherever the provisions of this Agreement require or provide for or permit an approval or consent by either Party, such approval or consent, and any request therefor, must be in writing (unless waived in writing by the other Party).

(i) Legal Requirements. Unless specified otherwise, references to a Legal Requirement are considered to be a reference to (i) the Legal Requirement as it may be amended from time to time, (ii) all regulations and rules pertaining to or promulgated pursuant to such Legal Requirement and (iii) all future Legal Requirements pertaining to the same or similar subject matter.

(j) Currency. Unless specified otherwise, all statements of or references to dollar amounts or money in this Agreement are to the lawful currency of the United States of America.

(k) Calculation of Time. For purposes of this Agreement, a period of days shall be deemed to begin on the first day after the event that began the period and to end at 5:00 p.m. (Columbus, Ohio time) on the last day of the period. If, however, the last day of the period does not fall on a Business Day, the period shall be deemed to end at 5:00 p.m. (Columbus, Ohio time) on the next Business Day. Unless otherwise provided, all references to a specific time or date shall be in Columbus, Ohio time.

(l) Approvals, Consents and Performance by Franchisee Parties and the State Parties.

(i) Procedures. To the extent not in conflict with or inconsistent with any other provision of this Agreement, wherever the provisions of this Agreement require or provide for or permit an approval or consent by a Party, as applicable, of or to any action, Person, document, budget, list, plan or other matter contemplated by this Agreement, the following provisions shall apply: (1) such request for approval or consent must (A) contain or be accompanied by any documentation or information required for such approval or consent in reasonably sufficient detail, (B) clearly set forth the matter in respect of which such approval or consent is being sought, (C) form the sole subject matter of the correspondence containing such request for the approval or consent, and (D) state clearly that such approval or consent is being sought; (2) such Party shall (unless such provision provides that such approval or consent may be unreasonably or arbitrarily withheld, conditioned or delayed or is subject to the discretion of such Party), within such time period set forth herein (or if no time period is provided, within 30 days) after the giving of a notice by the Party requesting an approval or consent, advise that Party by notice either that it consents or approves or that it withholds its consent or approval, in which latter case it shall set forth, in reasonable detail, its reasons for withholding its consent or approval; (3) if the responding notice mentioned in clause (2) of this Section 1.2(l) indicates that such

Party does not approve or consent, the requesting Party may take whatever steps may be necessary to satisfy the objections of the responding Party set out in the responding notice and, thereupon, may resubmit such request for approval or consent from time to time and the provisions of this Section 1.2(l) shall again apply until such time as the approval or consent of the responding Party is finally obtained; and (4) if the disapproval or withholding of consent mentioned in clause (3) of this Section 1.2(l) is subsequently overruled, such approval or consent shall be deemed to have been given on the date of the final determination of such overruling.

(ii) Authority of the State Parties. Wherever this Agreement provides that an act is to be taken or performed or approval or consent is to be given by the State Parties, such act may be taken or performed or approval or consent may be given by the Director of Budget and Management, in consultation, if applicable, with the Director of the State of Ohio agency that has such authority, and Franchisee may rely thereon in all reasonable respects.

(iii) Authority of the Franchisee Parties. Wherever this Agreement provides that an act is to be taken or performed or approval or consent is to be given by the Franchisee Parties, such act may be taken or performed or approval or consent may be given by the President of Franchisee, in consultation with and, if applicable, upon the approval of, the President of JobsOhio, the Board of Directors of JobsOhio and/or the Board of Directors of Franchisee.

ARTICLE 2 – PURCHASE AND TRANSFER OF FRANCHISE AND ASSETS

2.1 Grant of Franchise; Transfer of Assets.

(a) Upon the terms and subject to the conditions of this Agreement, effective at the Effective Time, (i) the State Parties shall (pursuant to the express authority of Section 4313.02(A) and 4313.01(D) of the ORC) (1) grant to Franchisee the Franchise for and during the Term, and (2) assign, transfer and otherwise convey to Franchisee or cause the relevant agency of the State of Ohio to assign, transfer, and otherwise convey to Franchisee, the Transferred Assets, free and clear of all Encumbrances (other than Permitted State Encumbrances), for and during the Term, and (ii) Franchisee shall accept the grant, assignment, transfer and conveyance of the Franchise and each of the Transferred Assets for and during the Term.

(b) The State Parties are retaining and not selling or transferring to Franchisee, and Franchisee is not purchasing or assuming, the Retained Assets and Functions.

2.2 Liabilities.

(a) Upon the terms and subject to the conditions of this Agreement, effective at the Effective Time, Franchisee shall assume and thereafter discharge or perform as and when due, the liabilities and obligations which are set forth on Schedule II (collectively, the “Assumed Liabilities”); provided, however, that in no event shall Franchisee assume any liability or obligation under any Assigned Contract and Contract Right to the extent such liability or

obligation arises from or relates to any breach of such Assigned Contract and Contract Right by the State Parties prior to Closing Date.

(b) The Assumed Liabilities shall not include, and the State Parties shall perform and discharge as and when due, any liabilities or obligations of the State Parties (i) with respect to the State Parties' obligations under this Agreement (or under any other agreement between the State Parties, on the one hand, and Franchisee, on the other hand), (ii) except as otherwise set forth on the Schedule of Assumed Liabilities, arising out of the operation of the Liquor Enterprise prior to the Effective Time, (iii) except for the Bond Defeasance Amount, and as provided in Section 14.6 relating to the defeasance of the Existing Liquor Enterprise Obligations, (iv) with respect to the compensation of the State Parties' employees, including accrued compensation prior to and through the Closing Date, and (v) with respect to State Contracts that are not Assigned Contracts and Contract Rights;

2.3 Non-Assignable Assets. Notwithstanding anything set forth in this Agreement to the contrary, no Transferred Asset shall be deemed transferred or assigned to Franchisee pursuant to this Agreement if the attempted transfer or assignment thereof to Franchisee at the Effective Time, without the consent or approval of another Person, would be ineffective or constitute a material breach of any State Contract or a material violation of any Legal Requirement or would in any other way have a Material Adverse Effect on the rights of the State Parties (or Franchisee as assignee of such Transferred Asset) and such consent or approval (or waiver thereof) is not obtained on or prior to the Effective Time. In each case, to the extent possible, pending receipt of such consent or approval (a) the beneficial interest in or to such Transferred Asset (collectively, the "Beneficial Rights") shall in any event pass as of the Effective Time to Franchisee under this Agreement and the State Parties shall act for Franchisee in receipt of any benefits, rights or interests received relating to the Beneficial Rights and (b) Franchisee shall assume or discharge the liabilities of the State Parties related to such Transferred Asset (to the extent such liabilities are Assumed Liabilities hereunder) for the State Parties. The Parties shall use their commercially reasonable efforts (and bear their respective costs and liabilities), without payment of any material fees, penalties or other amounts to any Person, to obtain or secure any and all consents or approvals that may be necessary to effect the legal and valid transfer or assignment of any such Transferred Assets underlying the Beneficial Rights. The Parties shall make or complete such assignments and transfers as soon as reasonably practicable and cooperate with each other in any other reasonable arrangement designed to provide for Franchisee the Beneficial Rights, including enforcement, at the cost and for the account of Franchisee, of any and all rights of the State Parties against the other party to any State Contract included in such non-assignable Transferred Assets, and to provide for the discharge by the Franchisee of any liabilities under such Transferred Assets (to the extent such liabilities are Assumed Liabilities hereunder).

2.4 Shared Contract. If any State Contract is found to relate to the Liquor Business, on the one hand, and the Retained Assets and Functions, on the other hand (any such State Contract, a "Shared Contract"), then the Parties agree and acknowledge that, after the Closing, upon the reasonable and appropriate written request of a Party, and as promptly as commercially practicable, the Parties shall cooperate with each other, in all commercially reasonable respects, to create and enter into an arrangement pursuant to which either (a) Franchisee, in the case of a Shared Contract that is not an Assigned Contract or (b) the State Parties, in the case of a Shared

Contract that is an Assigned Contract, may receive its share of the material rights and benefits and assume, discharge and indemnify for its proportionate share of the obligations under, such Shared Contract. Each of the Parties agrees and acknowledges that if it is not commercially reasonable, appropriate or practical to create and enter into such arrangement, no Party shall be liable to any other Party pursuant to the terms of this Section 2.4.

2.5 Rights in Assigned Contracts and Contract Rights. To the extent an Assigned Contract and Contract Right relates to a liability not included within the Assumed Liabilities, Franchisee will cooperate with the State Parties, in all commercially reasonable respects, to create and enter into an arrangement pursuant to which the State Parties will receive substantially all of the material rights and benefits from such Assigned Contracts and Contract Rights with respect to such liability not included within the Assumed Liabilities. Franchisee shall not be required to make any material change to the Liquor Business, expend any material funds or incur any other material burden, liability or loss in order to comply with its obligations set forth in this Section 2.5.

2.6 Allocation. Within 120 days after the Closing, the Parties may establish a mutually agreeable allocation of the Transfer Consideration (and all other capitalizable costs) among the Franchise and Transferred Assets for all purposes related to this Agreement and the Liquor Business. The Parties agree that such allocation will be reflected by Franchisee on Internal Revenue Service Form 8594 and that all Parties will file any Tax returns consistent with such allocation.

2.7 Interim Operations. Notwithstanding anything to the contrary in this Agreement or the DLC Services Agreement, the DLC shall retain and operate the Interim Assets as provided in this Section 2.7 and otherwise in the Ordinary Course of Business through and including the expiration date of any Tax that is being levied under ORC Section 307.697 as of the Effective Date (the "Tax Expiration Date"). Between the Closing Date and the first day immediately following the Tax Expiration Date, Franchisee will, without cost to the DLC, deliver Spirituous Liquor inventory to the Interim Agency Stores in amounts sufficient for their operation in the Ordinary Course of Business. DLC will take and retain title to such Spirituous Liquor inventory until it is sold. The risk of loss to such inventory will be borne by Franchisee's transportation carriers or the Interim Agency Store, as applicable. The DLC will, without cost to Franchisee, cause the Interim Agency Stores to deliver directly to Franchisee all of the gross revenue and applicable Tax receipts representing the sale of such Spirituous Liquor inventory at the Interim Agency Stores. Such receipts shall become the property of Franchisee immediately upon receipt. On the first day immediately following the Tax Expiration Date, DLC shall convey all of the Interim Assets to Franchisee without additional consideration (whereupon they shall become Transferred Assets) and the obligations of the Parties under this Section 2.7 shall cease.

ARTICLE 3 – CONSIDERATION

3.1 Total Consideration. The aggregate consideration payable to the State Parties by Franchisee shall be the sum of: (a) \$500,000,000, adjusted as provided in Section 3.4, *plus* (b) the Bond Defeasance Payment, *plus* (c) the Legacy Commitment Amount, *plus* (d) the State Transaction Expense Amount, *plus* (e) the Deferred Payments (as and if applicable), *plus* (f) the assumption of the Assumed Liabilities (collectively, "Transfer Consideration").

3.2 Closing Date Payments. At the Closing, Franchisee will pay or cause to be paid, to or as directed by the State Parties, by wire transfer of immediately available funds in accordance with the Payment Instructions:

- (a) cash equal to the sum of: (i) \$500,000,000, *minus* (ii) an amount equal to the Working Capital Holdback Amount, *plus* (iii) the Legacy Commitment Amount; and
- (b) the Bond Defeasance Payment.

3.3 Unpaid Charges. Except to the extent included in Working Capital, any amounts owed by DLC to any Person for Taxes, expenses and other charges (a) for which DLC is directly or indirectly responsible, (b) which relate to the Liquor Enterprise (other than expenses and other charges incurred in connection with Regulatory Functions (which shall be paid in full by the State Parties)) for any period that begins before and ends after the Effective Time, and (c) which are unpaid as of the Effective Time ("Unpaid Charges"), shall be prorated between the State Parties and Franchisee on a daily basis, *provided, however,* that appropriate adjustments shall be made to reflect specific Unpaid Charges that can be identified and specially allocated as occurring on or before the Effective Time (in which case the State Parties will be responsible for any such specifically allocated Unpaid Charges) or occurring after the Closing Date (in which case Franchisee will be responsible for any such specifically allocated Unpaid Charges). The State Parties will be responsible for all such Unpaid Charges allocable to the time period prior to the Effective Time, and Franchisee will be responsible for the payment of all such Unpaid Charges allocable to the time period after the Effective Time. The State Parties and Franchisee covenant and agree that all such Unpaid Charges (unless subject to good faith dispute) shall be paid in full by either the State Parties or Franchisee, as the case may be, within sufficient time to prevent any taxing agency or other creditor from making any claim for or on account of the Liquor Business. If either the State Parties or Franchisee pays any such Unpaid Charges in full in accordance with the preceding sentence, then the other Party shall promptly reimburse the paying Party for its pro rata portion of such unpaid charges (if applicable) to the paying Party upon receipt of written notice of the existence and amount of any such payment from the paying Party.

3.4 Post-Closing Adjustments.

(a) Within 60 days after the Closing Date, Franchisee shall prepare and deliver to each State Party a statement (the "Draft Working Capital Statement") setting forth Franchisee's good faith calculation of the actual Working Capital delivered by the State Parties to Franchisee at the Closing (the "Actual Delivered Working Capital"). Solely for the purposes of calculating Working Capital as provided in this Section 3.4, Interim Assets will be treated as Transferred Assets. After delivery of the Draft Working Capital Statement, Franchisee shall make its internal work papers related to its preparation of the Draft Working Capital Statement available to the State Parties and their accountants, during normal business hours, and shall cause the personnel of the Franchisee Parties to be reasonably available to assist, and otherwise reasonably cooperate with, the State Parties in their review of the Draft Working Capital Statement.

(b) If either (i) the State Parties accept the calculation of Actual Delivered Working Capital set forth in the Draft Working Capital Statement, or (ii) the State Parties do not deliver to Franchisee, within 45 days after receiving the Draft Working Capital Statement, a written notice stating their objection and setting forth their calculation of the Actual Delivered Working Capital ("Objection Notice"), then the calculation of Actual Delivered Working Capital set forth in the Draft Working Capital Statement shall become final and binding upon the State Parties and Franchisee.

(c) If the State Parties deliver an Objection Notice to Franchisee, then Franchisee and the State Parties shall use their reasonable good faith efforts to resolve and finally determine the Actual Delivered Working Capital. If the Parties do not reach a final resolution as to the amount of the Actual Delivered Working Capital within 30 days of the date of the Objection Notice, then Franchisee and the State Parties shall jointly engage an independent, nationally recognized, accounting firm (if required, then subject to approval by the Ohio Auditor of State) (the "Independent Accountant"), which Independent Accountant shall determine the amount of the Actual Delivered Working Capital. The Independent Accountant shall be instructed to use every reasonable effort to perform its services and to issue a written determination of the Actual Delivered Working Capital within 30 days after submission of the dispute to it, and in any case, as soon as practicable after such submission. The Parties shall promptly furnish or cause to be furnished, such work papers and other documentation and information related to the dispute as the Independent Accountant may reasonably request. The determination of any such Independent Accountant shall be set forth in writing and shall be final and binding upon the State Parties and Franchisee.

(d) If Franchisee and the State Parties submit any dispute to an Independent Accountant for resolution as provided in Section 3.4(c), the fees and costs of the Independent Accountant shall be borne by the State Parties and Franchisee in the same proportion as the net respective differences between (i) the amount of Actual Delivered Working Capital submitted by each of them to the other pursuant to Sections 3.4(a) and 3.4(b) and (ii) the Actual Delivered Working Capital amount determined by the Independent Accountant. For example, if the Actual Delivered Working Capital submitted by State Parties is \$2,000,000 and the Actual Delivered Working Capital submitted by the Franchisee is \$1,000,000 and the Actual Delivered Working Capital determined by the Independent Accountant is \$1,200,000 then

State Parties will bear 80% and the Franchisee will bear 20% of the fees and costs of the Independent Accountant. In addition to the portion of the costs of the Independent Accountant borne by it, each Party shall be responsible for costs, charges and expenses incurred by it in connection with and incidental to the determination of Actual Delivered Working Capital.

(e) Following the final determination of Actual Delivered Working Capital pursuant to Section 3.4(b) or 3.4(c) (as applicable):

(i) If the Actual Delivered Working Capital exceeds the Estimated Working Capital by an amount greater than \$5,000,000 (such excess amount, the "Excess Amount"), then within three Business Days following the final determination of Actual Delivered Working Capital, Franchisee shall pay the State Parties an amount equal to the sum of (A) the Excess Amount, *plus* (B) the Working Capital Holdback Amount by wire transfer of immediately available funds.

(ii) If the Estimated Working Capital exceeds the Actual Delivered Working Capital by an amount greater than \$5,000,000 (such excess amount, the "Shortfall Amount"), then within three business days following the final determination of Actual Delivered Working Capital, Franchisee shall (A) be entitled to retain an amount of the Working Capital Holdback Amount equal to the Shortfall Amount; (B) if the Shortfall Amount exceeds the Working Capital Holdback Amount, then Franchisee shall receive a credit against future amounts due under the DLC Services Agreement equal to such excess in addition to the amount provided in clause (A); and (C) if the Shortfall Amount is less than the Working Capital Holdback Amount, Franchisee shall remit the balance to the State Parties.

(iii) In all other cases, Franchisee shall within three Business Days pay the State Parties an amount equal to the Working Capital Holdback Amount.

3.5 Deferred Payments.

(a) Subject to the terms of this Section 3.5, Franchisee shall, on an annual basis beginning with the Fiscal Year following the Closing Date, pay to OBM (on behalf of the State Parties and pursuant to the payment instructions of the Director of OBM), a cash payment (the "Deferred Payment") in an amount ("Deferred Payment Amount") calculated as follows:

(i) if the Liquor Business Profits for a Fiscal Year are *less than* or *equal to* the Base Franchise Profits for the corresponding Fiscal Year, then the amount of the Deferred Payment shall be zero; or

(ii) if the Liquor Business Profits for a Fiscal Year are *greater than* the Base Franchise Profits for such Fiscal Year, then the amount of the Deferred Payment shall be 75% of the amount by which the Liquor Business Profits exceed the Base Franchise Profits for such Fiscal Year.

(iii) If for any reason Franchisee holds the Franchise for less than a full Fiscal Year, then for purposes of calculation of the Deferred Payment for such Fiscal Year, the Base Franchise Profits shall be pro-rated based on the total number of days that the Franchisee held the Franchise for such partial Fiscal Year.

(b) No later than 30 days after Franchisee receives its unaudited financial statements for the Liquor Business for a Fiscal Year, and in any event no later than 60 days following the close of such Fiscal Year, Franchisee will (i) deliver to each State Party a copy of such unaudited financial statements, and together with Franchisee's written statement ("Deferred Payment Notice") setting forth, in reasonable detail, the Franchisee's calculation of the Deferred Payment Amount corresponding to such Fiscal Year based upon the Liquor Business Profits shown in the unaudited financial statements for such Fiscal Year, and (ii) pay the full amount of the Deferred Payment Amount shown on its Deferred Payment Notice to the State Parties. Any additional balance due to the State Parties after a final determination of the Deferred Payment Amount pursuant to Section 3.5(e) shall be paid by Franchisee in accordance with Section 3.5(g).

(c) If the State Parties agree with the Deferred Payment Amount set forth in the Deferred Payment Notice, the State Parties shall notify Franchisee in writing of their acceptance ("Acceptance Notice"), and upon receipt of such Acceptance Notice, such Deferred Payment Amount shall be deemed to be the final and binding Deferred Payment Amount payable to the State Parties hereunder.

(d) If the State Parties disagree with the Deferred Payment Amount set forth in the Deferred Payment Notice, the State Parties shall deliver a written notice, stating their objection and setting forth their calculation of the Deferred Payment Amount (a "Dispute Notice"), to Franchisee no later than 30 days after receipt of the Deferred Payment Notice. If the State Parties deliver a timely Dispute Notice to Franchisee, then Franchisee and the State Parties shall use their reasonable good faith efforts to resolve their disagreement and determine a final Deferred Payment Amount.

(e) If the State Parties and Franchisee are unable to agree upon a final Deferred Payment Amount within 30 days after delivery of a Dispute Notice, any Party may elect, by written notice to the other Parties, to have the Independent Accountant assist in the resolution of such disagreement. The Independent Accountant shall address only that portion of the Deferred Payment Amount that remains in dispute and may not set the final Deferred Payment Amount at an amount greater than the highest amount claimed by any Party or an amount less than the lowest amount claimed by any Party. The Independent Accountant will determine the final Deferred Payment Amount for the applicable Fiscal Year. The Independent Accountant shall be instructed to use every reasonable effort to perform its services and to prepare a written report within 30 days after submission of the disagreement to it, and in any case, as soon as practicable after such submission. The fees and costs of the Independent Accountant shall be borne by the State Parties and Franchisee in the same proportion as the net respective differences between (i) the Deferred Payment Amount notified by each of them to the other pursuant to Sections 3.5(b) and 3.5(d) and (ii) the final Deferred Payment Amount for the applicable Fiscal Year determined by the Independent Accountant. In addition to its portion of the costs of the Independent Accountant, each Party shall be responsible for all the other

costs, charges and expenses incurred by it in connection with and incidental to the matters. The Independent Accountant's determination of the Deferred Payment Amount shall be final and binding upon the State Parties and Franchisee and shall be deemed to be the Deferred Payment Amount payable to the State Parties hereunder.

(f) If the State Parties do not deliver an Acceptance Notice or a Dispute Notice to Franchisee within 30 days after receipt of the Deferred Payment Notice, then Franchisee must personally notify each of the Director of Budget and Management and the Director of Commerce (either in-person or by a telephone conversation) of the failure of the State Parties to respond to the Deferred Payment Notice delivered by Franchisee. If either Director requests an extension of time for the State Parties to respond, the time period for delivery of an Acceptance Notice or a Dispute Notice shall be extended by 15 days. If upon the expiration of such 15-day extension period, the State Parties have not delivered an Acceptance Notice or a Dispute Notice to Franchisee, then the Deferred Payment Amount set forth in the Deferred Payment Notice shall be deemed to be the final and binding Deferred Payment Amount payable to the State Parties hereunder.

(g) No later than 10 days after any Deferred Payment Amount is finally determined pursuant to Section 3.5(c), (e), or (f) and deemed to be the Deferred Payment Amount due to the State Parties hereunder, (i) Franchisee shall pay any additional balance due with respect to such Deferred Payment Amount as instructed by the Director of Budget and Management in writing or (ii) if it is determined that Franchisee has made an overpayment to the State Parties, the State Parties shall credit such overpayment against any amounts owed by the Franchisee to the State Parties hereunder.

(h) Notwithstanding anything contained herein to the contrary, any Deferred Payment with respect to a Fiscal Year shall be payable by Franchisee from Liquor Business Profits and subordinated to Ordinary Course Costs and Expenses due and payable, Required Payments due in the current Fiscal Year and related payments necessary to replenish reserve funds, but senior in payment to any Other Commitments and the right of Franchisee to receive Liquor Business Profits. If, for any period of time, the payment of any Deferred Payment is blocked in accordance with the contractual rights of holders of the Obligations, the amount of such Deferred Payment shall bear simple interest, from and including the date the same first becomes due and payable through and including the date actually paid, at an annual rate equal to the Applicable Rate in effect on the date such Deferred Payment first becomes due and payable. Notwithstanding anything contained in this Agreement or any other agreement related to the Obligations, in no event will the remedies available to the State Parties hereunder (or the right of the State Parties to exercise such remedies) upon the occurrence of a Franchisee Default be blocked, prohibited or delayed in any manner.

3.6 Revitalization Program.

(a) JobsOhio shall establish and implement a program (the "Revitalization Program") for the funding of revitalization purposes as defined in Sections 2o and 2q of Article VIII of the Ohio Constitution (the "Revitalization Purposes"). For its Revitalization Program JobsOhio shall, in consultation with the State Parties, establish a selection process including selection criteria for projects involving Revitalization Purposes (the Revitalization

Projects). JobsOhio may contract with the DOD for administrative support and servicing of the Revitalization Program.

(b) JobsOhio will commit to select up to \$43 million of Revitalization Projects annually commencing on the Closing Date; *provided, however*, that (i) the Revitalization Projects selected for funding shall be consistent with the then-current selection criteria established by JobsOhio for the Revitalization Program, and (ii) shall be funded solely out of the General Purpose Fund (created under and as defined in the Master Trust Indenture), taking into account existing and projected resources and other existing and projected financial commitments of the General Purpose Fund.

3.7 Transaction Expenses. The Franchisee Parties shall promptly reimburse, pay to the State, or pay as directed by the State, the State Transaction Expense Amount within 10 days of receipt of OBM's certification of the State Transaction Expense Amount, *provided that* OBM shall deliver its certification of the State Transaction Expense Amount to the Franchisee Parties no later than 60 days after Closing.

ARTICLE 4 - CLOSING AND DELIVERIES

4.1 The Closing. The closing of the Contemplated Transactions (the "Closing") shall take place at the offices of Squire Sanders (US) LLP, in Columbus, Ohio, commencing on such date and at such time as the Parties mutually determine (the "Closing Date").

4.2 Effective Time. The Contemplated Transactions shall be effective as of 12:01 a.m. local time on the Closing Date, or such other time as the Parties may agree (the "Effective Time").

4.3 Deliveries at the Closing. At the Closing, (a) the State Parties will deliver to Franchisee the various certificates, instruments, and documents referred to in ARTICLE 11; (b) the Franchisee Parties will deliver to the State Parties the various certificates, instruments, and documents referred to in ARTICLE 12; (c) each Party shall execute, acknowledge (if appropriate), and deliver to the other Parties such additional instruments of sale, transfer, conveyance and assignment as any Party and its counsel may reasonably request; (d) each Party shall execute, acknowledge (if appropriate), and deliver to the other Parties the Bill of Transfer, the Assignment and Assumption Agreement, the DLC Services Agreement and the Transaction Documents to which it is a party; and (e) Franchisee will make all of the Closing Date payments specified in Section 3.2 pursuant to the flow of funds and wire transfer instructions provided in writing to Franchisee by the State Parties (such instructions, the "Payment Instructions").

ARTICLE 5 - OPERATION OF THE LIQUOR FRANCHISE

5.1 Generally. Subject to Sections 5.2 and 5.3, Franchisee shall, at all times during the Term (a) be responsible for all aspects of the Liquor Business and shall cause the Liquor Business to be operated in accordance with the provisions of this Agreement and applicable Legal Requirements and (b) pay or cause to be paid all costs and expenses relating to the operation of the Liquor Business as and when the same are due and payable. Notwithstanding the foregoing, any function or responsibility of Franchisee may be performed for Franchisee by the DLC if so performed under and in accordance with the terms and conditions of the DLC Services Agreement.

5.2 Regulatory Functions. For the avoidance of doubt, the Regulatory Functions are not a part of the Liquor Business, are not being transferred to Franchisee or franchised pursuant to this Agreement, are not being performed for Franchisee as a service under the DLC Services Agreement, and shall be paid for exclusively by the DLC. The DLC shall at all times be solely responsible for all aspects of the management and performance of the Regulatory Functions, without any instruction from, consultation with or reliance upon Franchisee.

5.3 Statutory Merchandising Functions. The DLC shall at all times be solely responsible for all aspects of the management and performance of the Statutory Merchandising Functions. Notwithstanding the foregoing, Franchisee (a) shall receive the benefit of the DLC's performance of Statutory Merchandising Functions as a service provided to Franchisee under the DLC Services Agreement, (b) shall have the right to make recommendations to the DLC concerning the DLC's performance of the Statutory Merchandising Functions in accordance with the DLC Services Agreement and (c) shall bear all costs and expenses of the Statutory Merchandising Functions as performed by the DLC in accordance with the terms of the DLC Services Agreement.

ARTICLE 6 - DLC REPRESENTATIONS AND WARRANTIES.

The DLC represents and warrants to Franchisee that the statements contained in this ARTICLE 6 are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this ARTICLE 6).

6.1 Organization and Authority. The DLC is comprised of two divisions of the Department of Commerce, a department of the State of Ohio, duly created and existing under and by virtue of the Constitution (the "Constitution") and the laws of the State of Ohio, and has full power and authority thereunder and under the JobsOhio Act to: (a) enter into this Agreement and each of the Transaction Documents to which it is a party; (b) subject to the satisfaction of the condition in Section 11.4, consummate the Contemplated Transactions; and (c) perform its obligations under and as contemplated by this Agreement and the Transaction Documents to which it is a party. This Agreement has been, and each of the Transaction Documents to which the DLC is a party will be, duly executed and delivered by the DLC, and constitutes, or in the case of each of the Transaction Documents to which it is a party, will constitute, when delivered, the valid and legally binding obligations of the State Parties and the DLC, enforceable in accordance with their respective terms and conditions.

6.2 Non-contravention. The execution, delivery and performance of this Agreement and the other Transaction Documents to which DLC is or will be a party, and the consummation of the Contemplated Transactions by it, do not as of the date hereof and will not as of the Closing Date (a) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any Governmental Authority to which the DLC, the Franchisee or the Transferred Assets are subject or (b) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any Person the right to accelerate, terminate, modify, or cancel, or require any notice or consent under any agreement, contract, lease, license, instrument, note, resolution, indenture, loan agreement, trust agreement, mortgage, deed of trust or other agreement or instrument to which the DLC is a party or by which the Liquor Enterprise

is bound or to which any of the Transferred Assets is subject (or result in the imposition of any Encumbrance (other than Permitted State Encumbrances) upon any of its assets). The DLC is not required to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any Person in order for the DLC to consummate the Contemplated Transactions other than the approval of the DLC Services Agreement and the DOD Agreement by the Controlling Board, which approval will be obtained as of Closing.

6.3 Advisors' Fees. Other than the retention of Public Financial Management, Inc. to act as financial advisor to the State of Ohio in connection with the Contemplated Transactions, the fee for which is included in the State Transaction Expense Amount, neither of the State of Ohio nor the DLC or any of their respective officers and agents have incurred, and will not incur, any liability or obligation, contingent or otherwise, to pay fees, commissions or similar payments to any broker, finder, or agent with respect to the Contemplated Transactions.

6.4 Title to Assets. The DLC has good and marketable title to the Transferred Assets and the Franchise, free and clear of any Encumbrances or restriction on transfer (other than the Existing Liquor Enterprise Obligations, which will be legally defeased on the Closing Date, and the Permitted State Encumbrances).

6.5 Financial Statements. The DLC has made available to Franchisee the unaudited financial statements of the DLC for Fiscal Years ended June 30 in each of 2007, 2008, 2009, 2010, 2011, and 2012 (the "Most Recent Fiscal Year End", subject to Section 11.1, with such financial statements, collectively, including the related notes and schedules, the "Year-End Financial Statements", and together with the Interim Financial Statements, the "Financial Statements"). The balance sheet of the DLC as of December 31, 2011 (which is included in the Interim Financial Statements) and the methodology used to calculate the Working Capital of the Liquor Enterprise as of such date are set forth on Schedule VI hereto. The Financial Statements have been prepared on a modified accrual basis throughout the periods covered thereby and present fairly, in all material respects, the financial condition of the DLC as of such dates and the results of operations of the DLC for such periods; *provided, however*, that the Interim Financial Statements are subject to normal year-end adjustments (which will not be material individually or in the aggregate) and lack footnotes and other presentation items.

6.6 Assigned Contracts and Contract Rights. With respect to each Assigned Contract and Contract Right: (a) the contract is legal, valid, binding, enforceable and in full force and effect; (b) the contract will be legal, valid, binding, enforceable and in full force and effect immediately following the Closing; (c) no party is in material breach or default, and, to the knowledge of the State Parties, no event has occurred which with notice or lapse of time would constitute a material breach or default, or permit termination, material modification or acceleration, under the contract; and (d) no party has repudiated any provision of the contract. Since the Most Recent Fiscal Year End, no Person has given oral or written notice of intent to terminate, discontinue or breach any such agreement. A true and accurate list of all Agency Stores has been provided by DLC to Franchisee and each such Agency Store has executed a DLC-approved form of an Agency Contract. DLC has previously provided copies of each of the forms of the Agency Contracts in effect as of the date hereof to the Franchisee.

6.7 Notes and Accounts Receivable. All notes and accounts receivable of DLC are reflected properly on their books and records, are valid receivables subject to no setoffs or counterclaims, are current and collectible, and will be collected in accordance with their terms at their recorded amounts, as adjusted for operations and transactions through the Closing Date in accordance with the past custom and practice of the DLC, as applicable.

6.8 Insurance. The DLC is self-insured with respect to the Liquor Enterprise. The agency performance bonds issued by Agency Stores under the terms of their Agency Contracts (such bonds, the "Agency Store Bonds") are issued for the benefit of the DLC in accordance with Legal Requirements. A listing of the bond coverage amounts for each Agency Store has been previously provided to Franchisee, which listing is current as of the date indicated thereon.

6.9 Compliance with Legal Requirements. The DLC has operated and is operating the Liquor Enterprise in compliance, in all material respects, with all applicable Legal Requirements and the DLC is not in material breach of any applicable Legal Requirement that would have a Material Adverse Effect on the operations of the Liquor Enterprise.

6.10 Litigation. The DLC has provided Franchisee with a complete and accurate description of each instance in which the DLC (a) is subject to any outstanding injunction, judgment, order, decree, ruling, or charge related to the Liquor Enterprise; or (b) is a party to any action, suit, proceeding, hearing, or investigation of, in, or before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction or before any arbitrator related to the Liquor Enterprise.

6.11 Inventory. All inventories held by the Liquor Enterprise are valued on the Financial Statements at the lower of cost or market. Such inventories consist of a quantity and quality usable and saleable in the Ordinary Course of Business, subject to reasonable reserves.

ARTICLE 7 - OBM REPRESENTATIONS AND WARRANTIES

The OBM represents and warrants to Franchisee that the statements contained in this ARTICLE 7 are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date (as though made then and as through the Closing Date were substituted for the date of this Agreement throughout this ARTICLE 7).

7.1 Organization and Authority. The OBM is a department of the State of Ohio, duly created and existing under and by virtue of the Constitution and the laws of the State of Ohio, and has full power and authority thereunder and under the JobsOhio Act to: (a) enter into this Agreement and each of the Transaction Documents to which it is a party; (b) subject to the satisfaction of the condition in Section 11.4, consummate the Contemplated Transactions; and (c) perform its obligations under and as contemplated by this Agreement and the Transaction Documents to which it is a party. This Agreement has been, and each of the Transaction Documents to which the OBM is a party will be, duly executed and delivered by the Director of Budget and Management, and constitutes, or in the case of each of the Transaction Documents to which it is a party, will constitute, when delivered, the valid and legally binding obligations of the State of Ohio and the OBM, enforceable in accordance with their respective terms and conditions.

7.2 Non-contravention. The execution, delivery and performance of this Agreement and the other Transaction Documents to which the OBM is or will be a Party, and the consummation of the Contemplated Transactions by it, do not, as of the date hereof, and will not, as of the Closing Date, (i) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any Governmental Authority to which the OBM is subject or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any Person the right to accelerate, terminate, modify, or cancel, or require any notice or consent under any agreement, contract, lease, license, instrument, note, resolution, indenture, loan agreement, trust agreement, mortgage, deed of trust or other agreement or instrument to which the OBM is a party or by which the OBM is bound or to which any of the assets of the OBM is subject (or result in the imposition of any Encumbrance upon any of its assets). The OBM does not need to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any Person in order for the OBM to consummate the Contemplated Transactions other than the approval of the DLC Services Agreement and the DOD Agreement by the Controlling Board, which approval will be obtained as of Closing.

7.3 Advisors' Fees. Other than the retention of Public Financial Management, Inc. to act as financial advisor to the State of Ohio in connection with the Contemplated Transactions, the fee for which is included in the State Transaction Expense Amount, neither the State of Ohio nor the OBM and their respective officers and agents have incurred, and will not incur, any liability or obligation, contingent or otherwise, to pay fees, commissions or similar payments to any broker, finder, or agent with respect to the Contemplated Transactions.

7.4 Compliance with Legal Requirements. To the knowledge of the OBM, the DLC has operated and is operating the Liquor Enterprise in compliance, in all material respects, with all applicable Legal Requirements and the DLC is not in breach of any applicable Legal Requirement that would have a Material Adverse Effect on the operations of the Liquor Enterprise.

ARTICLE 8 - FRANCHISEE REPRESENTATIONS AND WARRANTIES

Franchisee represents and warrants to the State Parties that the statements contained in this ARTICLE 8 are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this ARTICLE 8).

8.1 Organization of Franchisee; Tax Exemption. Franchisee is a nonprofit corporation duly incorporated, validly existing, and in good standing under the laws of the State of Ohio and duly qualified under Section 501(c)(3) of the Code. Franchisee is exempt from federal income Tax under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code (except for any unrelated business income tax imposed pursuant to Section 511 of the Code).

8.2 Franchisee Governance Documents. True and correct copies of the Organizational Documents, the Franchisee's conflicts of interest policies, and other ethical or corporate policies adopted by Franchisee were delivered to the State Parties prior to the date of this Agreement.

Franchisee's conduct, as of Closing and at all times prior thereto, has been in material compliance with the documents delivered pursuant to the first sentence of this Section 8.2.

8.3 Authority. Franchisee has all requisite corporate power and authority to own, lease and operate the properties and assets it now owns, leases or operates and to carry on its business as presently conducted. Immediately after the Effective Time, no portion of the Liquor Business will be owned or conducted by any parent, subsidiary or affiliate of Franchisee that is not a party to this Agreement.

8.4 Parent, Subsidiaries and Affiliates. JobsOhio is the sole member of Franchisee and Franchisee has no subsidiaries, ownership or other beneficial interests in any other Person.

8.5 Authorization of Transaction. Franchisee has full power and authority (including full corporate power and authority) to execute and deliver this Agreement and the Transaction Documents to which Franchisee is a party to perform its obligations hereunder and thereunder, and to consummate the Contemplated Transactions. This Agreement constitutes, and each of the Transaction Documents to which it is a party will constitute, when delivered, the valid and legally binding obligation of Franchisee, enforceable in accordance with their respective terms and conditions. The execution, delivery and performance of this Agreement and the other Transaction Documents to which it is a party have been duly authorized by Franchisee's board of directors.

8.6 Non-contravention. The execution, delivery and performance of this Agreement and the other Transaction Documents to which Franchisee is a party, and the consummation of the Contemplated Transactions by it, do not, as of the date hereof, and will not, as of the Closing Date, (a) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any Governmental Authority to which Franchisee or its business is subject or (b) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any Person the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which Franchisee is a party or by which it is bound or to which any of its assets are subject. Franchisee does not need to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any Person in order for the Parties to consummate the Contemplated Transactions, other than the approval of the DLC Services Agreement and the DOD Agreement by the Controlling Board, which approval will be obtained as of Closing.

8.7 Compliance with Legal Requirements; Litigation.

(a) Since the date of its formation, Franchisee has operated, and it is currently operating, in compliance, in all material respects, with all applicable Legal Requirements.

(b) Franchisee has provided the State Parties with a complete and accurate description of each instance in which the Franchisee (i) is subject to any outstanding injunction, judgment, order, decree, ruling, or charge related to the Contemplated Transactions; or (ii) is a party to any action, suit, proceeding, hearing, or investigation of, in, or before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction or before any arbitrator related to the Contemplated Transactions.

(c) Other than with respect to the Contemplated Transactions, there is not now and has not been any action, suit or proceeding, at law or in equity related to Franchisee's operations or business, as conducted prior to the Closing.

8.8 Ability to Perform at Closing. Franchisee has, as of the Closing, the ability to transition, operate, and perform its duties under this Agreement and the Transaction Documents to which it is a party without material disruption to the contemplated operations of the Liquor Business. As used in the previous sentence, "material disruption" does not include such minor disruptions historically experienced by DLC, both in quality and quantity.

8.9 Brokers' and Advisors' Fees. Franchisee has no liability or obligation, contingent or otherwise, to pay any fees, commissions or similar payments to any broker, finder, or agent with respect to the Contemplated Transactions for which the State Parties could become liable or obligated.

8.10 Business Operations. As of the Closing, Franchisee is not engaged in any business, activities or operations other than the Permitted Transitional Activities or business, activities or operations related to the Liquor Business. Franchisee has provided the State Parties with copies of all agreements pursuant to which the Permitted Transitional Activities are being conducted, and it is not a party to any other contractual arrangements other than those directly related to the Liquor Business or the Permitted Transitional Activities.

ARTICLE 9 - JOBSOHIO REPRESENTATIONS AND WARRANTIES

JobsOhio represents and warrants to the State Parties that the statements contained in this ARTICLE 9 are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this ARTICLE 9).

9.1 Organization of JobsOhio; Tax Exemption. JobsOhio is a nonprofit corporation duly incorporated, validly existing, and in good standing under the laws of the State of Ohio. JobsOhio is an exempt organization within the meaning of Section 501(c)(4) of the Code and exempt from federal income tax under Section 501(a) of the Code as an organization described in Section 501(c)(4) of the Code (except for any unrelated business income tax imposed pursuant to Section 511 of the Code).

9.2 JobsOhio Governance Documents. True and correct copies of the Organizational Documents, the JobsOhio Conflicts of Interests Policy, and other ethical other corporate policies adopted by JobsOhio were delivered to the State Parties prior to the date of this Agreement. JobsOhio's conduct, as of Closing and at all times prior thereto, has been in compliance with the documents delivered pursuant to the first sentence of this Section 9.2.

9.3 Authority. JobsOhio has all requisite corporate power and authority to own, lease and operate the properties and assets it now owns, leases or operates and to carry on its business as presently conducted. Immediately after the Effective Time, no portion of the Liquor Business will be owned or conducted by a subsidiary or affiliate of JobsOhio that is not a party to this Agreement.

9.4 Ownership. JobsOhio is the sole member of Franchisee and has the sole power to elect the directors of Franchisee. No other Person has the right to elect the directors of Franchisee or otherwise control the actions of Franchisee, and JobsOhio will not enter into any agreement or arrangement with any other Person that would or could have the effect of resulting in any Person other than JobsOhio becoming a member of Franchisee or otherwise having the right to control the actions of Franchisee.

9.5 Authorization of Transaction. JobsOhio has full power and authority (including full corporate power and authority) to execute and deliver this Agreement and the Transaction Documents to which it is a party, to perform its obligations hereunder and thereunder and to consummate the Contemplated Transactions. This Agreement constitutes, and each of the Transaction Documents to which JobsOhio is a party will constitute, when delivered, the valid and legally binding obligation of JobsOhio, enforceable in accordance with their respective terms and conditions. The execution, delivery and performance of this Agreement and the other Transaction Documents to which JobsOhio is a party have been duly authorized by JobsOhio's board of directors.

9.6 Non-contravention. The execution, delivery and performance of this Agreement and the other Transaction Documents to which JobsOhio is a party, and the consummation of the Contemplated Transactions by it, do not, as of the date hereof, and will not, as of the Closing Date, (a) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any Governmental Authority to which JobsOhio or its business is subject or (b) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any Person the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which JobsOhio is a party or by which it is bound or to which any of its assets are subject. JobsOhio does not need to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any Person, in order for the Parties to consummate the Contemplated Transactions, other than the approval of the DLC Services Agreement and the DOD Agreement by the Controlling Board, which approval will be obtained as of Closing.

9.7 Compliance with Legal Requirements; Litigation.

(a) Since the date of its formation, JobsOhio has operated, and it is currently operating, in compliance, in all material respects, with all applicable Legal Requirements.

(b) JobsOhio has provided the State Parties with a complete and accurate description of each instance in which JobsOhio (i) is subject to any outstanding injunction, judgment, order, decree, ruling, or charge related to its operations or business; or (ii) is a party to any action, suit, proceeding, hearing, or investigation of, in, or before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction or before any arbitrator related to its operations or business.

9.8 Ability to Perform at Closing. As of the Closing, JobsOhio has the ability to perform its duties under the Transaction Documents to which it is a party without material disruption.

9.9 Brokers' and Advisors' Fees. JobsOhio has no liability or obligation, contingent or otherwise, to pay any fees, commissions or similar payments to any broker, finder, or agent with respect to the Contemplated Transactions for which the State Parties could become liable or obligated.

ARTICLE 10 - PRE-CLOSING COVENANTS

The Parties agree as follows with respect to the period between the execution of this Agreement and the Closing:

10.1 General. From the date hereof up to the Effective Time, each Party shall use all commercially reasonable efforts to take, or cause to be taken, all actions and to do all things necessary, proper, or advisable in order to consummate and make effective the Contemplated Transactions.

10.2 Notices and Consents. Each of the Parties will (and the State Parties will cause the DLC to) give any notices to, make any filings with, and use its commercially reasonable efforts to obtain (and to cooperate with the other Party to obtain) any consent or approval of any Governmental Authority or any other public or private Person which is required to be obtained or made by such Party in connection with the consummation of the Contemplated Transactions. Each Party shall promptly cooperate with and promptly furnish reasonable and appropriate information requested by the other in connection with any such efforts by, or reasonable requirement imposed upon, any of them in connection with the foregoing.

10.3 Injunctions. If any Governmental Authority of competent jurisdiction issues a preliminary or permanent injunction or temporary restraining order or other order before the Effective Time which would prohibit or materially restrict or hinder the Closing, each Party shall use all reasonable efforts to have such injunction, decree or order dissolved or otherwise eliminated as promptly as possible and, in any event, prior to the Effective Time. Any and all costs incurred by any Party pursuant to any action taken in accordance with this Section 10.3 shall be borne by such Party.

10.4 Policies of Insurance; Agency Performance Bonds.

(a) The State Parties shall cause any applicable policies of insurance maintained in respect of the Liquor Enterprise to be continued in force from the date hereof up to the Effective Time. At the Effective Time, all such policies of insurance shall terminate and Franchisee shall be responsible for obtaining adequate insurance for the Franchise, the Liquor Business Profits, the Liquor Business and the Transferred Assets.

(b) The State Parties shall use commercially reasonable efforts to obtain, on or prior to the Closing Date, assurances acceptable to Franchisee, in its reasonable discretion, that the existing Agency Store Bonds, will remain in full force and effect after the Closing. After Closing, such Agency Store Bonds will be modified or reissued, at the cost of the Liquor Business, so that Franchisee is added as co-beneficiary with the DLC or covered as a separate beneficiary, as may be appropriate, as each Agency Store Contract with the DLC is renewed in the Ordinary Course of Business. To the extent that any Agency Store Bond does not include Franchisee as a named co-beneficiary on the Closing Date, and in the event of a loss covered

by such Agency Store Bond, the State Parties will share the proceeds of such Agency Store Bond with Franchisee to the extent necessary to place Franchisee in a position similar to if it were a named co-beneficiary. However, in no event shall the State Parties be responsible for sharing with or providing to Franchisee any amount greater than the State Parties actually received from any such Agency Store Bond. Franchisee will use commercially reasonable efforts to assist the State Parties in the modification or reissuance of such Agency Store Bonds as needed.

10.5 Operation of Liquor Business. The State Parties shall keep (and shall cause the DLC to keep) the Liquor Enterprise substantially intact, including its present operations, physical facilities, working conditions, insurance policies and relationships with lessors, licensors, suppliers, customers, and employees. The State Parties shall not engage in any practice, take any action, or enter into any transaction relating to or affecting the Liquor Business other than in the Ordinary Course of Business. Without limiting the generality of the foregoing, except in the Ordinary Course of Business, the State Parties will not, without the prior written consent of Franchisee, (a) enter into, terminate, amend, renew or otherwise modify any of the contracts or agreements set forth on the Schedule of Assumed Liabilities; (b) obtain or seek to obtain new licenses or certificates; or (c) alter in any material manner the staffing support allocated to the Liquor Enterprise. Nothing in this Section 10.5 shall constrain the State Parties' authority or discretion with respect to their Statutory Merchandising Functions or Regulatory Functions.

10.6 Reasonable Access. Each Party shall permit (and the State Parties shall cause the DLC to permit) Representatives of any other Party (including legal counsel and accountants) to have reasonable access, at mutually agreed times, during normal business hours, upon 48 hours prior written notice, and in a manner so as not to interfere with the normal business operations of a Party, to relevant and appropriate premises, properties, personnel, books, records (including Tax records), contracts, and documents of or pertaining to the Liquor Enterprise or the contemplated operation of the Liquor Business (the "Books and Records"). The Franchisee Parties acknowledge that, in the case of Books and Records of the State Parties, such access is subject to the State Parties' and the State of Ohio agencies' policies regarding access to the State Books and Records shared or located in common with the premises, properties, personnel, books, records (including Tax records), contracts, documents, personnel, servers, and other restricted assets or information of any agency of the State of Ohio. The requesting Party shall bear all costs and expenses incurred by the granting Party in providing such access to the requesting Party.

10.7 Notice of Developments. Each Party shall promptly notify the other Party in writing (a) if such Party becomes aware of any fact or condition that causes or would be reasonably likely to cause or constitute a material breach of any of the representations and warranties of such Party set forth herein or (b) of the occurrence of any material breach of any covenant of such Party in this Agreement or of the occurrence of any event that may make the satisfaction of the closing conditions set forth herein impossible or unlikely. No disclosure by any Party pursuant to this Section 10.7, however, shall be deemed to prevent or cure any misrepresentation, breach of warranty, or breach of covenant; *provided, however*, that the Franchisee Parties shall be deemed to have waived any claim of breach if Franchisee elects to consummate the Contemplated Transaction despite the continuance of such breach. If the subject matter of any such disclosure, alone or in the aggregate with the subject matter of any or all other such disclosures, would, as

determined by Franchisee in the sole discretion of Franchisee, constitute or have a Material Adverse Effect on the Franchise, the Transferred Assets, the Liquor Business and intended conduct of the Liquor Business or the ability of the Parties to consummate the Contemplated Transactions, Franchisee may terminate this Agreement by giving written notice to the Director of Budget and Management and the Director of Commerce.

10.8 Transition Matters.

(a) From the date hereof up to the Effective Time, the Parties shall cooperate with each other to ensure the orderly transition of control, custody, operation, and management of the Franchise and the Transferred Assets.

(b) The Franchisee Parties shall (i) amend their respective Organizational Documents in a manner and form reasonably satisfactory to the State Parties, and provide copies of such amendments as have been filed with the Ohio Secretary of State and (ii) create or amend, as applicable, their conflicts of interest and ethics policies in a manner and form reasonably satisfactory to the State Parties.

(c) The Franchisee Parties shall provide to the State Parties the transcripts of the proceedings for the Transaction Obligations.

ARTICLE 11 - CONDITIONS TO THE OBLIGATIONS OF THE FRANCHISEE PARTIES

The obligation of Franchisee Parties to consummate the Contemplated Transactions in connection with the Closing is subject to the satisfaction or written waiver by the Franchisee Parties of the following conditions:

11.1 DLC Conditions.

(a) the representations and warranties of the DLC set forth in this Agreement shall be true and correct in all material respects at and as of the Closing Date, except to the extent that such representations and warranties are qualified by the term "material," or contain the term "Material Adverse Effect" in which case such representations and warranties (as so written, including the term "material" or "Material") shall be true and correct in all respects at and as of the Closing Date;

(b) the DLC shall have performed and complied with all of its respective covenants hereunder in all material respects through the Closing to the extent that such covenants require performance prior to the Closing;

(c) no Proceeding shall be pending before any Governmental Authority wherein an unfavorable injunction, judgment, order, decree, ruling, or charge would (i) prevent consummation of any of the Contemplated Transactions, (ii) cause any of the Contemplated Transactions to be rescinded following consummation (and no such injunction, judgment order, decree, ruling, or charge shall be in effect), or (iii) adversely affect the right of the Franchisee to own the Franchise and/or the Transferred Assets and to operate the Liquor Business (and no such injunction, judgment, order, decree, ruling, or charge shall be in effect);

(d) the Director of Commerce shall have delivered to Franchisee a certificate to the effect that each of the conditions specified in Sections 11.1(a)–(c) are satisfied in all material respects; and

(e) the DLC shall have delivered to Franchisee the unaudited financial statements of the DLC for the most recent month end (the “Interim Financial Statements”).

11.2 OBM Conditions.

(a) the representations and warranties of the OBM set forth in this Agreement shall be true and correct in all material respects at and as of the Closing Date, except to the extent that such representations and warranties are qualified by the term “material,” or contain the term “Material Adverse Effect,” in which case such representations and warranties (as so written, including the term “material” or “Material”) shall be true and correct in all respects at and as of the Closing Date;

(b) the OBM shall have performed and complied with all of its respective covenants hereunder in all material respects through the Closing to the extent that such covenants require performance prior to the Closing;

(c) no Proceeding shall be pending before any Governmental Authority wherein an unfavorable injunction, judgment, order, decree, ruling, or charge would (i) prevent consummation of any of the Contemplated Transactions, (ii) cause any of the Contemplated Transactions to be rescinded following consummation (and no such injunction, judgment order, decree, ruling, or charge shall be in effect), or (iii) adversely affect the right of the Franchisee to own the Franchise and/or the Transferred Assets and to operate the Liquor Business (and no such injunction, judgment, order, decree, ruling, or charge shall be in effect); and

(d) the Director of Budget and Management shall have delivered to Franchisee a certificate to the effect that each of the conditions specified in Sections 11.2(a)–(c) are satisfied in all material respects.

11.3 State Parties. The State Parties shall have executed and delivered to Franchisee the Assignment and Assumption Agreement, the Bill of Transfer, the DLC Services Agreement and the other Transaction Documents to which any of them are a party.

11.4 Bond Defeasance. The Bond Defeasance Escrow Agreements shall have been executed by the Bond Defeasance Escrow Trustees and on behalf of the State of Ohio, and the Director of Budget and Management shall have arranged for the deposit of funds or securities out of the proceeds of the Transaction Consideration sufficient (in the opinion of the Verification Agent (as defined in the Bond Defeasance Escrow Agreements)) to provide for the payment in full (as the same mature or as the same may be called for redemption in advance of their maturity) of all Existing Liquor Enterprise Obligations outstanding at the Effective Time in such manner that on the Closing Date such obligations shall have been legally defeased and are no longer treated as outstanding under the documents under which such obligations were issued and secured, and the State Parties shall have provided to Franchisee evidence reasonably satisfactory to it that any and all security interests and collateral securing any such obligations will be released in full as of the Effective Time.

11.5 Contemplated Transactions. All actions to be taken by the State Parties necessary to consummate the Contemplated Transactions and all certificates, opinions, instruments, and other documents required to effect the Contemplated Transactions will be reasonably satisfactory in form and substance to Franchisee.

11.6 DLC Services Agreement. The DLC Services Agreement shall have been approved by the Controlling Board.

11.7 Opinion. Franchisee shall have received from counsel to the DLC and the OBM an opinion in form and substance reasonably satisfactory to the Parties, addressed to Franchisee, and dated as of the Closing Date.

11.8 DOD Agreement. The DOD Agreement shall have been approved by the Controlling Board, and executed by the DOD.

11.9 Transaction Obligations Completion. Franchisee shall have successfully issued the Transaction Obligations.

ARTICLE 12 - CONDITIONS TO THE OBLIGATIONS OF THE STATE PARTIES

The obligations of the State Parties to consummate the Contemplated Transactions in connection with the Closing are subject to the satisfaction or written waiver by the State Parties of the following conditions:

12.1 Franchisee Conditions.

(a) the representations and warranties of the Franchisee set forth in this Agreement shall be true and correct in all material respects at and as of the Closing Date, except to the extent that such representations and warranties are qualified by the term "material," or contain the term "Material Adverse Effect," in which case such representations and warranties (as so written, including the term "material" or "Material") shall be true and correct in all respects at and as of the Closing Date;

(b) Franchisee shall have performed and complied with all of its covenants hereunder in all material respects through the Closing to the extent that such covenants require performance prior to the Closing;

(c) except as previously disclosed to the State Parties, no Proceeding shall be pending before any Governmental Authority wherein an unfavorable injunction, judgment, order, decree, ruling, or charge would (i) prevent consummation of any of the Contemplated Transactions, (ii) cause any of the Contemplated Transactions to be rescinded following consummation (and no such injunction, judgment order, decree, ruling, or charge shall be in effect), or (iii) adversely affect the right of the Franchisee to own the Franchise and/or the Transferred Assets and to operate the Liquor Business (and no such injunction, judgment, order, decree, ruling, or charge shall be in effect); and

(d) the President of Franchisee shall have delivered to the State Parties (i) a final copy of the Master Trust Indenture and (ii) a certificate to the effect that each of the conditions specified in Sections 12.1(a)-(c) are satisfied in all respects.

12.2 JobsOhio Conditions.

(a) the representations and warranties of the JobsOhio set forth in this Agreement shall be true and correct in all material respects at and as of the Closing Date, except to the extent that such representations and warranties are qualified by the term "material," or contain the term "Material Adverse Effect," in which case such representations and warranties (as so written, including the term "material" or "Material") shall be true and correct in all material respects at and as of the Closing Date;

(b) JobsOhio shall have performed and complied with all of its covenants hereunder in all material respects through the Closing to the extent that such covenants require performance prior to the Closing;

(c) no Proceeding shall be pending before any Governmental Authority wherein an unfavorable injunction, judgment, order, decree, ruling, or charge would (i) prevent consummation of any of the Contemplated Transactions, (ii) cause any of the Contemplated Transactions to be rescinded following consummation (and no such injunction, judgment order, decree, ruling, or charge shall be in effect), or (iii) adversely affect the right of the Franchisee to own the Franchise and/or the Transferred Assets and to operate the Liquor Business (and no such injunction, judgment, order, decree, ruling, or charge shall be in effect); and

(d) the Chief Investment Officer of JobsOhio shall have delivered to the State Parties a certificate to the effect that each of the conditions specified in Sections 12.2(a)-(c) are satisfied in all respects.

12.3 DLC Services Agreement. The DLC Services Agreement shall have been approved by the Controlling Board.

12.4 Franchisee Parties. The Franchisee Parties shall have executed and delivered to the State Parties the Assignment and Assumption Agreement, the Bill of Transfer, the DLC Services Agreement, the DOD Agreement, and each Transaction Document to which any of them are a party. The Organizational Documents, conflicts of interest policies and other ethical or corporate policies of each Franchise Party shall be reasonably satisfactory to the State Parties.

12.5 Amounts Provided. Franchisee shall have paid in full the amounts provided for under Section 3.2 in accordance with the Payment Instructions.

12.6 Bond Defeasance. The Bond Defeasance Escrow Agreements shall have been executed by the Bond Defeasance Escrow Trustees and on behalf of the State of Ohio, and the Director of Budget and Management shall have arranged for the deposit of funds or securities out of the proceeds of the Transaction Consideration sufficient (in the opinion of the Verification Agent (as defined in the Bond Defeasance Escrow Agreements)) to provide for the payment in full (as the same mature or as the same may be called for redemption in advance of their maturity) of all Existing Liquor Enterprise Obligations outstanding at the Effective Time in such manner that on the Closing Date such obligations shall have been legally defeased and are no longer treated as outstanding under the documents under which such obligations were issued and secured, and the State Parties shall have provided to Franchisee evidence reasonably satisfactory to it that any and all security interests and collateral securing any such obligations will be released in full as of the Effective Time.

12.7 Opinion. The State Parties shall have received from counsel to Franchisee an opinion in form and substance reasonably satisfactory to the Parties, addressed to the Department of Commerce and the OBM, and dated as of the Closing Date, which shall include an opinion that the operation of the Liquor Business by the Franchisee will not be an unrelated trade or business within the meaning of Section 513(a) of the Code and that the income from the operation of the Liquor Business will not be unrelated business taxable income as defined in Section 512(a) of the Code and subject to tax under Section 511 of the Code.

12.8 Transaction Obligations. Franchisee shall have successfully issued the Transaction Obligations.

12.9 DOD Agreement. The DOD Agreement shall have been approved by the Controlling Board.

12.10 Contemplated Transactions. All actions to be taken by the Franchisee Parties in connection with consummation of the Contemplated Transactions and all certificates, opinions, instruments, and other documents required to effect the Contemplated Transactions will be reasonably satisfactory in form and substance to the State Parties.

ARTICLE 13 - TERMINATION PRIOR TO THE CLOSING

13.1 Pre-Closing Termination of Agreement. The Parties may terminate this Agreement at any time prior to Closing:

(a) by mutual written consent of the State Parties and Franchisee;

(b) by either the State Parties or Franchisee, upon notice to the other Party, if (i) any Governmental Authority of competent jurisdiction shall have issued an order, decree or ruling or taken any other action permanently restraining, enjoining or otherwise prohibiting the Contemplated Transactions, and such order, decree, ruling or other action has become final and nonappealable; *provided, however*, that the right to terminate this Agreement under this Section 13.1(b) shall not be available to any Party whose failure to comply with any provision of this Agreement has been the cause of, or resulted in, such order or action or (ii) the Closing has not occurred as of 12:01 A.M. (Columbus, Ohio time) on June 30, 2013;

(c) by Franchisee, upon notice to the State Parties, if any condition set forth in ARTICLE 11 is not satisfied at the Effective Time; *provided, however*, that Franchisee shall not have the right to terminate this Agreement under this Section 13.1(c) if a Franchisee Party's failure to comply with any provision of this Agreement has been the cause of, or resulted in, the failure of such condition or conditions to be satisfied; or

(d) by the State Parties, upon notice to Franchisee, if any condition set forth in ARTICLE 12 is not satisfied at the Effective Time; *provided, however*, that the State Parties shall not have the right to terminate this Agreement under this Section 13.1(d) if the State Parties' failure to comply with any provision of this Agreement has been the cause of, or resulted in, the failure of such condition or conditions to be satisfied.

13.2 Effect of Pre-Closing Termination. If any Party terminates this Agreement pursuant to Section 13.1, all rights and obligations of the Parties hereunder shall terminate without any liability of any Party to the other Party. Each Party will bear its own costs and expenses hereunder. The provisions of ARTICLE 1, Sections 13.2, 17.8 and ARTICLE 18 shall survive termination of this Agreement.

ARTICLE 14 - AFFIRMATIVE COVENANTS

14.1 Affirmative Covenants of the Parties. Each Party agrees that, unless at any time the other Party shall otherwise expressly consent in writing, it will:

(a) General. In case at any time after the Closing any further actions are necessary to carry out the purposes of this Agreement and the Transaction Documents, each of the Parties will take such further actions (including the execution and delivery of such further instruments and documents) as the other Party may reasonably request, all at the sole cost and expense of the requesting Party; *provided, however*, that nothing contained in this Section 14.1 shall limit the sole discretion of the State Parties to perform the Regulatory Functions or the Statutory Merchandising Functions.

(b) **Litigation Support.** If and for so long as any Party actively is contesting or defending against any action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand in connection with (i) any of the Contemplated Transactions or (ii) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction on or prior to the Closing Date involving the State Parties, the DLC, or the OBM with respect to the Contemplated Transactions, the other Party will cooperate with the contesting or defending Party and its counsel in the contest or defense, make available its personnel, and provide such testimony and access to its books and records as shall be necessary in connection with the contest or defense. Each Party shall bear its own costs and expenses incurred in contesting or defending a claim, or supporting another Party's claim or defense.

(c) **Remittance of Misdirected Payments.**

(i) If any Franchisee Party receives a payment that relates to the operation of the Liquor Enterprise at any time prior to the Effective Time (other than any Unswept Sales Revenue), such payment shall be the sole property of the State Parties and not the Franchisee Party, and the Franchisee Party shall remit such payment(s) to the DLC no later than 10 days after the receipt of such payment. For the avoidance of doubt, any Unswept Sales Revenue shall be the sole property of the Franchisee and not the State Parties.

(ii) If any State Party receives a payment that relates to the operation of the Liquor Business, the Franchise, the Transferred Assets and/or the After-Acquired Assets at any time on or after the Effective Time, such payment shall be the sole property of the Franchisee Parties and not the State Parties, and such State Party shall, at its election, either (1) deliver such payment(s) to the Master Trustee within 10 days after receipt of such payment or (2) credit such payment amount against any payments due to the State Parties under the DLC Services Agreement.

(d) **Agency Contracts.** After the Closing, as promptly as commercially practicable, each Party shall cooperate, in all commercially reasonable respects, to cause each Agent that is a party to an existing Agency Contract to enter into two agreements to replace the existing Agency Contract, (i) an agreement with Franchisee in the form agreed upon by the parties hereto, and (ii) an agreement with DLC in the form agreed upon by the parties hereto.

14.2 Affirmative Covenant of the State Parties. The State Parties agree that, unless at any time the Franchisee Parties shall otherwise expressly consent in writing, during the Term they will act at all times in material compliance with applicable Legal Requirements (including Section 28 of Article II of the Constitution), this Agreement and the DLC Services Agreement.

14.3 Affirmative Covenants of Franchisee. Franchisee agrees that, unless at any time the State Parties shall otherwise expressly consent in writing, during the Term it will:

(a) act in compliance with the terms and provisions of its Organizational Documents;

(b) (i) operate exclusively as a 501(c)(3) Organization, (ii) conduct its operations in a manner that will result in its continued qualification as a 501(c)(3) Organization, and (iii) timely file or cause to be filed all material, returns, reports and other documents that are required to be filed with the Internal Revenue Service;

(c) if a change in the Code or other applicable Legal Requirement (i) causes the revenues or monies derived from the Liquor Business to be subject to federal income taxation or (ii) causes it to operate its business or activities in a manner which causes revenues derived from the Liquor Business to be subject to federal income taxation, then the Franchisee shall use its best efforts to establish exempt status from federal income taxation with respect to such revenues or monies;

(d) act, and cause its officers and directors to act, in compliance with the terms of its conflicts of interest policy, and all other fiduciary and ethical rules and regulations imposed by all applicable Legal Requirements;

(e) maintain the Franchise, Transferred Assets and the After-Acquired Assets and operate the Liquor Business in the Ordinary Course of Business;

(f) provide the State Parties with written notice of the addition of a new member or removal of an existing member of the Obligated Group; and

(g) take all reasonable steps necessary to complete or otherwise wind up any and all of Franchisee's Permitted Transitional Activities as soon as reasonably practicable following the Closing.

14.4 Affirmative Covenants of JobsOhio. JobsOhio agrees that, unless at any time the State Parties shall otherwise expressly consent in writing, during the Term it will:

(a) act in compliance with the terms of its Organizational Documents and as provided in Section 187.01 of the ORC;

(b) remain the sole member of Franchisee at all times, and not enter into any agreement or arrangement with any other Person that would or could have the effect of resulting in any Person other than JobsOhio becoming a member of Franchisee or otherwise having the right to control the actions of Franchisee or to appoint directors of Franchisee;

(c) operate exclusively as an organization described in 501(c)(4) of the Code;

(d) if a change in the Code or other applicable Legal Requirement (i) causes the revenues or monies derived from the Liquor Business to be subject to federal income taxation or (ii) causes it to operate its business or activities in a manner which causes revenues derived from the Liquor Business to be subject to federal income taxation, then JobsOhio shall use its best efforts to establish exempt status from federal income taxation with respect to such revenues or monies;

(e) act, and cause its officers and directors to act, in compliance with the terms of JobsOhio Conflicts of Interest Policy, and all other fiduciary and ethical rules and regulations imposed by all applicable Legal Requirements; and

(f) take all reasonable steps necessary to cause the Franchisee to complete or otherwise wind up any and all Permitted Transitional Activities as soon as reasonably practicable following the Closing.

14.5 Liquor Revenue Covenants.

(a) The State of Ohio shall maintain statutory authority for and cause to be charged wholesale and retail prices for Spirituous Liquor sold by the Liquor Business so that the Minimum Debt Service Coverage Ratio is achieved in each Fiscal Year during the Term of this Agreement.

(b) No later than 30 days after the end of each Fiscal Year, Franchisee shall provide the State Parties with a written statement setting forth (in reasonable detail) its calculation of the Debt Service Coverage Ratio for such Fiscal Year ("Debt Coverage Statement").

(c) If the Debt Service Coverage Ratio set forth in such Debt Coverage Statement is less than the Minimum Debt Service Coverage Ratio, but greater than or equal to 1.10x, then the following shall occur:

(i) Franchisee shall, no later than 60 days after the date of the Debt Coverage Statement, engage an independent outside consultant with nationally recognized expertise in liquor sales and operations satisfactory to DLC (the "Consultant"), at the cost and expense of the Franchisee;

(ii) Franchisee shall instruct the Consultant to review and analyze the revenues, expenses and operations of the Liquor Business and to submit to each of Franchisee, the DLC, the OBM and the Master Trustee, within 60 days following its engagement, the Liquor Business Recommendations; and

(iii) Franchisee and DLC may also, in their discretion, within 60 days after the end of such Fiscal Year, create a plan to take such other actions as Franchisee and DLC may otherwise agree upon to increase the Debt Service Coverage Ratio for the then current Fiscal Year and have the Consultant certify in writing that such plan is, in its opinion, likely to result in a Debt Service Coverage Ratio that is greater than the Minimum Debt Service Coverage Ratio for the then current Fiscal Year (a "Work Plan").

14.6 Bond Redemption Covenants. The Bond Defeasance Escrow Agreement related to the Existing Liquor Enterprise Chapter 151 Make-Whole Obligations shall provide that the State of Ohio shall transfer all deposits maintained and held in the debt service funds for the Existing Liquor Enterprise Chapter 151 Obligations to the Bond Defeasance Escrow Trustee for such obligations to be held in the custody of such Bond Defeasance Escrow Trustee (the "Chapter 151 Reserve Account") as additional security to be used by such Bond Defeasance Escrow Trustee to pay the Make-Whole Redemption Prices (as defined in the Bond Defeasance Escrow Agreement related to the Existing Liquor Enterprise Chapter 151 Make-Whole Obligations) in the event that proceeds from the sale of the funds and securities deposited with such Bond Defeasance Escrow Trustee for the defeasance to final maturity of the Existing Liquor Enterprise Chapter 151 Make-Whole Obligations (the "Chapter 151 Make-Whole Proceeds") are not sufficient to pay such Make-Whole Redemption Prices on the Existing Liquor Enterprise Chapter 151 Make-Whole Obligations. Such deposits that were maintained and held in the debt service funds for the Existing Liquor Enterprise Chapter 151 Obligations and are transferred to the Chapter 151 Reserve Account shall not be taken into account for purposes of determining the Bond Defeasance Payment.

(b) The Bond Defeasance Escrow Agreement related to the Existing Liquor Enterprise Chapter 166 Make-Whole Obligations shall provide that the State of Ohio shall transfer all deposits maintained and held in the debt service funds for the Existing Liquor Enterprise Chapter 166 Obligations to the Bond Defeasance Escrow Trustee for such obligations to be held in the custody of such Bond Defeasance Escrow Trustee (the "Chapter 166 Reserve Account") as additional security to be used by such Bond Defeasance Escrow Trustee to pay the Make-Whole Redemption Prices (as defined in the Bond Defeasance Escrow Agreement related to the Existing Liquor Enterprise Chapter 166 Make-Whole Obligations) in the event that proceeds from the sale of the funds and securities deposited with such Bond Defeasance Escrow Trustee for the defeasance to final maturity of the Existing Liquor Enterprise Chapter 166 Make-Whole Obligations (the "Chapter 166 Make-Whole Proceeds") are not sufficient to pay such Make-Whole Redemption Prices on the Existing Liquor Enterprise Chapter 166 Make-Whole Obligations. Such deposits that were maintained and held in the debt service funds for the Existing Liquor Enterprise Chapter 166 Obligations and are transferred to the Chapter 166 Reserve Account shall not be taken into account for purposes of determining the Bond Defeasance Payment.

(c) The Bond Defeasance Escrow Agreement relating to the Existing Liquor Enterprises Chapter 151 Make-Whole Obligations shall provide that upon the redemption of the Existing Liquor Enterprise Chapter 151 Make-Whole Obligations, the Bond Defeasance Escrow Trustee for such obligations shall distribute (i) fifty percent (50%) of the Chapter 151 Make-Whole Proceeds, if any, that were not necessary to pay the Make-Whole Redemption Prices on the Existing Liquor Enterprise Chapter 151 Make-Whole Obligations (the "Excess Chapter 151 Make-Whole Proceeds") to Franchisee, and fifty percent (50%) of the Excess Chapter 151 Make-Whole Proceeds, if any, to the State of Ohio; and (ii) fifty percent (50%) of the balance in the Chapter 151 Reserve Account, if any, to Franchisee and fifty percent (50%) of the balance in the Chapter 151 Reserve Account, if any, to the State of Ohio.

(d) The Bond Defeasance Escrow Agreement relating to the Existing Liquor Enterprise Chapter 166 Make-Whole Obligations shall provide that upon the redemption of the

Existing Liquor Enterprise Chapter 166 Make-Whole Obligations, the Bond Defeasance Escrow Trustee for such obligations shall distribute (i) fifty percent (50%) of the Chapter 166 Make-Whole Proceeds, if any, that were not necessary to pay the Make-Whole Redemption Prices on the Existing Liquor Enterprise Chapter 166 Make-Whole Obligations (the "Excess Chapter 166 Make-Whole Proceeds") to Franchisee, and fifty percent (50%) of the Excess Chapter 166 Make-Whole Proceeds, if any, to the State of Ohio; and (ii) fifty percent (50%) of the balance in the Chapter 166 Reserve Account, if any, to Franchisee and fifty percent (50%) of the balance in the Chapter 166 Reserve Account, if any, to the State of Ohio.

(e) Except as otherwise provided in and Sections 14.6(c) and 14.6(d) herein, each Bond Defeasance Escrow Agreement shall provide that (i) if, upon termination of the Escrow Account established pursuant to such Bond Defeasance Escrow Agreement, the remaining balance in such Escrow Account is an amount in excess of Ten Thousand Dollars (\$10,000.00), the Bond Defeasance Escrow Trustee shall distribute (A) fifty percent (50%) of the balance in such Escrow Account to Franchisee, and (B) fifty percent to the State of Ohio; and (ii) if, upon termination of such Escrow Account, the remaining balance in such Escrow Account is an amount equal to or less than Ten Thousand Dollars (\$10,000.00), the Bond Defeasance Escrow Trustee shall distribute the entire balance in such Escrow Account to the State of Ohio.

ARTICLE 15 - NEGATIVE COVENANTS

15.1 Negative Covenants of the State Parties. The State Parties agree that, unless at any time Franchisee shall otherwise expressly consent in writing, during the Term they will not:

(a) materially impair any Obligations secured by Liquor Business Profits; provided, however, that nothing contained in this Section 15.1(a) shall prevent the State Parties from exercising their termination rights under this Agreement;

(b) create any Encumbrance on the Franchise, any Transferred Asset or any After-Acquired Asset, except for Permitted State Encumbrances; or

(c) adversely affect the tax exempt status of interest on any Obligations that are issued as debt, the interest on which is exempt from federal income taxation, provided, that this covenant shall not (i) be construed to prevent the State Parties' exercise of their respective Regulatory Functions or Statutory Merchandising Functions or (ii) modify, or otherwise prevent the exercise of, the State Parties respective rights to terminate this Agreement in accordance with its terms and conditions.

15.2 Negative Covenants of the Franchisee. The Franchisee agrees that during the Term it will not:

(a) without the consent of the Director of Budget and Management, create or permit to exist any Encumbrance on the Franchise, any Transferred Asset or any After-Acquired Assets, except for Obligations, the Permitted Franchisee Encumbrances and the State's rights hereunder;

(b) in any material way, violate, default under or fail to perform its obligations under any applicable Legal Requirement, the Master Trust Indenture or any Transaction Document to which it is a party;

(c) without the consent of the Director of Budget and Management, transfer, assign, sublicense or convey, or permit the transfer, assignment or conveyance of the Franchise, the Transferred Assets or the After-Acquired Assets to any Person other than the State or a receiver appointed by the State Parties (by operation of law or otherwise), except for sales of inventory in the Ordinary Course of Business;

(d) except as may otherwise be the result of a change in the Code or other applicable Legal Requirement, (i) cause or permit the revenues or monies derived from the Liquor Business to be subject to federal income taxation or (ii) operate its business or activities in a manner which causes revenues derived from the Liquor Business to be subject to federal income taxation;

(e) (i) commence, or permit to be maintained, any bankruptcy, receivership, assignment for the benefit of creditors, merger, consolidation, restructuring, reorganization, sale of substantially all of its assets or similar proceeding or (ii) initiate proceedings to wind-up, dissolve, or otherwise terminate its business and operations;

(f) without the consent of the Director of Budget and Management, create or own a beneficial interest in any other Person or Subsidiary;

(g) without the consent of the Director of Budget and Management, issue any Franchisee Indebtedness, other than the Transaction Obligations, unless (i) such Franchisee Indebtedness qualifies as an Additional Obligation and (ii) written notice of such issuance has been provided to the Director of Budget and Management at least 30 days' prior to the date of the planned issuance (which notice shall include (A) draft copies of principal or main financing documents related thereto and (B) a copy of the calculation showing that the Required Debt Service Ratio is projected to be met);

(h) without the consent of the Director of Budget and Management, amend any of its Organizational Documents, ethical codes or policies, or the conflicts of interest policies, except for any change that is: (i) clerical or inconsequential and does not adversely affect the rights of the State hereunder, (ii) necessary to maintain compliance with Legal Requirements, (iii) necessary or desirable to cure any ambiguity or supplement any provision thereof that would be inconsistent with law or a provision of this Agreement, or (iv) necessary or advisable to ensure that it will not be treated as a taxable corporation for federal income tax purposes provided, that such change does not adversely affect the rights of the State hereunder;

(i) without the consent of the Director of Budget and Management, operate, conduct or undertake any business or activity other than (i) the operation of the Liquor Business, (ii) the distribution of Liquor Business Profits to JobsOhio and (iii) subject to Sections 14.3(g) and 14.4(f), the Permitted Transitional Activities; or

(j) without the consent of the Director of Budget and Management, (i) amend or modify any term defined in the Master Trust Indenture, which defined term is incorporated in

this Agreement by the phrase “(as defined in the Master Trust Indenture)”; (ii) alter, modify, or interfere with the priority of the Deferred Payments hereunder as set forth in Section 3.5(h); or (iii) amend or modify the Master Trust Indenture or similar agreement governing any Obligations in a manner that has a material and adverse effect on the State Parties or their rights hereunder.

15.3 Negative Covenants of JobsOhio.

JobsOhio agrees that during the Term it will not:

(a) without the consent of the Director of Budget and Management, create or permit to exist any Encumbrance on the Franchise, any Transferred Asset, any After-Acquired Asset or its membership in Franchisee, except for Obligations, the Permitted Franchisee Encumbrances and the State’s rights hereunder;

(b) in any material way, violate, default under or fail to perform its obligations under any applicable Legal Requirement or the terms or obligations of the DOD Agreement, the Master Trust Indenture or any Transaction Document to which it is a party;

(c) without the consent of the Director of Budget and Management, transfer, assign, sublicense or convey, or permit the transfer, assignment or conveyance of the Franchise, the Transferred Assets or the After-Acquired Assets to any Person other than the State or a receiver appointed by the State Parties (by operation of law or otherwise), except for sales of inventory in the Ordinary Course of Business;

(d) except as may otherwise be the result of a change in the Code or other applicable Legal Requirement, (i) cause or permit the revenues or monies derived from the Liquor Business to be subject to federal income taxation or (ii) operate its business or activities in a manner which causes revenues derived from the Liquor Business to be subject to federal income taxation;

(e) without the consent of the Director of Budget and Management, (i) commence, or permit to be maintained, any bankruptcy, receivership, assignment for the benefit of creditors, merger, consolidation, restructuring, reorganization, sale of substantially all of its assets or similar proceeding or (ii) initiate proceedings to wind-up, dissolve, or otherwise terminate its business and operations;

(f) without the consent of the Director of Budget and Management, amend any of its Organizational Documents, ethical codes or policies, or conflicts of interest policies, except for any change that is: (i) clerical or inconsequential and does not adversely affect the rights of the State hereunder, (ii) necessary to maintain compliance with Legal Requirements, (iii) necessary or desirable to cure any ambiguity or supplement any provision thereof that would be inconsistent with law or a provision of this Agreement, or (iv) necessary or advisable to ensure that it will not be treated as a taxable corporation for federal income tax purposes, provided, that such change does not adversely affect the rights of the State hereunder; or

(g) permit Franchisee to violate any of its covenants.

ARTICLE 16 - FINANCE OBLIGATIONS AND ACKNOWLEDGEMENTS

16.1 Franchisee Parties' Obligations and Acknowledgements. The Franchisee Parties shall be responsible for obtaining any financing for the performance of their obligations under this Agreement, which financing shall comply with all requirements of this Agreement. The Franchisee Parties each acknowledge that (a) the obligations of the State Parties hereunder are not general obligations of the State of Ohio or the State Parties and that the full faith and credit, revenue, and taxing power of the State of Ohio is not pledged to the payment of amounts due hereunder; (b) the holders or owners of the Obligations shall have no right to have any moneys obligated or pledged for the payment of debt service except as provided in this Agreement; and (c) the rights of the holders and owners to payment of debt service on the Obligations are limited to the pledged Liquor Business Profits, to the extent pledged by Franchisee. The Franchisee Parties shall cause each Obligation to bear on its face a statement to the effect of Section 16.1(c).

16.2 State Parties Obligations and Acknowledgements.

(a) The State Parties shall (and to the extent necessary shall cause their affiliates to), to the extent consistent with applicable Legal Requirements and at the sole cost and expense of the Franchisee Parties, cooperate, in good faith, with the Franchisee Parties with respect to documentation reasonably necessary to obtain and consummate the issuance and sale of the Transaction Obligations. The State Parties' cooperation may include approving and executing documents, reasonably satisfactory to the State Parties, which substantiate the terms of this Agreement (including, without limitation any consents and agreements, reasonably satisfactory to the State Parties, necessary to confirm that the debt evidenced by the relevant financing constitutes Obligations) and making relevant and reasonable information and material available to the Franchisee Parties' underwriters or lenders to assist in the facilitation of the issuance and sale of the Transaction Obligations to the extent permitted by applicable Legal Requirements and contractual obligations with third Persons. In addition, the State Parties shall, promptly upon the reasonable request of the Franchisee Parties, execute, acknowledge and deliver to the Franchisee Parties, or any of the Persons specified by the Franchisee Parties, all questionnaires, opinions, underwriting agreements, certifications and other documents reasonably requested by the Franchisee Parties, each in form and substance satisfactory to the State Parties.

(b) Without limiting the generality of (a) above, the State Parties shall use their commercially reasonable efforts to (and to the extent necessary shall cause the appropriate State agencies to use their commercially reasonable efforts to) assist and cooperate, in good faith, with the preparation of any Preliminary Offering Circular and Offering Circular related to the issuance and sale of the Transaction Obligations to be completed in connection with the Closing of the Contemplated Transactions, to the extent that such Preliminary Offering Circular or Offering Circular contains information relating to a State Party or to the Liquor Enterprise or its operation prior to the Effective Time (the "State Information"). Each of the DLC and OBM shall ensure that the State Information provided by it will be true and correct in all material respects. Each of the DLC and OBM shall ensure that the State Information will not contain any untrue or misleading statement of a material fact with respect to it, or omit to state any material fact with respect to it necessary to make the statements therein, in the light of the circumstances under which they are made, not misleading.

(c) If reasonably requested to do so by the Franchisee Parties, the State Parties shall use their commercially reasonable efforts to cause the Ohio Auditor of State, or cause the State Parties' then independent public accountants, to provide and consent to the use and inclusion of certain financial information regarding the Liquor Enterprise in connection with the Transaction Obligations, all at the sole cost and expense of the Franchisee Parties.

(d) Nothing herein shall require the State Parties to incur any additional obligations or liabilities or to take any action, give any consent or enter into any document inconsistent with or in violation of any applicable Legal Requirement, the provisions of this Agreement, or their other contractual obligations to third Persons. Nothing in this Agreement shall (i) prohibit or prevent the State Parties from issuing bonds or entering into obligations; provided that, such bonds or obligations are not secured by Liquor Business Profits; or (ii) expand Franchisee's rights to issue any Obligations hereunder.

(e) The State Parties hereby acknowledge and agree that (i) any new obligations undertaken by the State Parties prior to the termination of all Obligations issued in accordance with this Agreement may not be secured by any of the Liquor Business, Franchise, Transferred Assets or After-Acquired Assets, (ii) Franchisee may consummate the issuance and sale of the Transaction Obligations in accordance with the terms of this Agreement, and (iii) in addition to the Transaction Obligations, Franchisee may enter into Additional Obligations in accordance the terms of this Agreement.

**ARTICLE 17 - DEFAULT; TERMINATION; CONSEQUENCES OF
TERMINATION OR REVERSION**

17.1 Default by Franchisee Parties. The occurrence of any one or more of the following events during the Term shall constitute a "Franchisee Default" under this Agreement:

(a) if any Franchisee Party fails to comply in all material respects with or observe in all material respects any obligation, covenant, agreement, term or condition in this Agreement and such failure continues unremedied for a period of 90 days following notice thereof (giving the particulars of the failure in reasonable detail) from the State Parties to Franchisee or for such longer period as may be reasonably necessary to cure such failure (but in no event later than 180 days thereafter) provided, in the latter case, that the Franchisee Parties have demonstrated to the satisfaction of the State Parties, acting reasonably, that (i) they are proceeding with all diligence to cure or cause to be cured such failure, (ii) their actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the State Parties, acting reasonably and (iii) such failure is in fact cured within such period of time; or

(b) if either Franchisee or JobsOhio (i) admits, in writing, that it is unable to pay its debts as such become due, (ii) makes an assignment for the benefit of creditors, (iii) files a voluntary petition under Title 11 of the U.S. Code, and an order for relief is entered, or if either JobsOhio or Franchisee files any petition or answer seeking, consent to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any other present or future applicable Legal Requirement, or shall seek or consent to or acquiesce in or suffer the

appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of such Franchisee Party, or of all or any substantial part of its properties or the Franchise, the Transferred Assets, the After-Acquired Assets, the Liquor Business Profits or any interest therein, or (iv) take any corporate action in furtherance of any action described in this Section 17.1(b).

17.2 Remedies of the State Parties Upon Franchisee Party Default. Upon the occurrence and during the continuance of a Franchisee Default, the State Parties may declare the Franchisee Parties to be in default and may, do any or all of the following as the State Parties, in their discretion, shall determine:

(a) subject to Section 17.6, the State Parties may terminate this Agreement upon giving written notice to the Franchisee Parties and the expiration of any applicable cure period;

(b) if a Franchisee Default is by reason of the failure to pay any monies, the State Parties may (without obligation to do so) make payment on behalf of the Franchisee Parties of such monies, and any amount so paid by the State Parties shall be payable by the Franchisee Parties to the State Parties within seven Business Days after written demand therefore; provided, however, that the State Parties' cure of any Franchisee Default shall not affect the State Parties' rights against the Franchisee Parties by reason of such Franchisee Default;

(c) the State Parties may cure a Franchisee Default (but this shall not obligate the State Parties to cure or attempt to cure a Franchisee Default or, after having commenced to cure or attempted to cure a Franchisee Default, to continue to do so), and all costs and expenses reasonably incurred by the State Parties in curing or attempting to cure a Franchisee Default, shall be payable by the Franchisee Parties to the State Parties within seven Business Days of written demand; provided, however, that the State Parties' cure of any Franchisee Default shall not affect the State Parties' rights against the Franchisee Parties by reason of such Franchisee Default;

(d) subject to Section 17.8, the State Parties may appoint a receiver or trustee, which the State Parties may designate as a successor or assign of Franchisee, to supervise, operate, hold and/or use the Franchise, the Liquor Business Profits, the Transferred Assets and the After-Acquired Assets, in compliance with the terms of this Agreement;

(e) subject to Section 17.8, the State Parties may elect to receive any revenues from the Liquor Business remaining after all Ordinary Course Costs and Expenses due and payable in that Fiscal Year, Required Payments due in that Fiscal Year and related payments necessary to replenish reserve funds in that Fiscal Year have been paid from the Liquor Business Profits;

(f) the State Parties may seek specific performance, injunction or other equitable remedies without the necessity of posting bond, it being acknowledged that damages are an inadequate remedy for a Franchisee Default;

(g) the State Parties may seek to recover their damages and costs arising from such Franchisee Default and any amounts due and payable under this Agreement and any other

Transaction Document and, in connection therewith, exercise any recourse available to any Person who is owed damages, costs or a debt; and/or

(h) the State Parties may exercise any of their other rights and remedies provided for hereunder or at law or equity.

17.3 Defaults by the State Parties. The occurrence of any one or more of the following events during the Term shall constitute a "State Default" under this Agreement:

(a) if the State Parties fail to comply in all material respects with or observe in all material respects any obligation, covenant, agreement, term or condition in this Agreement (other than the covenants described in Section 14.5, the breach of which is governed by Sections 17.3(b) and 17.3(c)) and such failure continues unremedied for a period of 90 days following notice thereof (giving the particulars of the failure in reasonable detail) from the Franchisee Parties to the State Parties or for such longer period as may be reasonably necessary to cure such failure provided, in the latter case, that the State Parties have demonstrated to the satisfaction of the Franchisee Parties, acting reasonably, that (i) they are proceeding with all diligence to cure or cause to be cured such failure, and (ii) their actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Franchisee Parties, acting reasonably and (iii) such failure is in fact cured within such period of time;

(b) for any Fiscal Year, (i) the State Parties do not observe the covenant in Section 14.5(a), (ii) the Minimum Debt Service Coverage Ratio is not achieved and (iii) the State Parties fail to either (1) follow the Liquor Business Recommendations provided pursuant to Section 14.5(c)(ii) or (2) follow the Work Plan created pursuant to Section 14.5(c)(iii); or

(c) for any Fiscal Year, (i) the State Parties do not observe the covenant in Section 14.5(a) and (ii) the Debt Service Coverage Ratio set forth in the relevant Debt Coverage Statement is less than 1.10x.

17.4 Remedies of Franchisee Parties Upon State Default. Upon the occurrence and during the continuance of a State Default by the State Parties under this Agreement, the Franchisee Parties may by notice to the State Parties declare the State Parties to be in default and may do any or all of the following as the Franchisee Parties, in their discretion, shall determine:

(a) subject to Section 17.6, the Franchisee Parties may terminate this Agreement upon giving 60 days' prior written notice to the State Parties and the expiration of any applicable cure period;

(b) the Franchisee Parties may seek enforcement by writ of mandamus under Section 2731.01 of the ORC, *provided, however*, that no such enforcement may be sought with respect to a failure of the State Parties to implement Liquor Business Recommendations presented by a Consultant unless and until the Debt Service Coverage Ratio set forth in the relevant Debt Coverage Statement is less than 1.10x;

(c) the Franchisee Parties may seek to recover their damages and costs and any amounts due and payable under this Agreement and, in connection therewith, exercise any recourse available to any Person who is owed damages, costs or a debt;

(d) if a State Default occurs under Section 17.3(b) or (c), the Franchisee Parties may reduce or defer all or a portion of any payments owed to the State Parties, other than amounts due pursuant to the DLC Services Agreement and amounts collected or due for Taxes, to the extent the Franchisee Parties deem reasonably necessary to meet the Minimum Debt Service Coverage Ratio for the then-current Fiscal Year; and

(e) the Franchisee Parties may exercise any of their other rights and remedies provided for hereunder.

17.5 Prior Termination. Subject to Section 17.6 or 17.8, as applicable, the State Parties may exercise the remedies provided in Sections 17.2(a), (d), and/or (e) of this Agreement:

(a) if a law is enacted and takes effect that directs the State Parties to terminate this Agreement in accordance with this Agreement's terms and provisions; or

(b) if a state or federal law enforcement officer, agency or other investigative authority, or a state or federal court, provides the Governor of the State of Ohio with an investigative report produced by such officer, agency, authority, or a court ruling, that the Governor reasonably deems reliable and provides clear and convincing evidence of an act or omission by a director or officer of a Franchisee Party, in the course and scope of his or her duties and responsibilities at such Franchisee Party, constituting either a crime punishable as a felony or a material violation of applicable law (such a crime or violation, a "Violation"), and, after reviewing the report or ruling, the Governor, in his or her reasonable judgment after consultation with legal counsel, determines that Violation:

(i) has resulted or is likely to result in a material financial loss to the Liquor Business or any Franchisee Party; or

(ii) (A) involved a material violation of (1) any Franchisee Party's conflict of interest policy, as it may be amended from time to time, (2) any other applicable corporate governance or ethics policy which any of the Franchisee Parties may enact, (3) state or federal securities laws, or (4) any other ethical, fiduciary or corporate governance standards, rules or regulations applicable to any Franchisee Party or the Liquor Business under Ohio or federal law or rule; and (B) has materially adversely affected the ability of any Franchisee Party to act in a manner consistent with its stated purpose set forth in its respective Organizational Documents.

(c) The rights provided in this Section 17.5 shall be in addition to any remedies or other rights that the State Parties may have.

17.6 Pre-Termination Arrangements.

(a) Notwithstanding anything herein to the contrary, in no event shall (i) the State Parties exercise the remedies in Sections 17.2(a) or (ii) the Franchisee Parties exercise their remedies under Section 17.4(a) unless and until the State Parties have made arrangements, which arrangements shall be without the State Parties assuming any liability or indebtedness of JobsOhio or Franchisee, for the satisfaction and discharge of all outstanding principal, interest, or any premium on the Obligations issued in accordance with the terms of this Agreement and the discharge and payment of any outstanding Ordinary Course Costs and Expenses incurred.

(b) Upon receipt of notice by the Franchisee Parties that the State Parties have exercised their remedies under Section 17.2(a), or upon receipt of notice by the State Parties that the Franchisee Parties have exercised their remedies under Section 17.4(a):

(i) the Franchisee Parties shall promptly deliver to the State Parties copies of all records, information and other documents or instruments related to the Liquor Business, the Liquor Business Revenues, the Transferred Assets and the After-Acquired Assets that are in the possession of the Franchisee Parties or their agents and representatives; and

(ii) the Franchisee Parties shall fully cooperate with the State Parties to ensure the orderly transition of control, custody, operation and management of the Liquor Business and all activities and functions, including distribution and merchandising activities related thereto, as well as the Franchise, the Liquor Business Profits, the Transferred Assets and the After-Acquired Assets back to the State Parties on the Reversion Date.

(c) The Franchisee Parties shall fully cooperate with the State Parties in effecting the foregoing arrangements, including providing the State Parties with access to all relevant information and documentation requested by the State Parties and executing and delivering any document, instrument or certificate the State Parties deem necessary to effect the foregoing.

(d) Each Party shall be responsible for its own costs and expenses incurred in complying with provisions of this Section 17.6.

17.7 Consequences of Termination and Reversion. Upon the termination of this Agreement, whether prior to the expiration of the Term or upon expiration of the Term, and concurrently with the payment of any amounts as a result of such termination, notwithstanding any claims the Parties may have against each other and subject to Section 17.6, the following provisions shall occur:

(a) Termination of Franchise; Transfer of Assets. After performing any obligations required by Section 17.6, on the day immediately following the termination date (the "Reversion Date"), the Franchise shall terminate; and Franchisee shall surrender, deliver, assign and transfer to the State Parties the Transferred Assets and After-Acquired Assets, as they exist on the Reversion Date, free and clear of any Encumbrances, for consideration in the

amount of \$1.00; *provided, that* if the Agreement has terminated due to the expiration of the Term, such surrender, delivery, assignment and transfer shall be without the payment of any consideration by the State Parties. Franchisee shall assign to the State Parties all of its right, title and interest in, to and under all or any contracts of the Franchisee Parties related to the Liquor Business, the Franchise, the Transferred Assets or the After-Acquired Assets that are effective as of the Reversion Date ("Franchisee Contracts").

(b) Liabilities.

(i) The State Parties shall, after the Reversion Date, assume full responsibility for the operation of the Liquor Business, and after the Reversion Date, the Franchisee Parties shall have no liability or responsibility for the operation of the Liquor Business or the performance of their duties related to the Liquor Business occurring on or prior to the Reversion Date, including without limitation all recurring or long-term ordinary course liabilities, and all Ordinary Course Costs and Expenses arising after the Reversion Date. The Franchisee Parties shall retain, and the State Parties shall not assume, all responsibility for and liabilities arising out of or related to the operation of the Liquor Business and the use of the Transferred Assets and the After-Acquired Assets on or prior to the Reversion Date.

(ii) The State Parties shall also expressly assume all of Franchisee's obligations under the Franchisee Contracts to the extent arising or relating to any period of time after the Reversion Date.

(iii) The Franchisee Parties shall be liable for all costs, expenses and other amounts for which they are liable or responsible hereunder incurred up to and including the Reversion Date which were not paid as of the Reversion Date. The State Parties shall be liable for all costs, expenses and amounts incurred in connection with the Liquor Business after the Reversion Date.

This Section 17.7 shall survive the expiration or any earlier termination of this Agreement.

17.8 Pre-Remedy Arrangements.

(a) Notwithstanding anything herein to the contrary, in no event shall the State Parties exercise the remedies in Sections 17.2(d) and/or (e) unless and until the State Parties have made arrangements, which arrangements shall be without the State Parties assuming any liability or indebtedness of JobsOhio or Franchisee, for the ongoing payment, when due, of the Obligations issued in accordance with the terms of this Agreement, in all cases in accordance with the Master Trust Indenture and the discharge and payment of any outstanding Ordinary Course Costs and Expenses incurred.

(b) Upon receipt of notice that the State Parties have exercised their remedies under Section 17.2(d) and/or (e), the Franchisee Parties:

(i) shall promptly deliver to the State Parties, receiver or trustee (as applicable) copies of all records, information and other documents or instruments

related to the Liquor Business, the Liquor Business Revenues, the Transferred Assets and the After-Acquired Assets that are in the possession of the Franchisee Parties or their agents and representatives; and

(ii) shall fully cooperate with the State Parties, receiver or trustee (as applicable) to ensure the orderly transition of control, custody, operation and management of the Liquor Business and all activities and functions, including distribution and merchandising activities related thereto, as well as the Franchise, the Liquor Business Profits, the Transferred Assets and the After-Acquired Assets back to the State Parties on the Reversion Date.

(c) The Franchisee Parties shall fully cooperate with the State Parties, receiver or trustee (as applicable) in effecting the foregoing arrangements, including providing the State Parties, receiver or trustee (as applicable) with access to all relevant information and documentation requested by the State Parties, receiver or trustee (as applicable) and executing and delivering any document, instrument or certificate the State Parties, receiver or trustee (as applicable) deem necessary to effect the foregoing.

(d) Each Party shall be responsible for its own costs and expenses incurred in complying with provisions of this Section 17.8.

17.9 Limitation of Liability of State Parties. The Franchisee Parties acknowledge that under no circumstance shall the State of Ohio or any State Party be liable to the Franchisee Parties or any other Person (including the holders of any Obligations) for providing for the payment of any financial or monetary damages or costs imposed upon it pursuant to this ARTICLE 17 or otherwise pursuant to this Agreement or the Contemplated Transactions out of or from any source other than the Liquor Business Profits. Monetary recourse against the State Parties under this ARTICLE 17 or otherwise pursuant to this Agreement or the transactions contemplated hereby shall be expressly limited to the extent of available Liquor Business Profits owned or controlled by the State Parties, and, if the Closing occurs, shall be the Franchisee Parties' sole recourse against the State Parties. For the avoidance of doubt, any such financial or monetary recourse shall not be the general obligation of the State of Ohio or the State Parties and the full faith and credit, revenue, and taxing power of the State of Ohio shall not be obligated for the payment of any such financial or monetary recourse.

ARTICLE 18 - MISCELLANEOUS

18.1 Expenses. Except as otherwise expressly provided in this Agreement or the Transaction Documents, each Party to this Agreement will bear its respective expenses incurred in connection with the preparation, execution, and performance of this Agreement and the Contemplated Transactions, including all fees and expenses of agents, representatives, counsel and accountants.

18.2 Press Releases and Public Announcements. Each Party shall coordinate and consult with each other before issuing, and give each other the opportunity to review and comment upon, giving due consideration to all reasonable additions, deletions or changes suggested in connection therewith, any press release or other public statements with respect to the

Contemplated Transactions (*provided, that* such coordination and consultation shall not be deemed to constitute a consent right), except for disclosures in satisfaction of, or otherwise required by, applicable Legal Requirement (including by making a public announcement through issuance of a press release or other reasonable means).

18.3 No Third-Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

18.4 Entire Agreement. This Agreement and the Transaction Documents constitutes the entire agreement between the Parties and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they relate in any way to the subject matter hereof.

18.5 Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. Except for the appointment of a trustee pursuant to Section 17.2(d), no Party may assign either this Agreement or any of its rights, interests, or obligations hereunder, including the Franchise, the Transferred Assets and the After-Acquired Assets, without the prior written approval of the other Party, in all cases in compliance with the JobsOhio Act.

18.6 Counterparts. This Agreement may be executed in one or more counterparts (including by means of facsimile or electronic mail), each of which shall be deemed an original but all of which together will constitute one and the same instrument.

18.7 Notices. All notices, requests, demands, claims, and other communications hereunder shall be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given (a) when delivered personally to the recipient, (b) one business day after being sent to the recipient by reputable overnight courier service (charges prepaid), (c) one business day after being sent to the recipient by facsimile transmission or electronic mail, or (d) four business days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

EXECUTION COPY

If to the Department of Commerce:

Ohio Department of Commerce
77 S. High Street, 23rd Floor
Columbus, Ohio 43215
Attn: Director
Fax: 614.220.7113
Email: david.goodman@com.state.oh.us

Copy to:

Ohio Department of Commerce
77 S. High Street, 23rd Floor
Columbus, Ohio 43215
Attn: Chief Legal Counsel
Fax: 614.644.7063
Email: Desiree.Blankenship@com.state.oh.us

And with a Copy to:

Ohio Department of Commerce,
Division of Liquor Control
6606 Tussing Road
Reynoldsburg, OH 43068
Attn: Superintendent
Fax: 614.995.4047
Email: Bruce.Stevenson@com.state.oh.us

If to OBM:

Ohio Office of Budget and Management
30 E. Broad Street, 34th Floor
Columbus, OH 43215
Attn: Director
Fax: 614.728.9295
Email: tim.keen@obm.state.oh.us

Copy to:

Ohio Office of Budget and Management,
Legal Division
30 E. Broad Street, 34th Floor
Columbus, OH 43215
Attn: Chief Legal Counsel
Fax: 614.728.9295
Email: robin.rose@obm.state.oh.us

If to JobsOhio:

JobsOhio
41 S. High Street, Suite 1500
Columbus, Ohio 43215
Attn: Interim President and
Chief Investment Officer
Fax: 614.469.1049
Email: kvamme@jobs-ohio.com

Copy to:

JobsOhio
41 S. High Street, Suite 1500
Columbus, Ohio 43215
Attn: General Counsel
Fax: 614.469.1049
Email: wahlers@jobs-ohio.com

If to Franchisee:

JobsOhio Beverage System
41 S. High Street, Suite 1500
Columbus, Ohio 43215
Attn: President
Fax: 614.469.1049
Email: kvamme@jobs-ohio.com

Copy to:

JobsOhio Beverage System
41 S. High Street, Suite 1500
Columbus, Ohio 43215
Attn: General Counsel
Fax: 614.469.1049
Email: wahlers@jobs-ohio.com

Any Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Party(ies) notice in the manner herein set forth.

18.8 Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Ohio without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than the State of Ohio.

18.9 Venue. Any litigation which relates to this Agreement will be brought solely in Franklin County, Ohio (and if a court within Franklin County, Ohio of competent jurisdiction is unavailable, in any Ohio state court or the US District Court whose geographical territory includes Franklin County, Ohio or any part thereof), which court will have exclusive jurisdiction over such litigation, whether at law or in equity. The Parties hereby waive all objections to (a) personal jurisdiction and venue in any such litigation and (b) personal service of any and all process.

18.10 WAIVER OF JURY TRIAL. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HEREBY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE TRANSFER AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 18.10.

18.11 Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by the Parties hereto. No waiver by any Party of any provision of the Agreement or any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

18.12 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

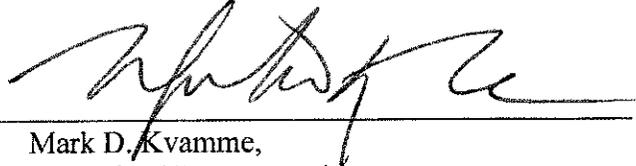
18.13 Construction. The Parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

18.14 Incorporation of Schedules. The Schedules identified in this Agreement are incorporated herein by reference and made a part hereof.

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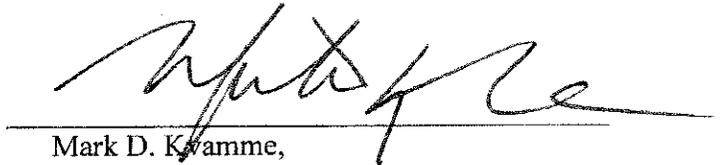
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

JOBSONHIO BEVERAGE SYSTEM



Mark D. Kvamme,
Authorized Representative

JOBSONHIO



Mark D. Kvamme,
Interim President and Chief Investment Officer

STATE OF OHIO



Timothy S. Keen,
Director of Budget and Management

David Goodman,
Director of Commerce

**SCHEDULE I
Assigned Contracts and Contract Rights**

1. Assigned Contracts

Index	DAS Contract No.	Vendor Name	Vendor Address	Service Provided	Effective Date	Contract Expiration
COM006	OT906708	Allstate Industrial (MBE)	5022 Lorain Avenue Cleveland, Ohio 44102	Liquor Bags, Paper	3/1/2008	2/29/2012; extended by amendment through 2/28/2013
COM003	OT906511-3	North Coast Logistics, Inc.	2323 Lakeside Avenue Cleveland, Ohio 44114	Regional Distribution and transportation	6/1/2011	5/31/2014
	OT906511-2	Spartan Warehouse and Distribution, Inc.	4140 Lockbourne Rd. Columbus, Ohio 43207	Regional Distribution and transportation	6/1/2011	5/31/2014
	OT906511-1	Thomas Transport and Delivery	9055 Freeway Drive Macedonia, Ohio 44056	Regional Distribution and transportation	6/1/2012	5/31/2014
COM005	OT906410	AT Xpress, LLC	2159 Lockbourne Rd. Columbus, Ohio 43201	Regional Distribution and transportation	6/1/2010	5/31/2014
LIQ018	OT905910	Spartan Warehouse and Distribution, Inc.	4140 Lockbourne Rd. Columbus, Ohio 43207	Cleveland, Toledo and Cincinnati Bailment Warehouse and bag storage	6/1/2010	5/31/2016
COM007	OT902912	Spartan Warehouse & Distribution Co., Inc.	4140 Lockbourne Rd. Columbus, OH 43207	Columbus Bailment Warehouse and bag storage	3/1/2012	2/28/2018

Copies of these DLC vendor contracts are available on the Department of Administrative Services Procurement website (reference <http://procure.ohio.gov/proc/currentContracts.asp>).

2. Assigned Contract Rights

DLC will assign or cause to be assigned to Franchisee the rights mutually identified and agreed to by the Parties.

SCHEDULE II

Assumed Liabilities

1. All post-Closing liabilities arising out of the Assigned Contracts and Contract Rights identified in Schedule I.
2. All recurring or long-term ordinary course liabilities of the Liquor Enterprise and the Liquor Business whether arising before or after the Closing (e.g., workers' compensation claims).
3. Ordinary course accounts payable attributable to the Liquor Enterprise and existing at the Closing which are not in excess of the amount taken into account in calculating the Working Capital of the Liquor Enterprise.

SCHEDULE III

Base Franchise Profits

Fiscal Year Ended June 30	Base Franchise Profit Amount
2013	257,500,000
2014	265,225,000
2015	273,181,750
2016	281,377,203
2017	289,818,519
2018	298,513,074
2019	307,468,466
2020	316,692,520
2021	326,193,296
2022	335,979,095
2023	346,058,468
2024	356,440,222
2025	367,133,428
2026	378,147,431
2027	389,491,854
2028	401,176,610
2029	413,211,908
2030	425,608,265
2031	438,376,513
2032	451,527,809
2033	465,073,643
2034	479,025,852
2035	493,396,628
2036	508,198,527
2037	523,444,482
2038	539,147,816

SCHEDULE IV

Existing Liquor Enterprise Obligations*

Existing Chapter 166 Obligations	
Program	Date Issued
Development Assistance (Refunding)	10/1/1996 (Series 1998)
Innovation Ohio	7/24/2003 (Series 2003A)
Research & Development	11/6/2003 (Series 2003B)
Development Assistance	9/9/2004 (Series 2004A)
Research & Development	10/27/2005 (Series 2005A)
Logistics & Distribution	6/18/2009 (Series 2009A)
Logistics & Distribution	6/18/2009 (Series 2009B)
Advanced Energy	11/5/2009 (Series 2009C)
Direct Loan	2/18/2010 (Series 2010A)
Innovation Ohio	6/15/2010 (Series 2010B)
Logistics & Distribution	11/23/2010 (Series 2010D)
Advanced Energy	12/16/2010 (Series 2010C)
Logistics & Distribution BANS	5/30/2012 (Series 2012A)
Direct Loan BANS	5/30/2012 (Series 2012B)
Innovation Ohio BANS	5/30/2012 (Series 2012C)

Existing Chapter 151 Obligations	
Program	Date Issued
Revitalization	10/1/2002 (Series 2002A)
Revitalization	4/26/2006 (Series 2006A)
Revitalization	4/30/2008 (Series 2008A)
Revitalization	2/18/2010 (Series 2010A)
Revitalization	2/18/2010 (Series 2010B)
Revitalization BANS	5/30/2012 (Series 2012A)
Revitalization BANS	5/30/2012 (Series 2012B)

* Existing Liquor Enterprise Obligations include all outstanding principal and interest and redemption premium thereon plus the fees and expenses of the escrow agents, and the fees of the independent certified public accounting firm verifying the sufficiency of the escrows and counsel to the Treasurer of State of Ohio in connection with the defeasance.

SCHEDULE V

Historical Spirituous Liquor Profits

	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Original Net Profit	\$145,354,779.59	\$156,666,732.34	\$164,774,398.52	\$191,589,561.48	\$203,231,238.51
Less Licensing					
Salaries and Benefits	\$4,284,622.74	\$4,715,468.45	\$4,607,816.91	\$4,655,441.21	\$4,788,173.67
All Other	\$1,010,550.08	\$982,583.70	\$995,434.97	\$1,074,498.95	\$1,058,551.28
Total Licensing	\$5,295,172.82	\$5,698,052.15	\$5,603,251.88	\$5,729,940.16	\$5,846,724.95
Less Beer and Wine					
Salaries and Benefits	\$470,813.47	\$504,374.61	\$516,182.94	\$527,212.05	\$519,077.37
All Other	\$119,820.27	\$114,074.50	\$117,571.79	\$118,122.05	\$119,492.16
Total Beer and Wine	\$590,633.74	\$618,449.11	\$633,754.73	\$645,334.10	\$638,569.53
Total Adjusted Net Profit	\$151,240,586.15	\$162,983,233.60	\$171,011,405.13	\$197,964,835.74	\$209,716,532.99
	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Original Net Profit	\$213,012,752.58	\$224,227,469.76	\$228,795,792.14	\$237,176,246.16	\$251,416,402.20
Less Licensing					
Salaries and Benefits	\$4,886,132.34	\$4,902,962.65	\$4,778,171.23	\$4,701,830.80	\$5,003,523.55
All Other	\$1,225,452.28	\$1,225,984.18	\$1,105,616.53	\$1,506,541.07	\$1,312,849.81
Total Licensing	\$6,111,584.62	\$6,128,946.83	\$5,883,787.76	\$6,208,371.87	\$6,316,373.36
Less Beer and Wine					
Salaries and Benefits	\$261,747.80	\$83,747.97	\$34,453.97	\$88,074.69	-\$5,396.06
All Other	\$135,241.63	\$116,906.03	\$100,791.39	\$133,847.37	\$130,478.58
Total Beer and Wine	\$396,989.43	\$200,654.00	\$135,245.36	\$221,922.06	\$125,082.52
Total Adjusted Net Profit	\$219,521,326.63	\$230,557,070.59	\$234,814,825.26	\$243,606,540.09	\$257,857,858.08

SCHEDULE VI

Historical Working Capital

Working Capital Calculation as of 12/31/2011

Current Assets

Accounts Receivable		
Sales Receivable	\$	13,329,781.86
Store Managers Adjustment	\$	218,011.26
Inventory		
Liquor In Agencies	\$	45,550,190.63
Paper Bags & Misc. Supplies	\$	786,283.84
Prepays		
Rent	\$	28,635.60
Total Current Assets:		<u>\$ 59,912,903.19</u>

Current Liabilities

Accounts Payable		
Liquor Purchase	\$	33,619,262.43
Taxes	\$	9,484,854.76
Operating Expenses	\$	318,078.38
Commissions	\$	4,736,322.95
Freight	\$	167,133.90
Total Current Liabilities:		<u>\$ 48,325,652.42</u>

Working Capital: \$ 11,587,250.77

Working Capital Considerations:

- Current Assets excludes Cash.
- Current Liabilities excludes salaries payable, all permit fees due taxing districts, all deposits on permit applications, and gross profit due the Alcoholism Treatment Program.

SCHEDULE VII

Regulatory Functions¹

- Issuing new licenses and permits for all manufacturer, wholesale distributor, and retail liquor licenses for the State. Ohio Rev. Code §§ 4301.10(A)(2), 4303.02 to .234, .24, .26, .292; Ohio Admin. Code § 4301:1-1-12.
- Processing and issuing liquor licenses pursuant to the quota and other provisions of Ohio Revised Code §§ 4301 and 4303. Ohio Rev. Code § 4303.29(B)(2), .292; Ohio Admin. Code § 4301:1-1-11.
- Conducting inspections and investigations of permit premises. Ohio Rev. Code § 4301.10(A)(1), (6)–(7).
- Administrating new location, transfer of location, and transfer of ownership applications. Ohio Rev. Code § 4303.24, .26, .29(B)(2)(b); Ohio Admin. Code § 4301:1-1-12, -14, -17.
- Reviewing qualifications of licensees, including background checks. Ohio Rev. Code §§ 121.08(K), 4303.29(A), .292(A)(1)(a); Ohio Admin. Code § 4301:1-1-19.
- Reviewing the qualifications of agencies and prospective agencies (including the physical structure, financial stability of ownership, and wet/dry status). Ohio Rev. Code § 4303.292(A)(2)(a); Ohio Admin. Code § 4301:1-1-12, -17.
- Administrating liquor license renewals. Ohio Rev. Code § 4303.271, .292.
- Issuing permits of various classes (55 classes of permits are available) including manufacturer, supplier, distributor, retailer, on premise and temporary permits. Ohio Rev. Code § 4303.02 to .234, .26.
- Enforcing hours of operation and Sunday sales. Ohio Rev. Code § 4301.10(A)(1), (4), (6), (7); Ohio Admin. Code § 4301:1-1-49.
- Reviewing local options pursuant to Ohio Revised Code § 4301.32 to .41.
- Sending notifications of permit applications to the local legislative authority and police. Ohio Rev. Code § 4303.26(A).
- Reviewing locations for violations. Ohio Rev. Code § 4301.10(A)(1), (6); Ohio Admin. Code § 4301:1-1-19.
- Overseeing and administrating various facets of beer and wine manufacturing, sale, transportation and distribution within the state, including out of state suppliers, product registrations, and territory designations. Ohio Rev. Code § 4301.10(A)(1)–(2), (4), (6)–(8), .24, .241; Ohio Admin. Code §§ 4301-2-01, 4301:1-1-03, -05, -22, -24, -28, -72, -73, -74.
- Issuing Tax Non-Renewal Orders. Ohio Rev. Code § 4303.271(D)(2)(a).
- Processing expansions or diminutions of permit premises. Ohio Rev. Code §§ 4301.10(C), 4303.27; Ohio Admin. Code § 4301-1-02.
- Approving transfers of products between permit premises. Ohio Admin. Code § 4301:1-1-46.
- Approving tastings of beer, wine, and mixed beverages. Ohio Admin. Code § 4301:1-1-30.
- Conducting hearings pursuant to objections by legislative authorities or institutions. Ohio Rev. Code § 4303.26, .271.

¹ Any changes to Spirituous Liquor statutes or regulations require legislative or administrative action. DLC is authorized to update this Exhibit from time to time as a result of any such action.

SCHEDULE VIII

Retained Assets and Functions

A. Retained Assets:

1. Cash.
2. All contracts and contract rights related to the Liquor Enterprise that are not set forth on Schedule I.
3. All information technology systems used or usable by the Liquor Enterprise.
4. All employee benefit plans of the Liquor Enterprise.
5. Vehicles used or held for use in the Liquor Enterprise.
6. Office equipment, supplies, and other personal property used or held for use in the Liquor Enterprise.
7. Facilities Establishment Fund created by Section 166.03 of the ORC.
8. All other assets, rights and properties of the Liquor Enterprise other than the Franchise and the Transferred Assets.

B. Retained Functions:

1. All Statutory Merchandising Functions and all Regulatory Functions.
2. All of the Services (as defined therein) to be provided by DLC pursuant to the terms of the DLC Services Agreement.

SCHEDULE IX

Statutory Merchandising Functions²

- Selecting spirituous liquor products, including size. Ohio Rev. Code § 4301.10(A)(1), (3), (11), .101, .17, .18, .19.
- Determining which agency locations will sell particular products. Ohio Rev. Code § 4301.10(A)(1), (3), (11).
- Controlling the purchase of spirituous liquor for distribution to agencies. Ohio Rev. Code § 4301.10(A)(1), (3), (11), (B)(2), .18.
- Reviewing and approving trucking contracts for spirituous liquor distribution purposes. Ohio Rev. Code § 4301.10(A)(1), (3), (11), (B)(2).
- Reviewing and approving warehouse contracts. Ohio Rev. Code § 4301.10(A)(1), (3), (11), (B)(2).
- Determining agency shelf sets. Ohio Rev. Code § 4301.10(A)(1), (3), (11).
- Auditing agencies for statutory compliance Ohio Rev. Code § 4301.10(A)(1), (3), (11).
- Fixing the wholesale and retail prices at which the various classes, varieties, and brands of spirituous liquor are sold (pursuant to statutory provisions, including gross profit caps). Ohio Rev. Code § 4301.10(A)(1), (3), (11), (B)(4); Ohio Admin. Code § 4301-3-01(D).
- Selecting new agency sites in a manner consistent with the Ohio Revised Code, including compliance with quota and county limits. Ohio Rev. Code § 4301.10(A)(1), (3), (11), .17(A)(1); Ohio Admin. Code § 4301-5-01.
- Fixing the amount of commissions paid to liquor contract agencies. Ohio Rev. Code § 4301.12, .16, .17(A)(1).
- Monitoring of and adherence to the statutory number of liquor agencies in a county. Ohio Rev. Code § 4301.17(A)(1).
- Processing of legislative notice for new agency location proposals, assignments of an agency contract, agency relocation proposals, or the relocation and assignment of an agency. Ohio Rev. Code § 4301.17(B).
- Notifying appropriate authorities if a proposed agency, assignment of an agency contract, or relocation of an existing agency store would cause such agency to be located within 500 feet of the school, church, library, public playground, or township park. Ohio Rev. Code § 4301.17(B).
- Processing the relocation of an agency or reassignment and relocation of an existing agency store. Ohio Rev. Code § 4301.17(B).
- Issuing non-quota C-1 and C-2 licenses for agencies. Ohio Rev. Code § 4301.17(C).
- Establishing bonding requirements for each agency. Ohio Rev. Code § 4301.17(E).
- Administering agency contracts for the sale of spirituous liquor. Ohio Rev. Code § 4301.17(C).
- Determining the location of all state liquor stores. Ohio Rev. Code § 4301.10(A)(5); Ohio Admin. Code § 4301-5-01.
- Processing of and setting standards for expansions or diminutions of permit premises. Ohio Rev. Code § 4301.10(C); Ohio Admin. Code § 4301-1-02.

² Any changes to Spirituous Liquor statutes or regulations require legislative or administrative action. DLC is authorized to update this Exhibit from time to time as a result of any such action.

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- Selecting new state liquor agencies. Ohio Admin. Code § 4301-5-01.
- Approving tastings of spirituous liquor. Ohio Admin. Code § 4301:1-1-30.
- Conducting hearings pursuant to objections by legislative authorities or institutions. Ohio Rev. Code § 4301.17(B).
- Assigning retail accounts for the wholesale portion of spirituous liquor agency contract. Ohio Rev. Code § 4301.10(A)(3), (11), .17.
- Registering new spirituous liquor products listed. Ohio Rev. Code § 4301.10(A)(8).
- Registering spirituous liquor suppliers. Ohio Rev. Code § 4301.10(A)(8).
- Registering spirituous liquor solicitors. Ohio Rev. Code § 4301.10(A)(8).

SCHEDULE X

Transferred Assets

1. All Spirituous Liquor inventory of the Liquor Enterprise existing as of Closing.
2. All Unswept Sales Revenue.
3. All Working Capital of the Liquor Enterprise as of the Closing (subject to Section 3.4).
4. All Assigned Contracts and Contract Rights identified on Schedule I (subject to Section 2.3).
5. Those certain licenses to use certain information technology included in the Retained Assets and Functions granted to Franchisee pursuant to the terms of the DLC Services Agreement.

SCHEDULE XI

Existing Liquor Enterprise Make-Whole Obligations*

Existing Chapter 166 Obligations	
Program	Date Issued
Direct Loan	2/18/2010 (Series 2010A)
Innovation Ohio	6/15/2010 (Series 2010B)
Advanced Energy	12/16/2010 (Series 2010C)

Existing Chapter 151 Obligations	
Program	Date Issued
Revitalization	2/18/2010 (Series 2010B)

* Existing Liquor Enterprise Make-Whole Obligations include all outstanding principal amounts and interest and redemption premium thereon plus the fees of the escrow agents, and the fees and expenses of the independent certified public accounting firm verifying the sufficiency of the escrows and counsel to the Treasurer of State of Ohio in connection with the defeasance.

Exhibit 6



41 South High Street • Columbus, OH 43215 • 614.224.6446

August 8, 2012

Mr. David Goodman
Director, Ohio Department of Commerce
77 South High Street, Suite 23rd Floor
Columbus, Ohio 43215

Subject: Request for Execution of JobsOhio Transfer Agreement

Dear Director Goodman:

I write with regard to the anticipated transfer of the State's Liquor Enterprise to JobsOhio under a twenty-five year franchise. I thank you and OBM Director Keen for your diligence in negotiating the terms of this transaction over the past several months. It is because of your concerted efforts that we have, in accordance with Ohio Revised Code Chapter 4313, finalized the Franchise and Transfer Agreement, an execution copy of which I enclose.

The enclosed Franchise and Transfer Agreement has been signed by OBM Director Keen, and I have signed the Agreement on behalf of both JobsOhio and JobsOhio Beverage System. Pursuant to both Revised Code Section 4313.02(C)(2) and Section 229.10 of Am. Sub. H.B. 153, you are now required to execute this Agreement. Your signature is the only step remaining before we may proceed with the proposed transfer. Please sign the attached Franchise and Transfer Agreement and return it to me at your earliest convenience.

I appreciate your continued assistance and look forward to your prompt reply.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Mark Kvamme".

Mark Kvamme
Interim President and Chief Investment
Officer, JobsOhio

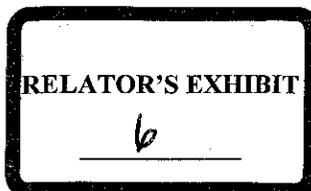


Exhibit 7



Department of Commerce

John R. Kasich, Governor
David Goodman, Director

August 9, 2012

Via Hand Delivery

Mr. Mark Kvamme
Interim President and Chief Investment Officer
JobsOhio
41 South High Street, Suite 1500
Columbus, Ohio 43215

Subject: Execution of JobsOhio Franchise and Transfer Agreement

Dear Mr. Kvamme:

I am in receipt of your letter dated August 8, 2012, requesting that I execute the Franchise and Transfer Agreement providing for the transfer and granting of a franchise on the State's Liquor Enterprise to JobsOhio, which you enclosed and which has been executed on behalf of JobsOhio and by Director of Budget and Management Keen.

As you noted, and as required by statute, the Director of Budget and Management consulted with me during the course of negotiating the Franchise and Transfer Agreement. This is consistent with Chapter 4313 of the Ohio Revised Code (the "Transfer Act"), and Section 4313.02 in particular. I have reviewed the Agreement you provided, and I readily conclude that the Agreement and the process by which it was negotiated comply with the Transfer Act. Nonetheless, I respectfully decline to execute the Franchise and Transfer Agreement at this time for the reasons stated below.

I first emphasize that I fully support JobsOhio and its mission of promoting economic development, job creation, and business recruitment to the State. Constitutional concerns, however, have been raised regarding Ohio Revised Code Chapter 187 (the "JobsOhio Act") and the Transfer Act. Although no court has reached the merits of the constitutional challenges, the Franklin County Court of Common Pleas and the Tenth District Court of Appeals have characterized these constitutional concerns as "understandable" and "significant," respectively. The constitutional issues raised include:

- (1) Whether the JobsOhio Act violates Article XIII, Section 1, which forbids the General Assembly from conferring corporate powers via special act;
- (2) Whether the JobsOhio Act violates Article XIII, Section 2, which requires all corporations to be formed under the general laws;
- (3) Whether the JobsOhio Act violates Article I, Section 16, which requires the courts to be open so injured parties may obtain a remedy by due process;

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(4) Whether the JobsOhio Act or the Transfer Act would authorize the State to lend credit to a private corporation, in violation of Article VIII, Section 4;

(5) Whether the Transfer Act would require legislative appropriations extending past a biennium, in violation of Article II, Section 22;

(6) Whether the Transfer Act would result in the State's issuing debt in excess of limits provided in Article VIII; and

(7) Whether Am. Sub. H.B. 153 violates the "one-subject rule" of Article II, Section 15.

Though I personally question the validity of these constitutional challenges, I believe my oath of office to uphold the Ohio Constitution precludes me from executing the Franchise and Transfer Agreement until the Ohio Supreme Court is given an opportunity to address the merits of these claims. I understand the Supreme Court has undertaken such reviews in the past under similar circumstances. *See, e.g., Duerk v. Donahey, 67 Ohio St.2d 216 (1981).*

It is imperative that the Supreme Court has the opportunity to review immediately these constitutional challenges. Providing for that opportunity could remove any cloud of uncertainty and allow JobsOhio to move forward directly with its more than \$1.4 billion bond offering to fund the 25-year transfer of the State's Liquor Enterprise. It also would enable JobsOhio to maximize the resources available for job creation and economic development in this State.

I, therefore, must respectfully decline to sign the Franchise and Transfer Agreement.

Respectfully yours,

A handwritten signature in black ink, appearing to read "David Goodman", with a long horizontal line extending to the right.

David Goodman
Director, Ohio Department of Commerce