NOTICE TO INTERESTED PERSONS

Date: **April 20, 2010**

To: Plan Trustee: Gary L. Simmons
Plan Trustee: J. Michael Carney
Plan Participant: Judith Knaute
Plan Sponsor: Wyvern Restaurants, Inc.

1. You are hereby notified that the U.S. Department of Labor (the Department) is considering a submission by J. Michael Carney and Judith Knaute (the Applicants) for final authorization, pursuant to Prohibited Transaction Exemption (PTE) 96-62, 61 FR 39988, July 31, 1996, as amended by 67 FR 44622, July 3, 2002, from the prohibited transaction rules of the Employee Retirement Income Security Act of 1974 (ERISA) and the sanctions of the Internal Revenue Code, as amended, (the Code).

2. The submission has met the requirements for tentative authorization under PTE 96-62.

3. If the submission by the Applicants receives final authorization from the Department, the restrictions resulting from the application of sections 406(a)(1)(A) and (D) and 406(b)(1) and (b)(2) of ERISA and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply to the proposed cash sale (Proposed Sale) by the individually-directed accounts of the Applicants (the Accounts) in the Wyvern Restaurants, Inc. 401(k) Profit Sharing Plan (the Plan) of residential real property located at 14290 Old Cazadero Road, Guerneville, California 95446 (the Property) to the Applicants in their individual capacities.

4. The Applicants make the following representations regarding this matter.

Background

5. The Plan is a defined contribution profit sharing plan qualified under section 401(k) of the Code. The Plan Sponsor is Wyvern Restaurants, Inc. which owns a chain of pizza restaurants, and one of its trustees (the Trustee) is Mr. Carney. Ms. Knaute and Mr. Carney are 25% and 50% shareholders (respectively) of the Plan Sponsor as well as officers. As of December 31, 2009, the Plan had 176 Participants and total assets of $5,301,624.00. Also as of this date, Ms. Knaute and Mr. Carney had total assets of $661,991 and $948,162, respectively, in their Accounts.

6. The individually-directed accounts provided by the Plan are subject to certain investment policies made effective as of January 20, 2004. These investment policies permit investments in either funds offered by American Funds or trust deeds secured by real property (Deeds of Trust). The investment policies limit provide guidelines for and restrictions on investments in Deeds of Trust, including general limitations that such investments must be no less than $10,000, no more than 25% of a participant's individually-directed account, and must be approved by the Plan

Trustees. The investment policies provide that the Trustees, in their discretion, may approve investments by individual participant accounts in amounts less than $10,000 or greater than 25% of the account value.

7. On June 13, 2006, the Accounts originated a promissory note (the Note) to an unrelated party (the Borrowers) in the principal amount of $262,500. The purpose of the loan was to allow the Borrowers to refinance the Property, which had they had acquired from unrelated party. At the time the Note was executed, the Applicants represent that the Property had been appraised for $430,000.

8. The Note was an interest only balloon payment loan maturing on July 1, 2008. The Note was secured by a Deed of Trust on the Property which was notarized on July 13, 2006. Under the terms of the Note, the Borrowers were required to pay a 10% interest rate in monthly installments of $2,187.50 until July 1, 2008, at which time all unpaid sums of principal and interest were due. Late payments were subject to a 10% penalty. On January 1, 2008, the Borrowers defaulted on the Note. On May 9, 2008, the Plan, on behalf of the Accounts, took a deed in lieu of foreclosure for the full $262,500 face value of the Note. The Plan had no further recourse against the Borrowers.

9. The Property is currently held in the Accounts as follows: Mr. Carney (88.57%) and Ms. Knaute (11.43%). The Property represents 26.2 % of Mr. Carney's Account and 4.8% of Ms. Knaute's Account. All gains, losses, income and expenses attributable to the Property are allocated to these participants' Accounts in the same percentages. Although Mr. Carney manages, leases, maintains and repairs the Property, he receives no compensation from the Plan. Moreover, he does not hire related parties as part of his management duties.

10. Beginning May 2008 and running through the Fall of 2008, the Accounts incurred recovery and remodeling expenses of $130,883.93. This work included renovations of the Property's kitchen and bathrooms as well as new appliances. In addition, annual real estate taxes for the Property are approximately $2,872. The Accounts also incurred additional expenses including taxes and insurance expenses in the total amount of $13,715.54. The Accounts' acquisition and holding cost in the Property is $407,099.47 ($262,500 + $130,883.93 + $13,715.54).*

11. Beginning January until September 2009, the Plan leased the Property to an unrelated tenant. The Plan hired a professional rental agent (the Agent) to market the Property as a rental. The Agent checked potential renters' credit, references, bank balances and employment status. The Accounts received rental income of $1,250 per month or a total of $11,250.00. The Account

* The Applicants understand that, if final authorization is granted, the Department is not opining on whether the acquisition and holding of the Property by the Accounts in the Plan have violated section 404(a) of ERISA. In pertinent part, section 404(a) of ERISA requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the Plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. However, the Department is concerned that the renovation costs expended by the Accounts to improve the Property are inconsistent with the value of such property.

incurred additional expenses of $5,461 for the period. The Applicants represent that, currently, the Property needs new carpeting and paint in order to be marketed as a rental again. The net acquisition and holding costs for the Accounts in the Property is $401,310.47 ($407,099.47 - $11,250 + $5,461).

12. The Applicants represent that the Accounts have not incurred Unrelated Business Taxation Income, but will confirm this assessment with a certified public accountant. The Applicants also represent that they do not live within close proximity of the Property, nor have they leased or used such Property since it has been held by their Accounts.

Description of the Proposed Sale

13. The Property was appraised on July 16, 2009 (the Appraisal), by Vint Hughes (the Appraiser), of Monarch Appraisal in Middletown, California. The Appraiser is certified by the State of California (State Certification #AR016869). The Appraiser has certified that he is independent of the Employer, the Trustee, and any other parties in interest with respect to this transaction. During 2009, the Appraiser represents that he derived less than 1% of his gross income from parties in interest with respect to the Plan. Further, the Appraiser is aware that the Appraisal will be used as part of the Proposed Sale.

14. The Property was valued using the Sales Comparison Approach. The Appraiser compared the Property to four other similar residential properties (consisting of 2-3 bedrooms and 1-2 bathrooms) sold within 0.75 miles since February 2009. He adjusted the sale price of the comparable properties based upon size, condition, date of the sale, buyer's preference, and landscaping/grounds. The Appraiser noted in his report that the Property's kitchen and bathrooms were recently remodeled. The Appraiser also described the Property's condition as "lower than typical physical depreciation taken, due to recent updating." The Appraiser determined that the fair market value of the Property was $280,000 as of July 16, 2009.

15. The Appraiser will update the Appraisal on the date of the Proposed Sale.

16. Although the Proposed Sale will result in a loss to the Accounts since the fair market value of the Property is less than the $401,310.47 that the Accounts had invested in the Property, the Applicants have significant reasons for Proposed Sale. First, the Applicants desire to have their Accounts invested in assets with a stable, consistent rate of return. Second, the Applicants did not intend to hold residential real property for lease as an investment in their Accounts. Third, the Proposed Sale will eliminate Mr. Carney's obligations to manage, lease, maintain and repair the Property. Fourth, the Accounts' holding and managing parcels of the real property is time consuming and is not economical for the Accounts and the Trustees.

17. The Proposed Sale is subject to the following conditions:

(A) The terms and conditions of the Proposed Sale are at least as favorable to the Accounts as those obtainable in an arm's length transaction with an unrelated party;

(B) The Proposed Sale is a one-time transaction for cash;

(C) The Plan, on behalf of the Accounts, pays no commissions, costs, or other expenses in connection with the Proposed Sale;

(D) The Accounts receive: (1) $280,000; or (2) the fair market value of the Property on the date of the Proposed Sale as determined by a qualified independent appraiser; and

(E) The Plan Trustees will (1) review and approve the methodology used by the Appraiser, (2) will ensure that such methodology is properly applied in determining the Property's fair market value on the date of the Proposed Sale, and (3) also determine whether it is prudent to go forward with the Proposed Sale.

Tentative Authorization of Proposed Sale

18. The Proposed Sale shall become tentatively authorized as of the date highlighted above.

Substantially Similar Prior Exemptions

19. PTE 96-62 requires that the Proposed Sale be substantially similar to the transactions described in at least two individual exemptions previously granted by the Department within the sixty-month (five year) period ending on the date of filing of the application. The substantially similar individual exemptions are described below:

(A) FAN 2007-05E (April 6, 2007) involving the Individual Retirement Account #1474 for Randy Aulick (Aulick): A prohibited transaction exemption was granted to Randy Aulick for the sale of land, which included residential real property, from Mr. Aulick's Individual Retirement Account (IRA) to Randy Aulick, a party in interest with respect to the plan. Mr. Aulick's IRA incurred renovation and unforeseen repair costs for the property. Mr. Aulick desired to purchase the property to provide a home for his ailing father. Although the IRA suffered a loss in connection with the transaction, Mr. Aulick represented that the sale of the property to a third party would likely result in an even more significant loss. Mr. Aulick also represented that the sale of the property would increase the liquidity and diversification of the IRA's portfolio, and would relieve the IRA of its substantial obligations with respect to the property (e.g., renovation and repair costs). The sale was a one time cash transaction. The purchase price was the greater of (1) $358,000 or (2) the current fair market value of the property as of the date of the sale. The IRA paid no commissions, costs, or other expenses in connection with the sale. Similar circumstances are present in the current exemption and therefore it is submitted that the exemption is similar in all material respects.

(B) PTE 2006-17, 71 FR 67914 (Nov. 24, 2006) involving the Frank D. May, D.M.D., P.A. 401(k) Profit Sharing Plan and Trust: A prohibited transaction exemption was granted to Dr. Frank May for the sale of stock in a closely held company from Dr. May's individual account in the Frank D. May, D.M.D., P.A. 401(k) Profit Sharing Plan and Trust to Dr. May himself. The sole asset of the company was undeveloped land. Dr. May's account incurred substantial and continuing costs and expenses relating to the acquisition and holding of the stock, and expenses required to protect the property from trespassers, squatters, and intruders. Therefore, Dr. May requested an exemption to purchase from the plan to relieve the account of these continued and substantial expenses. Dr. May represented that the sale of the stock would divest the account of an illiquid, non-income producing asset, would increase the liquidity of the account's portfolio, and would facilitate diversification of the account's assets. The purchase price for the stock was equal to the current fair market value of the account's interest established by an independent appraiser at the time of the sale, which resulted in a loss to his account. However, the sale to an unrelated third party purchaser would have been difficult and time consuming. The sale was a one time cash transaction. The purchase price for the stock was the fair market value of the company's assets determined by an independent, qualified appraiser as of the date the transaction. Dr. May's account paid no commissions, costs, or other expenses in connection with the sale. Similar circumstances are present in the current exemption and therefore it is submitted that the exemption is similar in all material respects.

Your Right to Comment on the Proposed Sale

20. As a person who may be affected by this exemption, you have the right to comment on the proposed exemption by **May 17, 2010**. Comments should be addressed to:

    Submission Number: E-00644
    Employee Benefits Security Administration (EBSA)
    Office of Exemption Determinations
    U.S. Department of Labor
    200 Constitution Avenue NW, Room N-5700
    Washington, DC 20210
    Attention: Mr. Anh-Viet Ly

21. The Department will make no decision on the request for final authorization for the transaction until it reviews all comments received in response to the enclosed notice no later than **May 17, 2010**. Be sure to reference the submission number, E-00644. Comments may also be submitted by facsimile to 202-219-0204, or by email to Ly.Anh-Viet@dol.gov.

Anticipated Date of Sale

22. The final authorization to engage in the transaction will occur on **May 22, 2010**, unless the Department notifies the Employer otherwise. Upon final authorization, the transaction will occur as soon as administratively feasible after **June 1, 2010**.