

01-18-2002

1-11-02

Form PTO/SB 594

OMB No. 0651-0027 (exp. 5/31/2002)

Tab settings



101953241

U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

The Krystal Company

- Individual(s)
- General Partnership
- Corporation-State
- Other
- Association
- Limited Partnership

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other License Agreement
- Merger
- Change of Name

Execution Date: December 31, 2001

2. Name and address of receiving party(ies)

Name: Crystac Property II LLC

Internal Address: c/o U.S. Realty Advisors, LLC

Street Address: 1370 Avenue of the Americas

City: New York State: NY Zip: 10019

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State
- Other limited liability company

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a separate document from assignment)
Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

None

343677

B. Trademark Registration No.(s)

See Exhibit A attached

Additional number(s) attached Yes No

406

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: David M. Ledy

Internal Address: c/o U.S. Realty Advisors, LLC

Street Address: 1370 Avenue of the Americas

City: New York State: NY Zip: 10019

6. Total number of applications and registrations involved: 25

7. Total fee (37 CFR 3.41): \$640.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Mitchell S. Padover

Name of Person Signing

Signature

January 8, 2002

Date

Total number of pages including cover sheet, attachments, and document: 20

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patent & Trademarks, Box Assignments
Washington, D.C. 20231

01/17/2002 TDIAZ1 00000159 343677

01 FC:481
02 FC:482

40.00 OP
600.00 OP

TRADEMARK
REEL: 002426 FRAME: 0589

EXHIBIT A**MARKS**

Mark	Reg. No.	Ser. No.	Reg. Date [Filing Date]
THE KRYSTAL	343,677	71/380,952	3/2/37
THE KRYSTAL	567,919	71/601,218	12/16/52
KRYSTAL	1,330,234	73/490,050	4/9/85
KRYSTAL	1,330,251	73/491,387	4/9/85
KRYSTAL KWIK	1,330,262	73/501,931	4/9/85
KRYSTAL	1,331,146	73/491,385	4/16/85
PLAIN PUPS	1,643,777	74/911,998	5/7/91
CHILI CHEESE PUPS	1,643,778	74/012,041	5/7/91
CHILI PUPS	1,652,807	73/839,598	7/30/91
KRYS-KROSS	1,682,140	74/075,075	4/7/92
KRYSTAL	1,787,005	74/337,580	8/10/93
CORN PUPS (stylized)	1,809,407	74/278,630	12/7/93
KRYSTAL	1,876,821	74/484,271	1/31/95
KRYSTAL	1,943,491	74/516,536	12/6/95
KRYSTAL'S XL	1,981,558	74/537,239	6/18/96
KRYSTAL SUNRISER	2,013,581	75/005,549	11/5/96
KRYSTAL	2,033,261	74/516,549	1/28/97
KRYSTAL	2,120,676	74/484,253	12/16/97
KRYSTAL CHIK	2,232,312	75/458,107	3/16/99
THE BEST THINGS IN LIFE ARE SQUARE	2,234,282	75/458,106	3/23/99
KRYSTAL	2,281,199	75/510,205	9/28/99

KRYSTAL	2,282,541	75/352,556	10/5/99
KRYSTAL	2,305,146	75/347,993	1/4/00
KRYSTAL	2,407,561	75/352,557	11/28/00
MINI PUPS	2,465,899	75/222,523	7/3/01



LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "Agreement") is made as of December 31, 2001 by and between CRYSTAC PROPERTY II LLC, a Delaware limited liability company ("Lessor"), whose address is c/o U.S. Realty Advisors, LLC, 1370 Avenue of the Americas, New York, New York 10019, and THE KRYSTAL COMPANY, a Tennessee corporation ("Lessee"), whose address is One Union Square, Chattanooga, Tennessee 37402.

PRELIMINARY STATEMENT

Lessor and Lessee entered into that certain Master Lease dated as of the date of this Agreement (the "Master Lease") with respect to the restaurant properties described by address on the attached Exhibit A (the "Properties"). In consideration for Lessor entering into the Master Lease and this Agreement, Lessee has agreed to grant Lessor licenses to use the Property Rights as set forth in this Agreement.

Initially capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the Master Lease.

The term "*Property Rights*" as used in this Agreement shall mean the following:

(i) any trade names, trademarks and service marks used in connection with the operation of the Licensed Concepts at the Properties, including, without limitation, the trademarks and service marks listed on Exhibit B (collectively, the "Marks" and individually, a "Mark");

(ii) any other commercial symbols and applications used in connection with the operation of the Licensed Concepts at the Properties; and

(iii) all of the following relating to the operation of the Licensed Concepts at the Properties: the plans, specifications, business formats, construction plans, inspection and consultation programs, signs, flags, equipment layouts, methods, specifications standards, recipes, confidential information, trade secrets, operating procedures, training programs and materials, guidance policy statements and related materials, designs, advertising, publicity and marketing programs, distinctive physical and structural features, distinctive décor, color schemes on all walls, counters, fixtures and furnishings, exterior treatments and all other materials developed and used by Lessee to distinguish its properties as Licensed Concepts.

The term "*Licensed Concepts*" as used in this Agreement shall mean "Krystal" restaurant units and any other restaurant concept developed and used by Lessee at the Properties during the Lease Term.

AGREEMENT

In consideration of the mutual covenants and provisions of this Agreement, the parties agree as follows:

1. ***Licenses; Exercise of Licenses; Assignment and Sublicensing.*** A. Lessee hereby grants to Lessor and its successors and assigns, including any Permitted Licensees (as hereinafter defined), an irrevocable license (exercisable without payment of any license fee, royalty or other compensation to Lessee) to use and license and sublicense (subject to Section 1.B hereof) the Property Rights in connection with the operation of the Licensed Concepts at the Properties (collectively, the "Licenses" and individually, a "License").

B. The Licenses corresponding to each Property may be exercised by Lessor and its successors and assigns, including any Permitted Licensees, only if Lessor or its successors and assigns, including any Permitted Licensees, takes possession of such Property upon the occurrence and during the continuance of an Event of Default. The Licenses with respect to any Property shall expire upon the earlier of (a) the satisfaction of all of Lessor's obligations to Lender under the Loan Documents, (b) 30 years after the date hereof (the "Licensed Term"), (c) a material breach by Lessor of any of its obligations under Section 2.A hereof (any such breach, a "Breach"), to the extent such Breach is not cured or deemed cured as provided in Section 2.C hereof, (d) upon execution of a Franchise Agreement (hereinafter defined) by Lessee and Lessor or any Permitted Licensee with respect to such Property, as set forth below, or (e) twelve (12) months following the exercise of the License with respect to such Property, unless, during such twelve (12) month period, Lessee, not acting in good faith, fails to execute a Franchise Agreement in favor of the operator of such Property and such operator is (x) Lessor, its successors and assigns or a Permitted Licensee, and (y) has satisfied all of the requirements to become a franchisee of Lessee in Lessee's reasonable discretion (other than requirements relating to payment of any franchise fee, license fee, royalty or other compensation to Lessee). Lessor and its successors and assigns, including any Permitted Licensees, shall not be obligated to pay any franchise fee or license fee to Lessee in connection with the exercise of the Licenses. Notwithstanding the foregoing, during the period commencing when the Licenses are exercised with respect to any Property and ending when the Franchise Agreement is entered into with respect to such Property as set forth below, any royalty payments that would be required to made to Lessee had the Franchise Agreement been in effect during such period shall be remitted to Lessor and its successors and assigns, to be credited towards the amounts owed by Lessee under the Master Lease. In addition to the collateral assignment to Lender contemplated by Section 17 of this Agreement, Lessor shall have the right to assign and/or sublicense the Licenses in whole or in part to any of the other Permitted Licensees. The term "Permitted Licensees" as used in this Agreement shall mean Lender, its successors and assigns, and any other Person (including any sublicensee) who qualifies to operate any of the Properties by (1) furnishing to Lessee satisfactory evidence that it meets Lessee's then system-wide criteria for being awarded a Licensed Concepts franchise as determined in Lessee's reasonable discretion (other than criteria relating to payment of any franchise fee, license fee, royalty or other compensation to Lessee), and (2) executing an undertaking to operate such Property pursuant to the terms of this Agreement. At the request of Lessee after the occurrence of Event of Default, Lessor shall cause any operator of the Properties (other than Lessee) to enter into Lessee's then-standard form of

franchise agreement for the Licensed Concepts (the "Franchise Agreement"), provided that, until such time as all amounts owed by Lessee under the Master Lease have been paid in full, any payments required to be made to Lessee under the Franchise Agreement shall be remitted to Lessor and its successors and assigns, to be credited towards the amounts owed by Lessee under the Master Lease. If Lessee does request such operator of any Property to enter into the Franchise Agreement, the terms and conditions of the Franchise Agreement shall supercede the terms and provisions of this Agreement as it relates to such Property.

C. In connection with the exercise of Lessor's right to assign and/or sublicense the Licenses in whole or in part to any of the other Permitted Licensees, Lessor agrees to comply with any reasonable request to assist Lessee in complying with any applicable state or federal franchise disclosure laws. Lessor agrees to indemnify and hold harmless Lessee for any loss, claim or expense incurred as a result of Lessor's failure to comply with this subparagraph.

2. **Quality Control.** A. Lessee (or any successor of Lessee as owner of the Marks) shall have the right, at its expense, during regular business hours, under the supervision of a representative of Lessor or any Permitted Licensee and in a manner so as not to interfere with the business or operations of Lessor or any Permitted Licensee, to reasonably monitor the quality of the services offered by Lessor or any Permitted Licensee under the Marks. Lessor agrees that the nature and quality of the services using the Marks shall meet or exceed the standards for nature and quality of services from time to time set by Lessee for the Licensed Concepts under Lessee's then-standard form of franchise agreement (the "Quality Control Standards"). Lessee shall provide a copy of Lessee's then-standard form of franchise agreement to Lessor upon request. Lessee may from time to time change the Quality Control Standards, but only upon 60 days prior written notice to Lessor and/or its successors and assigns, including any Permitted Licensees, and only to the extent Lessee changes the standards for nature and quality of services for the Licensed Concepts under substantially all of Lessee's then-current franchise agreements in the same region as such standards are applied to the Properties.

B. Lessor acknowledges that the Quality Control Standards and Property Rights may contain confidential and proprietary information and trade secrets. As used herein, the term "Confidential Information" shall mean any information (x) disclosed or provided to Lessor by Lessee, and (y) required to be kept confidential by Lessee's most recently dated form of franchise agreement received by Lessor. Lessor agrees (i) not to use the Confidential Information in any other business or capacity, (ii) not to communicate or divulge the Confidential Information to, or use the same for the benefit of any person, persons, partnership, association or corporation, and (iii) to divulge the Confidential Information only to such employees of Lessor and its successors and assigns, including any Permitted Licensees, as must have access to it in order to operate the Licensed Concepts at the Properties. The foregoing restrictions on disclosure and use of Confidential Information do not apply to information, processes or techniques which are generally known in the restaurant industry, other than through disclosure (whether deliberate or inadvertent) by Lessor or to disclosure of Confidential Information in judicial or administrative proceedings to the extent that Lessor is legally compelled to disclose such information, provided that Lessor has afforded Lessee the opportunity to obtain an appropriate protective order or other assurance satisfactory to Lessee of confidential treatment for the information required to be so disclosed.

C. If Lessee believes that there has been a Breach, then Lessee shall have the right to proceed against the operator of such Property or Properties according to the default and termination procedures set forth under Lessee's then-current franchise agreement, including termination of the operator's right to continue operation of the Property as a Krystal Restaurant, provided, however, that any controversy or claim arising out of or relating to this Section 2 between Lessee and Lessor shall be resolved pursuant to the arbitration provisions set forth in Section 16 of this Agreement.

3. ***Representations and Warranties of Lessee.*** The representations and warranties of Lessee contained in this Section are being made to induce Lessor to enter into this Agreement and Lessor has relied, and will continue to rely, upon such representations and warranties. Lessee represents and warrants to Lessor as of the date of this Agreement as follows:

A. ***Organization, Authority and Status of Lessee.*** Lessee has been duly organized or formed, is validly existing and in good standing under the laws of its state of incorporation and is qualified to do business in any jurisdiction where any of the Properties are located. All necessary corporate action has been taken to authorize the execution, delivery and performance by Lessee of this Agreement. The Person who has executed this Agreement on behalf of Lessee is duly authorized to do so.

B. ***Enforceability.*** This Agreement constitutes the legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms.

C. ***Absence of Breaches or Defaults.*** The authorization, execution, delivery and performance of this Agreement will not result in any breach of or default under any document, instrument or agreement to which Lessee is a party or by which Lessee, any of the Properties, or any of the property of Lessee is subject or bound, except for such breaches or defaults which, individually or in the aggregate, have not had, and could not reasonably be expected to result in, a Material Adverse Effect. The authorization, execution, delivery and performance of this Agreement will not violate any applicable law, statute, regulation, rule, ordinance, code, rule or order.

D. ***Licenses.*** Lessee is the owner of the Property Rights and has the exclusive right and authority to grant the Licenses to Lessor. Lessee has not assigned, conveyed, pledged or otherwise granted any rights in and to the Property Rights, other than (i) pursuant to the Licenses, (ii) pursuant to license or franchise agreements granted to licensees and/or franchisees, as applicable, at other locations, and (iii) as set forth on the attached Schedule I. The exercise by Lessor and/or its successors and assigns, including any Permitted Licensees, of the Licenses will not violate or infringe any property right of any third party.

4. ***Notices.*** All notices, consents, approvals or other instruments required or permitted to be given by either party pursuant to this Agreement shall be in writing and given by (i) hand delivery, (ii) facsimile, (iii) express overnight delivery service or (iv) certified or registered mail, return receipt requested, and shall be deemed to have been delivered upon (a) receipt, if hand delivered, (b) transmission, if delivered by facsimile during regular business

hours of recipient or, if not, on the next Business Day, (c) the next Business Day, if delivered by express overnight delivery service, or (d) the third Business Day following the day of deposit of such notice with the United States Postal Service, if sent by certified or registered mail, return receipt requested. Notices shall be provided to the parties and addresses (or facsimile numbers, as applicable) specified below:

If to Lessee: The Krystal Company
One Union Square
Chattanooga, TN 37402
Attention: Mr. Larry D. Bentley
Telephone: (423) 757-1500
Telecopy: (423) 757- 5773

With a copy to: Miller & Martin LLP
1000 Volunteer Building
832 Georgia Avenue
Chattanooga, TN 37402
Attention: Hugh F. Sharber, Esq.
Telephone: (423) 785-8212
Telecopy: (423) 785- 8480

If to Lessor: Crystac Property II LLC
c/o U.S. Realty Advisors, LLC
1370 Avenue of the Americas
New York, NY 10019
Attention: Mr. David M. Ledy
Telephone: (212) 581-4540
Telecopy: (212) 581-4950

With a copy to: Proskauer Rose LLP
1585 Broadway
New York, NY 10036
Attention: Kenneth S. Hilton, Esq.
Telephone: (212) 969-3000
Telecopy: (212) 969-2900

or to such other address or such other person as either party may from time to time hereafter specify to the other party in a notice delivered in the manner provided above. No such notices, consents, approvals or other communications shall be valid unless GE Capital Franchise Finance Corporation, a Delaware corporation ("Lender"), receives a duplicate original thereof at the following address:

Dennis L. Ruben, Esq.
Executive Vice President, General Counsel and Secretary
GE Capital Franchise Finance Corporation
17207 North Perimeter Drive
Scottsdale, AZ 85255
Telephone: (480) 585-4500
Telecopy: (480) 585-2226

or to such other address or such other person as Lender may from time to time specify to Lessor and Lessee in a notice delivered in the manner provided above.

5. ***Time Is of the Essence.*** Time is of the essence with respect to each and every provision of this Agreement in which time is a factor.

6. ***Waiver and Amendment.*** No provision of this Agreement shall be deemed waived or amended except by a written instrument unambiguously setting forth the matter waived or amended and signed by the party against which enforcement of such waiver or amendment is sought. Waiver of any matter shall not be deemed a waiver of the same or any other matter on any future occasion.

7. ***Successors Bound.*** Except as otherwise specifically provided herein, the terms, covenants and conditions contained in this Agreement shall bind and inure to the benefit of the respective heirs, successors, executors, administrators, assigns and Permitted Licensees of each of the parties hereto. Lessor shall have the right to assign and/or sublicense the Licenses, in whole or in part, to any Permitted Licensee.

8. ***Captions; Section References.*** Captions are used throughout this Agreement for convenience of reference only and shall not be considered in any manner in the construction or interpretation hereof. References to a particular Section herein shall mean such Section of this Agreement unless specific reference is also made to another instrument or agreement.

9. ***Severability.*** The provisions of this Agreement shall be deemed severable. If any part of this Agreement shall be held unenforceable by any court of competent jurisdiction, the remainder shall remain in full force and effect, and such unenforceable provision shall be reformed by such court so as to give maximum legal effect to the intention of the parties as expressed therein.

10. ***Other Documents and Actions.*** Each of the parties agrees to sign such other and further documents and to take such other actions as may be reasonably necessary or appropriate to carry out the intentions expressed in this Agreement. Without any limitation of the foregoing, after an Event of Default, Lessor agrees to provide within 30 days of a request by Lessee any and all information requested by Lessee and deemed necessary by Lessee, in its sole but reasonable discretion, for inclusion in Lessee's Uniform Franchise Offering Circular or other disclosure document required under the FTC Rule or other state law or regulation regarding the sale or offering for sale of franchises. Lessor further grants Lessee the right to use, reproduce, modify, publish and create derivative works from such information.

11. **Attorneys' Fees.** In the event of any judicial or other adversarial proceeding between the parties concerning this Agreement, to the extent permitted by law, the prevailing party shall be entitled to recover all of its reasonable attorneys' fees and other costs in addition to any other relief to which it may be entitled. In addition, Lessor shall, upon demand, be entitled to all reasonable attorneys' fees and all other costs incurred in the preparation and service of any notice or demand hereunder, whether or not a legal action is subsequently commenced.

12. **Entire Agreement.** This Agreement and any other instruments or agreements referred to herein, constitute the entire agreement between the parties with respect to the subject matter hereof.

13. **Forum Selection; Jurisdiction; Venue; Choice of Law.** Lessee acknowledges that this Agreement was substantially negotiated in the State of Arizona, this Agreement was executed and delivered in the State of Arizona and there are substantial contacts between the parties and the transactions contemplated herein and the State of Arizona. Except as otherwise provided in Section 16, for purposes of all actions or proceedings arising out of this Agreement, the parties hereto expressly submit to the non-exclusive jurisdiction of all federal and state courts located in the State of Arizona. Lessee and Lessor consent that they may be served with any process or paper by registered mail or by personal service within or without the State of Arizona in accordance with applicable law. Furthermore, each of Lessee and Lessor waives and agrees not to assert in any such action, suit or proceeding that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. This Agreement shall be governed by the internal laws of the State of Arizona, without regard to its principles of conflicts of law. Nothing contained in this Section 13 shall limit or restrict the right of Lessor or Lessee to commence any proceeding in the federal or state courts located in the states in which any of the Properties are located to the extent Lessor or Lessee deems such proceeding necessary or advisable to exercise remedies available under this Agreement.

14. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

15. **Waiver of Jury Trial and Punitive, Consequential, Special and Indirect Damages.** EACH OF LESSOR AND LESSEE HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY IT AGAINST THE OTHER PARTY OR SUCH OTHER PARTY'S SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE RELATIONSHIP OF LESSOR AND LESSEE, LESSEE'S USE OR OCCUPANCY OF ANY OF THE PROPERTIES, AND/OR ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY OR STATUTORY REMEDY. THIS WAIVER BY EACH OF THE PARTIES HERETO OF ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY HAS BEEN NEGOTIATED AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN. FURTHERMORE, LESSEE HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT IT MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES FROM LESSOR AND ANY OF

LESSOR'S AFFILIATES, OFFICERS, DIRECTORS, MEMBERS OR EMPLOYEES OR ANY OF ITS SUCCESSORS WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY LESSEE AGAINST LESSOR OR ANY OF LESSOR'S AFFILIATES, OFFICERS, DIRECTORS, MEMBERS OR EMPLOYEES OR ANY OF ITS RESPECTIVE SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY DOCUMENT CONTEMPLATED HEREIN OR RELATED HERETO. THE WAIVER BY LESSEE OF ANY RIGHT IT MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES HAS BEEN NEGOTIATED BY THE PARTIES HERETO AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN.

16. ***Arbitration of Quality Control Issues.*** Any controversy or claim arising out of or relating to Section 2 (Quality Control) hereof, or the breach thereof, shall be settled by final and binding arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules and "Expedited Procedures" thereunder (each as supplemented and amended by this Section 16, the "Rules"), and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The following rules, terms, conditions and requirements shall supplement and amend the Commercial Arbitration Rules and the "Expedited Procedures" thereunder for any arbitration required under this Section 16:

(i) The initiating party of the arbitration pursuant to this Section 16 (the "Claimant") shall give to the other party (the "Respondent") written notice of its intention to arbitrate (the "Demand"), which Demand shall contain a statement setting forth the nature of the dispute, the names and addresses of all other parties, the amount involved (if any), and the remedy sought.

(ii) Not later than five (5) days after Claimant delivers a Demand to Respondent, Claimant shall file at any office of the AAA located in Maricopa County, Arizona two (2) copies of the Demand and two (2) copies of this Section 16, together with all appropriate filing fees required by the AAA under the Rules. Claimant's failure to strictly comply with this subparagraph (ii) shall be deemed a material breach of this Section 16, and the Demand (and its subject matter including the requested remedy) shall be deemed withdrawn by Claimant for a period of not less than one (1) year, during which time Claimant may not pursue its Demand and claim of breach under Section 2 (Quality Control) hereof with AAA or any court of competent jurisdiction.

(iii) AAA shall confirm in writing notice of such filing to the parties immediately upon receipt of Claimant's filed Demand (the "Confirmation").

(iv) The respondent may file (with the appropriate fee) an answering statement in duplicate with the AAA within ten (10) days after receipt of Confirmation and concurrently therewith send such answering statement to the Claimant. No further answers or counterclaims shall be accepted by AAA or the arbitrators thereafter.

(v) A panel of three (3) Qualified Arbitrators shall be selected for any arbitration under this Section 16. AAA shall create and send a list of potential Qualified Arbitrators to the Claimant and Respondent within twenty (20) days after the date AAA

sends the Confirmation to the parties. A "Qualified Arbitrator" means a practicing attorney or a retired judge, with experience in matters concerning franchise law, operation, licensing and contracts under the laws of the State of Arizona.

(vi) Within seven (7) days after the date AAA sends a list of Qualified Arbitrators to the parties, Claimant and Respondent shall each select one person as a Qualified Arbitrator and deliver notice of that selection to AAA and the opposing party. In the event both Claimant and Respondent select the same individual or any party fails to timely deliver notice of a selected Qualified Arbitrator, AAA shall within five (5) days after such seven (7) day period select one or two Qualified Arbitrators, as applicable. The two selected Qualified Arbitrators shall, within ten (10) days of their selection, jointly select a third Qualified Arbitrator (the "Chair Arbitrator") from the list of Qualified Arbitrators. If the two selected Qualified Arbitrators are unable or fail to agree on a Chair Arbitrator, AAA shall select the Chair Arbitrator within five (5) days after such ten (10) day period. The date on which the Chair Arbitrator is selected shall hereinafter be referred to as the "Final Selection Date".

(vii) The arbitration shall be held in Maricopa County, Arizona at a place chosen by AAA.

(viii) This Agreement shall be governed by the laws of the State of Arizona. The parties acknowledge that this agreement evidences a transaction involving interstate commerce. Title 9 of the United States Code (United States Arbitration Act) shall govern the interpretation, enforcement and proceedings pursuant to the arbitration clause in this Agreement.

(ix) Any award by the arbitrators shall be limited by and conform to Sections 11 and 15 hereof, as applicable.

(x) Except for a Breach that endangers the health and/or safety of customers or employees at the Properties, no party may apply to the arbitrators or any court having jurisdiction to seek injunctive relief until the arbitration award is rendered or the dispute is otherwise resolved.

(xi) The arbitration shall commence as expeditiously as possible, but in no event later than sixty (60) days after the Final Selection Date.

(xii) In all events the arbitration shall be completed and an award (as determined by a majority of the Qualified Arbitrators) rendered and delivered to the parties within one hundred twenty (120) days after the Final Selection Date.

(xiii) Depositions prior to the arbitration are not required and shall not be mandated to occur by the Qualified Arbitrators.

(xiv) Consistent with the expedited nature of arbitration, each party will, upon the written request of the other party, promptly provide the other with copies of documents relevant to the issues raised by any claim or counterclaim. Any dispute

regarding discovery, or the relevance or scope thereof, shall be determined by the Chair Arbitrator which determination shall be conclusive. All discovery shall be completed within forty-five (45) days following the Final Selection Date.

(xv) To the extent that any of paragraphs (i) through (xiv) above are in conflict or are inconsistent with the published Commercial Arbitration Rules and "Expedited Procedures" of the AAA, any such paragraph (i) through (xiv) shall be controlling.

17. ***Property Rights Assignment to Lender.*** A. Lessee acknowledges and agrees that (i) Lessor has collaterally assigned all of its right, title and interest under this Agreement to Lender pursuant to the Loan Documents and (ii) upon the exercise of Lender's remedies set forth in such Loan Documents upon the occurrence of an Event of Default thereunder, all of the rights, powers and privileges of Lessor shall be deemed the rights, powers and privileges of Lender and Lender shall be entitled to exercise all of the rights and remedies of "Lessor" under this Agreement. Lessee hereby consents to, and no further consent by Lessee shall be required for, any further assignment of rights of Lessor hereunder or in connection with any transfer by Lender. Notwithstanding any provision herein to the contrary, the collateral assignment of this Agreement to Lender shall not be deemed to create any obligation of or liability for Lender.

B. Lessee acknowledges and agrees that Lender may rely on all of the representations, warranties and covenants set forth in this Agreement, that Lender is an intended third party beneficiary of such representations, warranties and covenants and that Lender shall have all rights and remedies available at law or in equity as a result of a breach of such representations, warranties and covenants, including to the extent applicable, the right of subrogation.

C. Lessee agrees that:

(i) this Agreement shall not be changed, amended, altered, modified, or terminated without the prior written consent of Lender, which consent shall not be unreasonably withheld, delayed or conditioned, provided that, if Lender determines that it needs to obtain confirmation of all of the rating agencies (the "Rating Agencies") which have issued ratings (the "Ratings") in connection with any Securitization of the Loan that the transaction for which Lender's consent is sought will not result in a downgrade, modification, withdrawal or qualification of any of the Ratings, Lender shall not be deemed to have unreasonably withheld, delayed or conditioned its consent if any of the Rating Agencies notifies Lender that the consummation of such transaction will result in a downgrade, modification, withdrawal or qualification of any of the Ratings;

(ii) any consent, approval, agreement or waiver provided by Lessor pursuant to this Agreement (each, a "Lessor Consent") shall not be valid unless consented to in writing by Lender; provided however, that, to the extent that this Agreement requires that Lessor not unreasonably withhold, delay or condition such Lessor Consent, Lender shall not unreasonably withhold, delay or condition its consent, provided that, if Lender determines that it needs to obtain confirmation of all of the Rating Agencies that the transaction for which such Lessor Consent is sought will not result in a downgrade,

modification, withdrawal or qualification of any of the Ratings, Lender shall not be deemed to have unreasonably withheld, delayed or conditioned its consent if any of the Rating Agencies notifies Lender that the consummation of such transaction will result in a downgrade, modification, withdrawal or qualification of any of the Ratings; and

(iii) Lessor shall in no event be deemed to have unreasonably withheld any approval under this Agreement if Lender shall not have given its approval.

18. **Lessor's Liability.** Notwithstanding anything to the contrary provided in this Agreement, it is specifically understood and agreed, such agreement being a primary consideration for the execution of this Agreement by Lessor, that (i) there shall be absolutely no personal liability on the part of Lessor, its successors or assigns and the trustees, members, partners, shareholders, officers, directors, employees and agents of Lessor and its successors or assigns, to Lessee with respect to any of the terms, covenants and conditions of this Agreement, provided that Lessee shall have recourse to the Properties and Lessor to the extent expressly provided below, (ii) Lessee waives all claims, demands and causes of action against the trustees, members, partners, shareholders, officers, directors, employees and agents of Lessor and its successors or assigns in the event of any breach by Lessor of any of the terms, covenants and conditions of this Agreement to be performed by Lessor, and (iii) Lessee shall look solely to the Properties for the satisfaction of each and every remedy of Lessee in the event of any breach by Lessor of any of the terms, covenants and conditions of this Agreement to be performed by Lessor, or any other matter in connection with this Agreement or the Properties, such exculpation of liability to be absolute and without any exception whatsoever, provided that, with respect to affirmative acts of Lessor which constitute gross negligence or intentional misconduct (it being understood and agreed that the acts of the Lessee and its shareholders, officers, directors, employees and agents shall not be imputed to Lessor), Lessee shall have the right to look to other assets of Lessor, but not the assets of the trustees, members, partners, shareholders, officers, directors, employees and agents of Lessor.

19. **Lanham Act.** The parties acknowledge their express intention that this license agreement shall not operate in a manner that will substantially impair the ability of Lessee, or its successors or assigns or owner of the marks set forth on Exhibit B, to protect and maintain control over the marks in full compliance with the Lanham Act (15 U.S.C. §§1051 et seq.).

20. **Bankruptcy of Lessee.** In the event this Agreement is rejected in a bankruptcy proceeding involving Lessee, Lessee shall, at the request of Lessor and its successors and assigns, including any Permitted Licensees, enter into one or more Franchise Agreements relating to any of the Properties with any of such parties in accordance with the provisions of Section 1.B.

21. **Bank of America, N.A. Credit Facility.** Lessee intends to refinance its existing senior debt facility with SunTrust Bank, Atlanta, N.A. through a credit facility arranged by Bank of America, N.A. (the "New Credit Facility"). Lessee agrees that, as part of the closing of the New Credit Facility, Lessee shall cause the lender(s) thereunder to agree that any acquisition, sale or transfer of title to any of the Property Rights shall be subject to this Agreement.

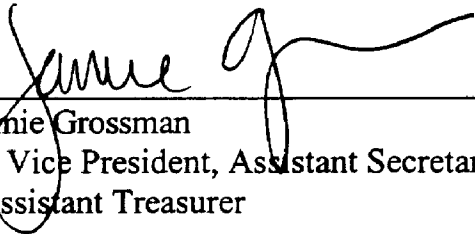
IN WITNESS WHEREOF, Lessor and Lessee have entered into this Agreement as of the date first above written.

LESSOR:

CRYSTAC PROPERTY II LLC,
a Delaware limited liability company

By Crystac Equity II LLC,
a Delaware limited liability company,
its member manager

By:



Jamie Grossman
Its Vice President, Assistant Secretary and
Assistant Treasurer

LESSEE:

THE KRYSTAL COMPANY,
a Tennessee corporation

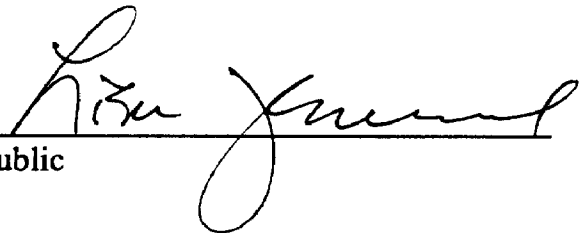
By:



Larry D. Bentley
Its Vice President and Chief Financial Officer

STATE OF ARIZONA)
) SS.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me on December 28, 2001 by Jamie Grossman, Vice President, Assistant Secretary and Assistant Treasurer of Crystac Equity II LLC, a Delaware limited liability company, member manager of Crystac Property II LLC, a Delaware limited liability company, on behalf of the limited liability company.



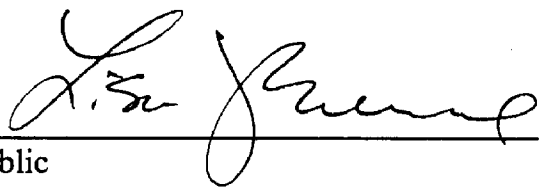
Notary Public

My Commission Expires:



STATE OF ARIZONA)
) SS.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me on December 28, 2001 by Larry D. Bentley, Vice President and Chief Financial Officer of The Krystal Company, a Tennessee corporation, on behalf of the corporation.



Notary Public

My Commission Expires:



Exhibit A**Pool 2**

FFC #	Store #	STREET	CITY	STATE
8001-3604	ATL022	4933 Jonesboro Rd	Forest Park	GA
8001-3605	ATL049	5181 Hwy 78	Stone Mtn.	GA
8001-3581	NSH015	1717 Charlotte Ave	Nashville	TN
8001-3603	KNX012	410 Lovell Road	Knoxville	TN
8001-3594	SAV006	14020 Abercorn Road	Savannah	GA
8001-3584	ATL051	5140 South Cobb Dr.	Smyrna	GA
8001-3591	KNX011	8901 Kingston Pike	Knoxville	TN
8001-3583	NSH022	401 S Cartwright Street	Goodlettsville	TN
8001-3596	SAV005	10003 Abercorn Rd.	Savannah	GA
8001-3599	ALB004	2621 Dawson Rd.	Albany	GA
8001-3589	BCF002	2914 S. Washington Ave.	Titusville	FL
8001-3592	SAV004	4814 Augusta Road	Garden City	GA
8001-3580	DAY004	2550 W. International Spdwy Blvd.	Daytona Bch	FL
8001-3587	MUF002	1865 S. Church St.	Murfreesboro	TN
8001-3569	MFS001	1377 Union Ave.	Memphis	TN
8001-3572	MNT001	2805 East South Blvd	Montgomery	AL

EXHIBIT B**MARKS**

Mark	Reg. No.	Ser. No.	Reg. Date [Filing Date]
THE KRYSTAL	343,677	71/380,952	3/2/37
THE KRYSTAL	567,919	71/601,218	12/16/52
KRYSTAL	1,330,234	73/490,050	4/9/85
KRYSTAL	1,330,251	73/491,387	4/9/85
KRYSTAL KWIK	1,330,262	73/501,931	4/9/85
KRYSTAL	1,331,146	73/491,385	4/16/85
PLAIN PUPS	1,643,777	74/911,998	5/7/91
CHILI CHEESE PUPS	1,643,778	74/012,041	5/7/91
CHILI PUPS	1,652,807	73/839,598	7/30/91
KRYS-KROSS	1,682,140	74/075,075	4/7/92
KRYSTAL	1,787,005	74/337,580	8/10/93
CORN PUPS (stylized)	1,809,407	74/278,630	12/7/93
KRYSTAL	1,876,821	74/484,271	1/31/95
KRYSTAL	1,943,491	74/516,536	12/6/95
KRYSTAL'S XL	1,981,558	74/537,239	6/18/96
KRYSTAL SUNRISER	2,013,581	75/005,549	11/5/96
KRYSTAL	2,033,261	74/516,549	1/28/97
KRYSTAL	2,120,676	74/484,253	12/16/97
KRYSTAL CHIK	2,232,312	75/458,107	3/16/99
THE BEST THINGS IN LIFE ARE SQUARE	2,234,282	75/458,106	3/23/99
KRYSTAL	2,281,199	75/510,205	9/28/99

KRYSTAL	2,282,541	75/352,556	10/5/99
KRYSTAL	2,305,146	75/347,993	1/4/00
KRYSTAL	2,407,561	75/352,557	11/28/00
MINI PUPS	2,465,899	75/222,523	7/3/01

SCHEDULE I

Lessee has granted a security interest in the Property Rights to SunTrust Bank, Atlanta.