

**FILED**

Dept. of Business and Professional Regulation

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By: Brandon M. Nichols

**STATE  
DEPARTMENT OF BUSINESS**

**DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO**

**IN RE:      PETITION FOR DECLARATORY STATEMENT,  
              on behalf of FRIDAY'S HOSPITALITY  
              WORLDWIDE, INC.,**

**Petitioner.**

**DS 98-01**

**DECLARATORY STATEMENT**

This Declaratory Statement is rendered by the Director of the Division of Alcoholic Beverages and Tobacco, ("DIVISION") pursuant to section 120.565, Florida Statutes. The Petitioner, FRIDAY'S HOSPITALITY WORLDWIDE, INC., ("FRIDAY'S") has filed a Petition for Declaratory Statement, containing a statement of facts, a discussion of relevant Florida law and administrative rules, and an Exhibit A. Petitioner subsequently submitted a Supplement to the Petition with attached exhibits A through D.

**QUESTION PRESENTED**

The Petitioner presents the following specific question to the Division:

Whether a licensed vendor that has contracted to use the registered trademark "Jack Daniel's" from the trademark's owner as a part of the vendor's business name, *Jack Daniel's Grill*, may display its business name on the outside of its licensed premises under § 561.42(10) of the Florida Statutes because "Jack Daniel's" is not a registered brand of

alcohol beverage in the State of Florida and the contract authorizing the use of the trademark does not obligate the vendor to the manufacturer to use, promote, or sell any products or brands of alcohol beverages?

#### **FINDINGS OF FACT**

1. On or about January 7, 1998, FRIDAY'S filed a Petition for Declaratory Statement with the Division. The DIVISION renders its Findings of Fact on the basis of the information contained in the Petition for Declaratory Statement filed herein.

2. The facts as stated in the Petition for Declaratory Statement are as follows:

Jack Daniel Distillery, Lem Motlow, Prop., Inc. ("JDD") has licensed Friday's to use the trademark "Jack Daniel's", which JDD has registered with the U.S. Patent and Trade Mark Office; a copy of JDD's registration is attached hereto as Exhibit "A". Friday's desires to use the trademark "Jack Daniel's" as a part of Friday's business name, *Jack Daniel's Grill*.

The *Jack Daniel's Grill* name will be used by Friday's at an initial location in the United States to test the concept with international customers before taking the concept to European and Asian countries. That initial location will be on or near International Drive in Orlando, Florida.

Friday's licensing agreement for the trademark "Jack Daniel's" is a fixed fee agreement with no obligation by the licensed vendor to order, display, sell, serve, or promote JDD's alcohol beverage brands. JDD is not entitled to any percentage payments from Friday's business income. Moreover, JDD has not obligated the vendor to do anything other than meet certain standards

in the use of the trademark, and comply with all local, state, and federal laws within the State of Florida, which are industry standards when trademarks are licensed.

"Jack Daniel's" is not a brand registered with the Division this license year, nor is there any record that it ever has been a registered brand authorized to be sold in Florida.

JDD has no direct or indirect financial interest in the business of Friday's and has not provided Friday's with any gift, loan of money or property, or rebates. In fact, JDD has sold the right to use a trademark for a fixed price, as it would any product it sells.

*Jack Daniel's Grill* will be the d/b/a name of an initial Friday's restaurant on or near International Drive in Orlando, Florida. That name will be displayed on the outside of the vendor's building, as well as on the realty where the restaurant is situated.

A copy of a Trademark Licensing Agreement was included as an attachment to the petition.

3. On March 6, 1998, FRIDAY'S filed a Supplement to the January 6, 1998, Petition for Declaratory Statement (Supplement), which presented the following supplemental facts to be considered in this Declaratory Statement:

Jack Daniel Distillery, Lem Motlow, Prop., Inc. ("JDD") has licensed Friday's to use the trademark "Jack Daniel's", which JDD has registered with the U.S. Patent and Trademark office. A copy of JDD's registration is attached to hereto as Exhibit "A."

JDD is a manufacturer of beverage alcohol products licensed outside the State of Florida.

JDD is not licensed to manufacture beverage alcohol products in Florida, and does not do so.

"Jack Daniel's" is not a brand registered with the Division this year, nor is there any record that it ever has been a registered brand authorized to be sold in Florida. In fact, "Jack Daniel's" is not a brand at all; it is a trademark used as an element in the names and marketing of many diverse products, such as bar-b-que sauce, clothing, and other consumer products. "Jack Daniel's" is not a brand of alcohol beverages. A sample listing of consumer products that bear or incorporate the registered trade mark "Jack Daniel's" is attached hereto as Exhibit "B".

In addition to being a trademark used used in naming a broad range of non-alcohol consumer goods, the name "Jack Daniel's" also is used in connection with the marketing of various beverage alcohol products. The name "Jack Daniel's" is not a brand registered in Florida. Rather, there are several brands that utilize the trademark "Jack Daniel's" as part of their registered registration numbers and Primary American Sources, is attached hereto as Exhibit "C".

A second amended copy of the proposed Trademark Licensing Agreement was included as Exhibit "D" to the supplemental petition.

#### **CONCLUSIONS OF LAW**

4. The DIVISION has jurisdiction over this matter pursuant to Sections 120.565, 561.02, 561.08 and 561.11, Florida Statutes, and is responsible for the application and enforcement of Chapters 561 and 562, Florida Statutes, specifically sections 561.22 and 561.42, Florida Statutes.

5. The Petitioners are substantially affected by the statutory provisions cited above and have standing to seek this Declaratory Statement.

6. Section 561.08, Florida Statutes, empowers and directs the DIVISION to enforce the provisions of the Beverage Law and perform such acts as may be necessary to carry out the provisions thereof. Accordingly, it is the DIVISION that construes and interprets the alcoholic beverage laws of the State of Florida and makes the determination as to whether they are applicable to a specific set of facts.

7. An agency's determination of the intent of a statutory provision within its power to enforce and interpret as well as agency action based upon this construction, will generally be upheld by a court. Thus, where an agency is acting within the scope of its authority as defined by law, a court will not substitute its judgment for that of an agency, where there is room for a difference of intelligent opinion on the subject. Storrs v. Pensacola & A.R. Co., 11 So. 266 (1892) Wilson v. Pest Control Com., 199 So.2d 277 (4th DCA 1967); Baptist Hospital, Inc. v. State, Department of Health and Rehabilitative Services, 500 So.2d 620 (First DCA 1986); SOS Alford v. School Board, 511 So.2d 438 (1st DCA 1987).

8. Therefore, it is the responsibility and duty of the DIVISION to construe and interpret the provisions of Section 561.22 and Section 561.42, Fla. Stat. and apply said provisions to a stated set of facts in a reasonable manner, that comports with the purpose, intent and spirit of the statutory provisions and which avoids an absurd result.

9. It is well established in Florida jurisprudence that a statute should be interpreted so as to give effect to the clear and unambiguous legislative intent. Zuzkerman v. Alter, 615 So.2d 661 (Fla. 1993). Consequently, the legislative intent is the polestar by which the agency or a court must be guided in interpreting a statutory provision. In re Order on Prosecution of Criminal Appeals by Tenth Judicial Circuit Public Defender, 561 So.2d 1130 (Fla. 1990). Where reasonable differences may arise as to the meaning or application of a statute, the legislative intent must be the polestar of judicial construction. Lowry v. Parole and Probation Com'n, 473 So. 1248, (Fla. 1985).

10. However, of equal importance is the well established principal that a statute should be interpreted so as to avoid arbitrary, absurd and/or unreasonable results. Carawan v. State, 515 So.2d 161 (Fla. 1987); Towerhouse Condominium, Inc. v. Millman, 475 So.2d 674 (Fla. 1985); Fletcher v. Fletcher, 573 So.2d 941

(Fla. 1st DCA 1991).

11. Accordingly, a statute must be interpreted so as to avoid a construction that results in unreasonable, harsh, or absurd consequences. Hamilton v. State, 645, So.2d 555 (Fla. 2nd DCA 1994). Unreasonable or ridiculous interpretations distort the fundamental principals of statutory construction and mandate the use of reasonable interpretations. Drost v. State Department of Environmental Regulation, 559 So.2d 1154 (Fla. 3rd DCA 1989).

12. To determine the legislative intent, a court will consider the act as a whole, i.e., the evil to be corrected, the language of the act, including its title, history of its enactment, and state of the law already in evidence. State, Department of Environmental Regulation v. SCM, Glidco Organics Corp., 606 So.2d 722 (Fla. 1st DCA 1992).

13. Furthermore, an agency's construction of a statute that it administers is entitled to great weight unless the agency's interpretation is clearly erroneous. D.A.B. Constructors, Inc. v. Department of Transportation, 656 So. 940 (Fla. 1st DCA 1995); Orange Park Kennel Club, Inc. v. Department of Business and Professional Regulation, 644 So.2d 574 (Fla. 1st DCA 1994); State Farm Mutual Automobile Insurance Co. v. Kilbreath, 362 So.2d 474 (Fla. 4th DCA 1978). The agency's interpretation need not be the

sole possible interpretation or even the most desirable one; it need only be within the range of permissible interpretations. D.A.B. Constructors, Inc. V. Dept. of Transportation, 656 So.2d 940 (Fla. 1st DCA 1995).

14. The presented facts raise the issue of whether the proposed business arrangement between a vendor and a manufacturer is violative of the Beverage Law, specifically whether the prohibitions and limitations in section 561.22 and sections 561.42(1) and (10), Florida Statutes, would prohibit the proposed enterprise.

15. Section 561.22(1), Fla. Stat., states in pertinent part that a "...a license or registration may not be issued to a manufacturer, distributor or exporter as a vendor, ..." Section 561.22(2)(b), Florida Statutes, further provides as follows:

If any applicant for a vendor's license or renewal thereof is a copartnership such copartnership is within the provisions of subsection (1) if any member of the copartnership is interested or connected, directly or indirectly, with any corporation which is engaged, directly or indirectly, or through any subsidiary or affiliate corporation, including any stock ownership as set forth in subsection (3) in manufacturing, distributing, or exporting alcoholic beverages under license or registration of this state or any state of the United States.



16. Section 561.22(3) further provides as follows:

If any applicant for a vendor's license ... is a corporation, such corporation is within the provisions of subsection (1) if such corporation is affiliated with, directly or indirectly, any other corporation which is engaged in manufacturing, distributing, or exporting alcoholic beverages ... or if such applicant corporation is controlled by or the majority stock therein owned by another corporation, which latter corporation owns or controls in any way the majority stock or controlling interest in any other corporation that is engaged, directly or indirectly, in manufacturing, distributing, or exporting alcoholic beverages under a license or registration in this state or any other state in the United States.

17. Under Section 561.22(3), Fla. Stat., a prohibited connection or affiliation would exist between an applicant for a vendor's license and a manufacturer of alcoholic beverages because of stock ownership, or if applicant is controlled by the manufacturer through stock ownership, or if the applicant is owned by another corporation or entity, which latter corporation or entity owns or controls in any way the majority stock or controlling interest in any other corporation that is engaged, directly or indirectly in manufacturing of alcoholic beverages.

18. Under the facts as stated, Friday's licensing of the trademark "Jack Daniels" does not give JDD the opportunity to control the management or operation of FRIDAY'S retail vendor establishment, to control the decisions of FRIDAY'S regarding the

sale of alcoholic beverages, or in any way to control the decisions of FRIDAY'S as to the alcoholic beverage products it will sell, serve, or promote. Therefore, the connection between FRIDAY'S and JDD does not violate the provisions of Section 561.22, Fla. Stat.

19. Section 561.42(1), Fla. Stat., states in pertinent part as follows:

... No licensed manufacturer or distributor of any of the beverages herein referred to shall have any financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the Beverage Law; nor shall such licensed manufacturer or distributor assist any vendor by any gifts or loans of money or property or property of any description.

20. The overall intent underlying the enactment of section 561.42 (the "tied-house evil" statute) and section 561.22 was to divorce the manufacturing and distributing activities of the liquor business from that of retailers/vendors. Mayhue's Super Liquor Store, Inc. v Meiklejohn, 426 F.2d 142 (5th Cir. 1970). Likewise, the statute was enacted to prevent distributors from having a financial interest in vendor's businesses or from controlling the retail outlets. Central Florida Distributing Co. v Jackson, 324 So.2d 143 (Fla. 1st DCA 1975), Musleh v Fulton Distributing Co. of Fla., 254 So.2d 815 (Fla. 1st DCA 1971).

21. Sections 561.22 and Section 561.42(1) have not been applied by the Florida courts to a factual situation similar to

this case. However, state and federal courts construing Florida's "tied-house evil" provisions have provided guidance as to the intent and application of these statutory provisions.

22. In Pickerill v. Schott, 55 So.2d 716 (Fla. 1951), the Florida Supreme Court stated that "tied house evil" statutes are aimed at preventing the integration of retail and wholesale outlets and to remove the retail dealer of intoxicating liquors from financial or business obligations to the wholesaler, with the exception of ordinary commercial credit for liquors sold. The court traced the history of the tied-house evil provisions and concluded that the purpose of the act was to prevent monopoly or control by manufacturers or distributors of the retail outlets for the sale of intoxicating liquors.

23. In Central Florida Distributing Co. v. Jackson, 324 So.2d 143 (Fla. 1st DCA 1976), the court stated that the purpose of section 561.42 is to prohibit any financial obligation between a distributor and a vendor, thus preventing the control of retail outlets. When again confronted with construing and applying the provisions of Florida's tied-house evil law to a specific factual situation, the First District Court of Appeal in Musleh v. Fulton Distributing Co. of Florida, 254 So.2d 815 (Fla. 1st DCA 1971), determined that the purpose of the tied-house evil law was to

prohibit manufacturers, wholesalers and distributors of alcoholic beverages from controlling retail outlets operated by licensed vendors through the granting, withholding or extension of credit.

24. In State ex rel. Continental Distilling Sales Co. v. Vocelle, 27 So.2d 728 (Fla. 1946), Continental Distilling Corporation and Continental Distilling Sales Co. brought an action against the Director of the Beverage Division to compel the issuance of a license as a wholesale distributor of liquor. Continental Distilling Corporation was a manufacturer of liquors and Continental Distilling Sales Co. was a wholesaler. Both companies were owned by a common parent corporation that acted as a holding company that could directly control the affairs of each subsidiary. The court refused to apply the subject statute, the current section 561.22, to prohibit the licensure of Continental Distilling Sales Co. as a wholesaler. The Court ruled that corporations were legal entities by fiction of law and that there was no evidence that the corporations had been formed for the purpose of evading the statute. As a result, the beverage director was required to issue a wholesale distributor license to Continental Distilling Sales Co., regardless of its affiliation with a manufacturer arising from the manufacturer's and distributor's status as wholly owned subsidiaries of the same

corporation.

25. Other states, construing similar tied-house evil provisions, have likewise concluded that the purpose of the tied-house evil provisions is to prevent a manufacturer from owning and controlling a retail outlet and gaining some advantage or control in the industry, and to likewise prohibit any influence or control by the manufacturer in the management and operation of a distributor. See for example Bohemian Breweries v. Koehler, 332 P.2d 875 (S.Ct.Idaho, 1958); Joseph Schlitz Brewing Co. v. Central Beverage Co., Inc., 359 N.W. 2d 566 (Court of Appeals, Ind. 1977); and Wine and Spirits Merchandisers, Inc. v. Illinois Liquor Control Commission, 432 N.E. 2d. 1013 (Illinois 1982). Influence or control by the distributor in the management and operation of a retailer has also been prohibited. Markstein Distributing Company v. Rice, 135 Cal. RPTR. 255 (1976).

26. The facts presented in the Petition and the Supplement indicate that JDD, a manufacturer, will be remotely affiliated with FRIDAY'S, a retail vendor, by virtue of the trademark license agreement. However, it further appears that FRIDAY'S will independently operate and manage the retail vendor restaurant. FRIDAY'S will make its own independent decisions, and JDD will not be involved in the decisions of FRIDAY'S with respect to the sale

of alcoholic beverages, including those manufactured by JDD.

27. As indicated by the facts presented in the Petition and the proposed trademark license agreement submitted with the Supplement, the trademark licensing arrangement between FRIDAY'S and JDD would create a non-controlling JDD interest in FRIDAY'S alcohol vendor business. The proposed license agreement is arguably more attenuated than the ownership interest in Continental Distilling Sales Co. v. Vocelle. Such a non-controlling interest would not violate either the spirit or the intent of sections 561.22 and 561.42(1), Florida Statutes.

28. The following caveat must be presented. As decided in this Declaratory Statement, there is no inherent Tied House Evil violation presented by a vendor's lease of a manufacturer's trademark, but as is sometimes the case, the devil is often in the details. The terms of the original Trademark License Agreement submitted with the Petition were inconsistent with the type of non-controlling interest represented in body of the Petition. Some of the terms in the original license agreement strongly imparted the impression that JDD could control the management and operation of FRIDAY'S alcohol licensed business. For example, in section 6.1.1 of the original agreement Fridays was required to obtain prior written approval of JDD for all aspects of the restaurant and its

operation, and in section 7.1 Fridays was required to meet quality standards in the operation of the restaurant as adopted by JDD and subject to JDD's modification from time to time. Section 6.1.1 was amended to reflect that any control of the business would be related to the direct or indirect use of the trademarks. Section 7.1 was also amended to reflect that the quality standards were related to the use of the trademarks. Similiar changes were made throughout the agreement.

29. In an arrangement of the type proposed, care must be taken to distinguish contract terms that protect the trademark and the contract terms that affect the management and operation of the vendor's licensed business. The latter are impermissible. With the understanding that these two issues may be by necessity and practice intermingled or closely related, the manufacturer wishing to license its trademark cannot enter into same agreement with an alcohol licensed vendor as it might with any other person or entity. Because of the constraints placed on the vendor and the manufacturer by sections 561.22 and 561.42, the manufacturer is required to surrender the level of control over the trademark's use, as it affects the management and operation of the business, that it would have otherwise been permitted to exert over any other person or entity not licensed under the Beverage Law.

30. Again, care must be taken in practice to prevent any influence by the manufacturer in the management and operation of the vendor's business, even if the manufacturer's actions are made in the name of trademark protection. The vendor must also avoid any practice that would indicate an obligation to act on behalf of the manufacturer. For example, FRIDAY'S should avoid giving any preference to JDD's products or excluding non-JDD products in the operation of its retail business. Failure to do so would be indicative of a violation of section 561.42, Florida Statutes.

31. JDD's continuing ownership and control of its trademarks does not constitute an impermissible ownership interest under Florida Law. JDD's continuing ownership and control of its trademarks is analogous to the manufacturer's permissible interest in State ex rel. Continental Distilling Co. v. Vocelle, 27 So.2d 728 (Fla. 1946), where the manufacturer parent corporation's ownership and control of its distributor subsidiary corporation did not constitute a violation of Tied House Evil.

32. Having concluded that the proposed trademark license agreement, as amended, does not violate sections 561.22 and 561.42(1), Florida Statutes, subject to the caveats referenced herein, we then must consider whether the proposed arrangement would violate section 561.42(10), Florida Statutes, which provides:



No manufacturer or distributor of the beverages referred to herein shall directly or indirectly give, lend, rent, sell, or in any other manner furnish to a vendor any outside sign, printed, painted, electric, or otherwise; nor shall any vendor display any sign advertising any brand of alcoholic beverages on the outside of his licensed premises, on any lot of ground of which the licensed premises are situate, or on any building of which the licensed premises are a part.

33. Hunter v. McKnight, 86 So.2d 434 (Fla. 1956), is the only case to have interpreted section 561.42(10), Florida Statutes. In Hunter, the vendor leased its roof to an outdoor advertising company. The lease agreement between the vendor and the outside advertising company was a standard roof lease, which contained no restrictions against use of the roof to advertise alcoholic beverages. The lease was entered into in "good faith" with the vendor not anticipating that an alcoholic beverage brand would be advertised. The outdoor advertizing company, through an advertising agency, then contracted for the advertisement of a brand of alcoholic beverage on the vendor's roof. The sign was standard outdoor advertising material. It did not refer to the retail vendor or mention that the product was sold on the premises.

34. In Hunter, the Court held:

[W]hen viewed in the light of its history and the purpose sought to be attained, it is clear

that Subsection (10) of Section 561.42 does not prohibit, per se, the location of a sign advertising an alcoholic beverage on the outside of a vendor's premises. The purpose of the Act is to prevent the furnishing of a sign by the wholesaler to the vendor in such a manner as to create a financial or business obligation from the vendor to the wholesaler. The very terms of the Act are subject to no other interpretation. The statute prohibits the manufacturer or distributor from furnishing to a vendor any outside sign, and prohibits the vendor from displaying such a sign. And in the absence of facts showing that the sign has been furnished, either directly or indirectly, by the manufacturer to the vendor, we do not think the statute has been violated.

35. In Hunter, the Supreme Court's interpretation of section 561.42(10) focused on whether the affiliation resulted in the integration of the manufacturer into the business of the retailer and whether that affiliation created any financial business obligations between the manufacturer and the retailer. Integration by the manufacturer into the business of the retailer and the creation of any financial business obligation between the manufacturer and the retailer were the "evils" designed to be prevented by the Act. Consequently, if the evil sought to be corrected by the statutory prohibition did not exist, the statute should not be construed to prohibit the affiliation.

36. In Hunter, the Court raised the issue of a "point of

purchase" or "owner identification sign." This is the issue presented by the Petition. The Court refused to address the issue of whether the furnishing and displaying of such a sign would amount to an indirect furnishing and displaying of the sign.

37. The facts in Hunter are distinguishable from the facts presented in the Petition. Under the facts presented in the Petition, JDD directly licenses FRIDAY'S for use of its trademark as both an outside sign and as the vendor's identification, i.e., the name of the business. To hold that such a trademark licensing arrangement violates the Act, it is necessary to conclude that such a licensing agreement would constitute the direct or indirect furnishing of a sign by JDD to FRIDAY'S. The leasing of JDD's trademark to FRIDAY'S is far too indirect a furnishing of a sign to risk the integration of retail and wholesale outlets, particularly in light of FRIDAY'S independent management and operation of the retail establishment. To conclude otherwise would stretch the Court's reasoning regarding the legislative intent.

38. Nor does the proposed arrangement appear to be done in such a manner as to create a financial or business obligation from the vendor to the manufacturer or distributor. The facts presented in the Petition, establish that FRIDAY'S will independently manage and control the retail establishment and that it is under no

obligation to promote or give preference to JDD's products or to exclude any non-JDD products in the operation of its retail business.

39. The final issue presented is whether the display of JDD's trademark constitutes the advertising of a brand of alcoholic beverage on the outside of the licensed premises contrary to the provisions of section 561.42(10), Florida Statutes. The term "brand" is not defined in the Beverage Law. In Jim Taylor Corp. v. Guinness Import Company, 897 F. Supp. 556 (M.D. Fla. 1995), the issue of what constitutes a brand was considered. Guinness Import Company (GIC), a manufacturer, had entered into separate distribution agreement with the plaintiff distributors for distribution of brands titled "Moosehead" and "Moosehead Light" beers. GIC introduced a new brand of beer, "Moosehead Canadian Ice Beer," into Florida and decided not to first offer the distribution rights to the plaintiff distributors. The plaintiff's argued that the new brand was an extension of the brands covered by the preexisting distribution agreements. The court considered whether "Moosehead Canadian Ice Beer" was a brand separate and distinct from the "Moosehead" and "Moosehead Light" beers. In concluding that "Moosehead Canadian Ice Beer" was a separate brand, the court relied on the fact that the parties referred to each of the brands

as separate products and that the State of Florida issued each product a separate brand number.

40. The term "brand" is defined as:

A word, mark, symbol, design, term, or combination of these, both visual and oral, used for the purpose of some identification of some product or service.

Black's Law Dictionary (6th ed. 1990).

41. A "brand" identifies a product or service and distinguishes it from other products or services. The purpose of a trademark is to identify and designate the origin of the product or service. Fotomat Corporation v. Cochran, 437 F.Supp. 1231, 1241 (D.Kan. 1977).

42. The Beverage Law provides for the registration of each brand or label. See section 563.045, Florida Statutes. The use of the term "brand" in section 563.045 is consistent with the definition of the term as an individual product identifier.

43. The term "brand" is used in other sections of the Florida Statutes. As defined in section 487.021(13), a brand distinguishes one pesticide product from another, and as defined in section 465.025(1), a brand name is the registered trademark name given to a drug product. The interpretation given to the terms "brand" and trademark in this Declaratory Statement is also consistent with the

use of the term in the Florida Statutes. See also 580.031 (distinguishing commercial feed), and 495.011 (trademark used to distinguish goods made by one person from goods made by another), Florida Statutes.

44. Under the facts presented in the Petition and Supplement, the trademark "Jack Daniel's" is not a brand of alcoholic beverage registered in Florida, nor does JDD manufacture a specific alcohol beverage product titled simply "Jack Daniel's". The trademark "Jack Daniel's" may be an element in several distinct brands of alcoholic beverage, e.g., "Jack Daniel's 1904 Gold Medal Tennessee Whiskey" and "Jack Daniel's Cactus Kicker", but it is not in and of itself a brand of alcoholic beverage that distinguishes a particular product from another.

45. The prohibition in section 561.42(10), Florida Statutes, against the outside advertising of brands of alcoholic beverage would not prohibit FRIDAY'S from displaying an outside sign titled "Jack Daniel's Grill" because neither "Jack Daniel's Grill" or "Jack Daniel's" are brands of alcoholic beverage. "Jack Daniel's" is a trademark that identifies JDD as the origin of the product that bears the trademark and is therefore not subject to the advertising restriction in section 561.42(10), Florida Statutes. (See Exhibit A to Supplement to Petition for Declaratory

Statement.)

46. In Hunter, the Court found persuasive the fact that the arrangement "was entered into 'in good faith' and that there [was] no intimation in the record that the lease was a ruse to evade the prohibition of section 561.42(10)." Hunter, 86 So.2d 434 at 436 (Fla. 1956). Trademarks may not be used as a ruse to evade the prohibition in section 561.42. This Declaratory Statement is not intended to permit or to authorize a vendor to use a manufacturer's trademark, name, symbol, character, design, drawing or device or any combination thereof to advertise on the outside of its licensed premises a manufacturer's brand or brands.

47. The conclusions made in this Declaratory Statement are compelled by the case law, from the Florida courts, Federal courts, and the courts of other states, interpreting and applying sections 561.42, 561.22, and other Tied House Evil Laws. Nothing in this Declaratory Statement or the law upon which it is based is intended to effect or relate to the legality of any other interest, either direct or indirect, which may be prohibited under the Beverage Law, and is further limited to the facts presented in the Petition and Supplement.

#### **CONCLUSION**

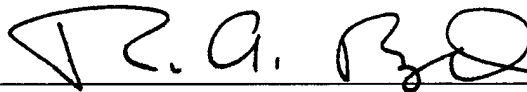
Based upon the specific facts presented by Petitioners, and

the legal conclusions set forth in full herein,

**THE DIVISION HEREBY CONCLUDES:**

- A. That sections 561.22 and 561.42, Florida Statutes, do not prohibit FRIDAY'S to contract with JDD for FRIDAY'S use of JDD's trademark as the name of the business and as a sign located on the outside of the licensed premises; and
- B. That this conclusion is based on the facts described in the Petitioners' Petition for Declaratory Statement, including the Supplement, and the particular factual assertions described therein. Accordingly, this conclusion has no application in the event that the factual circumstances and/or relationships among the entities described herein change.

DATED this 24 day of March, 1998.



Richard A. Boyd, Director  
Division of Alcoholic Beverages  
and Tobacco  
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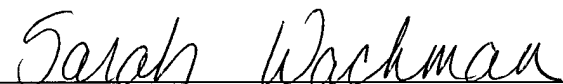


**RIGHT TO APPEAL**

THIS DECLARATORY STATEMENT CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(d), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH LOIS WILLIAMS, CLERK FOR THE DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO, WITHIN 30 DAYS OF THE RENDITION OF THIS DECLARATORY STATEMENT.

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by U.S. Mail to Richard M. Blau, Esquire, Holland & Knight, LLP, 400 N. Ashley Drive, #2300, P.O. Box 1288, Tampa, Florida 33601-1288; and John J. Harris, Governmental Consultant, Holland & Knight, LLP, 15 South Calhoun Street, Suite 600, Tallahassee, Florida 32301, this 24<sup>th</sup> day of March, 1998.

  
Sarah Wachman, Agency Clerk

Copies also furnished to:

Richard A. Boyd, Director, DABT

Miguel Oxamendi, Assistant General Counsel

Law Offices

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January 7, 1998

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Mr. Richard A. Boyd, Director  
Florida Division of Alcoholic Beverages & Tobacco  
1940 North Monroe Street  
Tallahassee, FL 32399-1020

Re: Friday's Hospitality Worldwide, Inc. Petition  
for Declaratory Statement

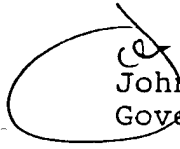
Dear Mr. Boyd:

The above referenced document was hand delivered to the Agency Clerk's Office on January 7, 1998.

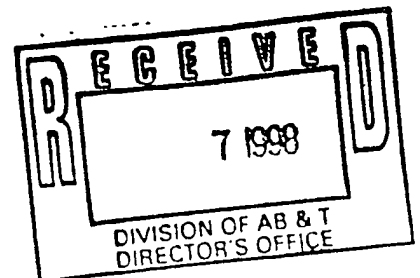
If you have any questions, please do not hesitate to contact me at the number above.

Very truly yours,

HOLLAND & KNIGHT LLP

  
John J. Harris  
Governmental Consultant

54132 1  
TAL-122971



Int. Cls.: 6, 8, 9, 14, 16, 18, 20, 21, 24, 26, 27 and 34

Prior U.S. Cls.: 2, 3, 8, 9, 13, 21, 22, 23, 26, 27, 29, 32, 33, 40, 42 and 50  
Reg. No. 1,290,702

United States Patent and Trademark Office  
Registered Aug. 21, 1984

**TRADEMARK**  
Principal Register

**JACK DANIEL'S**

REGISTERED FOR A TERM OF 20 YEARS FROM Aug. 21, 1984

**COMB. AFF. SEC. 8 & 15**

Jack Daniel Distillery, Lem Motlow, Prop., Inc.  
(Kentucky corporation)  
Lynchburg, Tenn. 37352, by change of name from  
Jack Daniel Distillery, Lem Motlow, Prop., Inc.  
(Tennessee corporation), d.b.a. Lynchburg  
Hardware & General Store  
Lynchburg, Tenn.

For: KEYRINGS AND METAL BOXES, in  
CLASS 6 (U.S. Cls. 2 and 13).

First use 1975; in commerce 1975.

For: POCKET KNIVES, in CLASS 8 (U.S. Cl.  
23).

First use 1980; in commerce 1980.

For: THERMOMETERS, in CLASS 9 (U.S. Cl.  
26).

First use 1975; in commerce 1975.

For: ELECTRIC LAMPS, in CLASS 11 (U.S. Cl.  
21).

First use 1980; in commerce 1980.

For: CLOCKS, AND WATCHES, in CLASS 14  
(U.S. Cl. 27).

First use 1971; in commerce 1971.

For: PLAYING CARDS, in CLASS 16 (U.S. Cl.  
22).

First use 1973; in commerce 1973.

For: SUIT BAGS FOR TRAVEL AND DUFF-  
EL BAGS, in CLASS 18 (U.S. Cl. 3).

First use 1981; in commerce 1981.

For: MIRRORS AND WOODEN CHESTS, in  
CLASS 20 (U.S. Cl. 32).

First use 1976; in commerce 1976.

For: SERVING TRAYS, DRINKING  
GLASSES, JUGS, DECANTERS, FLASKS, CUPS,  
SPONGES, PITCHERS, AND COASTERS, in  
CLASS 21 (U.S. Cls. 2, 29 and 33).

First use 1971; in commerce 1971.

For: PENNANTS AND TOWELS, in CLASS 24  
(U.S. Cls. 42 and 50).

First use 1975; in commerce 1975.

For: BELT BUCKLES, in CLASS 26 (U.S. Cl.  
40).

First use 1975; in commerce 1975.

For: RUGS, in CLASS 27 (U.S. Cl. 42).

First use 1976; in commerce 1976.

For: POKER CHIPS, GOLF BALLS, AND  
GOLF BALL MARKERS, in CLASS 28 (U.S. Cl.  
22).

First use 1976; in commerce 1976.

For: MATCHSAFES NOT MADE OF PRE-  
CIOUS METALS, MATCHES, AND LIGHTERS,  
in CLASS 34 (U.S. Cls. 8 and 9).

First use 1975; in commerce 1975.

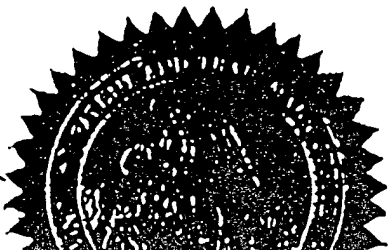
Owner of U.S. Reg. Nos. 298,102, 323,914, 582,789  
and others.

The name "Jack Daniel's" is not the name of any  
particular living individual.

Ser. No. 349,751, filed Feb. 10, 1982.

ROBERT C. CLARK, JR., Examining Attorney

CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION  
WHICH IS IN FULL FORCE AND EFFECT WITH NOTATION  
OF ALL STATUTORY ACTIONS TAKEN THEREON, AS DIS-  
CLOSED BY THE RECORDS OF THE UNITED STATES PATENT  
AND TRADEMARK OFFICE. SAID RECORDS SHOW TITLE  
TO BE IN. Registrant



Attest

MAR 12 1993

FEB-11-98 WED 04:48 PM BF GAL DEPARTMENT

FAX NO. 56 74 7188

P. 06/08

Int. Cl.: 34

Prior U.S. Cls.: 2, 8, 9 and 17

Reg. No. 2,026,933

United States Patent and Trademark Office

Registered Dec. 31, 1996

TRADEMARK  
PRINCIPAL REGISTER

JACK DANIEL'S

JACK DANIEL DISTILLERY, LEM MOTLOW,  
PROP., INC. (KENTUCKY CORPORATION)  
LYNCHBURG, TN 37572

FOR: CIGARETTE LIGHTERS NOT OF PRE-  
CIOUS METAL, IN CLASS 34 (U.S. CLS. 2, 8, 9  
AND 17).  
FIRST USE 12-31-1981; IN COMMERCE  
12-31-1981.

OWNER OF U.S. REG. NOS. 1,290,702, 1,329,704  
AND OTHERS.  
THE NAME "JACK DANIEL'S" DOES NOT  
IDENTIFY ANY PARTICULAR LIVING INDIVIDUAL

SER. NO. 75-035,161, FILED 12-21-1995.

DONNA MIRMAN, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,878,804

Registered Feb. 14, 1995

TRADEMARK  
PRINCIPAL REGISTER

JACK DANIEL'S

JACK DANIEL DISTILLERY, LEM MOTLOW,  
PROP., INC. (KENTUCKY CORPORATION)  
LYNCHBURG, TN 37352

FOR: MUSTARD, COFFEE, CAKES, AND  
CANDY, IN CLASS 30 (U.S. CL. 46).

FIRST USE 10-0-1990; IN COMMERCE  
10-0-1990.

OWNER OF U.S. REG. NOS. 441,002, 1,738,638  
AND OTHERS.  
THE NAME "JACK DANIEL'S" DOES NOT  
REFER TO A PARTICULAR LIVING INDIVID-  
UAL.

SER. NO. 74-509,373, FILED 4-5-1994.

TINA POMPEY, EXAMINING ATTORNEY

FEB-11-98 WED 04:49 PM L. LEGAL DEPARTMENT

FAX NO. 502 774 7188

P. 08/08

Int. Cl.: 28

Prior U.S. Cls.: 22, 23, 38 and 50

United States Patent and Trademark Office

Reg. No. 2,030,042

Registered Jan. 14, 1997

TRADEMARK  
PRINCIPAL REGISTER

JACK DANIEL'S

JACK DANIEL DISTILLERY, LEM MOTLOW,  
PROP., INC. (KENTUCKY CORPORATION)  
LYNCHBURG, TN 37572

FOR: POOL CUES, DARTS, AND DART  
FLIGHTS, IN CLASS 28 (U.S. CLS. 22, 23, 38  
AND 50).

FIRST USE 10-1-1994; IN COMMERCE  
10-1-1994.

OWNER OF U.S. REG. NOS. 1,290,702, 1,329,704  
AND OTHERS.

SER. NO. 75-035,228, FILED 12-21-1995.

DONNA MIRMAN, EXAMINING ATTORNEY

## JACK DANIEL'S U.S. Trademark Filings

<u>Mark</u>	<u>Class</u>	<u>Goods</u>	<u>Status</u>
JACK DANIEL'S	6, 8, 9, 11, 14, 16, 18, 20, 21, 24, 26, 27, 28, 29, 34	Keyrings and metal boxes; pocket knives; thermometers; electric lamps; clocks and watches; playing cards; suit bags for travel and duffel bags; mirrors and wooden chests; serving trays, drinking glasses, jugs, decanters, flasks, cups, sponges, pitchers and coasters; pennants and towels; belt buckles; rugs; poker chips, golf balls, and golf ball markers; matchsafes not made of precious metals, matches, and lighters	Registered
JACK DANIEL'S	25	Caps, jackets, aprons, sweaters, belts, shirts, T-shirts, overalls and jeans	Registered
JACK DANIEL'S (Stylized)	25	Men's and boy's shoes made of leather, fabric, rubber and combinations of said materials	Registered
JACK DANIEL'S	28	Pool cues, darts, and dart flights	Registered
JACK DANIEL'S	30	Mustard, coffee, cakes and candy	Registered
JACK DANIEL'S	32	Spring water	Registered
JACK DANIEL'S	34	Cigarette lighters	Registered

Friday December 19, 1997

8:50 AM

Page 1

Number	Brand Name	Primary American Source	Piscal Year of Approval
9,939	Gentleman Jack Rare Tennessee Whiskey	Jack Daniel Distillery	97-98
35,586	Jack Daniels 1904 Gold Medal Tennessee Whiskey	Jack Daniel Distillery	97-98
34,279	Jack Daniels Country Cocktails Cactus Kicker	Jack Daniel Distillery	97-98
20,827	Jack Daniels Country Cocktails Downhome Punch	Jack Daniel Distillery	97-98
20,828	Jack Daniels Country Cocktails Lynchburg Lemonade	Jack Daniel Distillery	97-98
23,552	Jack Daniels Country Cocktails Mountain Sipper	Jack Daniel Distillery	97-98
20,826	Jack Daniels Country Cocktails Tennessee Tea	Jack Daniel Distillery	97-98
4,000	Jack Daniels No 7 Green Label	Jack Daniel Distillery	97-98
38,305	Jack Daniels Single Barrel Tennessee Whiskey	Jack Daniel Distillery	97-98
4,002	Korbel Natural	Jack Daniel Distillery	97-98
4,006	Korbel Sec	Jack Daniel Distillery	97-98



Friday December 19, 1997

8:58 AM

Page

1

## 1 Number

1 Number	Brand Name
35,586	Jack Daniels 1904 Gold Medal Tennessee Whiskey
41,602	Jack Daniels 1905 Gold Medal Tennessee Whiskey
26,866	Jack Daniels Country Cocktails Blackberry Jack
34,279	Jack Daniels Country Cocktails Cactus Kicker
20,827	Jack Daniels Country Cocktails Downbone Punch
38,458	Jack Daniels Country Cocktails Hurricane Punch
20,828	Jack Daniels Country Cocktails Lynchburg Lemonade
23,552	Jack Daniels Country Cocktails Mountain Sipper
43,396	Jack Daniels Country Cocktails Red Eyed Jack
20,826	Jack Daniels Country Cocktails Tennessee Tea
31,519	Jack Daniels Country Cocktails Watermelon Spike
4,000	Jack Daniels No 7 Green Label
4,659	Jack Daniels Old Time Old No 7 Tennessee Sour Mash Whiskey
38,305	Jack Daniels Single Barrel Tennessee Whiskey

Primary American Source	Piscal Year of Approval
Jack Daniel Distillery	97-98
Brown Forman Beverage Company	97-98
Jack Daniel Cocktail Co	97-98
Jack Daniel Distillery	97-98
Jack Daniel Distillery	97-98
Jack Daniel Cocktail Co	97-98
Jack Daniel Distillery	97-98
Jack Daniel Distillery	97-98
Brown Forman Beverage Company	97-98
Jack Daniel Distillery	97-98
Jack Daniel Cocktail Co	97-98
Jack Daniel Distillery	97-98
Brown Forman Beverage Company	96-97
Jack Daniel Distillery	97-98

STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

IN RE: Supplement to 1/6/98 Petition for Declaratory Statement  
on behalf of FRIDAY'S HOSPITALITY WORLDWIDE, INC. a New  
York corporation.

Petitioner.

DS 98-001

SUPPLEMENT TO 1/6/98  
PETITION FOR DECLARATORY STATEMENT

Pursuant to § 120.565 of the Florida Statutes, FRIDAY'S HOSPITALITY WORLDWIDE, INC., ("Friday's") supplements its petition dated January 6, 1998 to the DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO of the Florida Department of Business & Professional Regulation (the "Division") for the rendition of a declaratory statement as to the applicability of § 561.42 (10) of the Florida Statutes. The supplemental information submitted by the Petitioner is as follows:

1. Jack Daniel Distillery, Lem Motlow, Prop., Inc. ("JDD") has licensed Friday's to use the trademark "Jack Daniel's", which JDD has registered with the U.S. Patent and Trademark office. A copy of JDD's registration is attached hereto as Exhibit "A".

2. JDD is a manufacturer of beverage alcohol products licensed outside the State of Florida.

3. JDD is not licensed to manufacturer beverage alcohol products in Florida, and does not do so.

4. "Jack Daniel's" is not a brand registered with the Division this license year, nor is there any record that it ever has been a registered brand authorized to be sold in Florida. In fact, "Jack Daniel's" is not a brand at all; it is a trademark used as an element in the names and marketing of many diverse products, such as barbeque sauce, clothing, and other consumer products. "Jack Daniel's" is not a brand of alcohol beverages. A sample listing of consumer products that bear or incorporate the registered trademark "Jack Daniel's" is attached hereto as Exhibit "B".

**FILED**

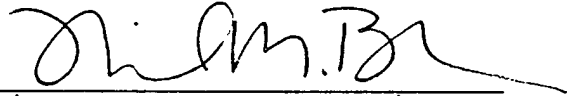
Department of Business and Professional Regulation  
DEPUTY CLERK

CLERK *Brandon M. Nichols*  
DATE 3-6-98

5. In addition to being a trademark used in naming a broad range of non-alcohol consumer goods, the name "Jack Daniel's" also is used in connection with the marketing of various beverage alcohol products. The name "Jack Daniel's" is not a brand registered in Florida. Rather, there are several brands that utilize the trademark "Jack Daniel's" as part of their registered brand names. A listing of these brands, their Florida respective registration numbers and Primary American Sources, is attached hereto as Exhibit "C".

The Petitioner requests that the Division consider this supplemental information and issue a declaratory statement confirming the propriety of Friday's use of the name *Jack Daniel's Grill* on an outside sign for a retail vendor in Orlando. For the Division's consideration in connection with this request, a copy of JDD's Licensing Agreement with Friday's is attached hereto as Exhibit "D".

Respectfully submitted,



Richard M. Blau, Esquire  
Florida Bar No. 347167  
HOLLAND & KNIGHT LLP  
400 N. Ashley Drive, #2300  
P.O. Box 1288  
Tampa, Florida 33601-1288

Dated: March 6, 1998

Attorneys for Petitioner

54132-2  
TPA3-507704

**JACK DANIEL'S**  
**TRADEMARK LICENSE AGREEMENT**  
(RESTAURANT SERVICES)

This **TRADEMARK LICENSE AGREEMENT** ("Agreement") is entered into and effective as of \_\_\_\_\_, 1997 (the "Effective Date"), by and between Jack Daniel Distillery, Lem Motlow, Prop., Inc., a Kentucky corporation ("JDD"); and Friday's Hospitality Worldwide, a New York corporation ("Licensee"), and is made with reference to the following facts

A. JDD is the owner of the world-famous trademark JACK DANIEL'S and certain related trademarks, service marks, trade names, trade dress, copyrights, designs, characters, and logos listed on Exhibit A, attached hereto (the "Trademarks");

B. JDD desires to utilize its substantial goodwill to develop opportunities in the Territory through the licensing of the Trademarks for the operation of an up-scale, steak-house style restaurant (the "Restaurant") together with related advertising and promotional activities (any or all of such steps are referred to herein as the "Operation" of the Restaurant)(collectively, the "Licensed Services")(the phrase "Marketing of the Licensed Services" may be substituted for the phrase "Operation of the Restaurant" where the context refers more to the advertising and promotion of the restaurant services);

C. Licensee desires to use the Trademarks on or in connection with the Licensed Services at the location specifically identified on Exhibit C-1 attached hereto (the "Location"). All activities under this Agreement shall be limited to the territory identified on Exhibit C-2, attached hereto (the Territory); and

D. Because of the need to protect, promote and enhance the goodwill, image and reputation of the Trademarks, JDD is willing to grant Licensee such rights only in accordance with the terms and conditions contained in this Agreement.

**THEREFORE**, in consideration of the promises and mutual covenants contained in this Agreement, the parties agree as follows:

1. Term. Except as otherwise provided herein, this Agreement shall commence as of the Effective Date and shall continue in effect up to and including the last day of \_\_\_\_\_, \_\_\_\_ (the "Term").

2. Grant of Rights.

2.1. Grant of License. Except as otherwise provided in this Agreement, and as limited below, JDD hereby grants to Licensee a non-exclusive, nontransferable, non-assignable right and license to use the Trademarks solely in connection with the Operation of the Restaurant at the Location, with Marketing activities limited solely to the Territory. The name of the restaurant shall be "JACK DANIEL'S GRILL" or such other name as the parties may mutually agree. Licensee shall at all times fulfill each of the obligations set forth in this Agreement. The rights granted in this Agreement are sometimes referred to herein as the "License "

2.2. Sublicensing Licensee shall have no right to sublicense any of its rights hereunder.

2.3. Limitations on Grant. The License is limited by the following:

2.3.1. The License shall not be deemed to restrict or prohibit in any way JDD's right to use its Trademarks for its own marketing, advertising and promotional purposes which may include the use of JDD's trademarks by JDD, its affiliates, agents, distributors, or customers in the Territory for products and services similar or identical to the Licensed Services.

2.3.2. No license as to any products, other than with respect to the Licensed Services and only in the Territory, is being granted under this Agreement, and JDD reserves for its use, as it may determine, all rights of any kind, including, without limitation, the right to use the Trademarks in connection with 1) promotional and licensed merchandise; 2) Marketing of any of food products, sauces or glazes used in connection with the Licensed Services; and 3) any form of premium, promotion or give-away.

2.4. Modifications of the Trademarks. Licensee acknowledges that, from time to time and without notice to Licensee, it may be necessary or desirable for JDD to modify certain elements of the Trademarks, to add elements to the Trademarks, or to discontinue use of some or all of the elements. Accordingly, JDD does not represent or warrant that the Trademarks or any of their elements will be maintained or used in any particular fashion. At JDD's option, any such new elements or modifications to existing elements occurring after the Effective Date may be included in the Trademarks.

3. Compensation. In consideration of the rights granted herein, Licensee shall pay to JDD a fixed annual license fee of \$\_\_\_\_,\_\_\_\_.00 (the "License Fee"). The License Fee shall be payable in four equal installments and each payment shall be due by the fifteenth day of July, October, January and April. The first payment shall not be due until the date the Operation of the Restaurant commences.

4. Reports, Statements, Records and Inspection

4.1. Audit. JDD shall be entitled, at its sole expense, to inspect and/or audit Licensee's books and records and all other documents and materials in or under Licensee's possession or control, relating to the performance of this Agreement ("Records"). JDD may make such audit for the purposes of any matter arising under this Agreement and may do so no more than once in any calendar year. JDD shall give written notice to Licensee at least five business days before the date the audit is to begin. The audit shall be conducted by JDD or its designee in such a manner so as not to unreasonably disrupt Licensee's business operations and shall be completed promptly. The audit shall be conducted during Licensee's usual business hours and at the place or places where the Records are kept. JDD may make, at the time of the audit, or any later time upon request, copies of the Records at its expense.

5. Exploitation by Licensee.

5.1. Best Efforts. Licensee shall use its best efforts to open the Restaurant and to actively, aggressively, and effectively Market the Licensed Services in the Territory during the Term. Licensee shall bear all costs in connection with such activities, including but not limited to market research, advertising, product development, and any costs incurred relating to all menus, advertising and promotional materials used in connection with the Operation and which related directly or indirectly to the Trademarks (collectively, "Collateral Materials"). Further, Licensee agrees that it will use its best efforts to make and maintain adequate arrangements for the Operation of the Restaurant in sufficient quantity to meet consumer demand. In order to protect Licensor's rights in the Trademarks, Licensee shall meet the Quality Standards, as defined below, and shall do so in a manner which is consistent with JDD's then current marketing practices in the Territory.

5.2. Start-up Commitment. Notwithstanding the generality of the foregoing, Licensee further agrees that the Restaurant shall be open and the Restaurant shall be in full Operation Licensed and open to the public within 18 months from the Effective Date.

5.3. Commitment to Continue. In the event the Restaurant does not remain open and in full Operation for a continuous period of 90 days, JDD shall have the right, upon 30 day's written notice to Licensee, to terminate this Agreement.

5.4. Legal Clearance. It shall be Licensee's sole obligation to ensure that the Operation of the Restaurant complies with all applicable laws, rules and regulations in the Territory.

5.5. Consumer Inquiries. Licensee shall, at its sole cost, promptly notify JDD of any consumer inquiries, complaints and/or satisfaction issues with respect to the Operation of the Restaurant ("Consumer Inquiries") and Licensee shall promptly handle all such Consumer Inquiries. JDD shall promptly forward to Licensee for handling any and all such Consumer Inquiries. Upon request by JDD, Licensee shall advise JDD in writing of the manner in which it proposes to handle and/or handled any particular Consumer Inquiry.

5.6. Access to Facilities. To assure that the provisions of this Agreement are being observed, Licensee agrees that it shall allow JDD, or its designee, to enter the Restaurant premises, the premises of any supplier and/or the premises where any of the Licensed Services, ingredients and Collateral Materials are being manufactured, produced, shipped, stored, or handled, during regular business hours and upon not less than 24 hours' notice; provided, however, that in the absence of any specific problem, such access shall be limited to two times in any calendar year in the same store

location. With respect to contract suppliers or other third parties, upon request from JDD, Licensee shall use its best efforts to assist JDD in gaining access to such premises, or if such access is denied, Licensee shall, upon JDD's request, shall on JDD's behalf enter such premises and perform such reasonable audits, inquiries and investigations as JDD may require.

## 6. Approvals.

6.1. Approvals Required. Licensee shall adhere to the following provisions in connection with approvals which are required hereunder:

6.1.1. Before commencing any aspect of the development and Operation of the Restaurant, Licensee shall first obtain JDD's prior written approval of all uses of the Trademarks, or any aspects of the Restaurant and its Operations which are related directly or indirectly to the Trademarks. JDD shall not unreasonably withhold or delay its approval.

A. Notwithstanding the generality of the foregoing subsection, JDD acknowledges that its approval rights shall not extend to the selection, use and sale of alcoholic beverages, including Jack Daniel's Tennessee whiskey, by Licensee at the Restaurant (as part of the bar operations or in recipes for food items), or as to specific decisions relating to the purchasing sources of food stocks and fixtures, those decisions being reserved for Licensee's reasonable discretion, being otherwise consistent with this Agreement.

6.1.2. Licensee shall not Market any of the Licensed Services or distribute any Collateral Materials without first submitting to JDD and obtaining JDD's prior written approval of each such items' layout, wording, graphics, and all other elements and characteristics. JDD shall not unreasonably withhold or delay its approval.

6.1.3. For purposes of clarity, Licensee acknowledges that it shall be a material breach of this Agreement if the foregoing approval provisions are not timely followed.

6.2. Effect of Non-approval. If approvals are required under this Agreement, if JDD fails to approve in writing any of the submissions furnished it by Licensee within ten business days from the date of submission, such failure shall be deemed a disapproval thereof. Notwithstanding the foregoing, in the event JDD fails to accept or reject ("Respond") within said ten business day period, and Licensee notifies JDD, in writing, as provided for herein, of JDD's failure to Respond, and JDD again fails to Respond within three business days after receipt of Licensee's notice, then the failure of JDD to Respond shall be considered an approval of the submission.

6.3. Changes after Initial Approval. After the necessary approvals have been secured, Licensee shall not depart therefrom in any material respect without JDD's prior written permission. Licensee shall furnish to JDD, annually or more frequently as JDD may reasonably request, samples of the Licensed Services (and each variation of them) together with any related Collateral Materials.

## 7. Quality Standard.

7.1. Standard of Quality. In order to protect, promote, and enhance the image, goodwill, and reputation of the Trademarks, Licensee shall meet or exceed the following standards (collectively, the "Quality Standard"):

7.1.1. It must conform to quality standards approved by JDD, who reserves the right to modify such quality standards from time to time by giving written notice to Licensee;

7.1.2. It must comply fully with all applicable laws and regulations in every part of the Territory, and the intellectual property notice requirements referred to in Paragraph 0;

7.1.3. It must comply fully with the Code of Good Practice of the Distilled Spirits Council of the United States (the "DISCUS Code"), a copy of which is attached as Exhibit 7.1.3; and

7.1.4. Its Marketing of the Licensed Services must be of such style, appearance, and quality as to be adequate and well suited for exploitation in accordance with the purposes of this Agreement and it will in no manner reflect adversely upon the image, goodwill, and reputation of JDD or the Trademarks.

7.2. Determinations. Determinations as to whether the Licensed Services meet the Quality Standard shall be made solely by JDD in the exercise of its reasonable discretion.

7.3. Failure to Meet Quality Standards. If the Quality Standard is not met or if the Quality Standard is not maintained throughout the period of Marketing of any item of the Licensed Services, in each and every part of the Territory, then, upon receipt of written notice from JDD, Licensee shall have 10 days in which to cure the deficiency, or to satisfy JDD that reasonable steps to do so have been and are being taken to cure the deficiency within a period of time acceptable to JDD (in either case, the "Notice Period"). If at the end of the Notice Period such deficiency still exists, Licensee shall immediately discontinue any and all Marketing of the Licensed Services in connection with which the Quality Standards have not been met. If at any time the Marketing of more than 50 percent of the Licensed Services has been suspended for failure to cure a Quality Standard deficiency, JDD may terminate this agreement under Paragraph 14.3 as if it was a third breach.

## 8. Product Notices.

8.1. Intellectual Property Notices. All Collateral Materials shall contain such legends, markings, and/or notices as are reasonably required from time to time by JDD. Unless otherwise expressly communicated by JDD, each usage of the Marks shall be followed by the symbol ®. In addition, the following legend shall appear at least once on each piece of Collateral Material:

**"JACK DANIEL'S is a registered trademark and is used under  
license. Copyright 199\_, Jack Daniel Distillery - All Rights  
Reserved"**

JDD reserves the right to change the above-specified legend and to subtract from or add other markings, legends, and/or notices from time to time.

8.2. No Other Markings or Legends. Without first obtaining JDD's prior written approval, Licensee shall use no other markings, legends, and/or notices in connection with the Licensed Services other than as specified above, and such other markings, legends, and/or notices as may from time to time be specified by JDD.



9. Ownership and Control of the Trademarks.

9.1. Exclusive Property of JDD. With respect to the Trademarks, including all related rights and good will, which shall inure solely to JDD's benefit, Licensee acknowledges and agrees that:

9.1.1. The Trademarks are JDD's exclusive property and has acquired secondary meaning;

9.1.2. Licensee shall not acquire rights or any other interest therein without JDD's prior written consent;

9.1.3. Licensee shall not challenge, attack, or contest the ownership or validity of JDD's rights in the Trademarks or its respective applications or registrations;

9.1.4. Licensee shall not apply for, or be the assignee of, any trademark protection which would affect any of JDD's rights in the Trademarks, or file any document with any governmental authority, or take any other action which could affect JDD's ownership of the Trademarks, or aid or abet anyone else in doing so;

9.1.5. Licensee shall not commit any act or engage in any conduct which adversely affects the Trademarks or any other trademarks, logos, or copyrighted material of JDD; and

9.1.6. This Agreement shall in no way be construed as an assignment to Licensee of any right, title, and/or interest in and to the Trademarks.

9.2. Registration by JDD. JDD has the exclusive right, but not the obligation, to obtain at its own cost, appropriate trademark protection for the Trademarks or any portion thereof.

9.3. Compliance with Trademark Laws. The License granted under this Agreement is conditioned upon Licensee's full and complete compliance with the provisions of the trademark and copyright laws of the United States and any state in the Territory.

9.4. Use of Trademark in Corporate Name of Licensee. Licensee shall not use the Trademarks as part of the name of a partnership or corporation.

9.5. Use of Similar Marks and Works. If Licensee has obtained or obtains, in any country, any right, title, or interest (including the filing of any application for registration or the issuance of any registration) in any 1) mark which is similar to, or a translation and/or transliteration of, any of the Trademarks; or 2) print, pattern, design, or "work" as defined under the U.S. Copyright Act, which is substantially similar to, or a derivative version of, any of the Trademarks (collectively, "Related Marks & Works"), Licensee shall so notify JDD and agrees that, it has acted or will act on and for JDD's behalf. Licensee further agrees to execute any and all instruments deemed by JDD, its attorneys, or representatives, to be necessary to transfer all Licensee's right, title, or interest in the Related Marks & Works to JDD. Related Marks & Works shall be considered included in the defined term "Trademarks" for all purposes except JDD's representations and warranties given in Paragraph 0. Related Marks & Works does not include any underlying, preexisting rights Licensee

may have in its own marks.

#### 10. Infringement

10.1. Control of Action. If a third party asserts that the Trademarks or the License (collectively, the "Rights") infringe upon such third party's rights, JDD shall take such action as is necessary to protect and validate the Rights including, without limitation, arbitration, mediation, litigation, or settlement. If a third party is infringing or threatens to infringe the Rights, as determined by JDD, JDD may also take such action(s). If JDD pursues any action, JDD shall pay all costs and expenses, including attorneys' fees, incurred in connection therewith and JDD shall be entitled to receive and retain all amounts awarded as damages, profits, or otherwise in connection with such suits.

10.2. Notice of Infringement. Licensee shall be vigilant in detecting possible infringements, including imitations by third parties of the Rights and shall immediately inform JDD of any known actual or threatened Infringement of the Trademarks.

10.3. Cooperation. Licensee agrees to assist JDD, at JDD's expense, to the extent necessary under this Paragraph. The parties may, with the consent of the other party, prosecute such infringement in their own name, in the name of JDD or Licensee, or may join the other party as a party thereto.

#### 11. Representations and Warranties

11.1. JDD's Representations and Warranties. JDD represents and warrants to Licensee that:

11.1.1. JDD has the full right, power, and authority to enter into and perform this Agreement. JDD is not a party to any agreement or understanding which would conflict with this Agreement.

11.1.2. JDD owns, controls, or has previously been granted the necessary consents and rights in and to the Trademarks to enable JDD to grant to Licensee the rights granted in this Agreement.

11.1.3. To the best of JDD's knowledge, the Trademarks do not and will not infringe upon or violate the copyright, trademark rights, or property rights, of any person or entity within the Territory.

11.2. Licensee's Representations and Warranties. Licensee represents and warrants to JDD that:

11.2.1. Licensee has the full right, power, and authority to enter into and perform this Agreement. Licensee is not a party to any agreement or understanding which would conflict with this Agreement.

11.2.2. All agreements entered into by Licensee with third parties, and all activities engaged in by Licensee regarding the Operation of the Restaurant, shall in all respects conform to and be consistent with the terms and conditions of this Agreement and JDD's rights under this Agreement.

11.2.3. Licensee shall abide by, and comply with the spirit of, the Codes of Conduct in all its Collateral Materials and Marketing of the Licensed Services.

11.3. Survival of Representations and Warranties. All representations and warranties of the parties made in, pursuant to, or in connection with this Agreement shall survive the execution and delivery of this Agreement, notwithstanding any investigation by the parties. All statements contained in any certificate, document, instrument or other writing delivered by a party to this Agreement, or in connection with the transactions contemplated by this Agreement, constitute representations and warranties under this Agreement.

## 12. Indemnification

12.1. By Licensee. Licensee shall indemnify, protect, defend (with legal counsel approved by JDD) and hold JDD, including its licensees, assignees, parent, subsidiary and affiliated companies, the officers, directors, employees, shareholders, agents, and representatives of each of them, free and harmless from and against any loss, damage, injury, demand, cost, expense, or claim of any kind or character, including but not limited to attorneys' fees ("Claim") (collectively, "Indemnify"), arising out of or related directly or indirectly to: a) Licensee's Operation of the Restaurant and Marketing of the Licensed Services; b) Licensee's unauthorized use of the Trademarks; c) any breach by Licensee of its representations and warranties in this Agreement; d) liability imposed on JDD for bodily injury or property damage caused to any third party because of such third party's use of a Licensed Product manufactured by or for Licensee; and e) any failure or delay by Licensee in withholding or paying any taxes, interest, or penalties as required under this Agreement.

12.2. By JDD. JDD shall indemnify, protect, defend (with legal counsel approved by Licensee) and hold Licensee, including its licensees, assignees, parent, subsidiary and affiliated companies, the officers, directors, employees, shareholders, agents, and representatives of each of them, free and harmless from and against any loss, damage, injury, demand, cost, expense, or claim of any kind or character, including but not limited to attorneys' fees arising out of or related to a) any breach by JDD of its representations and warranties in this Agreement; and b) liability imposed on Licensee for bodily injury caused to any third party because of such third party's use of Jack Daniel's brand Tennessee Whiskey.

## 12.3. Limitation on Indemnities and Liabilities.

12.3.1. Except for Claims related to the Trademarks themselves, in any Claim where a duty to Indemnify may or will arise, the party who would be entitled to Indemnity ("Non-Indemnifying Party") shall not settle any such Claim, confess judgment, knowingly allow itself to be defaulted, or allow any judgment to be taken against the party potentially responsible for Indemnification (the "Indemnifying Party"), without first:

A. giving notice to the Indemnifying Party immediately upon becoming aware of the Claim;

B. allowing the Indemnifying Party to participate meaningfully in the resolution an/or settlement of the Claim; and

C. obtaining the Indemnifying Party's prior written consent to any such settlement or consent judgment, such consent not to be unreasonably withheld or delayed.

All payments, settlements, judgements, costs, and expenses, including attorney's fees, incurred in connection with any settlement or judgment entered into or allowed without complying with the foregoing obligations shall be borne solely by the Non-Indemnifying Party.

12.3.2. JDD shall have no liability to, nor any obligation to Indemnify, Licensee for any Infringement Claim based on Licensee's:

A. use, including sale in the case of Licensed Services (collectively, "Use"), of the Trademarks in any manner inconsistent with the terms and conditions of this Agreement;

B. Use of the Rights after JDD's written notice to Licensee that Licensee should cease Use of them due to an Infringement claim;

C. unauthorized combination of the Rights with non-JDD patterns, marks, designs, patents or other intellectual rights if such Infringement claim could likely have been avoided had such combination not occurred (any alleged authorization to have been in writing);

D. Use of the Trademarks outside the geographical boundaries of the Territory; or

E. Use of other than an authorized version of the Trademarks, if any such Infringement could have been avoided by use of the latest version and such latest version had been made reasonably available to Licensee, without significant cost to Licensee. Licensee hereby releases and discharges JDD from any and all Infringement claims arising under this subsection, and Licensee agrees to Indemnify JDD from and against all such Claims, provided that such indemnity obligation shall not supersede, replace, limit, or relieve any other obligations JDD may have with respect to said Infringement claim.

### 13. Insurance

13.1. Coverage. Licensee shall, throughout the Term of this Agreement, obtain and maintain at its own expense, from an insurance company qualified to do business in the Territory and reasonably acceptable to JDD, such acceptance not to be unreasonably withheld, the following insurance coverage, the forms of which must be reasonably acceptable to JDD, naming JDD as an additional named insured and which shall specify that it is primary to any similar insurance maintained by JDD:

13.1.1. *Standard Product Liability Insurance*: Such policy shall provide protection against any and all claims, demands, and causes of action arising out of any defects or failure to perform, alleged or otherwise, of the Licensed Services or any material used in connection therewith or any use thereof, in a minimum amount of US\$1,000,000 combined single limit, with no deductible amount, for each single occurrence for bodily injury and/or for property damage.

13.1.2. *Liability Insurance:* A primary Comprehensive General Liability Insurance Policy providing coverage for bodily injury, broad form property damage, personal injury, advertising injury and contractual liability for both JDD and Licensee as respects all operations and liabilities of Licensee occurring under this Agreement. Such Comprehensive General Liability Insurance Policy shall provide a primary limit for each such coverage of not less than US\$1,000,000. Such policy shall include a waiver of subrogation against additional insureds. Licensee shall pay all deductibles and/or self-insured retentions on behalf of Licensee and JDD.

13.1.3. *Umbrella Coverage:* A Blanket Umbrella Insurance Policy providing excess liability coverage for the Comprehensive General Liability Insurance described in Paragraph 13.1.2. Such Blanket Umbrella Insurance Policy shall provide additional excess liability limits of not less than \$3,000,000 for Comprehensive General Liability Insurance and shall specifically state that it is primary to any similar primary or excess insurance maintained by JDD. Such Umbrella Insurance Policy shall not contain terms and conditions more restrictive than the Comprehensive General Liability Insurance described in Paragraph 13.1.2. Such policy shall include a waiver of subrogation against additional insureds.

13.2. *Additional Requirements.* Such policies shall provide for 30 days' notice to JDD from the insurer by Registered or Certified Mail, return receipt requested, in the event of any modification, cancellation, or termination. Licensee agrees to furnish JDD a certificate of insurance evidencing coverage within 30 days after execution of this Agreement. Licensee shall not Market the Licensed Services before JDD receives such evidence of insurance. Licensee acknowledges that the above coverages are in addition to any other insurance which may be required under other agreements between JDD and Licensee.

14. *Termination.* Subject to Paragraph 15, this Agreement will expire, as provided in Paragraph 1, or may be terminated as follows:

14.1. *Immediate Right of Termination.* By JDD, at its option, and upon written notice to Licensee, if Licensee does any of the following:

14.1.1. Breaches any of the provisions of this Agreement relating to the unauthorized assertion of rights in the Trademarks;

14.1.2. Assigns or transfers this Agreement without JDD's consent as required in Paragraph 0, or any act by Licensee which effects or constitutes an unauthorized sublicense to any other party.

14.2. *Right to Terminate on 30 Days' Notice.* If any of the following events shall occur, the non-breaching party may terminate this Agreement upon 30 days' prior written notice and such notice, which shall specify the nature of the breach, shall become effective unless the breaching party shall, within the 30-day notice period, completely remedy the breach, or satisfy the non-breaching party that such breach will be cured in a period acceptable to the non-breaching party:

14.2.1. By JDD if Licensee commits a material breach of any provision of this Agreement other than those covered by Paragraph 0

14.2.2. By Licensee if JDD commits a material breach of any material provision of this Agreement; or

14.2.3. By JDD if Licensee files a petition in bankruptcy or is adjudicated bankrupt or insolvent, or makes an assignment for the benefit of creditors, or an arrangement pursuant to any bankruptcy law, or if Licensee discontinues its business or if a receiver is appointed for Licensee or for Licensee's business and such receiver is not discharged within 60 days.

14.3. Right to Terminate on Notice for Multiple Breach. Notwithstanding Paragraph 0, if Licensee materially breaches this Agreement or fails to perform the same material agreement, obligation, term, or condition of this Agreement for the third time within 12 months, for any reason, Licensee shall forfeit the right to cure such third violation or failure to perform, and JDD may terminate this Agreement by giving written notice to Licensee.

15. Procedures and Application of Agreement upon Termination. Upon the expiration or termination of this Agreement, or as to any particular country within the Territory, the following provisions shall govern:

15.1. Reversion of Rights. All rights granted to Licensee shall immediately revert to JDD. Licensee shall then refrain from further use of the Trademarks or any further reference to it, either directly or indirectly, in connection with the marketing of Licensee's other products and services. At JDD's request, Licensee shall execute, acknowledge and deliver to JDD such waivers, assignments or other documents as JDD deems necessary or desirable to establish the relinquishment by Licensee of any continuing right to Operate the Restaurant or to use the Trademarks.

15.2. Limitation of Liability. Neither party shall be liable to the other for any loss of present or prospective profits from lost sales, investments, or loss of goodwill, or other consequential damages resulting from the termination of this Agreement.

16. Misuse of JDD's Rights; Failure to Market. Licensee acknowledges that JDD is entering into this Agreement not only in consideration of the License Fee but also for the promotional value and good will to be secured by JDD as a result of the Operation of the Restaurant. Accordingly, Licensee acknowledges its breach of any of the material terms, conditions, warranties, and representations in this Agreement may result in immediate and irreparable damage to JDD and that JDD would have no adequate remedy at law. Accordingly, Licensee agrees that, in the event of any such breach by Licensee, JDD, in addition to all other remedies available to it, shall be entitled to injunctive relief as well as such other relief as any court of competent jurisdiction may deem just and proper.

17. Relationship Created. The parties acknowledge that in performing their obligations, each is acting as an independent contractor. The parties do not intend to create any employment relationship nor a partnership and nothing in this Agreement shall be construed as to create a partnership, joint venture, franchise or other similar arrangement between the parties. Neither party has the authority to enter into any agreement, make any warranty or representation on behalf of the other party, except where and to the extent specifically authorized to do so in writing.

18. Assignability. Licensee shall not assign this Agreement without JDD's prior written consent, which may be withheld in JDD's sole discretion. JDD shall be free to assign its rights or delegate its duties under this Agreement as it chooses. This Agreement shall inure to the benefit of the permitted successors and assigns.

19. Confidential Information. The parties shall maintain in strict confidence, and shall not disclose to any person, or otherwise utilize or license, any confidential information, data, recipe, trade secret or any other proprietary or confidential information which a party receives (the "Recipient") from the other and which relates to the subject matter of this Agreement, or the related business affairs of either party (collectively, "Confidential Information") without the disclosing party's prior written consent. The Recipient agrees that the disclosing party shall be entitled to obtain injunctive relief, without bond, for any breach or threatened breach of this obligation. The obligations under this paragraph shall continue, even after the termination of the Agreements, for so long as the Confidential Information shall remain confidential.

20. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly received on the date of service if served personally on the party to whom notice is to be given, on the day following delivery of the notice to a reputable overnight courier, *provided* such delivery is before the cut-off time for shipment the day of delivery, or on the third day after mailing if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, return receipt requested, and properly addressed as set forth below:

If to Licensee to:

Friday's Hospitality Worldwide  
7540 LBJ Freeway  
Dallas, Texas 75251  
Attn: General Counsel

If to JDD to:

Brown-Forman Corporation  
850 Dixie Highway  
Louisville, Kentucky 40210  
Attn: General Counsel

Any party may change its address for purposes of this paragraph by giving the other party written notice of the new address in the manner set forth above. Any other routine communication in the regular course of business between the parties may be by any commercially reasonable means.

21. Miscellaneous.

21.1. Time is of the Essence. Time is of the essence of this Agreement.

21.2. Further Assurances and Cooperation. Each party agrees to execute and deliver to the other party such other instruments, documents, and statements, including without limitation, instruments and documents of recordation, assignment, transfer, conveyance, and clarification and

take such other action as may be reasonably necessary or convenient in the discretion of the requesting party to carry out more effectively the purposes of this Agreement. Unless otherwise provided above, no consent or approval provided for in this Agreement may be unreasonably withheld or delayed.

21.3. Force Majeure. Neither party to this Agreement shall be held liable for failure to comply with any of the terms of this Agreement when such failure is caused solely by earthquake, fire, riot, water, labor dispute, strike, war, insurrection, government restrictions, act of God, or other force majeure beyond the control and without fault on the part of the party involved, provided such party uses due diligence to remedy such default.

21.4. Effect of Headings. The subject headings of the paragraphs of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

21.5. Incorporation. All exhibits and schedules attached to this Agreement, if any, are incorporated by this reference.

21.6. Entire Agreement; Modification; Waiver. The Agreement Documents and any attached schedules and exhibits, constitute the entire agreement between the parties pertaining to the subject matter contained herein and supersede all prior and contemporaneous agreements, representations, and understandings of the parties. Each of the parties acknowledges that no other party, nor any agent or any attorney of any other party, has made any promise, representation, or warranty whatsoever, express or implied, and not contained herein, concerning the subject matter hereof to induce said party to execute or authorize the execution of this Agreement, and acknowledges that said party has not executed or authorized the execution of this instrument in reliance upon any such promise, representation, or warranty not contained herein. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by both parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

21.7. Election of Remedies. The remedies provided for herein are not exclusive of any other lawful remedies which may be available, and a party's choice election of a remedy shall not constitute an exclusive election of remedies.

21.8. Payment of Expenses. Each party hereto shall pay its own expenses incidental to the preparation, negotiation, execution, and consummation of this Agreement, including, without limitation, its outside consultants, agents, auditors, and attorneys, and shall not make a claim to the other party for reimbursement, whether or not the transaction is consummated.

21.9. Counterparts. This Agreement may be executed contemporaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

21.10. Parties In Interest. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this



Agreement, nor shall any provision give any third persons any right to subrogation or action against any party to this Agreement.

21.11. Recovery of Costs. If any legal action or any arbitration or other proceeding, including any bankruptcy proceeding, regardless of whether such action is asserted on the basis of contract, tort (including negligence or strict liability), or otherwise, is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the negotiation of this Agreement, or the conduct of the parties under it, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled. "Prevailing party" within the meaning of this section includes, without limitation, a party who agrees to dismiss an action or proceeding upon the other's payment of sums allegedly due or performance of covenants allegedly breached, or who obtains substantially the relief sought by it.

21.12. Governing Law. This Agreement shall be construed in accordance with, and governed by, the laws of the Commonwealth of Kentucky, without reference to or application of its conflict of laws principles, and except as to patent, trademark, and copyright issues where applicable U.S. federal law shall apply.

21.13. Consent to Jurisdiction. Licensee hereby consents to the jurisdiction of a state or Federal court of competent jurisdiction in Louisville, Kentucky.

21.14. Severability. Should any provision or part of any provision of this Agreement be void or unenforceable, such provision, or part of it, shall be deemed omitted, and this Agreement, with such provision or part omitted, shall remain in full force and effect, unless such omission shall adversely affect the spirit and intent of this Agreement.

21.15. Construction. No provision of this Agreement shall be construed in favor of or against any party on the ground that such party or its counsel drafted the provision. The language used herein, unless defined specifically, shall be construed according to its reasonable and customary meaning in the United States. Terms of art used in this Agreement which are not defined herein shall be defined as commonly understood in the United States licensing industry for similar products/services. In the event of a breach, this Agreement may be specifically enforced. This Agreement shall at all times be construed so as to carry out its stated purposes.

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IN WITNESS WHEREOF, the parties to this Agreement have duly executed it on the day and year first above written.

Date: \_\_\_\_\_

Jack Daniel Distillery, Lem Motlow, Prop., Inc., a  
Kentucky corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Friday's Hospitality Worldwide, a New York  
corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

**The Trademarks**

The mark JACK DANIEL'S GRILL, in both word and the following logo format(s):

EXHIBIT C-1The Location

Space No. \_\_\_\_ of the shopping and entertainment center currently known as Pointe Orlando, located at \_\_\_\_ International Drive, Orlando, Florida

EXHIBIT C-2The Territory

The United States

EXHIBIT 7.1.3

The DISCUS Code

STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

IN RE:      Petition for Declaratory Statement on behalf of  
FRIDAY'S HOSPITALITY WORLDWIDE, INC. a New York  
corporation.

Petitioner.

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**PETITION FOR DECLARATORY STATEMENT**

Pursuant to § 120.565 of The Florida Statutes, FRIDAY'S HOSPITALITY WORLDWIDE, INC., ("Friday's") petitions the DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO of the Florida Department of Business & Professional Regulation ("Division") for the rendition of a declaratory statement as to the applicability of § 561.42 (10) of the Florida Statutes, to the specific facts as enumerated herein. Petitioner is asking the Division to declare that § 561.42(10) does not apply to the licensed vendor's business name, *Jack Daniel's Grill*, when placed on an outside sign displayed on the vendor's building or on the lot of ground of which the licensed premises is located.

**SPECIFIC QUESTION**

Whether a licensed vendor that has contracted to use the registered trademark "Jack Daniel's" from the trademark's owner as a part of the vendor's business name, *Jack Daniel's Grill*, may display its business name on the outside of its licensed premises under § 561.42(10) of the Florida Statutes because "Jack Daniel's" is not a registered brand of alcohol beverage in the State of Florida and the contract authorizing the use of the trademark does not obligate the vendor to the manufacturer to use, promote, or sell any products or brands of alcohol beverages?

**FACTS**

Jack Daniel Distillery, Lem Motlow, Prop., Inc. ("JDD") has licensed Friday's to use the trademark "Jack Daniel's", which JDD has registered with the U.S. Patent and Trade Mark Office; a copy of JDD's registration is attached hereto as Exhibit "A". Friday's desires to use the trademark "Jack Daniel's" as a part of Friday's business name, *Jack Daniel's Grill*.

**FILED**

Department of Business and Professional Regulation  
DEPUTY CLERK

44:1 WD 1-NV 86  
BPR AGENCY CLERK

CLERK *Cheryl L. Herring*  
DATE 1-7-98

The *Jack Daniel's Grill* name will be used by Friday's at an initial location in the United States to test the concept with international customers before taking the concept to European and Asian countries. That initial location will be on or near International Drive in Orlando, Florida.

Friday's licensing agreement for the trademark "Jack Daniel's" is a fixed fee agreement with no obligation by the licensed vendor to order, display, sell, serve, or promote JDD's alcohol beverage brands. JDD is not entitled to any percentage payments from Friday's business income. Moreover, JDD has not obligated the vendor to do anything other than meet certain standards in the use of the trademark, and comply with all local, state, and federal laws within the State of Florida, which are industry standards when trademarks are licensed.

"Jack Daniel's" is not a brand registered with the Division this license year, nor is there any record that it ever has been a registered brand authorized to be sold in Florida.

JDD has no direct or indirect financial interest in the business of Friday's and has not provided Friday's with any gift, loan of money or property, or rebates. In fact, JDD has sold the right to use a trademark for a fixed price, as it would any product it sells.

*Jack Daniel's Grill* will be the d/b/a name of an initial Friday's restaurant on or near International Drive in Orlando, Florida. That name will be displayed on the outside of the vendor's building, as well as on the realty where the restaurant is situated.

#### DISCUSSION OF RELEVANT FLORIDA LAW AND ADMINISTRATIVE RULES

Pursuant to the provisions of § 561.02 Florida Statutes, the Division of Alcoholic Beverages and Tobacco is authorized to supervise the conduct, management, and operation of the manufacturing, packaging, distribution, and sale with the State of all alcohol beverages. The Division is specifically empowered with the responsibility to enforce the provisions of the beverage laws and the tobacco laws, as well as the rules and regulations of the Division promulgated in connection therewith. Likewise, § 561.08, Florida Statutes, empowers and directs the Division to enforce the provisions of the beverage law and the cigarette tax laws, and perform such other acts as may be necessary to carry out the provisions thereof. Accordingly, it is the Division that construes and interprets the alcohol beverage laws of the State of Florida and makes the determination as to whether or not violations of any provision of the beverage law has occurred or will occur under a specific set of facts.



§ 561.42(10) prohibits a manufacturer or distributor of alcohol beverages from directly or indirectly giving, lending, renting, selling, or in any other manner furnishing to a vendor any outside sign, printed, painted, electric, or otherwise. This subsection also prohibits a vendor from displaying any sign advertising any brand of alcohol beverages on the outside of its licensed premises, on any lot of ground of which the licensed premises is situate, or on any building of which the licensed premises are a part. Florida courts have construed the purpose of this law to be: ". . . to prevent the integration of retail and wholesale outlets and to remove the retail dealer in intoxicating liquors from financial or business obligations to the wholesaler, with the exception of ordinary commercial credit for liquors sold." See Hunter v. McNight, 86 So. 2d 434, 436 (Fla. 1956), quoting 48 C.J.S., Intoxicating Liquors, at 197, p. 329, and citing Pickerill v. Schott, 55 So. 2d 716 (Fla. 1951). Indeed, the Florida Supreme Court has expressly construed this particular tied-house law, ruling that:

[W]hen viewed in the light of its history and the purpose sought to be attained, it is clear that Subsection (10) of Section 561.42 does not prohibit, per se, the location of a sign advertising an alcoholic beverage on the outside of a vendor's premises. The purpose of the Act is to prevent the furnishing of a sign by the wholesaler to the vendor in such a manner as to create a financial or business obligation from the vendor to the wholesaler.

Hunter v. McNight, 86 So. 2d 434, 436 (Fla. 1956).

More recently, Florida courts have confirmed that the focus of Chapter 561's tied-house laws is control. Specifically, these laws prohibit a manufacturer or wholesaler from exercising any decision-making, discretionary or otherwise, over the business affairs of a retail vendor. As recently noted by the Florida Fifth District Court of Appeal:

The purpose of the Tied House Evil Law is to prohibit manufacturers, wholesalers, and distributors of alcoholic beverages from controlling retail outlets operating by licensed vendors through the granting, withholding or extension of credit, the lending of money, investment in the business of the retailer, the making of rebates or the giving of any other financial assistance. The purpose of the act is to protect not only the public interest but also the interest of retail vendors licensed under the provisions of the Act.

Winn Dixie Stores, Inc. v. Schenck Company, 662 So.2d 1021, 1023 (5th DCA 1995), quoting Musleh v. Fulton Distributing Company of Florida, 254 So.2d 815, 817 (Fla. 1st DCA 1971).

The decisions of these courts demonstrate that the focus of Florida's tied-house laws generally, and § 561.41(10) in particular, is the issue of working control. A business transaction or relationship between a manufacturer and a retail vendor is impermissible if it provides the manufacturer any element of control over the operations or decision making of the retail vendor.

Under the facts and circumstances set forth above, JDD will have no control or influence over the activities of Friday's. In fact, the licensing agreement whereby Friday's purchases the use of the trade name "Jack Daniel's" expressly precludes the licensor from imposing any obligation to purchase any product produced by or related to JDD. Thus, the proposed licensing agreement is not violative of the tied-house law's purpose or intent.

Nor does the proposed licensing agreement constitute a technical violation of § 561.42(10). Literally, the key issue is whether "Jack Daniel's" is a brand of alcohol beverage authorized to be sold in Florida; if it is not, the statute has no applicability to the proposed licensing agreement. As noted above, "Jack Daniel's" is not a brand registered with the Division this license year, nor is there any record that it ever has been a registered brand authorized to be sold in Florida.

The question of what constitutes a "brand" was addressed by U.S. District Judge Anne Conway in 1995, in what was then a case of first impression. In Jim Taylor Corporation v. Guinness Import Company, the court had to apply Florida's beverage laws to decide a brand extension dispute between a beer manufacturer and its wholesaler. At issue was whether Moosehead Canadian Ice Beer was a brand separate and distinct from the Moosehead and Moosehead Light beers. The plaintiff distributor argued that "Moosehead" was a brand of beer, and that Moosehead Canadian Ice Beer was just an extension of the Moosehead brand. The court rejected the distributor's position, ruling instead that Moosehead Canadian Ice Beer was a separate brand of beer from either Moosehead or Moosehead Light. See Jim Taylor Corp. v. Guinness Import Company, 897 F.Supp. 556, 558-59 (M.D. Fla. 1995).

The determining factor is what product name actually is registered, or required to be registered with the State. The court in Jim Taylor Corp. found that each brand is deemed separate and distinct from every other brand that is registered pursuant to Florida's regulatory scheme for beverage alcohol products. See Jim Taylor Corp. v. Guinness Import Company, 897 F.Supp. at 597 n.1 and accompanying text.

There is no definition of the term "brand" in the Beverage Law, and the Division has not promulgated any rule defining the term subsequent to the Jim Taylor decision. If "Jack Daniel's" was a brand, Brown-Forman would only have to register one brand in Florida each year under § 565.09, Fla. Stat. to cover all of their products and pay one annual \$30.00 tax. By requiring each separate product to be registered and taxed, the Division has long recognized that "Jack Daniel's" is not itself a brand.

"Jack Daniel's" actually is a trademark. The owners of the trademark have devoted significant resources to develop the name and invest it with a consumer cachet that goes beyond beverage alcohol. "Jack Daniel's" apparel, music, and other consumer items demonstrate the trademark's association with a down-home, grass roots, backbone-of-America lifestyle.

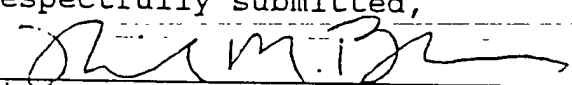
It is a trade name alone that Friday's is purchasing from JDD pursuant to the parties' licensing agreement. JDD will have no interest or control in Friday's business. Nor will Friday's be obligated, or have any financial incentive, to purchase any of JDD's beverage alcohol products. Thus, there is no tied-house concern.

#### CONCLUSION

Friday's outside sign, *Jack Daniel's Grill*, does not violate § 561.42(10) because it is not a brand of alcohol beverages. JDD, the company that has licensed Friday's to use the trademark, has no direct or indirect control over Friday's business and has not furnished any outside sign or similar advertising material to the licensee vendor. Nor is Friday's obligated to serve, sell, or promote any alcohol beverages as a result of the licensing agreement.

Consequently, the petitioner requests that the Division issue a declaratory statement confirming the propriety of Friday's use of the name *Jack Daniel's Grill* on an outside sign for a retail vendor in Orlando.

Respectfully submitted,

  
Richard M. Blau, Esquire  
Florida Bar No. 347167  
HOLLAND & KNIGHT LLP  
400 N. Ashley Drive, #2300  
P.O. Box 1288  
Tampa, Florida 33601-1288

DATED: January 6, 1998

54132-2  
TPA3-501130

Attorneys for Petitioner

**JACK DANIEL'S**  
**TRADEMARK LICENSE AGREEMENT**  
(RESTAURANT SERVICES)

This TRADEMARK LICENSE AGREEMENT ("Agreement") is entered into and effective as of \_\_\_\_\_, 1997 (the "Effective Date"), by and between Jack Daniel Distillery, Lem Motlow, Prop., Inc., a Kentucky corporation ("JDD"); and Friday's Hospitality Worldwide, a New York corporation ("Licensee"), and is made with reference to the following facts

- A. JDD is the owner of the world-famous trademark JACK DANIEL'S and certain related trademarks, service marks, trade names, trade dress, copyrights, designs, characters, and logos listed on Exhibit A, attached hereto (the "Property");
- B. JDD desires to utilize its substantial goodwill to develop opportunities in the Territory through the licensing of the Property for the operation of an up-scale, steak-house style restaurant (the "Restaurant") together with related advertising and promotional activities (any or all of such steps are referred to herein as the "Operation" of the Restaurant)(collectively, the "Licensed Services")(the phrase "Marketing of the Licensed Services" may be substituted for the phrase "Operation of the Restaurant" where the context refers more to the advertising and promotion of the restaurant services);
- C. Licensee desires to use the Property on or in connection with the Licensed Services at the location specifically identified on Exhibit C-1 attached hereto (the "Location"). All activities under this Agreement shall be limited to the territory identified on Exhibit C-2, attached hereto (the Territory); and
- D. JDD is willing to grant Licensee such rights only in accordance with the terms and conditions contained in this Agreement.

THEREFORE, in consideration of the promises and mutual covenants contained in this Agreement, the parties agree as follows:

1. Term. Except as otherwise provided herein, this Agreement shall commence as of the Effective Date and shall continue in effect up to and including the last day of \_\_\_\_\_, \_\_\_\_ (the "Term").
2. Grant of Rights.

2.1. Grant of License. Except as otherwise provided in this Agreement, and as limited below, JDD hereby grants to Licensee a non-exclusive, nontransferable, non-assignable right and license to use the Property solely in connection with the Operation of the Restaurant at the Location, with Marketing activities limited solely to the Territory. The name of the restaurant shall be "JACK DANIEL'S GRILL" or such other name as the parties may mutually agree. Licensee shall at all times fulfill each of the obligations set forth in this Agreement. The rights granted in this Agreement are sometimes referred to herein as the "License."

- 2.2. Sublicensing. Licensee shall have no right to sublicense any of its rights hereunder.

2.3. Limitations on Grant. The License is limited by the following:

2.3.1. The License shall not be deemed to restrict or prohibit in any way JDD's right to use its Property for its own marketing, advertising and promotional purposes which may include the use of JDD's trademarks by JDD, its affiliates, agents, distributors, or customers in the Territory for products and services similar or identical to the Licensed Services.

2.3.2. No license as to any products, other than with respect to the Licensed Services and only in the Territory, is being granted under this Agreement, and JDD reserves for its use, as it may determine, all rights of any kind, including, without limitation, the right to use the Property in connection with 1) promotional and licensed merchandise; 2) Marketing of any of food products, sauces or glazes used in connection with the Licensed Services; and 3) any form of premium, promotion or give-away.

2.4. Modifications of the Property. Licensee acknowledges that, from time to time and without notice to Licensee, it may be necessary or desirable for JDD to modify certain elements of the Property, to add elements to the Property, or to discontinue use of some or all of the elements. Accordingly, JDD does not represent or warrant that the Property or any of its elements will be maintained or used in any particular fashion. At JDD's option, any such new elements or modifications to existing elements occurring after the Effective Date may be included in the Property.

3. Compensation. In consideration of the rights granted herein, Licensee shall pay to JDD a fixed annual license fee of \$\_\_\_\_,\_\_\_\_.00 (the "License Fee"). The License Fee shall be payable in four equal installments and each payment shall be due by the fifteenth day of July, October, January and April. The first payment shall not be due until the date the Operation of the Restaurant commences.

4. Reports, Statements, Records and Inspection

4.1. Submission of Statements. Within 30 days following the end of each October and April during the Term (the "Reporting Period") Licensee shall furnish JDD complete statements using such form as JDD may prescribe from time to time, certified as accurate by the Director of Marketing of Licensee or, if reasonably requested by JDD, by a certified public accountant, fully describing the Operation of the Restaurant.

~~4.2. Records Licensee shall maintain books, records and accounts of all information relevant to Licensee's Operation of the Restaurant ("Records"). Licensee shall retain the Records for a period of three years from the effective date of expiration or termination of this Agreement.~~

4.2. Audit. JDD shall be entitled, at its sole expense, to inspect and/or audit Licensee's books and records and all other documents and materials in or under Licensee's possession or control, relating to the performance of this Agreement ("Records"). JDD may make such audit for the purposes of any matter arising under this Agreement and may do so no more than once in any calendar year. JDD shall give written notice to Licensee at least five business days before the date the audit is to begin. The audit shall be conducted by JDD or its designee in such a manner so as not to unreasonably disrupt Licensee's business operations and shall be completed promptly. The audit shall be conducted during Licensee's usual business hours and at the place or places where the

Records are kept. JDD may make, at the time of the audit, or any later time upon request, copies of the Records at its expense.

5. Exploitation by Licensee.

5.1. Best Efforts. Licensee shall use its best efforts to open and Operate the Restaurant and to actively, aggressively, and effectively Market the Licensed Services in the Territory during the Term. Licensee shall bear all costs in connection with such activities, including but not limited to market research, advertising, product development, and any costs incurred relating to all menus, advertising and promotional materials used in connection with the Operation (collectively, "Collateral Materials"). Further, Licensee agrees that it will use its best efforts to make and maintain adequate arrangements for the Operation of the Restaurant in sufficient quantity to meet consumer demand. Licensee agrees to Operate the Restaurant in a style which is in conformance with the Quality Standards, as defined below, and in a manner which is consistent with JDD's then current marketing practices in the Territory.

5.2. Start-up Commitment. Notwithstanding the generality of the foregoing, Licensee further agrees that the Restaurant shall be open and the Restaurant shall be in full Operation Licensed and open to the public within 18 months from the Effective Date.

5.3. Commitment to Continue. In the event the Restaurant does not remain open and in full Operation for a continuous period of 90 days, JDD shall have the right, upon 30 day's written notice to Licensee, to terminate this Agreement.

5.4. Legal Clearance. It shall be Licensee's sole obligation to ensure that the Operation of the Restaurant complies with all applicable laws, rules and regulations in the Territory. At Licensee's request and expense, JDD shall assist Licensee, to the extent reasonably possible in securing such legal clearances.

5.5. Consumer Inquiries. Licensee shall, at its sole cost, promptly notify JDD of any consumer inquiries, complaints and/or satisfaction issues with respect to the Operation of the Restaurant ("Consumer Inquiries") and Licensee shall promptly handle all such Consumer Inquiries. JDD shall promptly forward to Licensee for handling any and all such Consumer Inquiries. Upon request by JDD, Licensee shall advise JDD in writing of the manner in which it proposes to handle and/or handled any particular Consumer Inquiry.

5.6. Access to Facilities. To assure that the provisions of this Agreement are being observed, Licensee agrees that it shall allow JDD, or its designee, to enter the Restaurant premises, the premises of any supplier and/or the premises where any of the Licensed Services, ingredients and Collateral Materials are being manufactured, produced, shipped, stored, or handled, during regular business hours and upon not less than 24 hours' notice; provided, however, that in the absence of any specific problem, such access shall be limited to two times in any calendar year in the same store location. With respect to contract suppliers or other third parties, upon request from JDD, Licensee shall use its best efforts to assist JDD in gaining access to such premises, or if such access is denied, Licensee shall, upon JDD's request, shall on JDD's behalf enter such premises and perform such reasonable audits, inquiries and investigations as JDD may require.

6. Approvals.

6.1. Approvals Required. Licensee shall adhere to the following provisions in connection with approvals which are required hereunder:

6.1.1. Before commencing any aspect of the development and Operation of the Restaurant, Licensee shall first obtain JDD's prior written approval of all aspects of the Restaurant and its Operations. JDD shall not unreasonably withhold or delay its approval.

A. Notwithstanding the generality of the foregoing subsection, JDD acknowledges that its approval rights shall not extend to the selection, use and sale of alcoholic beverages, including Jack Daniel's Tennessee whiskey, by Licensee at the Restaurant (as part of the bar operations or in recipes for food items), those decisions being reserved for Licensee's reasonable discretion, being otherwise consistent with this Agreement.

6.1.2. Licensee shall not Market any of the Licensed Services or distribute any Collateral Materials without first submitting to JDD and obtaining JDD's prior written approval of each such items' layout, wording, graphics, and all other elements and characteristics. JDD shall not unreasonably withhold or delay its approval.

6.1.3. For purposes of clarity, Licensee acknowledges that it shall be a material breach of this Agreement if the foregoing approval provisions are not timely followed.

6.2. Effect of Non-approval. With respect to all approvals under this Agreement, if JDD fails to approve in writing any of the submissions furnished it by Licensee within ten business days from the date of submission, such failure shall be deemed a disapproval thereof. Notwithstanding the foregoing, in the event JDD fails to accept or reject ("Respond") within said ten business day period, and Licensee notifies JDD, in writing, as provided for herein, of JDD's failure to Respond, and JDD again fails to Respond within three business days after receipt of Licensee's notice, then the failure of JDD to Respond shall be considered an approval of the submission.

6.3. Changes after Initial Approval. After the necessary approvals have been secured, Licensee shall not depart therefrom in any material respect without JDD's prior written permission. Licensee shall furnish to JDD, annually or more frequently as JDD may reasonably request, samples of the Licensed Services (and each variation of them) together with any related Collateral Materials.

7. Quality Standard.

7.1. Standard of Quality. The Operation of the Restaurant, the Licensed Services and all Collateral Materials shall meet or exceed the following standards (collectively, the "Quality Standard"):

7.1.1. They must conform to the quality standards adopted by JDD, who reserves the right to modify its quality standards from time to time by giving written notice to Licensee;

7.1.2. They must comply fully with all applicable laws and regulations in every part of the Territory, and the intellectual property notice requirements referred to in Paragraph 8;

7.1.3. They must comply fully with the Code of Good Practice of the Distilled Spirits Council of the United States (the "DISCUS Code"), a copy of which is attached as Exhibit 7.1.3; and

7.1.4. They must be of such style, appearance, and quality as to be adequate and well suited for exploitation in accordance with the purposes of this Agreement and to protect, promote, and enhance the image, goodwill, and reputation of the Property, and they will in no manner reflect adversely upon the image, goodwill, and reputation of JDD or the Property.

7.2. Determinations. Determinations as to whether the Licensed Product(s) meet the Quality Standard shall be made solely by JDD in the exercise of its absolute but reasonable discretion.

7.3. Failure to Meet Quality Standards. If the Quality Standard is not met or if the Quality Standard is not maintained throughout the period of Marketing of any item of the Licensed Services, in each and every part of the Territory, then, upon receipt of written notice from JDD, Licensee shall have 10 days in which to cure the deficiency, or to satisfy JDD that reasonable steps to do so have been and are being taken to cure the deficiency within a period of time acceptable to JDD (in either case, the "Notice Period"). If at the end of the Notice Period such deficiency still exists, Licensee shall immediately discontinue any and all Marketing of the Licensed Services in connection with which the Quality Standards have not been met. If at any time the Marketing of more than 50 percent of the Licensed Services has been suspended for failure to cure a Quality Standard deficiency, JDD may terminate this agreement under Paragraph 14.3 as if it was a third breach.

## 8. Product Notices.

8.1. Intellectual Property Notices. All Collateral Materials shall contain such legends, markings, and/or notices as are reasonably required from time to time by JDD. Unless otherwise expressly communicated by JDD, each usage of the Marks shall be followed by the symbol ®. In addition, the following legend shall appear at least once on each piece of Collateral Material:

"JACK DANIEL'S is a trademark of Jack Daniel Distillery, Lem Motlow, Prop., Inc. and is used under license. Copyright 199\_, Jack Daniel Distillery - All Rights Reserved"

JDD reserves the right to change the above-specified legend and to subtract from or add other markings, legends, and/or notices from time to time.

8.2. No Other Markings or Legends. Without first obtaining JDD's prior written approval, Licensee shall use no other markings, legends, and/or notices in connection with the Licensed Services other than as specified above, and such other markings, legends, and/or notices as may from time to time be specified by JDD.



9. Ownership and Control of the Property.

9.1. Exclusive Property of JDD. With respect to the Property, including all related rights and good will, which shall inure solely to JDD's benefit, Licensee acknowledges and agrees that:

9.1.1. The Property is JDD's exclusive property and has acquired secondary meaning;

9.1.2. Licensee shall not acquire rights or any other interest therein without JDD's prior written consent;

9.1.3. Licensee shall not challenge, attack, or contest the ownership or validity of JDD's rights in the Property or its respective applications or registrations;

9.1.4. Licensee shall not apply for, or be the assignee of, any trademark protection which would affect any of JDD's rights in the Property, or file any document with any governmental authority, or take any other action which could affect JDD's ownership of the Property, or aid or abet anyone else in doing so;

9.1.5. Licensee shall not commit any act or engage in any conduct which adversely affects the Property or any other trademarks, logos, or copyrighted material of JDD; and

9.1.6. This Agreement shall in no way be construed as an assignment to Licensee of any right, title, and/or interest in and to the Property.

9.2. Registration by JDD. JDD has the exclusive right, but not the obligation, to obtain at its own cost, appropriate trademark protection for the Property or any portion thereof.

9.3. Compliance with Trademark Laws. The License granted under this Agreement is conditioned upon Licensee's full and complete compliance with the provisions of the trademark and copyright laws of the United States and any state in the Territory.

9.4. Use of Trademark in Name of Licensee. Licensee shall not use the Property as part of a trade name, fictitious business name, or name of a partnership or corporation.

9.5. Use of Similar Marks and Works. If Licensee has obtained or obtains, in any country, any right, title, or interest (including the filing of any application for registration or the issuance of any registration) in any 1) mark which is similar to, or a translation and/or transliteration of, any of the Property; or 2) print, pattern, design, or "work" as defined under the U.S. Copyright Act, which is substantially similar to, or a derivative version of, any of the Property (collectively, "Related Marks & Works"), Licensee shall so notify JDD and agrees that, it has acted or will act on and for JDD's behalf. Licensee further agrees to execute any and all instruments deemed by JDD, its attorneys, or representatives, to be necessary to transfer all Licensee's right, title, or interest in the Related Marks & Works to JDD. Related Marks & Works shall be considered included in the defined term "Property" for all purposes except JDD's representations and warranties given in Paragraph 11.1. Related Marks & Works does not include any underlying, preexisting rights Licensee may have in its own marks.

## 10. Infringement

10.1. Control of Action. If a third party asserts that the Property or the License (collectively, the "Rights") infringe upon such third party's rights, JDD shall take such action as is necessary to protect and validate the Rights including, without limitation, arbitration, mediation, litigation, or settlement. If a third party is infringing or threatens to infringe the Rights, as determined by JDD, JDD may also take such action(s). If JDD pursues any action, JDD shall pay all costs and expenses, including attorneys' fees, incurred in connection therewith and JDD shall be entitled to receive and retain all amounts awarded as damages, profits, or otherwise in connection with such suits.

10.2. Notice of Infringement. Licensee shall be vigilant in detecting possible infringements, including imitations by third parties of the Rights and shall immediately inform JDD of any known actual or threatened Infringement of the Property.

10.3. Cooperation. Licensee agrees to assist JDD, at JDD's expense, to the extent necessary under this Paragraph. The parties may, with the consent of the other party, prosecute such infringement in their own name, in the name of JDD or Licensee, or may join the other party as a party thereto.

## 11. Representations and Warranties

11.1. JDD's Representations and Warranties. JDD represents and warrants to Licensee that:

11.1.1. JDD has the full right, power, and authority to enter into and perform this Agreement. JDD is not a party to any agreement or understanding which would conflict with this Agreement.

11.1.2. JDD owns, controls, or has previously been granted the necessary consents and rights in and to the Property to enable JDD to grant to Licensee the rights granted in this Agreement.

11.1.3. To the best of JDD's knowledge, the Property does not and will not infringe upon or violate the copyright, trademark rights, or property rights, of any person or entity within the Territory.

11.2. Licensee's Representations and Warranties. Licensee represents and warrants to JDD that:

11.2.1. Licensee has the full right, power, and authority to enter into and perform this Agreement. Licensee is not a party to any agreement or understanding which would conflict with this Agreement.

11.2.2. All agreements entered into by Licensee with third parties, and all activities engaged in by Licensee regarding the Operation of the Restaurant, shall in all respects conform to and be consistent with the terms and conditions of this Agreement and JDD's rights under this Agreement.

11.2.3. Licensee shall abide by, and comply with the spirit of, the Codes of Conduct in all its Collateral Materials and Marketing of the Licensed Services.

11.3. Survival of Representations and Warranties. All representations and warranties of the parties made in, pursuant to, or in connection with this Agreement shall survive the execution and delivery of this Agreement, notwithstanding any investigation by the parties. All statements contained in any certificate, document, instrument or other writing delivered by a party to this Agreement, or in connection with the transactions contemplated by this Agreement, constitute representations and warranties under this Agreement.

## 12. Indemnification

12.1. By Licensee. Licensee shall indemnify, protect, defend (with legal counsel approved by JDD) and hold JDD, including its licensees, assignees, parent, subsidiary and affiliated companies, the officers, directors, employees, shareholders, agents, and representatives of each of them, free and harmless from and against any loss, damage, injury, demand, cost, expense, or claim of any kind or character, including but not limited to attorneys' fees ("Claim") (collectively, "Indemnify"), arising out of or related directly or indirectly to: a) Licensee's Operation of the Restaurant and Marketing of the Licensed Services; b) Licensee's unauthorized use of the Property; c) any breach by Licensee of its representations and warranties in this Agreement; d) liability imposed on JDD for bodily injury or property damage caused to any third party because of such third party's use of a Licensed Product manufactured by or for Licensee; and e) any failure or delay by Licensee in withholding or paying any taxes, interest, or penalties as required under this Agreement.

12.2. By JDD. JDD shall indemnify, protect, defend (with legal counsel approved by Licensee) and hold Licensee, including its licensees, assignees, parent, subsidiary and affiliated companies, the officers, directors, employees, shareholders, agents, and representatives of each of them, free and harmless from and against any loss, damage, injury, demand, cost, expense, or claim of any kind or character, including but not limited to attorneys' fees arising out of or related to a) any breach by JDD of its representations and warranties in this Agreement; and b) liability imposed on Licensee for bodily injury caused to any third party because of such third party's use of Jack Daniel's brand Tennessee Whiskey.

## 12.3. Limitation on Indemnities and Liabilities.

12.3.1. Except for Claims related to the Property itself, in any Claim where a duty to Indemnify may or will arise, the party who would be entitled to Indemnity ("Non-Indemnifying Party") shall not settle any such Claim, confess judgment, knowingly allow itself to be defaulted, or allow any judgment to be taken against the party potentially responsible for Indemnification (the "Indemnifying Party"), without first:

- A. giving notice to the Indemnifying Party immediately upon becoming aware of the Claim;
- B. allowing the Indemnifying Party to participate meaningfully in the resolution and/or settlement of the Claim; and

C. obtaining the Indemnifying Party's prior written consent to any such settlement or consent judgment, such consent not to be unreasonably withheld or delayed.

All payments, settlements, judgments, costs, and expenses, including attorney's fees, incurred in connection with any settlement or judgment entered into or allowed without complying with the foregoing obligations shall be borne solely by the Non-Indemnifying Party.

12.3.2. JDD shall have no liability to, nor any obligation to Indemnify, Licensee for any Infringement Claim based on Licensee's:

A. use, including sale in the case of Licensed Services (collectively, "Use"), of the Property in any manner inconsistent with the terms and conditions of this Agreement;

B. Use of the Rights after JDD's written notice to Licensee that Licensee should cease Use of them due to an Infringement claim;

C. unauthorized combination of the Rights with non-JDD patterns, marks, designs, patents or other intellectual rights if such Infringement claim could likely have been avoided had such combination not occurred (any alleged authorization to have been in writing);

D. Use of the Property outside the geographical boundaries of the Territory; or

E. Use of other than an authorized version of the Property(ies), if any such Infringement could have been avoided by use of the latest version and such latest version had been made reasonably available to Licensee, without significant cost to Licensee. Licensee hereby releases and discharges JDD from any and all Infringement claims arising under this subsection, and Licensee agrees to Indemnify JDD from and against all such Claims, provided that such indemnity obligation shall not supersede, replace, limit, or relieve any other obligations JDD may have with respect to said Infringement claim.

### 13. Insurance

13.1. Coverage Licensee shall, throughout the Term of this Agreement, obtain and maintain at its own expense, from an insurance company qualified to do business in the Territory and reasonably acceptable to JDD, such acceptance not to be unreasonably withheld, the following insurance coverage, the forms of which must be reasonably acceptable to JDD, naming JDD as an additional named insured and which shall specify that it is primary to any similar insurance maintained by JDD:

13.1.1. *Standard Product Liability Insurance*: Such policy shall provide protection against any and all claims, demands, and causes of action arising out of any defects or failure to perform, alleged or otherwise, of the Licensed Services or any material used in connection therewith or any use thereof, in a minimum amount of US\$1,000,000 combined single limit, with no deductible amount, for each single occurrence for bodily injury and/or for property damage.

13.1.2. *Liability Insurance:* A primary Comprehensive General Liability Insurance Policy providing coverage for bodily injury, broad form property damage, personal injury, advertising injury and contractual liability for both JDD and Licensee as respects all operations and liabilities of Licensee occurring under this Agreement. Such Comprehensive General Liability Insurance Policy shall provide a primary limit for each such coverage of not less than US\$1,000,000. Such policy shall include a waiver of subrogation against additional insureds. Licensee shall pay all deductibles and/or self-insured retentions on behalf of Licensee and JDD.

13.1.3. *Umbrella Coverage:* A Blanket Umbrella Insurance Policy providing excess liability coverage for the Comprehensive General Liability Insurance described in Paragraph 13.1.2. Such Blanket Umbrella Insurance Policy shall provide additional excess liability limits of not less than \$3,000,000 for Comprehensive General Liability Insurance and shall specifically state that it is primary to any similar primary or excess insurance maintained by JDD. Such Umbrella Insurance Policy shall not contain terms and conditions more restrictive than the Comprehensive General Liability Insurance described in Paragraph 13.1.2. Such policy shall include a waiver of subrogation against additional insureds.

13.2. Additional Requirements. Such policies shall provide for 30 days' notice to JDD from the insurer by Registered or Certified Mail, return receipt requested, in the event of any modification, cancellation, or termination. Licensee agrees to furnish JDD a certificate of insurance evidencing coverage within 30 days after execution of this Agreement. Licensee shall not Market the Licensed Services before JDD receives such evidence of insurance. Licensee acknowledges that the above coverages are in addition to any other insurance which may be required under other agreements between JDD and Licensee.

14. Termination. Subject to Paragraph 15, this Agreement will expire, as provided in Paragraph 12, or may be terminated as follows:

14.1. Immediate Right of Termination. By JDD, at its option, and upon written notice to Licensee, if Licensee does any of the following:

14.1.1. Breaches any of the provisions of this Agreement relating to the unauthorized assertion of rights in the Property;

14.1.2. Assigns or transfers this Agreement without JDD's consent as required in Paragraph 18, or any act by Licensee which effects or constitutes an unauthorized sublicense to any other party.

14.2. Right to Terminate on 30 Days' Notice. If any of the following events shall occur, the non-breaching party may terminate this Agreement upon 30 days' prior written notice and such notice, which shall specify the nature of the breach, shall become effective unless the breaching party shall, within the 30-day notice period, completely remedy the breach, or satisfy the non-breaching party that such breach will be cured in a period acceptable to the non-breaching party:

14.2.1. By JDD if Licensee commits a material breach of any provision of this Agreement other than those covered by Paragraph 14.1

14.2.2. By Licensee if JDD commits a material breach of any material provision of this Agreement; or

14.2.3. By JDD if Licensee files a petition in bankruptcy or is adjudicated bankrupt or insolvent, or makes an assignment for the benefit of creditors, or an arrangement pursuant to any bankruptcy law, or if Licensee discontinues its business or if a receiver is appointed for Licensee or for Licensee's business and such receiver is not discharged within 60 days.

14.3. Right to Terminate on Notice for Multiple Breach. Notwithstanding Paragraph 14.2, if Licensee materially breaches this Agreement or fails to perform the same material agreement, obligation, term, or condition of this Agreement for the third time within 12 months, for any reason, Licensee shall forfeit the right to cure such third violation or failure to perform, and JDD may terminate this Agreement by giving written notice to Licensee.

15. Procedures and Application of Agreement upon Termination. Upon the expiration or termination of this Agreement, or as to any particular country within the Territory, the following provisions shall govern:

15.1. Reversion of Rights. All rights granted to Licensee shall immediately revert to JDD. Licensee shall then refrain from further use of the Property or any further reference to it, either directly or indirectly, in connection with the marketing of Licensee's other products and services. At JDD's request, Licensee shall execute, acknowledge and deliver to JDD such waivers, assignments or other documents as JDD deems necessary or desirable to establish the relinquishment by Licensee of any continuing right to Operate the Restaurant or to use the Property.

15.2. Limitation of Liability. Neither party shall be liable to the other for any loss of present or prospective profits from lost sales, investments, or loss of goodwill, or other consequential damages resulting from the termination of this Agreement.

16. Misuse of JDD's Rights; Failure to Market. Licensee acknowledges that JDD is entering into this Agreement not only in consideration of the License Fee but also for the promotional value and good will to be secured by JDD as a result of the Operation of the Restaurant. Accordingly, Licensee acknowledges its breach of any of the material terms, conditions, warranties, and representations in this Agreement may result in immediate and irreparable damage to JDD and that JDD would have no adequate remedy at law. Accordingly, Licensee agrees that, in the event of any such breach by Licensee, JDD, in addition to all other remedies available to it, shall be entitled to injunctive relief as well as such other relief as any court of competent jurisdiction may deem just and proper.

17. Relationship Created. The parties acknowledge that in performing their obligations, each is acting as an independent contractor. The parties do not intend to create any employment relationship nor a partnership and nothing in this Agreement shall be construed as to create a partnership, joint venture, franchise or other similar arrangement between the parties. Neither party has the authority to enter into any agreement, make any warranty or representation on behalf of the other party, except where and to the extent specifically authorized to do so in writing.

18. Assignability. Licensee shall not assign this Agreement without JDD's prior written consent, which may be withheld in JDD's sole discretion. JDD shall be free to assign its rights or delegate

its duties under this Agreement as it chooses. This Agreement shall inure to the benefit of the permitted successors and assigns.

19. Confidential Information. The parties shall maintain in strict confidence, and shall not disclose to any person, or otherwise utilize or license, any confidential information, data, recipe, trade secret or any other proprietary or confidential information which a party receives (the "Recipient") from the other and which relates to the subject matter of this Agreement, or the related business affairs of either party (collectively, "Confidential Information") without the disclosing party's prior written consent. The Recipient agrees that the disclosing party shall be entitled to obtain injunctive relief, without bond, for any breach or threatened breach of this obligation. The obligations under this paragraph shall continue, even after the termination of the Agreements, for so long as the Confidential Information shall remain confidential.

20. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly received on the date of service if served personally on the party to whom notice is to be given, on the day following delivery of the notice to a reputable overnight courier, *provided* such delivery is before the cut-off time for shipment the day of delivery, or on the third day after mailing if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, return receipt requested, and properly addressed as set forth below:

If to Licensee to:

Friday's Hospitality Worldwide  
7540 LBJ Freeway  
Dallas, Texas 75251  
Attn: General Counsel

If to JDD to:

Brown-Forman Corporation  
850 Dixie Highway  
Louisville, Kentucky 40210  
Attn: General Counsel

Any party may change its address for purposes of this paragraph by giving the other party written notice of the new address in the manner set forth above. Any other routine communication in the regular course of business between the parties may be by any commercially reasonable means.

21. Miscellaneous.

21.1. Time is of the Essence. Time is of the essence of this Agreement.

21.2. Further Assurances and Cooperation. Each party agrees to execute and deliver to the other party such other instruments, documents, and statements, including without limitation, instruments and documents of recordation, assignment, transfer, conveyance, and clarification and take such other action as may be reasonably necessary or convenient in the discretion of the requesting party to carry out more effectively the purposes of this Agreement. Unless otherwise

provided above, no consent or approval provided for in this Agreement may be unreasonably withheld or delayed.

21.3. Force Majeure. Neither party to this Agreement shall be held liable for failure to comply with any of the terms of this Agreement when such failure is caused solely by earthquake, fire, riot, water, labor dispute, strike, war, insurrection, government restrictions, act of God, or other force majeure beyond the control and without fault on the part of the party involved, provided such party uses due diligence to remedy such default.

21.4. Effect of Headings. The subject headings of the paragraphs of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

21.5. Incorporation. All exhibits and schedules attached to this Agreement, if any, are incorporated by this reference.

21.6. Entire Agreement; Modification; Waiver. The Agreement Documents and any attached schedules and exhibits, constitute the entire agreement between the parties pertaining to the subject matter contained herein and supersede all prior and contemporaneous agreements, representations, and understandings of the parties. Each of the parties acknowledges that no other party, nor any agent or any attorney of any other party, has made any promise, representation, or warranty whatsoever, express or implied, and not contained herein, concerning the subject matter hereof to induce said party to execute or authorize the execution of this Agreement, and acknowledges that said party has not executed or authorized the execution of this instrument in reliance upon any such promise, representation, or warranty not contained herein. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by both parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

21.7. Election of Remedies. The remedies provided for herein are not exclusive of any other lawful remedies which may be available, and a party's choice election of a remedy shall not constitute an exclusive election of remedies.

21.8. Payment of Expenses. Each party hereto shall pay its own expenses incidental to the preparation, negotiation, execution, and consummation of this Agreement, including, without limitation, its outside consultants, agents, auditors, and attorneys, and shall not make a claim to the other party for reimbursement, whether or not the transaction is consummated.

21.9. Counterparts. This Agreement may be executed contemporaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

21.10. Parties In Interest. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any



party to this Agreement, nor shall any provision give any third persons any right to subrogation or action against any party to this Agreement.

21.11. Recovery of Costs. If any legal action or any arbitration or other proceeding, including any bankruptcy proceeding, regardless of whether such action is asserted on the basis of contract, tort (including negligence or strict liability), or otherwise, is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement: the negotiation of this Agreement, or the conduct of the parties under it, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled. "Prevailing party" within the meaning of this section includes, without limitation, a party who agrees to dismiss an action or proceeding upon the other's payment of sums allegedly due or performance of covenants allegedly breached, or who obtains substantially the relief sought by it.

21.12. Governing Law. This Agreement shall be construed in accordance with, and governed by, the laws of the Commonwealth of Kentucky, without reference to or application of conflict of laws principles, and except as to patent, trademark, and copyright issues where applicable U.S. federal law shall apply.

21.13. Consent to Jurisdiction. Licensee hereby consents to the jurisdiction of a state or Federal court of competent jurisdiction in Louisville, Kentucky.

21.14. Severability. Should any provision or part of any provision of this Agreement be void or unenforceable, such provision, or part of it, shall be deemed omitted, and this Agreement with such provision or part omitted, shall remain in full force and effect, unless such omission shall adversely affect the spirit and intent of this Agreement.

21.15. Construction. No provision of this Agreement shall be construed in favor of or against any party on the ground that such party or its counsel drafted the provision. The language used herein, unless defined specifically, shall be construed according to its reasonable and customary meaning in the United States. Terms of art used in this Agreement which are not defined herein shall be defined as commonly understood in the United States licensing industry for similar products/services. In the event of a breach, this Agreement may be specifically enforced. This Agreement shall at all times be construed so as to carry out its stated purposes.

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IN WITNESS WHEREOF, the parties to this Agreement have duly executed it on the day and year first above written.

Date: \_\_\_\_\_

Jack Daniel Distillery, Lem Motlow, Prop., Inc., a  
Kentucky corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Friday's Hospitality Worldwide, a New York  
corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT A

The Property

The mark JACK DANIEL'S GRILL, in both word and the following logo format(s):

EXHIBIT C-1The Location

Space No. \_\_\_\_ of the shopping and entertainment center currently known as Pointe Orlando, located at \_\_\_\_ International Drive, Orlando, Florida

EXHIBIT C-2The Territory

The United States

EXHIBIT 7.1.3

The DISCUS Code

Law Offices

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January 7, 1998

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New York	West Palm Beach

JOHN J. HARRIS  
850-425-5692

Internet Address:  
[jharris@hklaw.com](mailto:jharris@hklaw.com)

Mr. Richard A. Boyd, Director  
Florida Division of Alcoholic Beverages & Tobacco  
1940 North Monroe Street  
Tallahassee, FL 32399-1020

Re: Friday's Hospitality Worldwide, Inc. Petition  
for Declaratory Statement


Dear Mr. Boyd:

The above referenced document was hand delivered to the Agency Clerk's Office on January 7, 1998.

If you have any questions, please do not hesitate to contact me at the number above.

Very truly yours,

HOLLAND & KNIGHT LLP

  
John J. Harris  
Governmental Consultant