

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

FLAT OUT CRAZY, LLC, et al.

Case No. 13-22094 (RDD)

Debtors

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TERM SHEET CONCERNING SETTLEMENT OF §506(c) SURCHARGE MOTION

Defined Terms:

Acquisition Companies: FT Acquisition, LLC and STCR Acquisition, LLC

Agreement: The Settlement Terms and all other provisions of this term sheet.

Asset Sale: The sale of substantially all of the Debtors' Flat Top Grill and Stir Crazy assets as authorized by the Bankruptcy Court pursuant to sale orders entered on April 29 and 30, 2013 (Doc. Nos. 324 and 325) (the "Sale Orders").

Bankruptcy Cases: *In re Flat Out Crazy, et. al.*, Jointly Administered Case No.13-22094 (RDD).

Bankruptcy Court: The United States Bankruptcy Court for the Southern District of New York.

Carve Out: All amounts carved-out of HillStreet's prepetition and postpetition liens and security interests and funded or required to be funded by HillStreet to the Debtors for the payment of, among other things, professional fees and post-closing administrative expenses as set forth in the Final DIP Order.

Committee: The official committee of unsecured creditors appointed in the Bankruptcy Cases.

Debtors: The debtors and debtors in possession in the Bankruptcy Cases.

DIP Loan: The debtor in possession loan advanced to the Debtors pursuant to the terms of the Final DIP Order.

Estate Professionals: Collectively, Squire Sanders (US) LLP, Getzler Henrich & Associates LLC, Kelley Drye & Warren LLP, CBIZ Accounting, Tax and Advisory of New York, LLC, and CBIZ Valuation Group, LLC.

Final DIP Order: Final Order (A) Authorizing Debtors in Possession to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363 and 364; (B) Granting Liens, Security Interests and Superpriority Claims; (C) Authorizing Use of Cash Collateral and Granting Adequate Protection; and (D) Modifying the Automatic Stay (Doc. No. 234).

HillStreet: The HillStreet Fund IV, L.P.

Party: Each of the Debtors, the Committee, the Estates Professionals, HillStreet, and the Acquisition Companies (collectively, the "Parties").

Petition Date: January 25, 2013

Pre-Petition Debt: Any and all advances of monies and extensions of credit, and interest thereon, made by HillStreet or any predecessor of HillStreet, whether in its individual capacity or as assignee of U.S. Bank National Association or otherwise, to one or more of the Debtors prior to the Petition Date pursuant to or in connection with the Prepetition Financing Documents (as defined in the Final DIP Order).

Surcharge Claims: Any and all claims to surcharge the prepetition and/or postpetition collateral of HillStreet which were or could have been asserted by the Debtors, the Committee, or any of the Estate Professionals pursuant to Bankruptcy Code §§ 105, 502, 503 or 506 in these Bankruptcy cases.

Surcharge Motion: Joint Motion of Debtors and Debtors in Possession and the Official Committee of Unsecured Creditors for an Order Granting a Surcharge Against the Collateral of The HillStreet Fund IV, L.P. Under Section 506(c) of the Bankruptcy Code (Doc. No. 435).

Surcharge Objection: HillStreet's opposition to the Surcharge Motion (Doc. No. 453).

Terms of Settlement:

With no admission of wrongdoing, fault or liability by any Party, in full and final settlement and satisfaction of (i) the Surcharge Motion, the Surcharge Objection and all related pleadings (collectively, the "**Surcharge Dispute**"), (ii) all proofs of claim filed by HillStreet in the Bankruptcy Cases, and (iii) any and all other claims and causes of action, known or unknown, which have or could have been asserted by any Party and its predecessors, successors, assigns, officers, directors, employees, managers, agents, affiliates, subsidiaries, members, partners and professionals, against any other Party arising from or related to the Bankruptcy Cases, the Pre-Petition Debt, the DIP Loan, the Carve Out, any and all Surcharge Claims, the Asset Sale, the Surcharge Motion and the Surcharge Objection, and any and all professional fees, expenses and retainers of the Estate Professionals and any other professionals retained in the Bankruptcy Cases, and any other administrative expenses in connection with the Bankruptcy Cases that have previously been paid, incurred or claimed due or which may be claimed due or incurred in the future (collectively, the "**Settled Claims**"), the Parties, subject to approval by the Bankruptcy Court through the entry of a final non-appealable order, hereby stipulate and agree as follows (the "**Settlement Terms**"):

1. Subject to the full and complete satisfaction of their respective obligations under the Settlement Terms, each of the Parties, on behalf of themselves and each of their respective predecessors, successors, assigns, officers, directors, employees, managers, agents, affiliates, subsidiaries, members, partners and professionals, hereby mutually release each of the other Parties and their respective, predecessors, successors, assigns, officers, directors, employees, managers, agents, affiliates, subsidiaries, members,

partners and professionals from any and all claims and causes of action in law or at equity, known or unknown, asserted or unasserted, from the beginning of the world to the date of the approval of this Agreement by the Bankruptcy Court, arising from or related to any and all Settled Claims.

2. In addition, in full and final settlement and satisfaction of all proofs of claim filed by or on behalf of HillStreet in the Bankruptcy Cases and any and all obligations to fund any further amounts in connection with the Bankruptcy Cases including, but not limited to, in connection with the Pre-Petition Debt, the DIP Order, the Carve Out, a Surcharge Claim, the Surcharge Motion, the Sale Order, and any other administrative or other fees or expenses of the Debtors, the Bankruptcy Estates of the Debtors, the Committee, the Estate Professionals, any other professionals retained in these Bankruptcy Cases, the United States Trustee, and any successor or assign of the Debtors and the Committee, including any trustee, or examiner which may be appointed in any of the Bankruptcy Cases, whether under Chapter 11 or 7 of the Bankruptcy Code, or any other party in connection with the Bankruptcy Cases or any subsequent Chapter 7 cases, whether claimed due as of the date of the approval of this Settlement or which may be claimed due in the future for any reason including pursuant to or in connection with the Pre-Petition Debt, the DIP Order, the Carve Out, a Surcharge Claim, the Surcharge Motion, the Surcharge Objection and the Bankruptcy Code (including but not limited to any claims under Bankruptcy Code §§ 105, 502, 503, 506):

- a. HillStreet and the Acquisition Companies:

- i. Irrevocably release and waive any and all claims, liens, rights, and interests they have in, on or with respect to (i) all Carve Out funds

currently held by the Debtors; (ii) all non-Carve Out cash and cash equivalents currently held by the Debtors; (iii) any refund of insurance premiums due to the Debtors; (iv) all liquor licenses held by any of the Debtors; (v) any claims (or the value thereof) that the Debtors might have in connection with the Visa/Mastercard class action settlement; (vi) the receivables owed to the Debtors from Messrs. Larry Freed and Greg Carey; and (vii) any and all other remaining assets of the Debtors not previously delivered to HillStreet or the Acquisition Companies which remain in the Debtors' possession (or which may come into the Debtors' possession at any time hereafter) regardless of whether or not such assets have been sold, transferred or conveyed pursuant to the Sale Orders, except for any assets sold, transferred and conveyed pursuant to the Sale Orders that are determined by the Acquisition Companies to be necessary for the operation of the businesses purchased pursuant to the Sale Orders (the aggregate value of items (ii) through (vii) having been agreed by the Parties for settlement purposes only and not for valuation or otherwise to be approximately \$554,000) (collectively, the "Assets"); provided however, for the avoidance of doubt, such Assets shall not include any claims against or rights of collection against or from HillStreet or the Acquisition Companies, such claims and rights being expressly waived and released by this Agreement;

- ii. shall not object to any further interim or final fee applications of any of the Estate Professionals or the application of any retainers held by the Estate Professionals or the Carve Out; and
 - iii. within five (5) days of approval of this settlement by a final non-appealable order by the Bankruptcy Court, shall pay to the Debtors the sum of \$306,000 in cash in immediately available funds which shall be used as determined by the Estate Professionals for the payment of allowed professional fees and expenses of the Estate..
- b. The Debtors, the Committee, and the Estate Professionals:
- i. shall be authorized to retain and immediately apply any retainers currently held in accordance with their sole discretion;
 - ii. shall be authorized to retain and immediately apply the \$460,000 professional fee Carve Out on a pro rata basis in accordance with their sole discretion;
 - iii. acknowledge and agree that the Carve Out and the DIP Loan has been fully funded;
 - iv. acknowledge and agree that any obligation of HillStreet and the Acquisition Companies to fund any additional amounts for any reason in connection with the Bankruptcy Cases, the Pre-Petition Debt, the DIP Order, the Carve Out, a Surcharge Claim, the Surcharge Motion, the Surcharge Objection including without limitation, payment on account of any professional fees or administrative expenses incurred as of the date hereof or hereafter for any administrative expenses in connection with the

Bankruptcy Cases, the Estate Professionals and any other professionals retained in the Bankruptcy Cases or otherwise in connection with the Bankruptcy cases has been satisfied in full pursuant to the terms of this Agreement; and

- v. acknowledge and agree that the Assets shall not include any claims against or rights of collection from HillStreet or the Acquisition Companies, such claims and rights being expressly waived and released as set forth herein.
3. Subject to the respective obligations of the Parties under this Agreement, all outstanding obligations owed by any of the Debtors, the Committee, or the Estate Professionals to or for the benefit of HillStreet or the Acquisition Companies, and any consent or other rights to which HillStreet or the Acquisition Companies may be entitled, under any order previously entered in the Bankruptcy Cases, including, without limitation, under the Final DIP Order and that certain Order Granting Debtors' Motion for an Order Approving Procedures to Sell or Transfer Certain Assets, Free and Clear of Liens, Claims, and Encumbrances, and to Pay Market Rate Broker Commissions in Connection With Such Sales Without Further Court Approval (the "**De Minimis Sale Order**") (Doc. No. 392), are hereby terminated. For the avoidance of doubt, the Debtors are not required to obtain further third party consent for the sale of any assets under the De Minimis Sale Order and HillStreet and the Acquisition Companies are hereby deemed to have consented for all purposes to any such sale of assets that otherwise complies with the terms of the De Minimis Sale Order. Notwithstanding the foregoing, the Debtors agree to cooperate with reasonable requests made by HillStreet or the Acquisition Companies to provide documents or information necessary for the preparation of tax returns or otherwise

relating to the operation of the businesses purchased pursuant to the Sale Orders, but only to the extent that the same can be provided without the incurrence of material additional costs or expenses.

4. HillStreet shall cooperate with reasonable requests made by the Debtors to provide documents or information concerning the collection of the Assets; provided however, that neither HillStreet nor the Acquisition Companies, nor any of their officers, directors, partners, members, employees or professionals shall be required to take any action other than those actions necessary to cooperate with such reasonable requests (e.g., providing requested information and documentation) or incur any expenses in connection with such cooperation and no claim or cause of action shall accrue or be made against HillStreet or the Acquisition Companies, or any of their officers, directors, partners, members, employees professionals for any failure to cooperate or in the event that any Assets are not collected in whole or in part for any reason other than as a result of intentional or willful interference, misconduct or an unreasonable refusal to cooperate by HillStreet or the Acquisition Companies. Absent such willful or intentional interference, misconduct, or unreasonable refusal to cooperate, the sole remedy of the Debtors and the Committee shall be to seek an order of the Bankruptcy Court directing HillStreet or the Acquisition Companies to provide the requested information and documentation.
5. This Agreement shall be effective only upon approval by a final non-appealable order of the Bankruptcy Court. In the event such approval is denied for any reason, this Agreement shall be deemed immediately null and void and shall be treated as if it never existed. In such case, each of the Parties reserves their respective rights, claims, and

arguments with respect to the Surcharge Dispute, the Settled Claims, and all other matters addressed herein.

6. Following the date on which this Agreement becomes effective and the Parties fully perform their obligations hereunder, the Debtors and the Committee contemplate seeking a structured dismissal of the Bankruptcy Cases without pursuing the confirmation of a plan of reorganization or liquidation and without converting the Bankruptcy Cases to chapter 7 liquidation cases. Provided that the Parties comply with their respective obligations hereunder, HillStreet and the Acquisition Companies expressly covenant not to oppose or cause any other party to oppose the same and not to pursue or cause others to pursue any alternative approach or strategy in respect of bringing the Bankruptcy Cases to a close.
7. This Agreement shall be binding upon all predecessors, successors and assigns of the Parties and any other person or entities claiming by, through or under them, including, but not limited to any trustee or examiner appointed in any Bankruptcy Cases of the Debtors, including any subsequent Chapter 7 or 11 case, and any receiver or trustee or representative in any state court proceeding.
8. The Bankruptcy Court shall retain exclusive jurisdiction to interpret and enforce the Agreement.
9. Miscellaneous Provisions:
 - a. Integration. This Agreement constitutes the entire agreement of the Parties and a complete merger of prior negotiations and agreements. This Agreement shall not be modified except in a writing signed by the Parties or their authorized representatives.

- b. Unknown Facts. This Agreement includes all claims of every nature and kind whatsoever, known or unknown, suspected or unsuspected, relating to or connected with the issues and facts underlying the subject thereof. The Parties acknowledge that they may hereafter discover facts different from, or in addition to, those which they now know or believe to be true with respect to the Agreement, and agree that the Agreement shall be and remain effective in all respects relating to or connected with the issues and facts underlying the matters therein, notwithstanding such different or additional facts or the discovery thereof, with the exception of the express representations set forth in this Agreement.
- c. Representations and Warranties. The Parties represent and warrant that they have the authority to execute, deliver, and perform this Agreement.
- d. Governing Law. This Agreement shall be governed by the laws of the State of New York.
- e. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original for purposes of enforcement.
- f. Survival of Representations and Covenants. All representations, warranties, promises and covenants contained herein shall survive the execution and delivery of this Agreement.
- g. Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.
- h. Construction. This Agreement shall be deemed to have been jointly drafted by the respective Parties and their counsel, and the rule of construction of contracts

that ambiguities are construed against the drafting party shall not be applied against any person.

- i. Attorney's Fees and Costs. Each of the Parties shall bear its own attorney's fees and costs incurred in connection with the Surcharge Dispute and the negotiation and documentation of this Agreement.
- j. Nonreliance. The Parties to this Agreement expressly assume any and all risks that the facts and law may be or become different from the facts and law as known to, or believed to be, by the Parties as of the date of this Agreement. In executing this Agreement, no Party has relied upon any information supplied by the other, or upon any obligation or alleged obligation of the other Party to disclose information relevant to this Agreement.

Terms accepted and agreed, subject to approval by the Bankruptcy Court through a final non-appealable order, as of this ____ day of March, 2014

Flat Out Crazy, LLC, et al

By: _____
Name:
Title:

Squire Sanders (US), LLP

By: _____
Stephen D. Lerner

Getzler Henrich & Associates, LLC

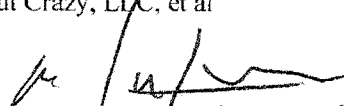
By: _____
William H Henrich

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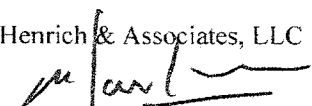
Flat Out Crazy, LLC, et al

By: 
Name: Mark Samson
Title: CO-CRD

Squire Sanders (US), LLP

By: _____
Stephen D. Lerner

Getzler Henrich & Associates, LLC

By: 
William H. Henrich

Signed on behalf of William Henrich (Mark Samson)

Official Committee of Unsecured Creditors of Flat Out Crazy, LLC, et. al.

By: _____

Name:

Title: Chairperson

Kelley Drye & Warren LLP

By: _____

Eric R. Wilson

HillStreet Fund IV, L.P.

By: 

Name: Chris Meininger

Title: President - HillStreet Capital IV, Inc.

FT Acquisition, LLC

By: 

Name: Chris Meininger

Title: MANAGER

STCR Acquisition, LLC

By: 

Name: Chris Meininger

Title: MANAGER

CBIZ Accounting, Tax and Advisory of New York, LLC

By: _____

Name:

Title:

CBIZ Valuation Group, LLC

By: _____

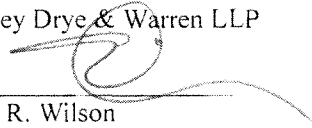
Name:

Title:

Official Committee of Unsecured Creditors of Flat Out Crazy, LLC, et. al.

By: _____
Name:
Title: Chairperson

Kelley Drye & Warren LLP

By: 
Eric R. Wilson

HillStreet Fund IV, L.P.

By: _____
Name:
Title:

FT Acquisition, LLC

By: _____
Name:
Title:

STCR Acquisition, LLC

By: _____
Name:
Title:

CBIZ Accounting, Tax and Advisory of New York, LLC

By: _____
Name:
Title:

CBIZ Valuation Group, LLC

By: _____
Name:
Title:

Official Committee of Unsecured Creditors of Flat Out Crazy, LLC, et. al.

By: Ronald M. Tucker
Name: Ronald M. Tucker
Title: Chairperson

Kelley Drye & Warren LLP

By: _____
Eric R. Wilson

HillStreet Fund IV, L.P.

By: _____
Name: _____
Title: _____

FT Acquisition, LLC

By: _____
Name: _____
Title: _____

STCR Acquisition, LLC

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CBIZ Valuation Group, LLC

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Name: _____
Title: _____

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By: _____
Name:
Title: Chairperson

Kelley Drye & Warren LLP

By: _____
Eric R. Wilson

HillStreet Fund IV, L.P.

By: _____
Name:
Title:

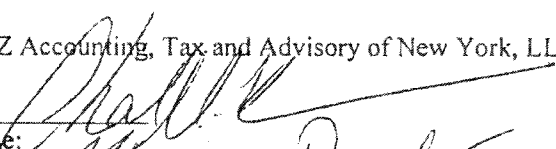
FT Acquisition, LLC

By: _____
Name:
Title:

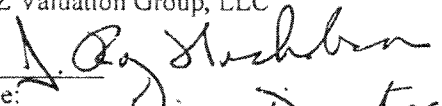
STCR Acquisition, LLC

By: _____
Name:
Title:

CBIZ Accounting, Tax and Advisory of New York, LLC

By: 
Name: *Gregory Director*
Title:

CBIZ Valuation Group, LLC

By: 
Name: *J. Q. Stuchsen*
Title: *Managing Director*