

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF RHODE ISLAND**

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In re:	)	Chapter 11
	)	
UTGR, INC. d/b/a TWIN RIVER, <u>et al.</u> , <sup>1</sup>	)	Case No. 09-12418 (ANV)
	)	
Debtors.	)	Jointly Administered
	)	

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**NOTICE OF REJECTION OF EXECUTORY CONTRACT**

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**PLEASE TAKE NOTICE** that the above-captioned debtors, as debtors and debtors in possession (collectively, the “Debtors”), file this Notice of Rejection of Executory Contract (the “Rejection Notice”) seeking rejection of that certain license agreement by and between Fado Pubs, Inc. (“Fado”) and UTGR, Inc., dated as of April 21, 2006 (the “Fado Licensing Agreement”), attached hereto as **Exhibit A**. Pursuant to the Rejection Procedures Order,<sup>2</sup> the salient terms of the Fado Licensing Agreement are as follows:

- **Executory Contract Counterparty**: (a) Fado Pubs, Inc., 2964 Peachtree Road, Suite 600, Atlanta, Georgia 30305, Attn: Kieran McGill, CEO/President and Cindy Coplen, Controller and (b) Fado Pubs, Inc., 309 E. Paces Ferry Road, Suite 800, Atlanta, Georgia 30305, Attn: Kieran McGill, CEO/President and Cindy Coplen, Controller.
- **Monthly Payment Obligations**: Five percent (5%) of gross receipts per month derived from the sale of food and beverages in connection with the operation of the restaurant subject to the Fado Licensing Agreement for a payment to Fado of no less than \$150,000 per year.
- **Term of Fado Licensing Agreement**: Through February 12, 2012, unless earlier terminated in accordance with the terms of the Fado Licensing Agreement.
- **Effective Date of Rejection**: November 25, 2009.

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<sup>1</sup> The Debtors in these chapter 11 cases are BLB Management Services, Inc., BLB Worldwide Holdings, Inc., and UTGR, Inc.

<sup>2</sup> Order Authorizing and Approving Procedures for Rejecting Executory Contracts and Unexpired Leases of Personal and Non-Residential Real Property, entered on July 17, 2009 [Docket No. 170] (the “Rejection Procedures Order”).

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Rejection Procedures Order, the Debtors will serve this Rejection Notice by overnight delivery service upon: (i) Fado and its counsel; (ii) the Office of the U.S. Trustee for the District of Rhode Island; (iii) applicable local, state, and federal regulatory entities; (iv) counsel to the Administrative Agents for the First and Second Lien Lenders; (v) counsel to the equity sponsors; (vi) counsel to those certain contractors who have asserted mechanic's liens against the Debtors; (vii) the Internal Revenue Service; (viii) the Securities and Exchange Commission; and (ix) counsel to the Official Committee of Unsecured Creditors (collectively, the "Service Parties").

**PLEASE TAKE FURTHER NOTICE** that, any parties who wish to object to the Rejection Notice must file and serve a written objection so that such objection is filed with this Court and is actually received by the Service Parties **no later than December 7, 2009**, which date is thirteen (13) calendar days after the Debtors serve the Rejection Notice.

**PLEASE TAKE FURTHER NOTICE** that, if an objection to the Rejection Notice is not timely filed within thirteen (13) days, the Debtors shall file with this Court a notice of no objection and, as provided in the Rejection Procedures Order, the rejection of Fado Licensing Agreement, shall be deemed effective as of November 25, 2009, without further notice, hearing, or order of this Court. If an objection to a Rejection Notice is timely filed and not withdrawn or resolved, the Debtors shall file a notice for a hearing to consider such objection.

Dated: November 24, 2009  
Providence, Rhode Island

**WINOGRAD, SHINE & ZACKS, P.C.**

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- and -

**KIRKLAND & ELLIS LLP**

*/s/ Paul M. Basta*

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Counsel for the Debtors and Debtors in Possession

**EXHIBIT A**

**Fado Licensing Agreement**

**LICENSE AGREEMENT**

**BY AND BETWEEN**

**FADÓ PUBS, INC. AND**

**UTGR, INC. D/B/A LINCOLN PARK**

**DATED AS OF APRIL 21, 2006**

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**LICENSE AGREEMENT**

**THIS LICENSE AGREEMENT** is made and entered into as of the 21st day of April, 2006 (the "Effective Date"), by and between Fadó Pubs, Inc. ("Fadó") with its principal place of business at 309 E. Paces Ferry Rd, Suite 800, Atlanta, GA 30305 and UTGR, Inc. d/b/a Lincoln Park, a Delaware corporation ("Lincoln Park") with its principal place of business at 1600 Louisquisett Pike, Lincoln, RI 02865.

**WITNESSETH:**

**WHEREAS**, the parties desire to utilize the Fadó owned Fadó Marks and the Lincoln Park owned O.P. Smith Marks to identify the Restaurant and to use it in connection with the marketing, promotion, advertisement and operation of the Restaurant;

**WHEREAS**, Fadó, in an effort to protect the value of the Fadó Marks, has developed marketing, design and operation standards to protect the Fadó Marks (hereinafter the "Quality Standards") relating to the establishment, development and operation of restaurants offering a wide assortment of beer and food products with distinctive interior and exterior design and trade dress geared to a high-quality Irish pub theme;

**WHEREAS**, Lincoln Park agrees to learn the Quality Standards in order to have the necessary knowledge to be able to maintain the value of the Fadó Marks and wishes to obtain a license from Licensor for that purpose, as well as to receive the training and other assistance provided by Licensor in connection therewith;

**WHEREAS**, Fadó has substantial experience in the hospitality, food service and entertainment industries, and acknowledges and agrees that it is fully capable of developing and providing various marketing, operational, and design standards as part of the Quality Standards; and

**WHEREAS**, Lincoln Park desires to establish and operate the Restaurant using the Fadó Quality Standards of Fadó and equipment recommended by Fadó and is willing to pay Fadó the Fees set forth in this Agreement, subject to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the parties agree as follows:

**Section 1. Definitions.** The terms listed below have the meanings which follow them and include the singular as well as the plural. Other terms are defined elsewhere in this Agreement in the context in which they arise.

"Affiliate" with respect to any Person means any Person which directly or indirectly controls, is controlled by, or is under common control with such Person. The term "control" means, with respect to any Person, either of the following: (i) ownership, directly or indirectly, by such Person of equity securities entitling it to exercise in the aggregate ten percent (10%) or more of the voting power of the entity in question, or (ii) the possession by such Person of the power,



directly or indirectly, (a) to elect a majority of the Board of Directors (or equivalent governing body of the entity in question), or (b) to direct or cause the direction of the management and policies of or with respect to the entity in question, whether by ownership of equity securities, contract or otherwise.

“Agreement” means this License Agreement, together with all Exhibits attached to this Agreement and made a part of this Agreement, as the same may be amended from time to time.

“Confidential Information” has the meaning set forth in Section 13.

“Cure Period” means a period of thirty (30) days from the date of delivery of notice of termination (pursuant to Sections 7B(2) and (4)) in which the party in breach may correct such breach without termination. Provided, however, there shall be no “Cure Period” for the disclosure of Confidential Information or the failure to comply with the Quality Standards.

“Derivative Marks” means new trademarks or trade names proposed by Lincoln Park and expressly approved in writing by Fadó which use both the Fadó Marks and the O.P. Smith Marks in connection with the Restaurant.

“Effective Date” has the meaning set forth in the preamble.

“Entertainment Activities” means any and all entertainment activities agreed to by the parties authorized and provided by Lincoln Park and meeting those requirements set out in Section 4 of the agreement at the Restaurant, which may include, by way of example and not limitation, live entertainment, television, arcade, interactive video, robotics, virtual reality and other games.

“Fadó” has the meaning set forth in the preamble.

“Fadó Marks” means any trademark and service mark owned by Fadó reflecting “**Fadó IRISH PUB AND RESTAURANT,**” and such other trademarks and service marks as may be reasonably designated by Fadó from time to time. Fadó Marks do not include the Derivative Marks.

“Fees” means the initial and monthly License Fees.

“Food and Beverage” means any and all food, beverage (including alcoholic beverage) and related services sold, produced or provided at the Restaurant as permitted under this Agreement.

“Force Majeure” has the meaning set forth in Section 16(J)

“Gross Receipts” shall mean, for any period, determined on an “accrual basis”, all receipts, revenues (including cash, credit card and charge card receipts), income or economic benefit of any kind received by or on behalf of Lincoln Park from the sale of food and beverages in connection with the Restaurant from and after the Opening Date; provided, however, “Gross Receipts” shall not include the following:



- (i) federal, state and local taxes, including, but not limited to, excise, sales, use or rent taxes, collected directly from patrons or guests as part of or as an addition to the sales price of any goods or services;
- (ii) proceeds or other economic benefit of any borrowings;
- (iii) funds furnished by Lincoln Park;
- (iv) reasonable discounts, allowances, or credits to patrons or guests (to the extent that gross receipts have not been previously reduced to reflect such discounts, allowances, or credits);
- (v) insurance proceeds;
- (vi) condemnation awards, litigation damages and settlement payments;
- (vii) Proceeds from collection of accounts receivable to the extent the amount of any account receivable was previously included in Gross Receipts;
- (viii) payments made under any warranty or guaranty (except to the extent such payments reimburse related costs or expenses included in operating expenses for any period);
- (ix) gratuities or service charges added to guests' bills or statements which are paid over to employees; and "Lincoln Park" has the meaning as set forth in the preamble.

"Lincoln Park Facility" means the racino facility owned and operated by Lincoln Park in which the Restaurant is located.

"Minimum Payment" has the meaning set forth in Section 3(B)(2).

"Notice" has the meaning set forth in Section 16(I).

"O.P. Smith Marks" means any trademark and service mark owned by Lincoln Park reflecting "**O.P SMITH'S IRISH PUB**," O.P. Smith's name (i.e., the name "O.P. Smith"), likeness, voice, image (including photographic images), endorsement and biographical sketch, and such other trademarks and service marks as may be reasonably designated by Lincoln Park from time to time. O.P. Smith Marks do not include the Derivative Marks.

"Opening Date" means the first date upon which the Restaurant is opened to the public for operation.

"Ownership Interests" shall mean all forms of ownership, whether legal or beneficial, voting or non-voting, including stock, partnership interests, limited liability company membership or ownership interests, joint tenancy interests, proprietorship interests, trust beneficiary interests,



proxy interests, power-of-attorney interests, and all options, warrants and instruments convertible into such other interests, and any other right, title or interest not included in this definition.

“Payment Period” means each 12 month period year during the Term of this Agreement beginning on the Opening Date.

“Person” means any individual, corporation, trust, partnership, joint venture, limited liability company or other entity.

“Pre-opening Period” means the period extending from the Effective Date until the Opening Date.

“Renewal Period” has the meaning set forth in Section 7(A).

“Restaurant” means the restaurant to be opened by Lincoln Park at the Restaurant Site and marketed, promoted, advertised and operated under the trademark “**O.P. SMITH’S Fadó IRISH PUB,**” (OR “**Fadó IRISH PUB FEATURING THE O.P SMITH GREYHOUND MUSEUM**” or such other trademark which includes the name “O.P. Smith” or “Fadó”).

“Restaurant Site” means the premises at which Lincoln Park will develop and operate the Restaurant within the Lincoln Park Facility, consistent with the marketing, design, and operational recommendations of Fadó.

“Transfer of Ownership Interests” shall mean any (i) sale, assignment, disposition, conveyance, gift, pledge or other transfer, in whole or in part, of any Ownership Interests in Fadó (ii) merger, consolidation, reorganization or other restructuring of Fadó, or (iii) issuance of additional Ownership Interests in Fadó that would have the effect of diluting voting rights or beneficial ownership of the Ownership Interests in Fadó, in each case whether voluntary, involuntary, by operation or law or otherwise (including as a result of any divorce, bankruptcy insolvency or dissolution proceedings, by declaration of or transfer in trust, or under a will or the laws of intestate succession).

## **Section 2. Establishment of Restaurant.**

A. Grant of License. Fadó hereby grants to Lincoln Park, upon the terms and conditions herein contained, the right and license to use the Fadó Marks solely in accordance with the Quality Standards during the Term for purposes of running the Restaurant at the Restaurant Site.

B. Restaurant Opening. Lincoln Park will use reasonable efforts to develop and cause the Restaurant to be opened for business to the general public at the Restaurant Site by June 1, 2007.

C. Fadó Recommendations. The development and operation of the Restaurant will be consistent with Fadó’s Quality Standards relating to the Fadó Marks used at the Restaurant. Such Quality Standards shall be provided by Fadó to Lincoln Park in a timely manner, in all instances consistent with allowing Lincoln Park to meet the targeted Opening Date. Any



unreasonable delay by Fadó in providing recommendations shall be a cause for termination of this Agreement by Lincoln Park under Section 7(B)(1).

D. Pre-opening Period Rights and Obligations.

- (1) Lincoln Park will act as the developer of the Restaurant and will have overall responsibility for all phases of the development and construction of the Restaurant.

E. Reservation of Rights in Fadó Marks. Fadó (on its own behalf and on behalf of all of its Affiliates) expressly reserves the right to use, license, lease, transfer or otherwise exploit, in any manner whatsoever and at any time, the Fadó Marks and to grant to any third party any license or other rights to use the Fadó Marks in any manner whatsoever, including by way of example and not limitation, marketing, promoting, advertising goods or services bearing any Fadó Mark, anywhere in the world, directly or indirectly, by or through any means, including without limitation, by catalog, direct mail, telephone, the Internet or any other means of electronic commerce or any other retail or wholesale distribution channel, all without regard to any adverse effects of such activities on the Restaurant and without any obligation or liability to Lincoln Park. LINCOLN PARK WAIVES, TO THE FULLEST EXTENT PERMITTED UNDER LAW, ALL CLAIMS, DEMANDS OR CAUSES OF ACTION ARISING FROM OR RELATED TO ANY OF THE FOREGOING ACTIVITIES BY FADÓ OR ITS AFFILIATES, AND FURTHER AGREES THAT SUCH ACTIVITIES WILL NOT GIVE RISE TO ANY LIABILITY OR DAMAGES FOR LINCOLN PARK AND ITS AFFILIATES, INCLUDING LIABILITY OR DAMAGES FOR CLAIMS FOR UNFAIR COMPETITION, BREACH OF CONTRACT, BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING OR DIVIDED LOYALTY.

F. Reservation of Rights in O.P. Smith Marks. O.P. Smith (on its own behalf and on behalf of all of its Affiliates) expressly reserves the right to use, license, lease, transfer or otherwise exploit, in any manner whatsoever and at any time, the O.P. Smith Marks and to grant to any third party any license or other rights to use the O.P. Smith Marks in any manner whatsoever, including by way of example and not limitation, marketing, promoting, advertising goods or services bearing any O.P. Smith Mark, anywhere in the world, directly or indirectly, by or through any means, including without limitation, by catalog, direct mail, telephone, the Internet or any other means of electronic commerce or any other retail or wholesale distribution channel, all without regard to any adverse effects of such activities on the Restaurant and without any obligation or liability to Fado. FADO WAIVES, TO THE FULLEST EXTENT PERMITTED UNDER LAW, ALL CLAIMS, DEMANDS OR CAUSES OF ACTION ARISING FROM OR RELATED TO ANY OF THE FOREGOING ACTIVITIES BY LINCOLN PARK OR ITS AFFILIATES, AND FURTHER AGREES THAT SUCH ACTIVITIES WILL NOT GIVE RISE TO ANY LIABILITY OR DAMAGES FOR LINCOLN PARK AND ITS AFFILIATES, INCLUDING LIABILITY OR DAMAGES FOR CLAIMS FOR UNFAIR COMPETITION, BREACH OF CONTRACT, BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING OR DIVIDED LOYALTY.



**Section 3. Fees.**

A. License Fees. In addition to any other amounts to be paid by Lincoln Park to Fadó under this Agreement, Lincoln Park shall pay to Fadó the license fees ("License Fees") set forth in this Section 3A.

- (1) Following the Opening Date, Lincoln Park shall pay to Fadó a monthly License Fee for the Restaurant in an amount equal to five percent (5%) of Gross Receipts per month.
- (2) Lincoln Park shall pay License Fees to Fadó monthly within 30 days of the end of each month
- (3) Notwithstanding the provisions of Section 3A(1) above, if the License Fees otherwise payable to Fadó for the Restaurant during any Payment Period occurring after the Opening Date do not exceed the amount of One Hundred Fifty Thousand Dollars (\$150,000) ("Minimum Payment"), then, subject to the provisions of this Section 3A(2), Lincoln Park will pay to Fadó, in addition to the License Fees otherwise payable by Lincoln Park for such Payment Period, an amount equal to the difference between One Hundred Fifty Thousand Dollars (\$150,000) and the License Fees otherwise payable by Lincoln Park for such Payment Period. The total Minimum Payments to Fado during the Initial Term and in each Renewal Terms shall be at least \$750,000 per each five (5) year period.
- (4) It is agreed and acknowledged that the timely delivery of all reports and payments required by this Agreement are essential to this Agreement. Regardless of whether a default is declared by Fado with respect to any late delivery or payment under this Agreement, Lincoln Park shall pay to Fado, as compensation to Fado for Fado's administrative costs (including the cost of in-house management and employee time) of collecting such late payment, an administrative fee each month equal to the lesser of (1) one and one-half percent (1.5%) of the amount of any such late payment or (2) the maximum amount allowed by law, until such late payment (including the amount of any such administrative fee) has been paid in full. The acceptance of late payments hereunder shall not constitute a waiver of timely payments or of collection of the administrative fee described herein.

B. Pre-Opening Period Fee. In addition to any other amount to be paid by Lincoln Park to Fadó under this Agreement, Lincoln Park shall pay to Fadó an initial License Fee of One Hundred Twenty Five Thousand Dollars (\$125,000) payable to Fadó as follows: (1) Seventy Five Thousand Dollars (\$75,000) upon the execution of this Agreement; and (2) Fifty Thousand Dollars (\$50,000) upon the start of construction of the Restaurant.



C. Payments. All fees and other amounts due to Fadó under this Agreement shall be paid in U.S. dollars, in immediately available funds, at the location(s) specified by Fadó.

D. Force Majeure. In the event of the occurrence of a Force Majeure that results in the suspension of business of the Restaurant, then Lincoln Park may delay payment to Fado of any Fees accruing after the date of the occurrence of such Force Majeure until the date ninety (90) days subsequent to the date of the occurrence of such Force Majeure.

E. Electronic Recording and Reporting. Lincoln Park has an established point of sale system referred to as "ALOHA". Fadó shall be provided reasonable access to such system as necessary to confirm amount and payment of Fees owed. To the extent the Lincoln Park internal financial reporting system allows, Lincoln Park will report sales to Fado on a weekly basis.

**Section 4. Additional Rights, Obligations, and Quality Standards.** In addition to those rights and obligations set forth elsewhere in this Agreement, Fadó and Lincoln Park will have those additional rights and obligations set forth in this Section 4. Licensee shall operate the Restaurant in such a way that will not weaken or devalue the Fadó Marks by following the Quality Standards.

A. Food and Beverages. Lincoln Park agrees that the Restaurant will offer for sale Food and Beverages and other products and services that meet the Quality Standards and have been approved by Fadó, but need not sell all of such approved products. Lincoln Park agrees that the Restaurant will use and/or offer for sale food and beverages, ingredients, uniforms, packaging materials, menus, forms, labels and other supplies and other products and services that meet the Quality Standards and that have been approved by Fadó.

B. Standards and Specifications. Fadó shall define Quality Standard specifications and operating procedures relating to the appearance, function, cleanliness or operation of the Restaurant. These Quality Standards, which are developed to maintain the overall appearance and high quality that the public has associated with the Fadó Marks, relate to specifications and procedures in many areas, including: (i) type, quality, taste, weight, dimensions, ingredients uniformity, and manner of preparation, packaging and sale of Food and Beverages; (ii) sale procedures and customer service; (iii) advertising and promotional programs; (iv) qualifications, appearance, uniforms and dress of employees; (v) safety, maintenance, appearance, cleanliness, sanitation, standards of service and operation of the Restaurant; (vi) training for both management and hourly associates; and (vii) product ordering procedures.

C. Licenses and Permits. Lincoln Park will maintain in force in its name all required license permits and certificates relating to the operation of the Restaurant, including liquor licenses. Lincoln Park will operate the Restaurant in full compliance with all applicable laws, ordinances and regulations.

D. Marketing, Advertising and Promotion.

- (1) At least Sixty (60) days before the Opening Date, Fadó shall provide recommendations to Lincoln Park on how to market, advertise and promote the Restaurant in accordance with the Quality Standards of the Fado Marks.



- (2) Lincoln Park is the owner or exclusive licensee of the O.P. Smith Marks.
- (3) Lincoln Park shall have the right during the Term of this Agreement to use the Derivative Marks in connection with the Restaurant and marketing for the Restaurant, provided that Lincoln Park operates the Restaurant in accordance with the Quality Standards and the standards and specifications attendant thereto which underlie the goodwill associated with and are symbolized by the Fadó Marks.
- (4) Fadó is the owner or exclusive licensee of the Fadó Marks, and has the right to authorize their use by Fadó and others duly authorized, including Lincoln Park's use in connection with the Restaurant.
- (5) Fadó shall have the right, but not the obligation, during the Term of this Agreement to use the Derivative Marks in connection with marketing for the Restaurant.
- (6) In accordance with Fadó's Quality Standards, Lincoln Park agrees that certain promotional elements and events are core to the Irish Pub Concept and, as such, Lincoln Park agrees the Restaurant will take part in certain promotions deemed central to the Irish Pub Concept. These promotions may include the Great Guinness Toast, St. Patrick's Day, the Summer and Winter Drinks Programs, the Fantasy English Premiere League online soccer tournament, and Customer Surveys. Promotional material will be provided by Fadó for these events.

E. Entertainment Activities. Lincoln Park may, from time to time during the Term of this Agreement, provide Entertainment Activities consistent with the Quality Standards at the Restaurant.

#### **Section 5. Acknowledgment and Protection of Intellectual Property.**

A. Ownership of O.P. Smith Marks. Fadó recognizes and acknowledges the exclusive rights of Lincoln Park in and to the O.P. Smith Marks (including any derivatives, improvements and modifications thereto, and all logos developed in connection therewith). Such rights do not include ownership of the Derivative Marks. Nothing contained in or contemplated under this Agreement will be construed to confer upon Fadó any right to have the O.P. Smith Marks (or any such derivatives, improvements, modifications and logos) registered in the name of Lincoln Park or to vest in Fadó any right of ownership to the O.P. Smith Marks (or any such derivatives, improvements, modifications and logos), and Fadó shall not, directly or indirectly, use, register or cause to be used or registered, any word, symbol, character or set of words, symbols or characters, trademark, trade name, service mark or copyright consisting of, related to, similar to and/or confusingly similar to any of the O.P. Smith Marks (or any such derivatives, improvements, modifications and logos).

B. Ownership of Fadó Marks. Lincoln Park recognizes and acknowledges the exclusive rights of Fadó in and to the Fadó Marks (including any derivatives, improvements and

modifications thereto, and all logos developed in connection therewith). Nothing contained in or contemplated under this Agreement will be construed to confer upon Lincoln Park any right to have the Fadó Marks (or any such derivatives, improvements, modifications and logos) registered in the name of Lincoln Park or to vest in Lincoln Park any right of ownership to the Fadó Marks (or any such derivatives, improvements, modifications and logos), and Lincoln Park shall not, directly or indirectly, use, register or cause to be used or registered, any word, symbol, character or set of words, symbols or characters, trademark, trade name, service mark or copyright consisting of, related to, similar to and/or confusingly similar to any of the Fadó Marks (or any such derivatives, improvements, modifications and logos).

C. Ownership of Derivative Marks. Lincoln Park recognizes and acknowledges the exclusive rights of Fadó in and to the Derivative Marks (including any derivatives, improvements and modifications thereto, and all logos developed in connection therewith). During the Term of this Agreement, neither party shall directly or indirectly, register or cause to be registered, any word, symbol, character or set of words, symbols or characters, trademark, trade name, service mark or copyright consisting of, related to, similar to and/or confusingly similar to any of the Derivative Marks (or any such derivatives, improvements, modifications and logos) unless such registration is necessary to enforce Fadó's rights, at which time Fadó may file an application for registration. Further, upon the termination of the Agreement, neither party may use the Derivative Marks without the express, written consent of the other party.

D. No Challenges to Ownership by Fadó. During the Term of this Agreement and following the expiration or termination of this Agreement for any reason, Fadó will not (i) challenge the validity of Lincoln Park's ownership in the O.P. Smith Marks (or any such derivatives, improvements, modifications and logos related thereto), (ii) represent in any manner that Fadó has any title or right to the ownership, registration or use of any of the O.P. Smith Marks (or any such derivatives, improvements, modifications and logos) in any manner except as set forth in this Agreement, or (iii) challenge the right of Lincoln Park or its Affiliates to grant a license for the O.P. Smith Marks (or any such derivatives, improvements, modifications and logos). Any and all goodwill associated with or identified by the O.P. Smith Marks (or any such derivatives, improvements, modifications and logos) will inure directly and exclusively to the benefit of and will be deemed to be the property of Lincoln Park and its Affiliates.

E. No Challenges to Ownership by Lincoln Park. During the Term of this Agreement and following the expiration or termination of this Agreement for any reason, Lincoln Park will not (i) challenge the validity of Fadó's ownership in the Fadó Marks (or any such derivatives, improvements, modifications and logos related thereto), (ii) contest the fact that Lincoln Park's rights under this Agreement are solely those of Lincoln Park and terminate upon expiration or termination of this Agreement, (iii) represent in any manner that Lincoln Park has any title or right to the ownership, registration or use of any of the Fadó Marks (or any such derivatives, improvements, modifications and logos) in any manner except as set forth in this Agreement, or (iv) challenge the right of Fadó or its Affiliates to grant a license for the Fadó Marks (or any such derivatives, improvements, modifications and logos). Any and all goodwill associated with or identified by the Fadó Marks (or any such derivatives, improvements, modifications and logos) will inure directly and exclusively to the benefit of and will be deemed to be the property of Fadó and its Affiliates.



F. Interference by Fadó: Use of Similar Trademarks. Fadó will not (i) cause or, to the extent within its reasonable control, permit any action or inaction which may damage or endanger Lincoln Park's O.P. Smith Marks or other trade name, trademark, service mark or intellectual property right of Lincoln Park, (ii) interfere in any manner with nor attempt to prohibit the use or registration by Lincoln Park of the O.P. Smith Marks or other trade name or trademark or service mark owned or licensed by Lincoln Park, and (iii) use any name, trademark or service mark similar to or capable of being confused with the Lincoln Park's O.P. Smith Marks or any other trade name, trademark or service mark of Lincoln Park.

G. Interference by Lincoln Park: Use of Similar Trademarks. Lincoln Park will not (i) cause or, to the extent within its reasonable control, permit any action or inaction which may damage or endanger Fadó's Fadó Marks or other trade name, trademark, service mark or intellectual property right of Fadó, (ii) interfere in any manner with nor attempt to prohibit the use or registration by Fadó of the Fadó Marks or other trade name or trademark or service mark owned or licensed by Fadó, and (iii) use any name, trademark or service mark similar to or capable of being confused with the Fadó's Fadó Marks or any other trade name, trademark or service mark of Fadó.

H. Fadó's Notice and Assistance Regarding Third Party Infringement. Fadó will immediately notify Lincoln Park in writing of any actual or suspected claim of infringement or dilution, or any other type of harm or damage to any of the O.P. Smith Marks or any other trade name, trademark, service mark or other intellectual property right of Lincoln Park.

I. Lincoln Park's Notice and Assistance Regarding Third Party Infringement. Lincoln Park will immediately notify Fadó in writing of any actual or suspected claim of infringement or dilution, or any other type of harm or damage to the Fadó Marks or any other trade name, trademark, service mark or other intellectual property right of Fadó.

#### **Section 6. Non-Competition; Hiring of Employees.**

A. Non-Competition. During the Term, Fado agrees not to own, operate or license another Irish pub within ten miles of the Restaurant Site; provided, however, that the terms of this Section shall not apply if Fado acquires a company that, at the time of the acquisition, owns or operates another Irish pub within ten miles of the Restaurant Site. During the Term, Lincoln Park agrees not to own or operate any other Irish Pubs within ten miles of the Restaurant Site.

B. Non-solicitation by Lincoln Park. During the Term of this Agreement and for a period of two (2) years following the expiration or termination of this Agreement for any reason, Lincoln Park will nor employ or solicit for employment any employees of Fadó.

C. Non-solicitation by Fadó. During the Term of this Agreement and for a period of two (2) years following the expiration or termination of this Agreement, Fadó shall not employ or solicit for employment any employees of Lincoln Park or its Affiliates unless employee was recruited by Fadó directly to work at the Restaurant.



**Section 7. Term; Termination; Effect of Termination.**

A. Term. Pursuant to that certain Agreement dated July 18, 2005 by and between Lincoln Park and the Division of Lotteries of the Rhode Island Department of Administration, Lincoln Park has been granted a Video Lottery Terminal License to operate until August 1, 2010, with the option to extend such License over two successive five year periods ("State License"). Unless earlier terminated in accordance with the terms of this Agreement, this Agreement will be effective as of the Effective Date and will remain in full force and effect until the fifth (5th) anniversary of the Opening Date ("Initial Term"). Lincoln Park may elect to extend the Term of this Agreement for two additional five (5) year periods ("Renewal Period") after such fifth (5th) anniversary date, provided Lincoln Park provides Fadó Notice of such election at least Ninety (90) days prior to the expiration of the Initial Term or any Renewal Period. For purposes of this Agreement, "Term" shall mean the Initial Term and any Renewal Term. If the State License terminates for any reason during the Initial Term or either Renewal Period, this Agreement shall immediately terminate effective as of the date upon which the State License terminates. In no event shall the Term of this Agreement exceed the earlier of (1) the fifteenth (15th) anniversary of the Opening Date, or (2) the termination date of the State License.

B. Termination.

(1) Immediate Termination by Lincoln Park. Fadó shall be in material breach of this Agreement, and this Agreement will automatically terminate without notice, at Lincoln Park's discretion, if Fadó becomes insolvent by reason of its inability to pay its debts as they mature; if Fadó is adjudicated bankrupt or insolvent; if Fadó files a petition in bankruptcy, reorganization or similar proceeding under the bankruptcy laws of the United States or has such a petition filed against it which is not discharged within thirty (30) days; if a receiver or other custodian, permanent or temporary, is appointed for Fadó's business, assets or property; if Fadó requests the appointment of a receiver or makes a general assignment for the benefit of creditors; if final judgment against Fadó in the amount of Fifty Thousand Dollars (\$50,000.00) or more remains unsatisfied of record for sixty (60) days or longer; if Fadó voluntarily dissolves or liquidates or has a petition filed for dissolution and such petition is not dismissed within thirty (30) days, or if Fadó is in violation of any of the anti-terrorism laws.

(2) Termination Upon Notice By Lincoln Park. In addition to Lincoln Park's right to terminate pursuant to other provisions of the Agreement and under applicable law, Lincoln Park has the right to terminate the Agreement effective upon delivery of notice of termination to Fadó, after the Cure Period, if:

(a) Fadó makes any material, purposeful, misstatement or omission in any information, report or summary provided to Lincoln Park at any time;

(b) Fadó or any officer or Director of Fadó is convicted of, or pleads no contest to, a felony or other crime that Lincoln Park reasonably believe may adversely affect the goodwill associated with the Restaurant;



(c) Fadó makes any unauthorized use or disclosure of any Confidential Information;

(d) Fadó fails to comply with any other provision of this Agreement and does not correct such failure in good faith and diligently (commencing immediately to completion) within thirty (30) days after notice of such failure to comply is delivered to Fadó; or

(e) Fadó fails to timely provide design plans, specifications, marketing plans, sourcing of Operating Equipment or any other requirement pursuant to the Agreement.

(3) Immediate Termination by Fadó. Lincoln Park shall be in material breach of this Agreement, and this Agreement will automatically terminate without notice, at Fadó's discretion, if Lincoln Park becomes insolvent by reason of its inability to pay its debts as they mature; if Lincoln Park is adjudicated bankrupt or insolvent; if Lincoln Park files a petition in bankruptcy, reorganization or similar proceeding under the bankruptcy laws of the United States or has such a petition filed against it which is not discharged within thirty (30) days; if a receiver or other custodian, permanent or temporary, is appointed for Fadó's business, assets or property; if Lincoln Park requests the appointment of a receiver or makes a general assignment for the benefit of creditors; if final judgment against Lincoln Park in the amount of Fifty Thousand Dollars (\$50,000.00) or more remains unsatisfied of record for sixty (60) days or longer; if Lincoln Park voluntarily dissolves or liquidates or has a petition filed for dissolution and such petition is not dismissed within thirty (30) days, or if Lincoln Park is in violation of any of the anti-terrorism laws.

(4) Termination Upon Notice By Fadó . In addition to Fadó's right to terminate pursuant to other provisions of the Agreement and under applicable law, Fadó has the right to terminate the Agreement effective upon delivery of notice of termination to Lincoln Park, after the Cure Period, if :

(a) Lincoln Park fails to comply with the Quality Standards in the operation of the Restaurant;

(b) Lincoln Park fails to make a payment of any Fee;

(c) Lincoln Park makes any material, purposeful, misstatement or omission in any information, report or summary provided to Fadó at any time;

(d) Lincoln Park or any officer or Director of Lincoln Park is convicted of, or pleads no contest to, a felony or other crime that Fadó reasonably believe may adversely affect the goodwill associated with the Restaurant;

(e) Lincoln Park makes any unauthorized use or disclosure of any Confidential Information; or



(f) Lincoln Park fails to comply with any other provision of this Agreement and does not correct such failure in good faith and diligently (commencing immediately to completion) within thirty (30) days after notice of such failure to comply is delivered in accordance with Section 16.

(C) Effect of Termination.

Notwithstanding any provision contained in this Agreement to the contrary, the terms and conditions set forth in this Agreement that by their express terms or by their nature are intended to survive, including, without limitation, Sections 6, 7, 8, 9, 11, 12, 13, 14 and 16 will survive any expiration or termination of this Agreement. Upon termination or expiration of this Agreement, Lincoln Park shall (i) cease using the Fado Marks and Fado's trade dress at the Restaurant and cancel all assumed name or equivalent registrations relating to the use of the Fado Marks at the Restaurant, and cease representing to the public that it is a licensee of Fado; (ii) return to Fado all copies of Fado Confidential Information within its possession; (iii) immediately pay to Fado all amounts owed hereunder; and (iv) immediately and permanently cease to use, by advertising or in any manner whatsoever any distinctive forms, slogans, signs, symbols, or devices associated with or belonging to Fado. The obligation of Lincoln Park to pay the Minimum Payment for the remainder of the then current Initial Term or Renewal Term shall survive the termination of this Agreement for any reason other than a material breach by Fado of this Agreement.

**Section 8. Relationship Of The Parties.**

A. Independent Contractors. Neither this Agreement nor the dealings of the parties pursuant to this Agreement shall create any fiduciary relationship or any other relationship of trust or confidence between the parties hereto. Fadó and Lincoln Park, as between themselves, are and shall be independent contractors. Whenever Lincoln Park has expressly reserved in this Agreement or is deemed to have a right and/or discretion to take or withhold an action, or to grant or decline to grant Fadó a right to take or withhold an action, except as otherwise expressly and specifically provided in this Agreement, Lincoln Park may make its decision or exercise Lincoln Park's right and/or discretion on the basis of its judgment of what is in its best interests. If applicable law implies a covenant of good faith and fair dealing in this Agreement, Fadó and Lincoln Park agree that such covenant shall not imply any rights or obligations that are inconsistent with a fair construction of the terms of this Agreement and that this Agreement grants the parties the right to make decisions, take actions and/or refrain from taking actions not inconsistent with the other party's explicit rights and obligations hereunder. Nothing contained in this Agreement, or arising from the conduct of the parties hereunder, is intended to make either party a general or special agent, franchisee or franchisor, joint venturer, partner or employee of the other for any purpose whatsoever. Neither party may make any express or implied agreements, warranties, guarantees or representations or incur any obligation, liability or debt in either's name or on either's behalf or represent that the relationship of the parties hereto is anything other than that of independent contractors. Neither party will be obligated by or have any liability under any agreements made by the other party with any third party or for any representations made by the other party.



B. Indemnification. Each party, as applicable, agrees to indemnify the other party, and to hold the other party harmless to the fullest extent permitted by law, from any and all losses and expenses (as defined below) incurred in connection with any claim, demand, investigation, formal or informal inquiry (regardless of whether it is reduced to judgment) litigation or other form of adjudicatory procedure or any settlement thereof which arises directly or indirectly from, or as a result of, a claim of a third party caused by (i) the failure to perform or breach by a party of any covenant, agreement, term or provision of this Agreement, (ii) the breach by either party of any representation or warranty made by a party in this Agreement, (iii) the use of the Fadó Marks or Derivative Marks by Lincoln Park or the use of the O.P. Smith Mark by Fadó, as applicable (iv) any unauthorized service or act rendered or performed by either party in connection with this Agreement; or (v) personal injury or actions of employees of Lincoln Park (collectively "event"); provided, however, that this indemnity will not apply to any liability arising to the extent caused by a breach of this Agreement by the party requesting indemnification or the gross negligence or willful acts of the party requesting indemnification (except to the extent that joint liability is involved, in which event the indemnification provided herein will extend to any finding of comparative or contributory negligence). The term "losses and expenses" includes compensatory, exemplary, and punitive damages; fines and penalties; attorneys' fees; experts' fees; court costs; costs associated with investigating and defending against claims; settlement amounts; judgments; compensation for damages to reputation and goodwill; and all other costs associated with any of the foregoing losses and expenses. Each party agrees to give the other party reasonable notice of any event of which the applicable party becomes aware for which indemnification may be required.

C. Insurance. Lincoln Park shall purchase comprehensive liability insurance for personal injury and property damage (the aggregate which will be an amount not less than Five Million Dollars (\$5,000,000)) for each occurrence during the term of this Agreement related to the operation of the Restaurant.

**Section 9. Representations and Warranties of Fadó.** Fadó represents and warrants that, as of the Effective Date, the following statements are true, correct and complete:

A. Fadó is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and has all requisite power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement. The execution and delivery of this Agreement and the performance and observance of all terms, conditions and obligations under this Agreement have been duly authorized by all necessary actions on the part of Fadó.

B. The execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement do not and will not conflict with, or be in contravention of, any of Fadó's governing documents or any resolution of Fadó or any instrument, agreement or contract to which Fadó is a party.

C. The authorized officer of Fadó executing this Agreement has been authorized to execute this Agreement by all necessary actions on the part of Fadó.



D. Fadó has had full and adequate opportunity to conduct due diligence and has consulted with outside counsel in connection with the transactions contemplated under this Agreement.

E. Fadó has not relied on any representation, warranty, or covenant of Lincoln Park or any of its respective Affiliates or agents (including without limitation any information, including financial information or projections, provided to Fadó by such Persons or any Person associated with such Persons) in connection with Fadó's entering into this Agreement, except as expressly set forth in this Agreement.

**Section 10. Representations and Warranties of Lincoln Park.** Lincoln Park represents and warrants that, as of the Effective Date, the following statements are true, correct and complete:

A. Lincoln Park is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and has all requisite power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement. The execution and delivery of this Agreement and the performance and observance of all terms, conditions and obligations under this Agreement have been duly authorized by all necessary actions on the part of Lincoln Park.

B. The execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement do not and will not conflict with, or be in contravention of, any of Lincoln Park's governing documents or any resolution of Lincoln Park or any instrument or contract to which Lincoln Park is a party.

The authorized officer of Lincoln Park executing this Agreement has been authorized to execute this Agreement by all necessary actions on the part of Lincoln Park.

C. Lincoln Park has had full and adequate opportunity to conduct due diligence and has consulted with outside counsel in connection with the transactions contemplated under this Agreement.

D. Lincoln Park has not relied on any representation, warranty or covenant of Fadó (including without limitation any information, including financial information or projections, provided to Lincoln Park by such Persons or any Person associated with such Persons) in connection with Lincoln Park's entering into this Agreement, except as expressly set forth in this Agreement.

E. No approval or consent by any court or other governmental authority is required for Lincoln Park to validly and legally execute this Agreement and assume its obligations hereunder.

**Section 11. Acknowledgements.**

A No Additional Representations Or Warranties. Neither party has made any promises, representations, warranties or guaranties of any kind whatsoever to the other except as specifically set forth in this Agreement, and no person is authorized to make any promises,



representations, warranties or guaranties on behalf of either party, except as specifically set forth in this agreement.

B. No Reliance. Neither party has made or has received or relied upon, any written or verbal statements or projections of revenue, sales, expenses, income, profitability, value of the restaurant or similar financial performance information.

### **Section 12. Accounting and Records; Inspection Rights.**

A. Books and Records. During the Term and for a period of one year thereafter, Lincoln Park agrees to prepare and to maintain complete and accurate books, records and accounts for the Restaurant, copies of Lincoln Park's sales tax returns and such portions of Lincoln Park's state and federal income tax returns as relate to the Restaurant. Lincoln Park will make available to Fadó all books and records, including without limitation, contract documents, invoices, receipts, credit card charge slips and all other records pertaining to the operation of the Restaurant. Lincoln Park will keep the books and records for the Restaurant on an accrual basis and in all material respects in accordance with generally accepted accounting principles, consistently applied.

B. Financial Statements and Information. Lincoln Park will deliver, or cause to be delivered, to Fadó within thirty (30) days after the end of each fiscal quarter, a detailed balance sheet and related profit and loss statement showing the results of operation of the Restaurant for such period and the fiscal year to date.

C. Inspection and Audit Rights. Lincoln Park hereby grants Fadó the right, upon prior approval of the owner of the building in which the Restaurant is located, for Fadó and its employees to access the Restaurant during regular business hours for the purposes of conducting inspections to ensure that Lincoln Park continues to meet the Quality Standards associated with the Fadó Marks. Lincoln Park shall, and shall cause its employees to, reasonably cooperate in any such inspection. Fadó shall also have the right to audit the books, records and accounts of Lincoln Park which are specifically related to the Restaurant, but no more than twice in one year, upon five (5) business days prior written notice to Lincoln Park. If such audit shows any amount owing by Lincoln Park to Fadó, Lincoln Park shall have five (5) days to review Fadó's findings and an additional ten (10) days to pay Fadó the proven amount understated.

### **Section 13. Confidentiality.**

A. Confidential Information. Each party acknowledges that the other party may periodically disclose information relating to customer, supplier, employee, contractor, referral source, vendor, officer, director, and shareholder information; financial and marketing information and projections; products and services and the pricing for same; Quality Standards; plans; drawings; flow charts; business methods and procedures; software, databases, hardware configurations, and other technology created, developed, or compiled by or for the other party; and other commercially sensitive information the secrecy of which is valued by the other party (collectively, "Confidential Information").



B. Trade Secrets. For purposes of this Agreement, the term "Trade Secret" shall have the meaning ascribed to it by relevant state law, as now in force or hereafter amended.

C. Restrictions. During the Term of the Agreement and for a period of five (5) years after termination of the Agreement for any reason, each party agrees that it: (i) will keep Confidential Information confidential; (ii) will not disclose Confidential Information to any third parties; and (iii) will not use (or cause to be used) Confidential Information for personal benefit or for the benefit of any third party. In addition, if any Confidential Information constitutes a Trade Secret, the other party agrees that such restrictions in the preceding sentence shall remain in effect with respect to such Confidential Information for so long beyond the restricted period set forth herein as such Confidential Information constitutes a Trade Secret.

#### **Section 14. Public Statements.**

Each party shall cooperate with the other on all press releases and other public statements relating to the Restaurant and neither party shall issue any press release or other public statement relating thereto without the prior written approval of the other, except for any public statement required under Applicable Law. With respect to any public statement required under Applicable Law, the issuing Party shall provide the other Party with a reasonable opportunity to review and comment upon any such statement prior to its issuance.

#### **Section 15. Assignment or Transfer; Notices of Ownership Changes.**

A. Assignment by Either Party. Neither party will, directly or indirectly, sell, assign, transfer, convey, sublicense, encumber this Agreement or any right or interest herein, or suffer or permit any such sale, assignment, transfer, conveyance, sublicense or encumbrance to occur, or delegate to another Person (e.g., by management or operating agreement) any covenants or obligations under the Agreement, in each case without the prior written consent of the other party. Any attempt to so sell, assign, transfer, convey, sublicense or encumber this Agreement, or delegate any of a party's rights or obligations under this Agreement, without the prior written consent of the other will be void and of no force or effect.

B. Notice of Ownership Changes. Each party shall notify the other of any and all changes in the beneficial ownership not later than five (5) days following any such change.

#### **Section 16. MISCELLANEOUS.**

A. Severability and Substitution of Provisions. Every part of this Agreement shall be considered severable. If for any reason any part of this Agreement is held to be invalid, that determination shall not impair the other parts of this Agreement. If any covenant herein which restricts competitive activity is deemed unenforceable by virtue of its scope or in terms of geographic area, type of business activity prohibited and/or length of time, but could be rendered enforceable by reducing any part or all of it, the parties agree that it will be enforced to the fullest extent permissible under applicable law and public policy. If any applicable law requires a greater prior notice of the termination of or refusal to enter into a successor franchise than is required hereunder, a different standard of "good cause", or the taking of some other action not



required hereunder, the prior notice, "good cause" standard and/or other action required by such law shall be substituted for the comparable provisions hereof.

B. Waiver of Obligations. Fadó and Lincoln Park may by written instrument unilaterally waive or reduce any obligation of the other under this Agreement. Any such waiver granted shall be without prejudice to any other rights the waiving party may have, will be subject to continuing review by such party and may be revoked, in such party's sole discretion, at any time and for any reason, effective upon delivery to the other party of ten (10) days' prior notice. Fadó and Lincoln Park shall not be deemed to have waived any right reserved by this Agreement or be deemed to have modified this Agreement by virtue of any custom or practice of the parties at variance with it; any failure, refusal or neglect by Lincoln Park or Fadó to exercise any right under this Agreement or to insist upon exact compliance by the other with its obligations hereunder.

C. Exercise of Rights. The rights of Fadó and Lincoln Park hereunder are cumulative and no exercise or enforcement by Fadó or Lincoln Park of any right or remedy hereunder shall preclude the exercise or enforcement by Fadó or Lincoln Park of any other right or remedy hereunder which Fadó or Lincoln Park is entitled to enforce by law. Notwithstanding the foregoing, and except as otherwise prohibited or limited by applicable law, any failure, neglect, or delay of a party to assert any breach or violation of any legal or equitable right arising from or in connection with this Agreement shall constitute a waiver of such right and shall preclude the exercise or enforcement of any legal or equitable remedy arising therefrom, unless written notice specifying such breach or violation is provided to the other party within twenty four (24) months after the later of: (a) the date of such breach or violation; or (b) the date of discovery of the facts (or the date the facts could have been discovered, using reasonable diligence) giving rise to such breach or violation.

D. Attorneys' Fees. In a judicial or arbitration proceeding, the non-prevailing party agrees to reimburse the prevailing party for all of the prevailing party's costs and expenses, including reasonable accounting, paralegal, expert witness and attorneys' fees.

E. Governing Law. This Agreement shall be construed under the laws of the State of Rhode Island. In the event of any conflict of law, Rhode Island law will prevail, without regard to its conflict of law principles.

F. Successors and Assigns. This Agreement is binding on the parties hereto and their respective executors, administrators, heirs, assigns and successors in interest. Fadó and Lincoln Park each waives, to the fullest extent permitted by law, any right to or claim for any punitive, indirect, consequential, special or exemplary damages against the other.

G. Construction. The language of this Agreement shall be construed according to its fair meaning and not strictly against any party. Except as otherwise expressly provided herein, there are no other oral or written agreements, understandings, representations or statements relating to the subject matter of this Agreement, that either party may or does rely on or that will have any force or effect. Nothing in this Agreement shall be deemed to confer any rights or remedies on any person or legal entity not a party hereto. This Agreement shall not be modified except by written agreement signed by both parties. The headings of Sections are for



convenience only and do not limit or construe their contents. The word "including" shall be construed to include the words "without limitation." References to a controlling interest in an entity shall mean more than fifty percent (50%) of the equity or voting control of such entity. This Agreement may be executed in multiple copies, each of which shall be deemed an original. Time is of the essence in this Agreement.

H. Approvals and Consents. Whenever this Agreement requires the approval or consent of a party ("Approving Party"), the other party ("Requesting Party") shall make written request therefore, and such approval or consent shall be obtained in writing; provided however, unless specified otherwise in this Agreement, the Approving Party may withhold approval or consent, if reasonable. The Approving Party will approve or disapprove a request from the Requesting Party within twelve (12) business days of receipt by the Approving Party of the written request. If the Approving Party does not approve or disapprove the Requesting Party's submission within such twelve (12) business day period, the Requesting Party will provide notice to the Approving Party of such delay and the Approving Party agrees that any such submission will be deemed approved if the Requesting Party's submission is not responded to within five (5) business days following receipt of such notice of delay. Unless specified otherwise in this Agreement, no approval or consent shall be deemed to constitute a warranty or representation of any kind, express or implied, and the Approving Party shall have no responsibility, liability or obligation arising therefrom.

I. Notices. Any notice, request, demand or other communication ("Notice") permitted or required by the terms of this Agreement will be in writing and will be effective if delivered to the addressee in person or sent to such addressee by United States registered or certified mail, postage prepaid, return receipt requested, or by nationally recognized overnight courier at the address set forth below, or at such other address as any party may specify by Notice given to the other in the manner hereby required. Each Notice given by United States registered or certified mail as aforesaid will be effective on the fifth business day following the date on which deposited in the United States mail unless sooner received by the addressee, in which case it will be effective when received, as shown by the certified mail or registry receipt. Notice delivered by nationally recognized overnight courier will be effective on the second business day following the delivery to the courier, charges prepaid. Each Notice delivered in person will be effective upon delivery. All Notices will be addressed as follows:

If to Fadó:

Fadó Pubs, Inc.  
309 E. Paces Ferry Rd  
Suite 800  
Atlanta, GA 30305  
Attn: Kieran McGill  
CEO / President

With a copy to

Seyfarth Shaw LLP  
1270 Avenue of the Americas  
Suite 2500  
New York, New York 10020  
Attn: John P. Napoli



If to Lincoln Park:

BLB, Inc.  
1600 Louisquisett Pike  
Lincoln, RI 02865  
Attn: George Papanier  
President and Chief Operating Officer

With a copy to:

Craig L. Eaton, Esq.  
Vice President & General Counsel  
BLB, Inc.  
1600 Louisquisett Pike  
Lincoln, RI 02865

J. Force Majeure. If solely by reason of war, riots, civil commotion, labor disputes, strikes, lockouts, inability to obtain labor or materials, fire or other acts or elements, accidents, government restrictions or appropriation or other causes, beyond the control of a party to this Agreement (each, a "Force Majeure"), such party is unable to perform in whole or in part its obligations under this Agreement, then for a period of no longer than ninety (90) days from the date of the occurrence of such Force Majeure, such party will be relieved of those obligations to the extent it is so unable to perform, and such inability to perform, so caused, will not make the party liable to the other. Each party shall make all diligent efforts to resume its performance promptly after such Force Majeure ceases to exist. . If the Agreement is not able to be continued by either party due to a Force Majeure event (e.g. permanent government restriction placed on the ability of Lincoln Park to operate), Lincoln Park shall pay to Fado all fees due and owing up to the time of the termination, but shall not be responsible for the Minimum Payment for the remainder of the then current Initial Term any Renewal Term.

K. Further Assurances. Each of the parties hereto forthwith upon request from the other will execute and deliver and take such action as may be reasonably requested to carry out the intent and accomplish the purposes of this Agreement.



IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

*Fado Subs Inc*

Fado, Inc.

*my*

Name: *Kieran McGill*  
KIERAN MCGILL

Title: PRESIDENT

Date: 4/21/06

UTGR, INC.

Name: *[Signature]*

Title: C.O.O.

Date: 4-21-06