

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

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| In re: |) | Chapter 11 |
| |) | |
| OTB HOLDING LLC, <i>et al.</i> , ¹ |) | Case No. 25-52415 (SMS) |
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| |) | |
| Debtors. |) | (Jointly Administered) |
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DEBTORS' MOTION FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. §§ 105, 363 AND 365 (I) AUTHORIZING AND SCHEDULING AN AUCTION AT WHICH DEBTORS WILL SOLICIT THE HIGHEST OR BEST BID FOR THE SALE OF SUBSTANTIALLY ALL OF DEBTORS' ASSETS, (II) APPROVING BIDDING PROCEDURES RELATED TO CONDUCT OF AUCTION, (III) APPROVING BID PROTECTIONS, (IV) APPROVING THE FORM AND MANNER OF NOTICES OF (A) PROPOSED SALE OF THE DEBTORS' ASSETS, THE AUCTION AND THE SALE HEARING, AND (B) PROPOSED ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND LEASES, (V) APPROVING THE SALE OF THE ASSETS TO THE PARTY SUBMITTING THE HIGHEST OR BEST BID, AND (VI) GRANTING RELATED RELIEF

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) file this *Debtors’ Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 105, 363 and 365 (I) Authorizing and Scheduling an Auction at Which Debtors Will Solicit the Highest or Best Bid for the Sale of Substantially all of Debtors’ Assets, (II) Approving Bidding Procedures Related to Conduct of Auction, (III) Approving Bid Protections, (IV) Approving the Form and Manner of Notices of (A) Proposed Sale of the Debtors’ Assets, the Auction and the Sale Hearing, and*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: OTB Holding LLC (3213), OTB Acquisition LLC (8500), OTB Acquisition of New Jersey LLC (1506), OTB Acquisition of Howard County LLC (9865), Mt. Laurel Restaurant Operations LLC (5100), OTB Acquisition of Kansas LLC (9014), OTB Acquisition of Baltimore County, LLC (6963). OTB Holding LLC’s service address is One Buckhead Plaza, 3060 Peachtree Road, NW, Atlanta, GA 30305.



(B) *Proposed Assumption and Assignment of Executory Contracts and Leases*, (V) *Approving the Sale of the Assets to the Party Submitting the Highest or Best Bid*, and (VI) *Granting Related Relief* (the “Motion”), pursuant to Sections 105(a), 363 and 365 of title 11 of the United States Code (11 U.S.C. §§ 101 *et seq.*, the “Bankruptcy Code”) and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), seeking entry of two orders: (i) following an initial hearing (the “Bidding Procedures Hearing”), an order (the “Bidding Procedures Order”) (a) authorizing and scheduling an auction at which the Debtors will solicit the highest or best bid for the sale of substantially all of the Debtors’ assets; (b) approving the Bidding Procedures (as defined below) related to the conduct of the auction; (c) approving the Bid Protections (as defined below) payable to the Stalking Horse Purchaser (as defined below); (d) approving the form and manner of the notices of (1) the proposed sale of the Debtors’ assets, the Auction and the Sale Hearing (each as defined below), and (2) the proposed assumption and assignment of the Debtors’ executory contracts and unexpired leases and proposed cure costs related thereto; and (ii) following a final hearing (the “Sale Hearing”), an order (the “Sale Order”) approving the sale by the Debtors of the Purchased Assets (as defined below) to OTB Hospitality, LLC (the “Stalking Horse Purchaser”) or to the bidder submitting the highest or best bid for the Purchased Assets in connection with the sale and bidding process. In support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The bases for the relief requested herein are sections 105(a), 345(b), 363, 364, 365, 1107, and 1108 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Procedure H of the *Second Amended and Restated General Order 26-2019, Procedures for Complex Chapter 11 Cases*, dated February 6, 2023 (the “Complex Case Procedures”).

BACKGROUND

3. On March 4, 2025 (the “Petition Date”), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division (the “Court”). The Debtors have continued in possession of their properties and have continued to operate and manage their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner, and no official committee has yet been established in these cases.

4. The factual background relating to the Debtors’ commencement of these cases is set forth in the *Declaration of Jonathan M. Tibus in Support of Chapter 11 Petitions and First Day Pleadings* (the “First Day Declaration”) filed on or about the Petition Date and incorporated herein by reference.²

² Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the First Day Declaration or the Agreement (as defined below) as applicable.

**PROPOSED SALE PROCESS AND
SELECTION OF STALKING HORSE PURCHASER**

A. The Debtors' Business

5. The Debtors operate the well-known fast-casual restaurant brand “On The Border Mexican Grill & Cantina,” which is engaged primarily in the development, operation and franchising of fast casual restaurants in the United States and South Korea (“Business”). In 1982, the first On the Border Mexican Grill & Cantina opened in Dallas, Texas. In the past 40 years, the Business has steadily grown over time from a single cantina to one of the country’s most well-known domestic and international Tex-Mex restaurant chains offering affordable, consistent, cultivated delicious menu items featuring bold flavors from Texas and Mexico.

6. In the years leading up to the filing, the Debtors have experienced declining financial performance as a result of, among other reasons, difficult macroeconomic environment, labor shortages and leadership turnover, an underperforming restaurant footprint, and creditor enforcement actions. In the months prior to the Petition Date, the Debtors took various steps to address their struggling performance. Among other things, the Debtors closed underperforming restaurants, implemented cost reduction measures to help mitigate the effect of declining performance and improve their financial position and liquidity, but have not been able to overcome the trends in this business segment and certain other operational challenges. While the Debtors took these steps, among others, to limit additional strains on liquidity, the Debtors continued to face substantial financial challenges.

B. Pre-Petition Bridge Financing

7. By January 2025, the Debtors required additional working capital to (i) continue operations and (ii) evaluate and pursue certain strategic alternatives in order to maximize the value

of the Debtors' assets for the benefit of all stakeholders. The Debtors were in default under the Prepetition Credit Agreement and the Prepetition Lenders were unable to advance additional funds. However, the Prepetition Secured Parties were willing to subordinate their claims and liens to new bridge financing and potential debtor-in-possession financing (subject to a cap). As a result, the Debtors and their professionals commenced a process to identify potential bridge funding to provide the Debtors with sufficient liquidity to continue operations while they evaluate and pursue certain strategic alternatives, including a potential chapter 11 filing, to maximize the value of the Debtors' assets for all stakeholders.

8. Following negotiations with two parties, on February 14, 2025, the Debtors entered into the Senior Secured Note with the Bridge Lender pursuant to which the Bridge Lender advanced the Debtors an amount equal to \$4,000,000 ("Bridge Financing"). The proceeds of the Bridge Financing were used to (i) fund operations while assessing strategic alternatives to maximize the value of the Debtors' assets and (ii) repay an overdraft balance in the Debtors' cash management system. The Bridge Financing provided the Company with the liquidity it needed to salvage operations, maintain over 2,800 jobs for the Debtors' employees and, ultimately, continue a comprehensive marketing and sale process for the benefit of all stakeholders.

C. Sale Process

9. In January 2025, the Debtors engaged a financial advisor Alvarez & Marsal North America, LLC ("A&M") and investment banker, Hilco Corporate Finance, LLC ("Hilco"), to assist the Debtors in evaluating various strategic alternatives available to the Debtors. Under the terms of its agreement and to assist the Debtors in determining the best strategic alternative available to them, Hilco explored debt refinance, structured equity, minority capital and full sale

transactions. In consultation with the Debtors and certain of their lenders, Hilco developed a list of strategic parties whom they believed may be interested in a Sale, and whom Hilco reasonably believed would have the financial resources to consummate a Sale. Hilco prepared a confidential offering memorandum and virtual data room. Potential bidders were invited to management meetings to discuss the Debtors and their businesses as part of the diligence process.

10. In total, during the sale and marketing process, Hilco contacted 273 strategic and financial potential bidders to serve as a potential stalking horse bidder, of which thirty-one (31) ultimately negotiated confidentiality agreements and were provided a confidential information memorandum.

D. The APA and Proposed Bidding Procedures

11. On March 7, 2025 the Debtors entered into that certain Asset Purchase Agreement with the Stalking Horse Purchaser, a true and correct copy of which (excluding Schedules) is attached hereto as **Exhibit B**, (the “Agreement”).³ The Agreement contemplates the sale of the Purchased Assets to the Stalking Horse Purchaser (subject to higher or better bids) and contains the following material terms:⁴

| MATERIAL TERMS OF THE AGREEMENT | |
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| Purchase Price | The aggregate amount of the Prepetition Secured Note Obligations and the DIP Obligations, by means of a credit bid (the “ <u>Credit Bid</u> ”); <i>plus</i> the Additional Cash Consideration, if applicable. <i>See Agreement § 2.5(c)</i> |

³ The following description of the Agreement is qualified in its entirety by the provisions of the Agreement. In the event there is any conflict between the description of the Agreement contained in this Motion and the provisions of the Agreement, the provisions of the Agreement shall govern and control.

⁴ Capitalized terms used in this section but not defined herein shall have the meanings ascribed to them in the Agreement.

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| <p>Purchased Assets</p> | <p>All of Sellers' rights, title and interests in and to all (except to the extent it is included in the definition of Excluded Assets) tangible and intangible real and personal property assets used or held for use by Sellers in the operation of the Business, including</p> <p>(a) all Cash for all Continuing Restaurants other than Retained Cash, the Additional Cash Consideration, if any, and the Adequate Assurance Account (and all Cash therein);</p> <p>(b) all Accounts Receivable of Sellers for all Continuing Restaurants as of the Closing;</p> <p>(c) all Credit Card Receivables for all Continuing Restaurants;</p> <p>(d) all Inventory of Sellers as of the Closing for all Continuing Restaurants, excluding: (i) alcoholic beverage Inventory in jurisdictions where the Law does not permit Buyer to take title to such Inventory through an asset purchase arrangement, (ii) alcoholic beverage Inventory in jurisdictions where the Law does not permit Buyer to take title to such Inventory until it obtains the requisite Liquor License Approvals from the pertinent Governmental Entity; and (iii) Inventory located at a restaurant that is covered by a Lease that does not constitute an Assigned Contract;</p> <p>(e) (i) all deposits under the Leases at each Continuing Restaurant, (ii) all deposits under all Assigned Contracts that are not Leases, and (iii) other prepaid deposits, charges and expenses of Sellers with respect to each Continuing Restaurant;</p> <p>(f) to the maximum extent permitted by the Bankruptcy Code, all Assigned Contracts, the rights and benefits accruing thereunder, and all documents related thereto;</p> <p>(g) all Intellectual Property owned by Sellers;</p> <p>(h) all of Sellers' recipes, methods, procedures, cooking/preparation/mixing publications, guidelines, or standards, knowhow, ingredient lists, menus, price lists, nutritional, health, or dietary information, publications, or disclosures, and promotional or informational materials;</p> <p>(i) all open purchase orders with suppliers related to the Continuing Restaurants;</p> <p>(j) all tangible personal property;</p> <p>(k) all rights under leases for all cars, trucks, or other motor vehicles;</p> |
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| | <p>(l) all Records;</p> <p>(m) all goodwill associated with the Business and the Purchased Assets;</p> <p>(n) all rights of Sellers under non-disclosure or confidentiality, non-interference, inventions assignment, non-compete, or non-solicitation agreements with current or former employees, directors, consultants, independent contractors and agents of Sellers;</p> <p>(o) all of the Assumed Permits or all of the rights and benefits accruing under any Permits relating to the Continuing Restaurants and the New Jersey Restaurants, including all Liquor Licenses to the extent transferrable and held by Sellers;</p> <p>(p) the amount of, and all rights to any, insurance proceeds received by any of Sellers after the Execution Date in respect of (i) the loss, destruction or condemnation of any Purchased Assets occurring prior to, on or after the Closing or (ii) any Assumed Liabilities, including the Condemnation Proceeds and the Casualty Proceeds;</p> <p>(q) the Purchased Actions;</p> <p>(r) all rights under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers, contractors and any other Person;</p> <p>(s) the right to receive and retain mail relating to Accounts Receivable payments and other communications of Sellers and the right to bill and receive payment for services performed but unbilled or unpaid as of the Closing;</p> <p>(t) all telephone numbers, fax numbers, e-mail addresses, websites, URLs and internet domain names owned by Sellers or otherwise utilized by Sellers in conducting the Business;</p> <p>(u) all rights, interests or claims with respect to or arising under any Customer Program;</p> <p>(v) all rights or interests of Sellers in and to all domestic and international franchise arrangements; and</p> <p>(w) all other assets that are related to or used in connection with the Business (but excluding all of the Excluded Assets).</p> <p><i>See Agreement § 2.1</i></p> |
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| <p>Assumed Liabilities</p> | <p>(a) all Liabilities arising under the Assigned Contracts that become due and payable after Closing and that do not constitute Cure Costs;</p> <p>(b) all Liabilities arising from or related to the Purchased Assets from and after the Closing;</p> <p>(c) all Cure Costs payable with respect to the Assigned Contracts;</p> <p>(d) all Liabilities of Sellers under the Customer Programs;</p> <p>(e) all Liabilities as of the Closing with respect to trade payables incurred by Sellers in the Ordinary Course of Business and arising from and after the Petition Date;</p> <p>(f) all Liabilities as of the Closing for accrued but unpaid base wages, base salary and benefits owing to Transferred Employees arising from and after the Petition Date;</p> <p>(g) all Liabilities for the provision of notice or payment in lieu of notice and any applicable New Jersey Restaurant penalties under WARN arising as a result of the Contemplated Transactions;</p> <p>(h) all Liabilities as of the Closing for accrued but unpaid sales Taxes arising from and after the Petition Date;</p> <p>(i) all property Taxes arising in connection with Continuing Restaurants that are (i) due and owing as of the Closing Date and (ii) for a Tax period;</p> <p>(j) all property Taxes that accrue on and after the Petition Date and prior to the Closing Date in connection with an Excluded Restaurant;</p> <p>(k) all rent due and payable on account of any Excluded Restaurant that accrues on and after the Petition Date and prior to the Closing Date;</p> <p>(l) any and all costs and expenses necessary in connection with providing “adequate assurance of future performance” with respect to the Assumed Contracts (as contemplated by Section 365 of the Bankruptcy Code); and</p> <p>(m) all Taxes owed to any Tax authority assessed with respect to the Purchased Assets for any period or portion thereof beginning on or after the Closing Date, including, without limitation, all Transfer Taxes.</p> <p><i>See Agreement § 2.3</i></p> |
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| Sale of Assets to Insider Complex Case Procedure H(3)(i) | None. |
| Agreements with Management or Key Employees Complex Case Procedure H(3)(ii) | None. |
| Releases Complex Case Procedure H(3)(iii) | Following the Closing, Buyer will not pursue or cause to be pursued, and hereby releases, any Avoidance Actions. <i>See Agreement § 6.12</i> |
| Private Sale/No Competitive Bidding Complex Case Procedure H(3)(iv) | None. |
| Closing and Other Deadlines Complex Case Procedure H(3)(v) | The closing of the Contemplated Transactions shall take place on the first Business Day on which all conditions to the obligations of Sellers and Buyer to consummate the Contemplated Transactions shall have been satisfied or waived. As soon as reasonably practicable following the Closing Date, but no later than 90 calendar days after the Closing Date, Buyer shall prepare an allocation of the Purchase Price among the Purchased Assets and deliver a copy of same to Sellers. <i>See Agreement § 2.7 and 2.9</i> |
| Good Faith Deposit Complex Case Procedure H(3)(vi) | \$750,000 <i>See Agreement § 2.5(a)</i> |
| Interim Arrangements with Stalking Horse Purchaser Complex Case Procedure H(3)(vii) | None. |
| Credit Bid | The aggregate amount of the Prepetition Secured Note Obligations and the DIP Obligations <i>See Agreement § 2.5(c)(i)</i> |
| Relief from Bankruptcy Rule 6004(h) | The form of Sale Order is to be determined. |

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| Provisions Providing Bid Protections to “Stalking Horse” or Initial Bidder | \$600,000 Breakup Fee \$350,000 Expense Reimbursement <i>See Agreement § 5.3</i> |
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12. The Agreement with the Stalking Horse Purchaser will be further “tested” in the marketplace by the sale and bidding process described below, so as to ensure that the Debtors’ estates realize the maximum value for the Purchased Assets (as defined in the Agreement). The Debtors have developed the following proposed process for continuing to market the Purchased Assets for sale (the “Proposed Sale Process”) in connection with concluding a prompt sale of the Business. In connection therewith, the Debtors request that this Court approve the Proposed Sale Process, including the following bidding procedures (the “Bidding Procedures”):

- (i) The Bidding Process. Any third party (other than the Stalking Horse Purchaser) (the “Potential Bidder”) that is interested in acquiring the Purchased Assets must submit an “Initial Overbid” at or prior to **May 1, 2025** (the “Bid Deadline”). Any such Initial Overbid must:
 - (a) Contain a signed definitive asset purchase agreement (together with a copy of the signed agreement that is marked to show changes from the Agreement, including all schedules and exhibits to the Agreement) with, at a minimum, the following requirements: (w) having substantially identical terms and conditions as the Agreement except with higher and better consideration; (x) containing terms and conditions no less favorable to the Debtors’ estates than the terms and conditions in the Agreement (provided that no Initial Overbid shall provide for the payment to the overbidder of any breakup fee, topping fee, expense reimbursement or other similar arrangement); (y) provide for a purchase price in an amount equal to or greater than the sum of (1) the Purchase Price, (2) the Bid Protections, and (3) \$150,000 (the “Initial Overbid Amount”); and (z) not be subject to any (1) financing contingency, (2) contingency relating to the completion of unperformed due diligence, (3) contingency relating to the approval of the overbidder’s board of directors or other internal approvals or consents, or (4) any conditions precedent to the overbidder’s obligation to purchase the Purchased Assets other than those included in the Agreement;

- (b) Include a cashiers' or certified check in the amount of 10% of the Purchase Price (the "Good Faith Deposit") to be held as a deposit (it being understood that the deposit may also be sent by wire transfer of immediately available funds to Escrow Agent);
- (c) To the extent not previously provided to the Debtors, be accompanied by evidence satisfactory to the Debtors in their commercially reasonable discretion that the overbidder is willing, authorized, capable and qualified financially, legally and otherwise, of unconditionally performing all obligations under the Agreement (or its equivalent) in the event that it submits the Prevailing Bid (as defined below) at the Auction (as defined below);
- (d) Include information regarding the identity of the Potential Bidder, including its legal name, jurisdiction and form of organization, and details regarding the ownership and capital structure of the Potential Bidder, as well as the identity of any controlling persons, significant direct or indirect equity or debt investors, and/or guarantors of such entity, and any known connections the Potential Bidder has to the Debtors or their advisors or any creditor or equity security interest holder of the Debtors;
- (e) Contain an acknowledgement and representation that the bidder: (a) has had an opportunity to conduct any and all due diligence regarding the Debtors and their assets and businesses prior to making its offer, (b) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the businesses and assets of the Debtors in making its bid, and (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Debtors' business or assets, or the completeness of any information provided in connection therewith or the Auction;
- (f) Include a list of assumed contracts and assumed liabilities (if any) and provides that the bidder will be responsible for any Cure Amounts associated with such assumption;
- (g) Remain open and irrevocable through and including such date that the Debtors identify the Prevailing Bidder and Backup Bidder (each as defined below), at which time the provisions governing the Prevailing Bidder or Backup Bidder, as applicable, shall apply; and
- (h) Be submitted to (i) OTB Holding LLC, One Buckhead Plaza, 3060 Peachtree Road, NW, Atlanta, GA 30305, Attention: Jonathan Tibus (JTibus@alvarezandmarsal.com), (ii) counsel to the Debtors, King & Spalding LLP, 1180 Peachtree Street, Atlanta, Georgia 30309, Attention: Jeffrey R. Dutson, Esq. (email: jdutson@kslaw.com), (iii) Hilco Corporate Finance, LLC, 401 N. Michigan Suite 1630, Chicago, Illinois 60611,

Attn: Teri Stratton (email: tstratton@hilcof.com); (iv) Office of the U.S. Trustee, 362 Richard B. Russell Building, 75 Ted Turner Drive, SW, Atlanta Georgia 30303, Attention: David S. Weidenbaum (email: David.S.Weidenbaum@usdoj.gov); and (v) counsel for any official committee of unsecured creditors appointed in these cases, in each case so as to be received not later than the Bid Deadline.

- (ii) Auction. In the event that the Debtors timely receive a conforming Initial Overbid from a prospective purchaser as described above (a “Qualified Bidder”), then the Debtors will conduct an auction (the “Auction”) with respect to the sale of the Purchased Assets. The Debtors shall notify Qualified Bidders of any Auction within 24 hours after the Bid Deadline. The Debtors shall hold the Auction for the Purchased Assets at the offices of King & Spalding LLP, 1180 Peachtree Street, N.E., Atlanta, Georgia 30309, commencing on **May 6, 2025 at 10:00 a.m. (prevailing Eastern time)**, or at such other time and location as may be designated by the Debtors. Based upon the terms of the qualified bids received and such other information as the Debtors determine is relevant, the Debtors (in their discretion) may conduct the Auction in the manner the Debtors determine will achieve the maximum realizable value for the Purchased Assets. The Stalking Horse Purchaser under the Agreement shall be deemed a Qualified Bidder at the Auction. In order to participate in the Auction, each Qualified Bidder shall be required to comply with the requirements of the Bidding Procedures and to submit an Initial Overbid that is timely and that complies in all respects with the Bidding Procedures. At the Auction, Qualified Bidders and the Stalking Horse Purchaser (it being understood that the Stalking Horse Purchaser shall be deemed to be a Qualified Bidder) may submit successive bids in increments of at least \$250,000 (or such other amount that the Debtor determines in its reasonable discretion) in cash greater than the prior bid for the purchase of the Purchased Assets until there is only one offer that the Debtors determine, subject to Court approval, is the highest or best offer for the Purchased Assets (the “Prevailing Bid”). When bidding at the Auction, the Stalking Horse Purchaser shall receive a “credit” in the amount of the Bid Protections. All bidding for the Purchased Assets will be concluded and final at the conclusion of the Auction and there will be no further bidding at the Sale Hearing. Subject to court availability, the Sale Hearing shall be scheduled no later than four (4) days after the Auction. If no conforming Initial Overbid from a Qualified Bidder shall have been received at or prior to the Bid Deadline, the Auction will not be held and the Sale Hearing will proceed with respect to the Agreement. In determining the Prevailing Bid, the Debtors will consider, among other things: (i) the number, type and nature of any changes to the Agreement requested by each bidder; (ii) the extent to which such modifications are likely to delay closing of the sale of the Purchased Assets and the cost to the Debtors of such modifications or delay; (iii) the total consideration to be received by the Debtors; (iv) the nature of the consideration to be received by the Debtors; (v) the likelihood of the bidder’s ability to close a transaction and the timing thereof; (vi) the net benefit to the Debtors’ estates; and

- (vii) such other factors as the Debtors determine in their sole discretion. In the event that the Qualified Bidder who submitted the Prevailing Bid (the “Prevailing Bidder”) fails to close on the transaction contemplated in the Prevailing Bid, the Debtors shall be permitted to retain the Prevailing Bidder’s good faith deposit as liquidated damages.
- (iii) Bid Protections. Subject to subsection (iv) below, upon the approval of a sale of all or substantially all of the Purchased Assets to any third party (other than the Stalking Horse Purchaser) who submits a Prevailing Bid for the Purchased Assets, the Debtors shall cause the Escrow Agent to return the Good Faith Deposit to the Stalking Horse Purchaser. For the avoidance of doubt, to the extent the Stalking Horse Purchaser is identified as the Backup Bidder, the Good Faith Deposit shall not be returned to the Stalking Horse Purchaser until the consummation of the sale of all or substantially all of the Purchased Assets to any third party (other than the Stalking Horse Bidder). Upon the consummation of a sale of all or substantially all of the Purchased Assets to any third party (other than the Stalking Horse Purchaser) who submits a Prevailing Bid for the Purchased Assets, the Debtors shall cause the Escrow Agent to return the Good Faith Deposit to the Stalking Horse Purchaser and shall pay to the Stalking Horse Purchaser cash in an amount equal to \$600,000.00 (the “Breakup Fee”) and cash on account of the Stalking Horse Purchaser’s reasonable, documented out-of-pocket fees, costs and expenses actually incurred, owed or paid to third parties in an aggregate amount not to exceed \$350,000.00 (such amount shall be inclusive of attorneys’ fees and expenses, consulting fees and expenses, accounting fees and expenses and the Stalking Horse Purchaser’s out-of-pocket expenses) (the “Expense Reimbursement” and together with the Breakup Fee, the “Bid Protections”), which in each case shall not be encumbered by any of the liens or security interests of any other person, including the Debtors’ secured lenders; provided, however, the Bid Protections shall not be due and payable if the Stalking Horse Purchaser has committed a material breach of the Agreement prior to the consummation of such sale to the third party. The Bid Protections shall be an allowed administrative expense claim in these bankruptcy cases pursuant to sections 503(b)(1) and 507(a)(1) of the Bankruptcy Code upon entry of this Bidding Procedures Order, and shall be paid to the Stalking Horse Purchaser within three (3) Business Days following the closing of such sale to a third party, and shall be paid to the Stalking Horse Purchaser prior to the payment of the proceeds of such sale to any third party asserting a Lien (as such term is defined in the Agreement) on the Purchased Assets (and no Lien of any third party shall attach to the portion of the sale proceeds representing the Bid Protections).
- (iv) Backup Bid. At the conclusion of the Auction, the Debtors shall identify and certify the bid that constitutes the second highest or best offer for the Purchased Assets (the “Backup Bid” and the Qualified Bidder submitting such bid, the “Backup Bidder”). The Backup Bidder may be required by the Debtors to close on the Backup Bid no later than fifty (50) days following the conclusion of the Auction. In the event that the Backup Bidder fails to close on the transaction contemplated

in the Backup Bid, Sellers shall be permitted to retain the Backup Bidder's good faith deposit as liquidated damages and that shall be Seller's sole and exclusive remedy in connection with such failure. Notwithstanding the foregoing, nothing in this subparagraph (iv) shall prevent the Stalking Horse Purchaser, even if designated as the Backup Bidder, from terminating the Agreement pursuant to Section 8.1(b) of the Agreement and, in the event of any such termination, the Stalking Horse Purchaser shall be entitled to return of the Good Faith Deposit.

- (v) Sale Hearing. The Sale Hearing will be conducted before this Court at a date and time established in the Bidding Procedures Order, at which time the Debtors intend to present the Prevailing Bid for approval by the Court pursuant to the provisions of sections 105, 363(b), 363(f), 363(m), 363(n) and 365 of the Bankruptcy Code. The Debtors shall be deemed to have accepted a bid only when the bid has been approved by the Court at the Sale Hearing. Upon the failure to consummate a sale of the Purchased Assets after the Sale Hearing because of the occurrence of a breach or default under the terms of the Prevailing Bid, the Backup Bid, as determined as soon as practicable after the conclusion of the Auction, and as disclosed at the Sale Hearing, shall be deemed the Prevailing Bid without further order of the Court and the parties shall be authorized to consummate the transactions contemplated by the Backup Bid. The party submitting the Backup Bid may be required by the Debtors to close on such bid within fifty days of the conclusion of the Auction.
- (vi) Highest or Best Bid. At all times during the sale process through the conclusion of the Auction, the Debtors shall retain full discretion and right to determine, in the exercise of their business judgment, which bid constitutes the highest or otherwise best offer for the purchase of the Purchased Assets, and which bid should be selected as the Prevailing Bid, if any, all subject to final approval by the Court pursuant to the provisions of section 363(b) of the Bankruptcy Code. Without limiting the generality of the foregoing, the Debtors may, at any time before the conclusion of the Auction, reject any bid that the Debtors determine is (i) inadequate or insufficient, (ii) contrary to the requirements of the Bankruptcy Code or the Bidding Procedures, or (iii) contrary to the best interests of the Debtors, their estates, their creditors or their other stakeholders. The Debtors may adopt rules for the Auction that, in their judgment, will better promote the goals of the Auction (provided that such rules shall not be inconsistent with the Bidding Procedures Order).
- (vii) Sale Implementation. Following the approval of the Prevailing Bid at the Sale Hearing, the Debtors will be authorized and directed to take all commercially reasonable and necessary steps to complete and implement the transaction(s) contemplated by the Prevailing Bid.

RELIEF REQUESTED

13. By this Motion, the Debtors request that the Court enter (i) following the Bidding Procedures Hearing, the Bidding Procedures Order in the form attached hereto as **Exhibit A** (a) authorizing and scheduling the Auction; (b) approving the Proposed Sale Process and Bidding Procedures; (c) approving the Bid Protections payable to the Stalking Horse Purchaser; and (d) approving the form and manner of notices of (1) the proposed sale of the Debtors' assets, the Auction and the Sale Hearing, and (2) the proposed assumption and assignment of the Debtors' executory contracts and unexpired leases and proposed cure costs related thereto; and (ii) following the Sale Hearing, the Sale Order (on a form to be filed with the Court prior to the Sale Hearing) approving the sale by the Debtors of the Purchased Assets to the Stalking Horse Purchaser or to the bidder submitting the highest or best bid for the Purchased Assets in connection with the sale and bidding process.

BASIS FOR RELIEF REQUESTED

14. The Debtors currently believe that the Proposed Sale Process provides the Debtors with their best opportunity to preserve and maximize the value of the Business and the Purchased Assets for the benefit of their estates and, therefore, the Debtors believe that implementation of the Proposed Sale Process, and approval of any sale that is presented in accordance therewith, is in the best interests of the Debtors' creditors, employees, estates and other stakeholders. As such, the Debtors submit that approval of this Motion and the Proposed Sale Process is consistent with applicable law and should be granted.

A. Section 363(b) Authorizes the Proposed Sale and Sale Process.

15. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). The proposed use, sale or lease of property of the estate may be approved under section 363(b) of the Bankruptcy Code if it is supported by sound business justification. *See e.g. In re Reg’l Housing & Cmty Servs. Corp.*, Case No. 21-41034 (PWB) (Bankr. N.D. Ga. Jun. 22, 2022); *In re Virtual Citadel, Inc.*, Case No. 20-62725 (JWC) (Bankr. N.D. Ga. Mar. 13, 2020); *In re 160 Royal Palm, LLC*, 600 B.R. 119, 129 (S.D. Fla. 2019) (courts will approve a debtor’s proposed sale under section 363 where the debtor has used reasonable business judgment); *In re Diplomat Const., Inc.*, 481 B.R. 215, 218 (Bankr. N.D. Ga. 2012) (chapter 7) (“The business judgment test is the prevailing rubric to evaluate the proposed transaction under § 363(b)(1)”); *Institutional Creditors of Continental Air Lines, Inc. v. Continental Air Lines, Inc. (In re Continental Air Lines)*, 780 F.2d 1223, 1226 (5th Cir. 1986) (“[F]or a debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.”); *see also In re Crutcher Resources Corp.*, 72 B.R. 628, 631 (Bankr. N.D. Tex. 1987) (“A Bankruptcy Judge has considerable discretion in approving a § 363(b) sale of property of the estate other than in the ordinary course of business, but the movant must articulate some business justification for the sale.”); *In re Terrace Gardens Park Partnership*, 96 B.R. 707, 714 (Bankr.W.D.Tex. 1989). In reviewing a proposed sale of assets, a bankruptcy court should give deference to the business judgment of a debtor in possession when it deems the sale to be appropriate. *See Esposito v. Title*

Ins. Co. (In re Fernwood Mkts.), 73 B.R. 616, 621 n.2 (Bankr. E.D. Pa. 1987); *see also In re Chateaugay Corp.*, 973 F.2d 141 (2d Cir. 1992) (holding that a judge determining a § 363(b) application must find from the evidence presented before him a good business reason to grant such application); *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (same); *Stephens Indus. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986) (holding that “bankruptcy court can authorize a sale of all of a chapter 11 debtor’s assets under § 363(b)(1) when a sound business purpose dictates such action”); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169 (D. Del. 1991); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (stating that judicial approval of a § 363 sale requires a showing that the proposed sale is fair and equitable, a good business reason exists for completing the sale and that the transaction is in good faith). In the context of a proposed sale under Section 363, a debtor’s exercise of its business judgment is entitled to “great judicial deference.” *See 160 Royal Palm*, 600 B.R. at 126 (citation omitted).

16. Although the Debtors cannot predict the results of the Proposed Sale Process and the Auction, the Debtors respectfully submit that the proposed sale and Proposed Sale Process fit squarely within the parameters of the sound business judgment test articulated in the above-referenced authorities. They also are reflective of sound management and business practices, and are in accord with obtaining the highest value possible in a difficult business segment.

17. First and foremost, the Debtors have articulated a sound business purpose for any transaction emanating from the Auction, including as a baseline the sale under the Agreement to the Stalking Horse Purchaser. As set forth above, the Debtors have determined that it is in the best interest of their estates and stakeholders to consummate a sale of their assets. In order to monetize the Purchased Assets for distribution to creditors and other stakeholders, it is critical that the

Debtors be permitted to consummate a sale of the Purchased Assets pursuant to the Proposed Sale Process. The Debtors believe that the Purchase Price reflected in the Agreement is fair and reasonable and the Debtors would be prepared to close a transaction with the Stalking Horse Purchaser even if no Initial Overbid is submitted by a competing bidder.

18. The Debtors respectfully submit that the notice and timing of the Proposed Sale Process are adequate and fair, and are reasonably calculated to elicit the highest levels of interest in acquiring the Purchased Assets. As described above, the Debtors have engaged in reasonable and appropriate marketing of the Business and the Purchased Assets and strongly believe that their efforts, coupled with the Proposed Sale Process outlined above, will garner the highest or best possible value for the Purchased Assets.

19. The Debtors have made, and will continue to make, diligent efforts to seek out all potentially credible buyers, having already contacted numerous parties. As in the case of *Delaware & Hudson Ry. Co.*, the substantial solicitation and marketing efforts of the Debtors support the proposed process and the reasonableness of any offer ultimately presented through that process.

20. Moreover, because the Proposed Sale Process will create a fair and reasonable environment in which all legitimate and qualified interest in the Business and Purchased Assets can be presented in a competitive, open and level playing field, any offer presented in accordance with the terms of the Proposed Sale Process will necessarily be negotiated and presented in good faith. In connection therewith, the Debtors will be prepared to present further evidence of good faith during the course of the Sale Hearing that will satisfy this Court and the mandates of Section 363(m) of the Bankruptcy Code.

21. The Debtors intend to give notice of the Bidding Procedures Hearing, the Auction, the Proposed Sale Process, the Sale Hearing and the proposed sale by the Debtors of the Purchased Assets, by mailing a copy of the Motion, on or before April 2, 2025, to (i) the parties on the Limited Service List established in these cases, which will include, without limitation: (a) all government entities and creditors entitled to be provided notice under the Bankruptcy Rules and Complex Case Procedures, (b) the 30 largest unsecured creditors, (c) all secured creditors, and (d) the United States Trustee; (ii) any parties who previously have expressed serious interest in acquiring all or substantially all of the Purchased Assets; and (iii) all parties known by the Debtors to assert a lien or security interest in the Purchased Assets (the persons listed in clauses (i) through (iii) are referred to collectively as the “Notice Parties”; provided, however, that notwithstanding anything herein to the contrary, any notices sent may be sent by electronic mail). In addition to the foregoing, the Debtors also propose to give additional notice by mailing (a) a copy of any Bidding Procedures Order entered by the Court within three business days of its entry to each of the Notice Parties, (b) a copy of the Auction Notice (as such term is defined in the Bidding Procedures Order) within three business days of entry of the Bidding Procedures Order to the Notice Parties, all persons and entities listed in the Debtors’ mailing matrix, all non-debtor parties to the Debtors’ executory contracts and unexpired leases, all entities (including governmental entities) known to the Debtors that may have the right to file a fine, penalty or lien against the Purchased Assets or the Debtors, and all creditors known to the Debtors, and (c) a copy of the Cure Notice (as such term is defined in the Bidding Procedures Order) within three business days of entry of the Bidding Procedures Order to all non-debtor parties to the Debtors’ executory contracts and unexpired leases. The Debtors submit that the foregoing is sufficient notice of the Auction, the Proposed

Sale Process (if and in whatever form approved at the Bidding Procedures Hearing), the Sale Hearing and the proposed sale by the Debtors of the Purchased Assets.

22. By this Motion, the Debtors intend to sell the Business in order to monetize the Purchased Assets for distributions to their creditors and other stakeholders. The Debtors strongly believe that, in furtherance of this goal, they have done all that is reasonably possible to secure the highest or best possible offer for the Purchased Assets under the circumstances. For all of the foregoing reasons, the relief requested in this Motion is a product of sound business judgment and is in the best interests of the Debtors, their creditors, employees, estates and other stakeholders, and should be granted.

23. Accordingly, the Debtors submit that the Proposed Sale Process, and any sale presented in accordance therewith, is warranted and appropriate under the terms and provisions of Section 363(b) of the Bankruptcy Code.

B. Section 363(f) Authorizes the Sale Free and Clear of Liens and Other Claims.

24. The Debtors request that the sale and transfer of the Purchased Assets be approved free and clear of all Liens (as such term is defined in the Agreement), other than those specifically assumed by the party submitting the Prevailing Bid. Such relief is consistent with the provisions of Section 363(f) of the Bankruptcy Code in these cases.

25. Section 363(f) provides that a debtor-in-possession may sell property free and clear of any lien, claim or interest of another entity in such property if any of the following circumstances pertain:

- (1) applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;

- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

26. As indicated by the use of the disjunctive term “or,” satisfaction of any one of the five requirements listed in Section 363(f) is sufficient to permit the sale of assets free and clear of Liens. *See In re Elliott*, 94 B.R. 343, 345 (E.D. Pa. 1988) (stating that Section 363(f) is written in the disjunctive; the court may approve a sale “free and clear” provided that at least one of the subsections is met).

27. In this instance, the Debtors believe that all entities holding or asserting a security interest in the Purchased Assets will (i) consent to the transaction presented for approval at the Sale Hearing, or (ii) receive cash from the sale proceeds sufficient to pay their secured claims in full.

28. The Debtors propose that any Liens against the Purchased Assets (other than Permitted Liens and Assumed Liabilities, as such terms are defined in the Agreement) attach to the proceeds of the sale. Based on the above, the requirements of Section 363(f) of the Bankruptcy Code can be satisfied, and the sale of the Purchased Assets free and clear of all liens, claims, encumbrances and other interests is appropriate.

C. The Prevailing Bidder Should Be Afforded All Protections Under Bankruptcy Code Section 363(m) as a Good Faith Purchaser.

29. Section 363(m) of the Bankruptcy Code provides that “the reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property

does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith . . .” 11 U.S.C. § 363(m).

30. As discussed above, the Proposed Sale Process and the bidding procedures contemplated as a part thereof (if and in whatever form approved at the Bidding Procedures Hearing), have been designed to create a fair, open and level playing field. Accordingly, the Debtors request that the party submitting the Prevailing Bid be determined to have acted in good faith and be entitled to the protections of a good faith purchaser under Section 363(m) of the Bankruptcy Code. *See, e.g., In re United Press Int’l, Inc.*, No. 91 B 13955 (FGC), 1992 U.S. Bankr. LEXIS 842, at *3 (Bankr. S.D.N.Y. May 18, 1992). In this regard, the transaction reflected in the Agreement was negotiated by the parties at arm’s length and in good faith, and the Stalking Horse Purchaser and its affiliates (i) are not “insiders” or affiliates of the Debtors, and (ii) do not have any relationship to the Debtors that has not been fully disclosed to the Court.

D. Section 365 Authorizes the Assumption and Assignment of Executory Contracts and Unexpired Leases.

31. The Agreement also contemplates the assumption of certain executory contracts and unexpired leases and the assignment of these contracts and leases to the Stalking Horse Purchaser. The amount of the cure costs will be material to confirm in order for any transaction to proceed, and for determinations to be made by the time of closing by the Prevailing Bidder. Accordingly, the Debtors also respectfully seek provisions in the Sale Order (i) authorizing the Debtors to assume and assign the Assumed Contracts pursuant to Section 365 of the Bankruptcy Code, (ii) fixing and determining on a final and irrevocable basis the cure amounts identified in the Cure Notice as the exact amounts that must be paid to the non-debtor contract counterparties parties to the Assumed Contracts (the “Cure Costs”), (iii) authorizing and directing the Debtors or

the Purchaser (as applicable) to pay the Cure Costs promptly following the closing or, with respect to a prepetition Contract that is added to the Assumed Contract following Closing in accordance with the terms of the Agreement (“Omitted Contract”), following the date such Omitted Contract becomes an Assumed Contract, and (iv) deeming the parties to the Assumed Contracts adequately assured of future performance.

32. Section 365(a) of the Bankruptcy Code provides that a debtor-in-possession “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). Courts evaluate a decision to assume or reject an executory contract or unexpired lease under the “business judgment” standard. *See Chateaugay Corp.*, 973 F.2d at 141; *see also In re Gardinier, Inc.*, 831 F.2d 974, 976 n.2 (11th Cir. 1987); *In re Wells*, 227 B.R. 553, 564 (Bankr. M.D. Fla. 1998); *see also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984); *In re CGLA Liquidation Inc.*, No. 11-80202-PWB, 2012 WL 5558050, at *4 (Bankr. N.D. Ga. Nov. 9, 2012) (approving the debtor’s rejection and assumption of executory contracts on the basis of the exercise of sound business judgment); *In re Davidson Hydrant Technologies, Inc.*, No. 11-13349-WHD, 2012 WL 987620, at *4 (Bankr. N.D. Ga. Jan. 10, 2012) (“In determining whether to approve a debtor-in-possession’s decision to reject an executory contract, the Court applies the business judgment rule, giving a large degree of deference to the debtor-in-possession’s business decision”) (citing *In re Penn Traffic Co.*, 524 F.3d 373, 383 (2d Cir. 2008)); *In re Sun Belt Elec. Constructors, Inc.*, 56 B.R. 686, 689 (Bankr. N.D. Ga. 1986) (“A debtor in possession’s decision to reject an executory contract is reviewable by the courts under the business judgment rule”) (internal citations omitted). This standard is satisfied if the debtor determines in its business judgment that the assumption or rejection of the contract or lease would benefit the

estate. *See Sharon Steel Corp. v. National Fuel Gas Distr. Corp.*, 872 F.2d 36, 39-40 (3d Cir. 1989); *In re Bicoastal Corp.*, 125 B.R. 658, 667 (Bankr. M.D. Fla. 1991). The business judgment standard requires that the court approve the debtor's business decision unless that judgment is the product of bad faith, whim, or caprice. *See Lubrizol Enter. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1047 (4th Cir. 1985); *In re Prime Motor Inns*, 124 B.R. 378, 383 (S.D. Fla. 1991).

33. Here, the Assumed Contracts are integral assets of the Business, and the Debtors have determined, in the exercise of their business judgment, that the assumption and assignment of the Assumed Contracts in connection with a sale of the Purchased Assets is necessary to yield significant value and benefit to the Debtors and their estates from the sale of the Purchased Assets.

34. The Debtors also request that the Court fix the amount of Cure Costs due under the Assumed Contracts in connection with the requirement in Section 365(b)(1) of the Bankruptcy Code that the debtor in possession, at the time of assumption, cure defaults in any executory contract or unexpired lease being assumed, or provide adequate assurance that the default will be promptly cured. In anticipation of the sale of the Business, the Debtors will carefully review their books and records, calculate all of the arrearages and overdue amounts owing on the Assumed Contracts, and determine that the Cure Costs identified in the Cure Notice are the amounts that should be paid to the non-debtor parties to the Assumed Contracts.

35. To the Debtors' knowledge, there are no defaults under the Assumed Contracts that are required to be cured or for which there is compensation due, other than the Cure Costs. The Debtors strongly believe that, in furtherance of the goal of maximizing value for their estates and creditors and to enable a Stalking Horse Purchaser to be confirmed, they have done all that is possible to secure the highest or best possible offer for the Purchased Assets under the

circumstances. Accordingly, the Debtors respectfully request that this Court include in the Sale Order provisions (i) authorizing the Debtors to assume and assign the Assumed Contracts to the Stalking Horse Purchaser (or to the party that submits the Prevailing Bid) pursuant to Section 365 of the Bankruptcy Code, (ii) fixing the Cure Costs as the exact amounts needed to cure any defaults under the Assumed Contracts, (iii) authorizing and directing the Debtors or the Purchaser (as applicable) to pay the Cure Costs promptly following the closing or, with respect to a Omitted Contract, following the date such Omitted Contract becomes an Assumed Contract, and (iv) deeming the parties to the Assumed Contracts adequately assured of future performance by the Stalking Horse Purchaser (or by the party that submits the Prevailing Bid).

E. The Proposed Bidding Procedures and Bid Protections Are Appropriate.

36. The Debtors have formulated a bidding process that the Debtors believe will induce prospective competing bidders to expend the time, energy and resources necessary to submit an Initial Overbid, and which the Debtors believe is fair and reasonable in view of the assets to be sold. The Proposed Sale Process and, in particular, the proposed Bid Protections, are reasonable and supported by applicable case law.

37. Historically, bankruptcy courts have approved bidding incentives, including break-up fees awarded to an initial bidder or “stalking horse,” in the event of a successful overbid based on the business judgment of the debtor. *See, e.g., In re 995 Fifth Ave. Assocs., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1992) (bidding incentives may “be legitimately necessary to convince a white knight to enter the bidding by providing some form of compensation for the risks it is undertaking”); *In re Integrated Resources, Inc.*, 147 B.R. 650, 656 (Bankr. S.D.N.Y. 1992) (noting that “the business judgment of the Debtor is the standard applied under the law in this district” and

applying the standard to a break-up fee); *Asarco, Inc. v. Elliot Mgmt. (In re Asarco, LLC)*, 650 F.3d 593, 597-98, 601-03 n.9 (5th Cir. 2011).

38. The Third Circuit Court of Appeals has also addressed the appropriate standard for determining whether proposed bidding incentives in the bankruptcy context are appropriate. In *Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl Energy, Inc.)*, 181 F.3d 527 (3d Cir. 1999), the Court of Appeals held that even though bidding incentives are measured against a business judgment standard in nonbankruptcy transactions, the administrative expense provisions of Section 503(b) of the Bankruptcy Code govern bidding incentives in the bankruptcy context. Finding no “compelling justification” for treating an application for break-up fees and expenses under Section 503(b) any differently from other applications for administrative expenses, the Court concluded that “the determination whether break-up fees or expenses are allowable under § 503(b) must be made in reference to general administrative expense jurisprudence. In other words, the allowance and payment of break-up fees, like that of other administrative expenses, depends upon the requesting party’s ability to show that the fees were actually necessary to preserve the value of the estate.” *Id.* at 535.

39. In *O'Brien*, the Third Circuit identified at least two circumstances in which bidding incentives may provide actual benefit to the estate, justifying administrative expense status. First, there exists an actual benefit to the estate where “assurance of a break-up fee promoted more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited.” *Id.* at 537. Second, where the availability of bidding incentives induces a prospective buyer to research the value of the debtor and submit a bid that serves as a minimum bid on which other bidders can rely, the initial “bidder may have provided

a benefit to the estate by increasing the likelihood that the price at which the Debtors is sold will reflect its true worth.” *Id.* Both of those circumstances exist in this case because the inducement of the Bid Protections was critical in persuading the Stalking Horse Purchaser to make an initial offer (which will serve as a “floor” for other bidders in connection with the Proposed Sale Process) and to expend the time and resources associated with conducting due diligence regarding the Business and with negotiating and entering into the Agreement.

40. Additionally, the Debtors believe that granting authority to pay the Expense Reimbursement represents a reasonable exercise of their business judgment and will maximize the proceeds from the sale process. The payment of an expense reimbursement, like that proposed here, in a bidding process is appropriate under section 363(b) of the Bankruptcy Code so long as such payment is a valid exercise of a debtor’s business judgment by providing a benefit to a debtor’s estate. *See, e.g., In re Bouchard Transportation Co., Inc.*, 639 B.R. 697, 710 (S.D. Tex. 2022); *In re Antaramian Properties, LLC*, 564 B.R. 762, 766 (M.D. Fla. 2016). Under section 363(b), the debtors may use, sell, or lease estate property outside of the ordinary course of business so long as they articulate a sound business reason for doing so. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (Bankr. S.D.N.Y. 1983).

41. Under the “administrative expense” standard enunciated in *O’Brien*, as well as the “sound business judgment” standard followed in other jurisdictions, the Bidding Procedures proposed by the Debtors should be approved as fair and reasonable. Moreover, here there are exigencies in the nature of the Business to be sold, in a deteriorating market environment, where the consumer orientation of the Business can be adversely influenced by the bankruptcy process.

Under the circumstances, and after considerable arm's length negotiation between the Debtors and stakeholders it represents on the one hand and the Stalking Horse Purchaser on the other hand, the proposed Bid Protections, which include a Breakup Fee in an amount equal to \$600,000.00 and an Expense Reimbursement on account of the Stalking Horse Purchaser's reasonable, documented out-of-pocket fees, costs and expenses actually incurred, owed or paid to third parties in an aggregate amount not to exceed \$350,000.00 (such amount shall be inclusive of attorneys' fees and expenses, consulting fees and expenses, accounting fees and expenses and Stalking Horse Purchaser's out-of-pocket expenses) is reasonable and generally consistent with the range of bidding protection typically approved by bankruptcy courts in the Eleventh Circuit and other Circuits. *See, e.g., In re Lavie Care Centers, LLC*, No. 24-55507 (PMB) (Bankr. N.D. Ga. Jun. 2, 2024) (court approved 3% break-up fee); *In re AtheroGenics, Inc.*, No. 08-78200 (Bankr. N.D. Ga. March 17, 2009) (J. Massey) (approving break-up fee equal to 10% of the cash purchase price and approving additional expense reimbursement in an amount up to 10% of the cash purchase price); *In re Rhodes, Inc.*, No. 04-78434 (Bankr. N.D. Ga. July 26, 2005) (J. Massey) (approving break-up fee equal to 2.5% of the cash purchase price); *In re Dan River, Inc.*, No. 04-10990 (Bankr. N.D. Ga. Dec. 17, 2004) (J. Drake) (approving break-up fee equal to 5.3% of the cash purchase price); *In re RM Holdco LLC*, Case No. 18-11795 (MFW) (Bankr. D. Del. Sept. 6, 2018) (authorizing break-up fee of 3% of the purchase price in the chapter 11 bankruptcy case involving one of the largest full service Mexican casual dining restaurant chains with 80 restaurants located throughout the United States); *In re Bertucci's Holdings, Inc.*, Case No. 18-10894 (MFW) (Bankr. D. Del. May 7, 2018) (authorizing break-up fee and expense reimbursement of approximately 5.0% of purchase price); *In re Lucky's Market Parent Co., LLC*, Case No. 20-10166 (JTD) (Bankr. D. Del.

Feb. 26, 2020) (authorizing a break-up fee of 3% of the purchase price and expense reimbursement of \$250,000, for total bid protections of approximately 5.2%); *In re American Sports International, Ltd. d/b/a American Athletic, Inc.*, No. 04-41108 (Bankr. N.D. Ga. June 4, 2004) (J. Bonapfel) (approving break-up fee equal to 2.3% of the cash purchase price); *In re Centennial HealthCare Corporation*, No. 02-74974 (Bankr. N.D. Ga. July 3, 2003) (J. Massey) (approving expense reimbursement in an amount up to 3.3% of the cash purchase price); *see also, e.g., In re Stone Energy Corp.*, No. 16-36390 (MI) (Bankr. S.D. Tex. Jan. 18, 2017) (court approved 3% break-up fee); *In re UGHS Senior Living, Inc.*, No. 15-80399 (DRJ) (Bankr. S.D. Tex. Nov. 24, 2015) (court approved 3% break-up fee and 1 % expense reimbursement); *In re Enron Corp.*, No. 01-16034 (AJG) (Bankr. S.D.N.Y., Apr. 8, 2004) (court approved break-up fee equal to 5% of the purchase price); *In re TransCom USA Mgmt Co., L.P.*, No. 01-35158 (KKB) (Bankr. S.D. Tex. Feb. 12, 2002) (court approved break-up fee of more than 3.6% of the purchase price).

42. Furthermore, pursuant to the Agreement, the entry of a Bidding Procedures Order approving the Bid Protections is a condition precedent that must be satisfied before the Stalking Horse Purchaser is obligated to proceed further, much less close the transactions set forth in the Agreement. Accordingly, if this Court does not enter the Bidding Procedures Order approving the Bid Protections, the Stalking Horse Purchaser would not be obligated to proceed, it would be entitled to get its initial deposit immediately returned by the escrow agent, and would not be bound to close the proposed transaction and purchase the Purchased Assets.

43. Therefore, because the procedures and incentives included in the Proposed Sale Process, including the proposed Bid Protections, are fair and reasonable, are reasonably calculated to produce the best and highest offers for the Purchased Assets and thereby confer actual benefits

upon the estates herein, and are within the range of incentives customarily approved by courts, such procedures should be approved in these chapter 11 cases.

F. Relief Under Bankruptcy Rules 6004(h) and 6006(d) is Appropriate.

44. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale or lease of property... is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Additionally, Bankruptcy Rule 6006(d) provides that an “order authorizing the trustee to assign an executory contract or unexpired lease... is stayed until the expiration of the 14 days after the entry of the order, unless the court orders otherwise.” The Debtors request that any Sale Order be effective immediately by providing that the fourteen-day stays under Bankruptcy Rules 6004(h) and 6006(d) are waived.

NOTICE

45. This Motion will be served, and further notice of the Auction, the Proposed Sale Process, the Sale Hearing and the proposed sale by the Debtors of the Purchased Assets will be given, in accordance with the procedures set forth above. The Debtors respectfully submit that such notice is sufficient and proper under the circumstances, and that no other or further notice is required.

CONCLUSION

WHEREFORE, based upon the foregoing, the Debtors respectfully request that the Court (a) enter an order following the Bidding Procedures Hearing, substantially in the form attached hereto as **Exhibit A**, (i) approving the Proposed Sale Process, and (ii) authorizing the Debtors to take all actions reasonably necessary to effectuate such Proposed Sale Process and the sale presented in accordance therewith; (b) enter the Sale Order following the Sale Hearing, approving

the highest or best bid for the Purchased Assets and granting the other relief requested in this Motion; and (c) grant such other and further relief as the Court deems just and proper.

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Date: March 7, 2025
Atlanta, GA

Respectfully submitted,

KING & SPALDING LLP

/s/ Jeffrey R. Dutson

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Proposed Counsel for the Debtors in Possession

Exhibit A

Proposed Bidding Procedures Order

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

| | | |
|---|---|-------------------------|
| In re: |) | Chapter 11 |
| |) | |
| OTB HOLDING LLC, <i>et al.</i> , ¹ |) | Case No. 25-52415 (SMS) |
| |) | |
| |) | |
| Debtors. |) | (Jointly Administered) |
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**ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS 105, 363 AND 365:
(A) SCHEDULING AN AUCTION; (B) SCHEDULING THE DATE, TIME AND PLACE
FOR A HEARING ON THE PROPOSED SALE MOTION; (C) APPROVING THE
FORM AND MANNER OF THE NOTICE OF (I) THE PROPOSED SALE OF THE
DEBTORS' ASSETS, THE AUCTION AND THE SALE HEARING, AND
(II) PROPOSED ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS
AND LEASES; AND (D) APPROVING (I) BIDDING PROCEDURES,
AND (II) BID PROTECTIONS**

Upon consideration of the *Debtors' Motion for Entry of an Order Pursuant to 11 U.S.C.*
§§ 105, 363 and 365 (I) Authorizing and Scheduling an Auction at Which Debtors Will Solicit the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: OTB Holding LLC (3213), OTB Acquisition LLC (8500), OTB Acquisition of New Jersey LLC (1506), OTB Acquisition of Howard County LLC (9865), Mt. Laurel Restaurant Operations LLC (5100), OTB Acquisition of Kansas LLC (9014), OTB Acquisition of Baltimore County, LLC (6963). OTB Holding LLC's service address is One Buckhead Plaza, 3060 Peachtree Road, NW, Atlanta, GA 30305.

*Highest or Best Bid for the Sale of Substantially all of Debtors' Assets, (II) Approving Bidding Procedures Related to Conduct of Auction, (III) Approving Bid Protections, (IV) Approving the Form and Manner of Notices of (A) Proposed Sale of the Debtors' Assets, the Auction and the Sale Hearing, and (B) Proposed Assumption and Assignment of Executory Contracts and Leases, (V) Approving the Sale of the Assets to the Party Submitting the Highest or Best Bid, and (VI) Granting Related Relief [Docket No. [•]](the "Motion")*² of the above captioned debtors and debtors in possession (collectively, the "Debtors") (a) authorizing and scheduling an auction at which the Debtors will solicit the highest or best bid for the sale of substantially all of the Debtors' assets; (b) scheduling the date, time and place for a hearing on the proposed sale motion; (c) approving the form and manner of the notice of (i) the Auction and the Sale Hearing (each as defined below), and (ii) the proposed assumption and assignment of the Debtors' executory contracts and unexpired leases and proposed cure costs related thereto; and (d) approving the (i) bidding procedures, and (ii) bid protections payable to the Stalking Horse Purchaser; the Court having reviewed the Motion; the Court having heard the statements of counsel in support of the relief requested therein at a hearing held on [____], 2025 (the "Hearing"); the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and their other stakeholders; and it appearing that notice of the Motion and the Hearing given by the Debtors was sufficient under the circumstances; and the Court being fully advised in that premises; it is hereby

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

FOUND AND DETERMINED THAT:³

A. The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

B. This Court has jurisdiction over the Motion and the transactions contemplated by the Agreement pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue in this District is proper under 28 U.S.C. §§ 1408 and 1409.

C. The Debtors have articulated good and sufficient reasons for approval of the Bidding Procedures and designating the Stalking Horse Purchaser under the terms of the Agreement.

D. The Bidding Procedures have been proposed by the Debtors in good faith, are fair and reasonable, are reasonably calculated to produce the best and highest offers for the Purchased Assets, will facilitate an orderly sale process and will confer actual benefits upon the Debtors’ estates, creditors and other stakeholders. The Bidding Procedures were negotiated at arm’s length and in good faith between the Debtors and the Stalking Horse Purchaser.

E. Approval of the Bid Protections (as defined below) is a necessary and appropriate inducement to the Stalking Horse Purchaser to (i) make an initial offer which will serve as a “floor” for further bidding, and (ii) negotiate and enter into the Agreement and consummate the transactions contemplated thereby. The Stalking Horse Purchaser has expended, and will continue

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

to expend, considerable time, money and energy pursuing the transactions proposed in the Agreement and has engaged in arm's length and good faith negotiations. The Debtors and the Stalking Horse Purchaser have engaged in significant arm's length negotiations on the terms and amount of the Bid Protections. The Debtors have been unable to find a buyer who is willing to enter into a definitive agreement on terms as favorable to the Debtors and the estates as the Agreement. Recognizing this, the Debtors have agreed to the Bid Protections. Approval of the Bid Protections is, therefore, in the best interests of the Debtors and their estates.

F. The Debtors' proposed notice of the Bidding Procedures, including the Notice of Auction and Sale Hearing (the "Auction Notice") attached hereto as **Exhibit 1**, is adequate and reasonable.

G. The Debtors' proposed notice to counterparties of the Debtors' executory contracts and unexpired leases that may be assumed and assigned, attached hereto as **Exhibit 2** (the "Cure Notice"), is adequate and reasonable.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is granted to the extent set forth in this Order.
2. All objections to entry of this Order that have not been resolved or withdrawn are overruled on the merits.
3. The following "Bidding Procedures" are hereby approved and shall be used in connection with the proposed sale of the Purchased Assets:

a. **The Bidding Process.** Any third party (other than the Stalking Horse Purchaser) (the "Potential Bidder") that is interested in acquiring the Purchased Assets must submit an "Initial Overbid" at or prior to **May 1, 2025** (the "Bid Deadline"). Any such Initial Overbid must:

(i) Contain a signed definitive asset purchase agreement (together with a copy of the signed agreement that is marked to show changes from the Agreement, including all schedules and exhibits to the Agreement) with, at a minimum, the following requirements: (w) having substantially identical terms and conditions as the Agreement except with higher and better consideration; (x) containing terms and conditions no less favorable to the Debtors' estates than the terms and conditions in the Agreement (provided that no Initial Overbid shall provide for the payment to the overbidder of any breakup fee, topping fee, expense reimbursement or other similar arrangement); (y) provide for a purchase price in an amount equal to or greater than the sum of (1) the Purchase Price, (2) the Bid Protections, and (3) \$150,000 (the "Initial Overbid Amount"); and (z) not be subject to any (1) financing contingency, (2) contingency relating to the completion of unperformed due diligence, (3) contingency relating to the approval of the overbidder's board of directors or other internal approvals or consents, or (4) any conditions precedent to the overbidder's obligation to purchase the Purchased Assets other than those included in the Agreement;

(ii) Include a cashiers' or certified check in the amount of 10% of the Purchase Price to be held as a deposit (it being understood that the deposit may also be sent by wire transfer of immediately available funds to Escrow Agent);

(iii) To the extent not previously provided to the Debtors, be accompanied by evidence satisfactory to the Debtors in their commercially reasonable discretion that the overbidder is willing, authorized, capable and qualified financially, legally and otherwise, of unconditionally performing all obligations under the Agreement (or its equivalent) in the event that it submits the Prevailing Bid (as defined below) at the Auction;

(iv) Include information regarding the identity of the Potential Bidder, including its legal name, jurisdiction and form of organization, and details regarding the ownership and capital structure of the Potential Bidder, as well as the identity of any controlling persons, significant direct or indirect equity or debt investors, and/or guarantors of such entity, and any known connections the Potential Bidder has to the Debtors or their advisors or any creditor or equity security interest holder of the Debtors;

(v) Contain an acknowledgement and representation that the bidder (a) has had an opportunity to conduct any and all due diligence regarding the Debtors and their assets and businesses prior to making its offer, (b) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the businesses and assets of the Debtors in making its bid, and (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Debtors' business or assets, or the completeness of any information provided in connection therewith or the Auction;

(vi) Include a list of assumed contracts and assumed liabilities (if any) and provides that the bidder will be responsible for any Cure Amounts associated with such assumption;

(vii) Remain open and irrevocable through and including such date that the Debtors identify the Prevailing Bidder and Backup Bidder (each as defined below), at which time the provisions governing the Prevailing Bidder or Backup Bidder, as applicable, shall apply; and

(viii) Be submitted to (i) OTB Holding LLC, One Buckhead Plaza, 3060 Peachtree Road, NW, Atlanta, GA 30305, Attention: Jonathan Tibus (JTibus@alvarezandmarsal.com), (ii) counsel to the Debtors, King & Spalding LLP, 1180 Peachtree Street, Atlanta, Georgia 30309, Attention: Jeffrey R. Dutson, Esq. (email: jdutson@kslaw.com), (iii) Hilco Corporate Finance, LLC, 401 N. Michigan Suite 1630, Chicago, Illinois 60611, Attn: Teri Stratton (email: tstratton@hilcof.com); (iv) Office of the U.S. Trustee, 362 Richard B. Russell Building, 75 Ted Turner Drive, SW, Atlanta Georgia 30303, Attention: David S. Weidenbaum (email: David.S.Weidenbaum@usdoj.gov); and (v) counsel for any official committee of unsecured creditors appointed in these cases, in each case so as to be received not later than the Bid Deadline.

b. **Auction.** In the event that the Debtors timely receive a conforming Initial Overbid from a prospective purchaser as described above (a "Qualified Bidder"), then the Debtors will conduct an auction (the "Auction") with respect to the sale of the Purchased Assets. The Debtors shall notify Qualified Bidders of any Auction within 24 hours after the Bid Deadline. The Debtors shall hold the Auction for the Purchased Assets at the offices of King & Spalding LLP, 1180 Peachtree Street, N.E., Atlanta, Georgia 30309, commencing on **May 6, 2025 at 10:00 a.m. (prevailing Eastern time)**, or at such other time and location as may be designated by the Debtors. Based upon the terms of the qualified bids received and such other information as the Debtors determine is relevant, the Debtors (in their discretion) may conduct the Auction in the manner the Debtors determine will achieve the maximum realizable value for the Purchased Assets. The Stalking Horse Purchaser under the Agreement shall be deemed a Qualified Bidder at the Auction. In order to participate in the Auction, each Qualified Bidder shall be required to comply with

the requirements of the Bidding Procedures and to submit an Initial Overbid that is timely and that complies in all respects with the Bidding Procedures. At the Auction, Qualified Bidders and the Stalking Horse Purchaser (it being understood that the Stalking Horse Purchaser shall be deemed to be a Qualified Bidder) may submit successive bids in increments of at least \$250,000 (or such other amount that the Debtor determines in its reasonable discretion) in cash greater than the prior bid for the purchase of the Purchased Assets until there is only one offer that the Debtors determine, subject to Court approval, is the highest or best offer for the Purchased Assets (the “Prevailing Bid”). When bidding at the Auction, the Stalking Horse Purchaser shall receive a “credit” in the amount of the Bid Protections. All bidding for the Purchased Assets will be concluded and final at the conclusion of the Auction and there will be no further bidding at the Sale Hearing. Subject to court availability, the Sale Hearing shall be scheduled no later than four (4) days after the Auction. If no conforming Initial Overbid from a Qualified Bidder shall have been received at or prior to the Bid Deadline, the Auction will not be held and the Sale Hearing will proceed with respect to the Agreement. In determining the Prevailing Bid, the Debtors will consider, among other things: (i) the number, type and nature of any changes to the Agreement requested by each bidder; (ii) the extent to which such modifications are likely to delay closing of the sale of the Purchased Assets and the cost to the Debtors of such modifications or delay; (iii) the total consideration to be received by the Debtors; (iv) the nature of the consideration to be received by the Debtors; (v) the likelihood of the bidder’s ability to close a transaction and the timing thereof; (vi) the net benefit to the Debtors’ estates; and (vii) such other factors as the Debtors determine in their sole discretion. In the event that the Qualified Bidder who submitted the Prevailing Bid (the “Prevailing Bidder”) fails to close on the transaction contemplated in the Prevailing Bid, the Debtors shall be permitted to retain the Prevailing Bidder’s good faith deposit as liquidated damages.

c. **Bid Protections.** Subject to subsection (d) below, upon the approval of a sale of all or substantially all of the Purchased Assets to any third party (other than the Stalking Horse Purchaser) who submits a Prevailing Bid for the Purchased Assets, the Debtors shall cause the Escrow Agent to return the Good Faith Deposit to the Stalking Horse Purchaser. For the avoidance of doubt, to the extent the Stalking Horse Purchaser is identified as the Backup Bidder, the Good Faith Deposit shall not be returned to the Stalking Horse Purchaser until the consummation of the sale of all or substantially all of the Purchased Assets to any third party (other than the Stalking Horse Bidder). Upon the consummation of a sale of all or substantially all of the Purchased Assets to any third party (other than the Stalking Horse Purchaser) who submits a Prevailing Bid for the Purchased Assets, the Debtors shall cause the Escrow Agent to return the Good Faith Deposit to the Stalking Horse Purchaser and shall pay to the Stalking Horse Purchaser cash in an amount equal to \$600,000.00 (the “Breakup Fee”) and cash on account of the Stalking Horse Purchaser’s reasonable, documented out-of-pocket fees, costs and expenses actually incurred, owed or paid to third parties in an aggregate amount not to exceed \$350,000.00 (such amount shall be inclusive of attorneys’ fees and expenses, consulting fees and expenses, accounting fees and expenses and the Stalking Horse Purchaser’s out-of-pocket expenses) (the “Expense Reimbursement” and together with the Breakup Fee, the “Bid Protections”), which in each case shall not be encumbered by any of the liens or security interests of any other person, including the Debtors’ secured lenders; provided, however, the Bid Protections shall not be due and payable if the Stalking Horse Purchaser has committed a material breach of the Agreement prior to the consummation of such sale to the third party. The Bid Protections shall be an allowed administrative expense claim in these bankruptcy cases pursuant to sections 503(b)(1) and 507(a)(1) of the Bankruptcy Code upon entry of this Bidding Procedures Order, and shall be paid to the Stalking Horse Purchaser within three (3) Business Days following the closing of such sale to a third party, and shall be paid to the Stalking Horse Purchaser prior to the payment of the proceeds of such sale to any third party asserting a Lien (as such term is defined in the Agreement) on the Purchased Assets (and no Lien of any third party shall attach to the portion of the sale proceeds representing the Bid Protections).

d. **Backup Bid.** At the conclusion of the Auction, the Debtors shall identify and certify the bid that constitutes the second highest or best offer for the Purchased Assets (the “Backup Bid” and the Qualified Bidder submitting such bid, the “Backup Bidder”). The Backup Bidder may be required by the Debtors to close on the Backup Bid no later than fifty (50) days following the conclusion of the Auction. In the event that the Backup Bidder fails to close on the transaction contemplated in the Backup Bid, Sellers shall be permitted to retain the Backup Bidder’s good faith deposit as liquidated damages and that shall be Seller’s sole and exclusive remedy in connection with such failure. Notwithstanding the foregoing, nothing in this subparagraph (d) shall prevent the Stalking Horse Purchaser, even if designated as the Backup Bidder, from terminating the Agreement pursuant to Section 8.1(b) of the Agreement and, in the event of any such termination, the Stalking Horse Purchaser shall be entitled to return of the Good Faith Deposit.

e. **Sale Hearing.** The Sale Hearing will be conducted before this Court on **May [•], 2025 at [] [a.m./p.m.] (prevailing Eastern time)**, at which time the Debtors intend to present the Prevailing Bid for approval by the Court pursuant to the provisions of sections 105, 363(b), 363(f), 363(m), 363(n) and 365 of the Bankruptcy Code. The Debtors shall be deemed to have accepted a bid only when the bid has been approved by the Court at the Sale Hearing. Upon the failure to consummate a sale of the Purchased Assets after the Sale Hearing because of the occurrence of a breach or default under the terms of the Prevailing Bid, the Backup Bid, as determined as soon as practicable after the conclusion of the Auction, and as disclosed at the Sale Hearing, shall be deemed the Prevailing Bid without further order of the Court and the parties shall be authorized to consummate the transactions contemplated by the Backup Bid. The party submitting the Backup Bid may be required by the Debtors to close on such bid within fifty days of the conclusion of the Auction.

f. **Highest or Best Bid.** At all times during the sale process through the conclusion of the Auction, the Debtors shall retain full discretion and right to determine, in the exercise of their business judgment, which bid constitutes the highest or otherwise best offer for the purchase of the Purchased Assets, and which bid should be selected as the Prevailing Bid, if any, all subject to final approval by the Court pursuant to the provisions of section 363(b) of the Bankruptcy Code. Without limiting the generality of the foregoing, the Debtors may, at any time before the conclusion of the Auction, reject any bid that the Debtors determine is (i) inadequate or insufficient, (ii) contrary to the requirements of the Bankruptcy Code or the Bidding Procedures, or (iii) contrary to the best interests of the Debtors, their estates, their creditors or their other stakeholders. The Debtors may adopt rules for the Auction that, in their judgment, will better promote the goals of the Auction (provided that such rules shall not be inconsistent with this Order).

g. **Sale Implementation.** Following the approval of the Prevailing Bid at the Sale Hearing, the Debtors will be authorized and directed to take all commercially reasonable and necessary steps to complete and implement the transaction(s) contemplated by the Prevailing Bid.

4. The Court hereby approves the designation of the Stalking Horse Purchaser and entry into the Agreement. Recognizing the Stalking Horse Purchaser's expenditure of time, energy and resources, the Debtors are authorized to provide the Bid Protections to the Stalking Horse Purchaser. Specifically, upon the consummation of a sale of all or substantially all of the Purchased Assets to any third party (other than Stalking Horse Purchaser) who submits a Prevailing Bid for the Purchased Assets, the Debtors shall pay to the Stalking Horse Purchaser

solely from the proceeds of such Prevailing Bid, cash or other immediately available funds in an amount equal to \$600,000.00 *plus* cash on account of the Stalking Horse Purchaser's reasonable, documented out-of-pocket fees, costs and expenses actually incurred, owed or paid to third parties in an aggregate amount not to exceed \$350,000.00; provided, however, the Bid Protections shall not be due and payable if the Stalking Horse Purchaser has committed a material breach of the Agreement prior to the consummation of such sale to the third party. The parties agree that the Stalking Horse Purchaser is entitled to the Bid Protections and the prompt return of the Good Faith Deposit arising out of any termination of the Agreement pursuant to Section 8.1(b) thereof.

5. The Bid Protections shall be treated as an allowed and final administrative expense claim pursuant to Sections 503(b)(1) and 507(a)(1) of the Bankruptcy Code.

6. The Bid Protections shall be paid by the Debtors to the Purchaser within three (3) Business Days following the closing of a Prevailing Bid with any third party, and shall be paid by the Debtors to the Purchaser prior to the payment of the proceeds of such sale to any third party asserting a Lien on the Purchased Assets (and no Lien of any third party shall attach to the portion of the sale proceeds representing the Bid Protections).

7. The Auction Notice is hereby approved as good and sufficient notice of the sale of the Purchased Assets, the Auction and all proceedings related thereto.

8. As soon as reasonably practicable after the entry of this Order, the Debtors shall cause the information contained in the Auction Notice to be published once in the *The Wall Street Journal* (national edition) (the "Publication Notice").

9. The Publication Notice complies with the provisions of Bankruptcy Rule 9008 and is deemed sufficient and proper notice of the proposed sale of the Purchased Assets, the Auction,

the Sale Hearing, and the Sale Objection Deadline (as defined below) to any other interested parties whose identities are unknown to the Debtors.

10. The Debtors shall serve the Auction Notice upon the persons and in the manner specified in the Motion, including (without limitation) on all creditors of the Debtors. Such service shall be deemed good and sufficient notice of this Order, the Motion, the Bidding Procedures, the Auction, the Sale Hearing, and all proceedings to be held thereon.

11. The Cure Notice is hereby approved as good and sufficient notice of the proposed assumption and assignment of the Debtors' executory contracts and unexpired leases.

12. The Debtors shall serve the Cure Notice on all counterparties and persons having any interests to the executory contracts and unexpired leases identified in the Cure Notice in the manner specified in the Motion.

13. The Bidding Procedures (including the Bid Protections) are fair and reasonable, are reasonably calculated to produce the best and highest offers for the Purchased Assets, and will confer actual benefits upon the Debtors' estates. The Bidding Procedures represent an exercise of the Debtors' sound business judgment and will facilitate an orderly sale process.

14. Objections, if any, to the sale of the Purchased Assets or the adequate assurance of future performance provided by the Stalking Horse Purchaser ("Sale Objection"), shall be in writing, shall set forth the name of the objecting party, the basis for the objection and the specific grounds therefor, and shall be filed with the Court and served so as to be actually received by 4:00 p.m. (local time in Atlanta, Georgia) on [____], 2025 (the "Sale Objection Deadline"), by: (i) counsel to the Debtors, King & Spalding LLP, 1180 Peachtree Street, Atlanta, Georgia 30309, Attention: Jeffrey R. Dutson (email: jdutson@kslaw.com), (ii) Office of the U.S. Trustee, 362

Richard B. Russell Building, 75 Ted Turner Drive, SW, Atlanta Georgia 30303, Attention: David S. Weidenbaum (email: David.S.Weidenbaum@usdoj.gov), (iii) counsel to any official committee of unsecured creditors appointed in these cases, and (iv) counsel to the Stalking Horse Purchaser, Porter Hedges LLP, 1000 Main St, 36th Floor | Houston, TX 77002, Attention: Joshua W. Wolfshohl (email: JWolfshohl@porterhedges.com) and Brian G. Rose (email: BRose@porterhedges.com). Failure to file and serve a Sale Objection by the Sale Objection Deadline shall be deemed to be consent to the sale for purposes of section 363(f) of the Bankruptcy Code and a waiver of any preferential purchase rights or other similar rights to acquire any of the Debtors' assets.

15. Objections, if any, that relate to the proposed assumption and assignment of the Debtors' executory contracts and unexpired leases (including, but not limited to, any objections relating to the validity of the cure amounts as determined by the Debtors or to otherwise assert that any amounts, defaults, conditions, or pecuniary losses must be cured or satisfied under any of the assigned executory contracts or unexpired leases as of the date of the Sale Hearing (not including accrued but not yet due obligations) in order for such contracts and leases to be assumed and/or assigned (a "Cure Objection")), shall be filed with the Court and served so as to be actually received by 4:00 p.m. (local time in Atlanta, Georgia) on [____], 2025 (the "Cure Objection Deadline"), by: (i) counsel to the Debtors, King & Spalding LLP, 1180 Peachtree Street, Atlanta, Georgia 30309, Attention: Jeffrey R. Dutson (email: jdutson@kslaw.com), (ii) Office of the U.S. Trustee, 362 Richard B. Russell Building, 75 Ted Turner Drive, SW, Atlanta Georgia 30303, Attention: David S. Weidenbaum (email: David.S.Weidenbaum@usdoj.gov), (iii) counsel to any official committee of unsecured creditors appointed in these cases, and (iv) counsel to the Stalking

Horse Purchaser, Porter Hedges LLP, 1000 Main St, 36th Floor | Houston, TX 77002, Attention: Joshua W. Wolfshohl (email: JWolfshohl@porterhedges.com) and Brian G. Rose (email: BRose@porterhedges.com).

16. Except as set forth herein, unless a Cure Objection is filed and served by a non-debtor party to an executory contract or unexpired lease proposed to be assumed and assigned by the Cure Objection Deadline, all interested parties who have received actual or constructive notice of such Cure Objection Deadline shall be deemed to have waived and released any right to assert a Cure Objection and to have otherwise consented to the assumption and assignment of the executory contracts and unexpired leases set forth on the Cure Notice as served and shall be forever barred and estopped from asserting or claiming against Debtors, the Purchaser or any acquirer of the Purchased Assets, or any other assignee of them, that any additional amounts are due or defaults exist, or conditions to assignment must be satisfied, under such assumed contract or unexpired lease for the period prior to the date of the Sale Hearing.

17. Each Cure Objection shall set forth the cure amount the objector asserts is due, the specific types and dates of the alleged defaults, pecuniary losses, conditions to assignment and the support therefor.

18. Any hearings with respect to the Cure Objections may be held (a) at the Sale Hearing; or (b) at such other date as the parties shall agree. A properly filed and served Cure Objection shall reserve such party's rights against the Debtors (but not against any purchaser of the Purchased Assets) respecting the Cure Obligation, but shall not constitute an objection to the relief generally requested in the Motion.

19. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (a) this Order shall be effective immediately and enforceable upon its entry and the stay provided for in Bankruptcy Rule 6004(h) is hereby waived; (b) the Debtors are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order; and (c) the Debtors are authorized and empowered to, and may in their discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Order.

20. To the extent this Order is inconsistent with any prior order or pleading with respect to the Motion in these cases, the terms of this Order shall govern.

21. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

22. Proposed counsel for the Debtors, through Kurtzman Carson Consultants, LLC d/b/a Verita Global (“Verita”) shall, within three (3) days of the entry of this Order, cause a copy of this Order to be served by electronic mail or first class mail, as applicable, on all parties served with the Motion, and Verita shall file promptly thereafter a certificate of service confirming such service.

[END OF ORDER]

Prepared and presented by:

/s/ Jeffrey R. Dutson

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Proposed Counsel for the Debtors in Possession

EXHIBIT 1

Notice of Proposed Sale of the Debtors Assets, the Auction, and the Sale Hearing

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

| | | |
|---|---|-------------------------|
| In re: |) | Chapter 11 |
| |) | |
| OTB HOLDING LLC, <i>et al.</i> , ¹ |) | Case No. 25-52415 (SMS) |
| |) | |
| |) | |
| Debtors. |) | (Jointly Administered) |
| | | |

**NOTICE OF PROPOSED SALE OF THE DEBTORS' ASSETS, THE
AUCTION, AND THE SALE HEARING**

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On [___], 2025, the above-captioned debtors and debtors in possession (collectively, the “Debtors”), filed the *Debtors’ Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 105, 363 and 365 (I) Authorizing and Scheduling an Auction at Which Debtors Will Solicit the Highest or Best Bid for the Sale of Substantially all of Debtors’ Assets, (II) Approving Bidding Procedures Related to Conduct of Auction, (III) Approving Bid Protections, (IV) Approving the Form and Manner of Notices of (A) Proposed Sale of the Debtors’ Assets, the Auction and the Sale Hearing, and (B) Proposed Assumption and Assignment of Executory Contracts and Leases, (V) Approving the Sale of the Assets to the Party Submitting the Highest or Best Bid, and (VI) Granting Related Relief* (the “Motion”) [Docket No. ____]. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

2. On [___], 2025, the United States Bankruptcy Court for the Northern District of Georgia (the “Bankruptcy Court”) entered the *Order Pursuant to Bankruptcy Code Sections 105, 363 And 365: (A) Scheduling an Auction; (B) Scheduling the Date, Time and Place for a Hearing on the Proposed Sale Motion; (C) Approving the Form and Manner of the Notice of (I) the Proposed Sale of the Debtors’ Assets, the Auction and the Sale Hearing, and (II) Proposed Assumption and Assignment of Executory Contracts and Leases; and (D) Approving (I) Bidding Procedures, and (II) Bid Protections* (the “Order”) [Docket No. ____].

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: OTB Holding LLC (3213), OTB Acquisition LLC (8500), OTB Acquisition of New Jersey LLC (1506), OTB Acquisition of Howard County LLC (9865), Mt. Laurel Restaurant Operations LLC (5100), OTB Acquisition of Kansas LLC (9014), OTB Acquisition of Baltimore County, LLC (6963). OTB Holding LLC’s service address is One Buckhead Plaza, 3060 Peachtree Road, NW, Atlanta, GA 30305.

3. **Any third party (other than the Stalking Horse Purchaser) that is interested in acquiring the Purchased Assets must submit an Initial Overbid conforming to the requirements set forth in the Bidding Procedures set forth in the Order by not later than 4:00 p.m. local time in Atlanta, Georgia on May 1, 2025 (the “Bid Deadline”).**

4. Any Initial Overbid must be submitted to (i) OTB Holding LLC, One Buckhead Plaza, 3060 Peachtree Road, NW, Atlanta, GA 30305, Attention: Jonathan Tibus (JTibus@alvarezandmarsal.com), (ii) counsel to the Debtors, King & Spalding LLP, 1180 Peachtree Street, Atlanta, Georgia 30309, Attention: Jeffrey R. Dutson, Esq. (email: jdutson@kslaw.com), (iii) Hilco Corporate Finance, LLC, 401 N. Michigan Suite 1630, Chicago, Illinois 60611, Attn: Teri Stratton (email: tstratton@hilcofc.com); (iv) Office of the U.S. Trustee, 362 Richard B. Russell Building, 75 Ted Turner Drive, SW, Atlanta Georgia 30303, Attention: David S. Weidenbaum (email: David.S.Weidenbaum@usdoj.gov); and (v) counsel for any official committee of unsecured creditors appointed in these cases, in each case so as to be received not later than the Bid Deadline. The Debtors may extend the Bid Deadline without further notice and for one or more bidders, but shall not be obligated to do so.

5. In the event that the Debtors receive a timely conforming Initial Bid from a Qualified Bidder by the Bid Deadline, the Debtors will conduct an auction (the “Auction”) with respect to the sale of the Purchased Assets. The Debtors shall hold the Auction for the Purchased Assets at the offices of King & Spalding LLP, 1180 Peachtree Street, Atlanta, Georgia 30309, **commencing on May 6, 2025 at 10:00 a.m. local time**, or at such other time and location as may be designated by the Debtors. All bidding for the Purchased Assets will be concluded at the Auction and there will be no further bidding at the Bankruptcy Court hearing held to approve the highest or best bid for the Purchased Assets (the “Sale Hearing”).

6. The Sale Hearing will be conducted at [__:__ .m.] (prevailing Eastern Time), on [___], 2025, in courtroom of the Honorable [____] in the United States Bankruptcy Court for the Northern District of Georgia, at which time the Debtors intend to present the Prevailing Bid for approval by the Bankruptcy Court pursuant to the provisions of sections 105, 363(b), 363(f), 363(m), 363(n) and 365 of the Bankruptcy Code. The Debtors shall be deemed to have accepted a bid only when the bid has been approved by the Bankruptcy Court at the Sale Hearing.

7. At the Sale Hearing the Debtors will seek authorization to consummate the transactions contemplated by either the Prevailing Bid or that certain Asset Purchase Agreement by and between the Debtors and the Stalking Horse Purchaser, dated March 7, 2025 (the “APA”). **The Debtors will seek to sell and transfer the Purchased Assets and assume and assign the Assumed Contracts, subject to the terms of the Prevailing Bid, to either the Stalking Horse Purchaser or the purchaser under the Prevailing Bid, free and clear of any and all Liens (as such term is defined in the APA), other than those specifically assumed by the party submitting the Prevailing Bid.**

8. Objections, if any, to the sale of the Purchased Assets, shall be in writing, shall set forth the name of the objecting party, the basis for the objection and the specific grounds therefor, and shall be filed with the Bankruptcy Court and served so as to be actually received **by 4:00 p.m.**

local time in Atlanta, Georgia, on [____], 2025, by: (i) counsel to the Debtors, King & Spalding LLP, 1180 Peachtree Street, Atlanta, Georgia 30309, Attention: Jeffrey R. Dutson (email: jdutson@kslaw.com), (ii) Office of the U.S. Trustee, 362 Richard B. Russell Building, 75 Ted Turner Drive, SW, Atlanta Georgia 30303, Attention: David S. Weidenbaum (email: David.S.Weidenbaum@usdoj.gov), (iii) counsel to any official committee of unsecured creditors appointed in these cases, and (iv) counsel to the Stalking Horse Purchaser, Porter Hedges LLP, 1000 Main St, 36th Floor | Houston, TX 77002, Attention: Joshua W. Wolfshohl (email: JWolfshohl@porterhedges.com) and Brian G. Rose (email: BRose@porterhedges.com). **Each person or entity who receives notice of the proposed sale of the Purchased Assets and who does not object thereto on or prior to the [____], 2025, deadline shall be deemed to have consented to the sale.**

9. This Notice and the Auction are subject to the terms and conditions of the Order and the Bidding Procedures, which shall control in the event of any conflict with this Notice. Copies of the Motion and the Order can be obtained by accessing the Debtors' website (<https://www.veritaglobal.net/ontheborder>) or by contacting the Debtors' claims agent by phone ((888) 647-1744 (U.S./Canada) or (310) 751-2628 (International)) or by sending a written request to OTB Holding LLC, One Buckhead Plaza, 3060 Peachtree Road, NW, Atlanta, GA 30305. Parties interested in receiving more information regarding the sale of the Purchased Assets, subject to any necessary confidentiality agreement, may make a written request to: (i) counsel to the Debtors, King & Spalding LLP, 1180 Peachtree Street, Atlanta, Georgia 30309, Attention: Jeffrey R. Dutson, Esq. (email: jdutson@kslaw.com); or (ii) Hilco Corporate Finance, LLC, 401 N. Michigan Suite 1630, Chicago, Illinois 60611, Attn: Teri Stratton (email: tstratton@hilcofc.com). A copy of the APA may be obtained by making a request to King & Spalding LLP, 1180 Peachtree Street, Atlanta, Georgia 30309, Attention: Jeffrey R. Dutson.

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Date: [March] [•], 2025
Atlanta, GA

By Order of the Court,

KING & SPALDING LLP
Jeffrey R. Dutson
Georgia Bar No. 637106
Brooke L. Bean
Georgia Bar No. 764552
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Georgia Bar No. 692753
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Email: bbean@kslaw.com
Email: asong@kslaw.com

Proposed Counsel for the Debtors in Possession

EXHIBIT 2

Cure Notice

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

| | | |
|---|---|-------------------------|
| In re: |) | Chapter 11 |
| |) | |
| OTB HOLDING LLC, <i>et al.</i> , ¹ |) | Case No. 25-52415 (SMS) |
| |) | |
| |) | |
| Debtors. |) | (Jointly Administered) |
| <hr style="width: 40%; margin-left: 0;"/> | | |

**NOTICE OF CURE AMOUNTS AND PROPOSED ASSUMPTION AND
ASSIGNMENT OF EXECUTORY CONTRACTS AND LEASES**

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On [___], 2025, the above-captioned debtors and debtors in possession (collectively, the “Debtors”), filed the *Debtors’ Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 105, 363 and 365 (I) Authorizing and Scheduling an Auction at Which Debtors Will Solicit the Highest or Best Bid for the Sale of Substantially all of Debtors’ Assets, (II) Approving Bidding Procedures Related to Conduct of Auction, (III) Approving Bid Protections, (IV) Approving the Form and Manner of Notices of (A) Proposed Sale of the Debtors’ Assets, the Auction and the Sale Hearing, and (B) Proposed Assumption and Assignment of Executory Contracts and Leases, (V) Approving the Sale of the Assets to the Party Submitting the Highest or Best Bid, and (VI) Granting Related Relief* (the “Motion”) [Docket No. ____]. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

2. On [___], 2025, the United States Bankruptcy Court for the Northern District of Georgia (the “Bankruptcy Court”) entered the *Order Pursuant to Bankruptcy Code Sections 105, 363 And 365: (A) Scheduling an Auction; (B) Scheduling the Date, Time and Place for a Hearing on the Proposed Sale Motion; (C) Approving the Form and Manner of the Notice of (I) the Proposed Sale of the Debtors’ Assets, the Auction and the Sale Hearing, and (II) Proposed Assumption and Assignment of Executory Contracts and Leases; and (D) Approving (I) Bidding Procedures, and (II) Bid Protections* (the “Order”) [Docket No. ____].

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: OTB Holding LLC (3213), OTB Acquisition LLC (8500), OTB Acquisition of New Jersey LLC (1506), OTB Acquisition of Howard County LLC (9865), Mt. Laurel Restaurant Operations LLC (5100), OTB Acquisition of Kansas LLC (9014), OTB Acquisition of Baltimore County, LLC (6963). OTB Holding LLC’s service address is One Buckhead Plaza, 3060 Peachtree Road, NW, Atlanta, GA 30305.

3. A hearing to consider the remaining relief requested in the Motion and the results of the Auction (the “Sale Hearing”) will be held before the Honorable [____], United States Bankruptcy Judge, in Courtroom [____], United States Courthouse, [•], Atlanta, Georgia [•], at [__:___.m. on [May [•]], 2025].

4. In connection with any sale of the Purchased Assets authorized at the Sale Hearing, the Debtors will assume and assign to the Stalking Horse Purchaser (or another acquirer of the Purchased Assets) certain of the Debtors’ executory contracts and leases. **Not all of the agreements listed in Exhibit A will be assumed and assigned by the Debtors.**

5. The Debtors believe that any and all defaults (other than the filing of these chapter 11 cases) and the actual pecuniary losses under the agreements listed on Exhibit A, to the extent they are Assumed Contracts, can be cured by the payment of the Cure Costs listed on Exhibit A. The inclusion of any document on Exhibit A shall not constitute or be deemed to be a determination or admission by the Debtors that such document is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code.

6. If any non-debtor party to an agreement listed on Exhibit A objects to the Cure Cost listed on Exhibit A for such agreement or objects to the possible assumption and assignment of such agreement, such party must file an objection (a “Cure Objection”) with the Bankruptcy Court and serve such Cure Objection so as to be actually received by **4:00 p.m. (local time in Atlanta, Georgia) on [____], 2025 (the “Cure Objection Deadline”)**, by: (i) counsel to the Debtors, King & Spalding LLP, 1180 Peachtree Street, Atlanta, Georgia 30309, Attention: Jeffrey R. Dutson (email: jdutson@kslaw.com), (ii) Office of the U.S. Trustee, 362 Richard B. Russell Building, 75 Ted Turner Drive, SW, Atlanta Georgia 30303, Attention: David S. Weidenbaum (email: David.S.Weidenbaum@usdoj.gov), (iii) counsel to any official committee of unsecured creditors appointed in these cases, and (iv) counsel to the Stalking Horse Purchaser, Porter Hedges LLP, 1000 Main St, 36th Floor | Houston, TX 77002, Attention: Joshua W. Wolfshohl (email: JWolfshohl@porterhedges.com) and Brian G. Rose (email: BRose@porterhedges.com). **A Cure Objection must set forth the cure amount the objector asserts is due, the specific types and dates of the alleged defaults, pecuniary losses, conditions to assignment and the support therefor. No Cure Objection is needed if you agree with the Cure Amount listed.**

7. Except as set forth in the Order, unless a non-debtor party to an agreement listed on Exhibit A files and serves a Cure Objection by the Cure Objection Deadline, such non-debtor party shall be deemed to have: (a) consented to the possible assumption and assignment of such executory contract or unexpired lease to the Stalking Horse Purchaser (or any other acquirer of the Purchased Assets); (b) waived and released any right to assert a Cure Objection; and (c) shall be forever barred and estopped from asserting or claiming against Debtors, the Stalking Horse Purchaser (or any other acquirer of the Purchased Assets), or any other assignee of them, that any additional amounts are due or defaults exist, or conditions to assignment must be satisfied, under such assumed contract or unexpired lease for the period prior to the date of the Sale Hearing.

8. Any hearings with respect to the Cure Objections may be held (a) at the Sale Hearing; or (b) at such other date as the parties agree.

9. If a non-debtor party to an agreement listed on Exhibit A agrees with the applicable Cure Cost set forth on Exhibit A and does not otherwise object to the Debtors' possible assumption and assignment of such agreement, no further action need be taken on the part of that non-debtor party.

10. The Debtors' decision to sell, assign and/or transfer the Assumed Contracts to the Stalking Horse Purchaser (or any other acquirer of the Purchased Assets) is subject to Bankruptcy Court approval and the closing of the transactions contemplated by either the Prevailing Bid or that certain Asset Purchase Agreement by and between the Debtors and the Stalking Horse Purchaser, dated March 7, 2025 (the "APA"). Accordingly, absent such closing or further order of the Bankruptcy Court, none of the Assumed Contracts shall be assumed, sold, assigned and/or transferred, and shall in all respects be subject to further administration under the Bankruptcy Code.

11. Copies of the Motion and the Order can be obtained by accessing the Debtors' website (<https://www.veritaglobal.net/ontheborder>) or by contacting the Debtors' claims agent by phone ((888) 647-1744 (U.S./Canada) or (310) 751-2628 (International)) or by sending a written request to OTB Holding LLC, One Buckhead Plaza, 3060 Peachtree Road, NW, Atlanta, GA 30305. Parties interested in receiving more information regarding the sale of the Purchased Assets, subject to any necessary confidentiality agreement, may make a written request to: (i) counsel to the Debtors, King & Spalding LLP, 1180 Peachtree Street, Atlanta, Georgia 30309, Attention: Jeffrey R. Dutson, Esq. (email: jdutson@kslaw.com); or (ii) Hilco Corporate Finance, LLC, 401 N. Michigan Suite 1630, Chicago, Illinois 60611, Attn: Teri Stratton (email: tstratton@hilcofc.com). A copy of the APA may be obtained by making a request to King & Spalding LLP, 1180 Peachtree Street, Atlanta, Georgia 30309, Attention: Jeffrey R. Dutson.

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Date: March [•], 2025
Atlanta, GA

By Order of the Court,

KING & SPALDING LLP
Jeffrey R. Dutson
Georgia Bar No. 637106
Brooke L. Bean
Georgia Bar No. 764552
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Email: asong@kslaw.com

Proposed Counsel for the Debtors in Possession

EXHIBIT A

Schedule of Cure Costs and Assumed Contracts

Exhibit B

Asset Purchase Agreement

ASSET PURCHASE AGREEMENT

by and among

**OTB HOLDING LLC,
OTB ACQUISITION LLC,
OTB ACQUISITION OF NEW JERSEY LLC,
MT. LAUREL RESTAURANT OPERATIONS LLC,
OTB ACQUISITION OF HOWARD COUNTY LLC,
OTB ACQUISITION OF BALTIMORE COUNTY, LLC,
and
OTB ACQUISITION OF KANSAS LLC,**

as Sellers,

and

OTB HOSPITALITY, LLC,

as Buyer

March 7, 2025

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ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (as amended or modified, this “Agreement”) is entered into as of March 7, 2025 (the “Execution Date”), by and among OTB Holding LLC, a Delaware limited liability company (“Parent”), OTB Acquisition LLC, a Delaware limited liability company (“Acquisition”), OTB Acquisition of New Jersey LLC, a New Jersey limited liability company (“New Jersey”), Mt. Laurel Restaurant Operations LLC, a New Jersey limited liability company (“Mt. Laurel”), OTB Acquisition of Howard County LLC, a Maryland limited liability company (“Howard”), OTB Acquisition of Baltimore County, LLC, a Maryland limited liability company (“Baltimore”), and OTB Acquisition of Kansas LLC, a Kansas limited liability company (“Kansas” and, collectively with Parent, Acquisition, New Jersey, Mt. Laurel, Howard, and Baltimore, “Sellers”, and each individually a “Seller”), and OTB Hospitality, LLC, a Texas limited liability company (together with its permitted successors, designees and assigns, “Buyer”). Sellers and Buyer are referred to herein collectively as the “Parties”. Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in ARTICLE I.

RECITALS

WHEREAS, Sellers are engaged in the business of owning, operating and franchising a chain of Tex-Mex casual dining restaurants known as “On The Border Mexican Grill & Cantina” (collectively, the “Business”);

WHEREAS, Sellers have commenced proceedings (collectively, the “Chapter 11 Cases”) under Title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Northern District of Georgia (the “Bankruptcy Court”);

WHEREAS, subject to approval of the Bankruptcy Court and on the terms and subject to the conditions set forth herein and pursuant to an anticipated Bidding Procedures Order and Sale Order (each defined below), Sellers wish to sell, transfer and assign to Buyer or one or more of its Permitted Designees (as defined below), and Buyer wishes to purchase, acquire and assume from Sellers, pursuant to Sections 105, 363, 365, and other applicable provisions of the Bankruptcy Code, the Purchased Assets and the Assumed Liabilities as of the Closing;

WHEREAS, on the Closing Date, Buyer will acquire certain assets and assume certain Liabilities of the Business of Sellers in accordance with the terms of this Agreement;

WHEREAS, in accordance with this Agreement, on or before the Closing Date, Buyer intends to form a series of Affiliated limited liability companies, each of which will be an assignee of certain of the Purchased Assets and certain of the Assumed Liabilities (the “Permitted Designees”);

WHEREAS, Sellers intend to seek the entry of an Order by the Bankruptcy Court approving this Agreement and authorizing Sellers to consummate the Contemplated Transactions upon the terms and subject to the conditions set forth herein and in the Sale Order;

WHEREAS, pursuant to the Bidding Procedures Order, Sellers shall conduct an Auction and sale process to determine the highest or otherwise best offer for the Purchased Assets, as ordered by the Bankruptcy Court in the Bidding Procedures Order;

WHEREAS, this Agreement shall not be binding upon Sellers until approved by the Bankruptcy Court; and

WHEREAS, the Contemplated Transactions are subject to the approval of the Bankruptcy Court and will be consummated only pursuant to the Sale Order to be entered by the Bankruptcy Court.

NOW, THEREFORE, in consideration of the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

AGREEMENT

ARTICLE I. DEFINITIONS

“Accounts Receivable” means (a) all accounts, accounts receivable, Credit Card Receivables, contractual rights to payment, notes, notes receivable, negotiable instruments, chattel paper, and vendor rebates of Sellers, and (b) any security interest, claim, remedy or other right related to any of the foregoing.

“Additional Cash Consideration” has the meaning set forth in Section 2.5(b).

“Adequate Assurance Account” shall have the meaning ascribed to it in any Order entered by the Chapter 11 Cases with respect to adequate assurance under Section 366 of the Bankruptcy Code.

“Adverse Consequences” means all Litigations, charges, complaints, demands, injunctions, judgments, orders, decrees, awards, rulings, damages, penalties, fines, costs, reasonable amounts paid in settlement, Liabilities, obligations, Taxes, Liens, losses, expenses and fees, including court costs and reasonable attorneys’ fees and expenses.

“Affiliate” when used with reference to another Person means any Person, directly or indirectly, through one or more intermediaries, Controlling, Controlled by, or under common Control with, such other Person, including those Persons defined and described as an Affiliate or Insider in the Bankruptcy Code.

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

“Allocation” has the meaning set forth in Section 2.9.

“Alternate Agreement” means one or more definitive agreements with respect to one or more Alternate Transactions.

“Alternate Transaction” means a transaction or series of related transactions pursuant to which Sellers, consistent with the Bidding Procedures Order, (a) accept a Qualified Bid other than that of Buyer, as the highest or best offer, or (b) sell, transfer, lease or otherwise dispose of, directly or indirectly, including through an asset sale, stock sale, merger, reorganization or other similar

transaction (by Sellers or otherwise), including pursuant to a Plan or refinancing, all or substantially all of the Purchased Assets or the equity interests of any Seller (or agree to do any of the foregoing) in a transaction or series of transactions to a Person or Persons other than Buyer or its Affiliates.

“Approved Budget” has the meaning set forth in Section 5.5(d).

“Assigned Contracts” means the Assigned Prepetition Contracts and the Assigned Postpetition Contracts.

“Assigned Prepetition Contracts” has the meaning set forth in Section 2.6(b).

“Assigned Postpetition Contracts” has the meaning set forth in Section 2.6(c)(iii).

“Assignment and Assumption Agreement” has the meaning set forth in Section 2.8(a)(ii).

“Assumed Contract” has the meaning set forth in Section 2.6(a)(ii).

“Assumed Liabilities” has the meaning set forth in Section 2.3.

“Assumed Permits” means all Permits relating to the Business of the Continuing Restaurants and the New Jersey Restaurants that are transferable in accordance with their terms, but excluding all Permits to the extent related to any Excluded Asset (including any Lease that is not an Assumed Contract).

“Auction” means an auction for the sale and assumption of the Purchased Assets and the Assumed Liabilities.

“Avoidance Actions” has the meaning given such term in the definition of “Purchased Actions.”

“Back-Up Bid” has the meaning set forth in Section 5.3(d).

“Back-Up Bidder” has the meaning set forth in Section 5.3(d).

“Bankruptcy Code” has the meaning set forth in the recitals.

“Bankruptcy Court” has the meaning set forth in the recitals.

“Bid Protections” has the meaning set forth in Section 5.3(b).

“Bidding Procedures” means the procedures approved pursuant to the Bidding Procedures Order, in form and substance satisfactory to Buyer in its reasonable discretion, that approves, *inter alia*, bidding and auction procedures to be followed by Sellers and all potential bidders for the Purchased Assets and the Assumed Liabilities.

“Bidding Procedures and Sale Motion” means a motion, in a form and substance satisfactory to Buyer in its reasonable discretion, filed by Sellers with the Bankruptcy Court in

connection with the Chapter 11 Cases requesting the entry of the Bidding Procedures Order and the Sale Order.

“Bidding Procedures Order” means an Order of the Bankruptcy Court, in a form and substance satisfactory to Buyer in its reasonable discretion, that, among other things, (a) approves and authorizes the payment of the Breakup Fee and the Expense Reimbursement on the terms and conditions set forth in Section 5.3(b), (b) grants superpriority administrative status to the Breakup Fee and the Expense Reimbursement (senior to any other superpriority administrative expense claims) pursuant to Sections 363, 503(b) and 507(a)(2) of the Bankruptcy Code, (c) establishes a date for the Sale Hearing, (d) establishes procedures for the bidding and Auction process, including: (i) the receipt by Sellers of a qualified bid by May 1, 2025 (the “Qualified Bid Deadline”), (ii) the amount of the cash bid required for a qualified bid, (iii) the requirement that each qualified bid be accompanied by a good faith deposit equal to ten percent (10%) of the purchase price represented by such bid, (iv) the nature of the financial information that potential bidders must submit to consummate a qualified bid, (v) the requirement that for a qualified bid a duly authorized and fully executed purchase agreement must be included, with terms that are substantially the same as, not more burdensome in any material way than, and no more conditional than, the terms of Buyer’s proposed transaction under the terms of this Agreement, (vi) the nature of the information that potential bidders must submit to demonstrate their ability to provide adequate assurance of future performance with respect to potential Contracts and Leases that may be assumed and assigned, (vii) the minimum bid required to start the Auction, and (viii) the subsequent bid increments for the Auction, which in any event shall be no less than \$250,000, and (e) designates Buyer as the “stalking horse” bidder for the Purchased Assets.

“Bill of Sale” has the meaning set forth in Section 2.8(a)(i).

“Breakup Fee” has the meaning set forth in Section 5.3(b).

“Business” has the meaning set forth in the recitals.

“Business Day” means any day other than a Saturday, a Sunday or a day on which banks located in Atlanta, Georgia shall be authorized or required by Law to close.

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

“Cash” means all cash and cash equivalents of Sellers as of the Closing.

“Casualty” has the meaning set forth in Section 5.11(b).

“Casualty Proceeds” has the meaning set forth in Section 5.11(b).

“Chapter 11 Cases” has the meaning set forth in the Recitals.

“Claim” or “claim” means a “claim” as defined in Section 101(5) of the Bankruptcy Code, whether arising before or after the Petition Date.

“Closing” has the meaning set forth in Section 2.7.

“Closing Date” has the meaning set forth in Section 2.7.

“Closing Date Cash” has the meaning set forth in Section 2.5(b).

“Closing Cash Payment” has the meaning set forth in Section 2.5(d).

“COBRA” means Part 6 of Subtitle B of Title I of ERISA, Section 4980B of the IRC, and any similar state Law.

“Committee” means the Official Unsecured Creditors’ Committee appointed in the Chapter 11 Cases.

“Condemnation” has the meaning set forth in Section 5.11(a).

“Condemnation Proceeds” has the meaning set forth in Section 5.11(a).

“Confidentiality Agreement” has means that certain Letter Agreement dated as of January 30, 2025, among Sellers and Buyer.

“Consent” means any approval, consent, ratification, permission, clearance, designation, qualification, waiver or authorization, or an Order of the Bankruptcy Court that deems or renders unnecessary the same.

“Contemplated Transactions” means the sale by Sellers to Buyer, and the purchase by Buyer from Sellers, of the Purchased Assets, and the assumption by Buyer of the Assumed Liabilities.

“Continuing Restaurant” means any of Sellers’ restaurant locations with respect to which the associated Leases are Assigned Contracts.

“Contract” means any written or oral agreement, contract, lease, sublease, indenture, mortgage, instrument, guaranty, loan or credit agreement, note, bond, customer order, purchase order, sales order, sales agent agreement, supply agreement, development agreement, joint venture agreement, promotion agreement, license agreement, contribution agreement, partnership agreement, collective bargaining agreement, or other arrangement, understanding, permission or commitment that, in each case, is legally binding.

“Contract Schedule” has the meaning set forth in Section 2.6(a)(i).

“Control” means, when used with reference to any Person, the power to direct the management or policies of such Person, directly or indirectly, by or through stock or other equity ownership, agency or otherwise, or pursuant to or in connection with any Contract; and the terms “Controlling” and “Controlled” shall have meanings correlative to the foregoing.

“Credit Bid” has the meaning set forth in Section 2.5(c)(i).

“Credit Card Receivables” means all accounts receivable and other amounts owed to Sellers (whether current or non-current) in connection with any customer purchases from any

Continuing Restaurants operated by Sellers that are made with credit cards or any other related amounts owing (including deposits or holdbacks to secure chargebacks, offsets or otherwise) from credit card processors to Sellers, including all Credit Card Receivables generated with respect to sales occurring during the three days immediately prior to the Closing Date, including any amounts received by or payable to Sellers with respect to such sales occurring during such three days immediately prior to the Closing Date.

“Customer Programs” means those certain customer gift card programs, offered by each Seller, respectively and as applicable, in the Ordinary Course of Business in conducting the operations of each such Seller’s Business.

“Cure Costs” means, for only the Assumed Contracts, all amounts that are determined by a final and nonappealable Order of the Bankruptcy Court must be paid, pursuant to Sections 365(b)(1)(A) and (B) of the Bankruptcy Code, in connection with the assumption and/or assignment of the Assumed Contracts to Buyer as provided herein.

“Current Employees” means all employees of Sellers employed as of the day before the Closing Date, whether active or not (including those on short-term disability, leave of absence, paid or unpaid, or long-term disability), with respect to all Continuing Restaurants.

“Debtors” means Sellers, as debtors and debtors in possession in the Chapter 11 Cases.

“Deposits” has the meaning set forth in Section 2.1(e).

“DIP Lender” shall have the same meaning given such term in the DIP Order.

“DIP Loan Agreement” shall have the same meaning given such term in the DIP Order.

“DIP Obligations” means all “DIP Obligations” as defined in the DIP Order.

“DIP Order” and “DIP Orders” means, as applicable and collectively, (a) the interim Order to be entered by the Bankruptcy Court approving the DIP Loan Agreement on an interim basis (the “Interim Order”); and (ii) the Order of the Bankruptcy Court to be entered approving the DIP Loan Agreement on a final basis (the “Final Order”).

“Disclosure Schedule” has the meaning set forth in ARTICLE III.

“Employee Benefit Plan” means any “employee benefit plans” (as defined in Section 3(3) of ERISA) and any bonus, stock option, stock purchase, restricted stock, equity based, incentive, deferred compensation, pension plan, retiree medical or life insurance, supplemental retirement, severance, change in control or other benefit plans, programs or arrangements, and all employment, termination, severance, any cafeteria plan or any holiday or vacation plan or practice or other contracts or agreements (a) to which any Seller or any Seller’s ERISA Affiliate is a party, with respect to which any Seller or any Seller’s ERISA Affiliate has any obligation to or which are maintained, contributed to or sponsored by any Seller or any Seller’s ERISA Affiliate for the benefit of any Current Employee or Former Employee, officer, manager or director of any Seller, or (b) for which any Seller has or could reasonably be expected to have any Liability; provided

that, any statutory benefit plan to which any Seller is required to participate in or comply with that is sponsored by a Governmental Entity shall not be an “Employee Benefit Plan”.

“End Date” has the meaning set forth in Section 8.1(b).

“ERISA” means the United States Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” of any entity means any other entity which, together with such entity, would be treated as a single employer under Section 414 of the Internal Revenue Code or Section 4001 or ERISA.

“Escrow Agent” means JPMorgan Chase Bank, N.A.

“Escrow Agreement” means that certain Escrow Agreement, entered into following the Execution Date, among Acquisition, Buyer and the Escrow Agent.

“Excluded Assets” has the meaning set forth in Section 2.2.

“Excluded Claims” means all causes of action, lawsuits, claims, rights of recovery and other similar rights of each Debtor and its bankruptcy estate that is solely related to any Excluded Asset or Excluded Liability (other than those causes of action, lawsuits, claims, rights of recovery and other similar rights of each Debtor that are included in the definition of “Purchased Actions”).

“Excluded Employee” has the meaning set forth in Section 6.4(a).

“Excluded Liabilities” has the meaning set forth in Section 2.4.

“Excluded Restaurants” means any of Sellers’ restaurant locations that are not Continuing Restaurants.

“Expense Reimbursement” has the meaning set forth in Section 5.3(b).

“Former Employees” means all individuals who have been employed by Sellers who are not Current Employees.

“Good Faith Deposit” has the meaning set forth in Section 2.5(a).

“Governmental Entity” means any United States federal, state or local or non-United States governmental or regulatory authority, agency, commission, court, body or other governmental entity.

“Health Plans” means all health plans of Sellers including, but not limited to, health, dental, life, disability and long-term care insurance.

“Highest or Best Bid” has the meaning set forth in Section 5.3(d).

“Independent Accounting Firm” means any of the nationally recognized “big four” accounting firms, as mutually agreed.

“Insurance Policy” means each primary, excess and umbrella insurance policy, bond and other form of insurance owned or held by or on behalf of Sellers and their operations, properties and assets, or providing insurance coverage to the Business.

“Intellectual Property” means any and all rights, title and interest in or relating to intellectual property of any type, which may exist or be created under the Laws of any jurisdiction throughout the world (including, without limitation, all common-law rights, statutory rights and contractual rights related to the following), including: (a) patents and patent applications, together with all reissues, continuations, continuations-in-part, divisionals, extensions and reexaminations in connection therewith, (b) trademarks, service marks, trade dress, logos, slogans, trade names, service names, brand names, Internet domain names and all other source or business identifiers and general intangibles of a like nature, along with all applications, registrations and renewals in connection therewith, and all goodwill associated with any of the foregoing, (c) rights associated with works of authorship, including exclusive exploitation rights, mask work rights, copyrights, database and design rights, whether or not registered or published, all registrations and recordations thereof and applications in connection therewith, along with all extensions and renewals thereof, (d) trade secrets and Recipes and menus, and (e) all other intellectual property rights related to the Business, including all social media accounts related to the Business.

“Intellectual Property Assignments” has the meaning set forth in Section 2.8(a)(iii).

“Inventory” means all of Sellers’ consumable food, alcoholic beverages, and other beverages and raw materials and work-in-process therefor and all of Sellers’ tangible property used in the preparation of, serving, and cleaning up from, food and drinks, including napkins, silverware, plates and dining ware, cups, glassware, mugs, cooking and cleaning utensils, packaging materials, paper products, ingredients, miscellaneous consumables, materials, supplies, inventories and other related items or that are otherwise included in the Purchased Assets and are permitted to be sold and transferred under applicable Law.

“IRC” means the United States Internal Revenue Code of 1986, as amended.

“Law” means any federal, state, provincial, local, municipal, foreign or other law, statute, legislation, constitution, principle of common law, resolution, ordinance (including with respect to zoning or other land use matters), code, treaty, convention, rule, regulation, requirement, edict, directive, pronouncement, determination, proclamation or Order of any Governmental Entity.

“Leased Real Property” means all leasehold or sub-leasehold estates and other rights to use or occupy any land, buildings, structures, improvements, fixtures or other interest in real property of Sellers which is used in the Business.

“Leases” means all leases, subleases, unexpired leases, unexpired subleases, licenses, concessions and other Contracts, including all amendments, extensions, renewals, guaranties and other agreements with respect thereto, in each case pursuant to which any Seller holds any Leased Real Property.

“Liability” means all indebtedness, losses, claims, damages, expenses, fines or other penalties, costs, royalties, proceedings, deficiencies, duties, obligations, and other liabilities

(including those arising out of any Litigation, such as any settlement or compromise thereof or judgment or award therein) of a Person (whether absolute, accrued, contingent, fixed, liquidated or unliquidated, or otherwise, and whether known or unknown, and whether due or to become due, and whether in contract, tort, strict liability, or otherwise, and whether or not resulting from third-party claims).

“Lien” means any mortgage, deed of trust, hypothecation, contractual restriction, pledge, lien (statutory or otherwise, including PACA/PASA Claims), encumbrance, interest, charge, security interest, put, call, other option, right of first refusal, right of first offer, servitude, right of way, easement, conditional sale or installment contract, finance lease involving substantially the same effect, security agreement or other encumbrance or restriction on the use, transfer or ownership of any property of any type (including real property, tangible property and intangible property and including any “Lien” as defined in the Bankruptcy Code).

“Liquor License Approvals” has the meaning set forth in Section 6.10(a).

“Liquor Licenses” has the meaning set forth in Section 3.12(b).

“Litigation” means any action, cause of action, suit, claim, investigation, mediation, audit, grievance, demand, hearing or proceeding, whether civil, criminal, administrative or arbitral, whether at Law or in equity and whether before any Governmental Entity or arbitrator.

“Management Agreement” means an agreement in the form as shall be reasonably acceptable to Buyer and Sellers, and which provides that all costs of operations of the Purchased Assets from and after the Closing Date shall be paid on a current basis by Buyer and the economic benefit of the operations of the Purchased Assets accrues to Buyer.

“Material Adverse Effect” means any change, event, effect, development, condition, circumstance or occurrence (when taken together with all other changes, events, effects, developments, conditions, circumstances or occurrences), that has or could reasonably be expected to have a material adverse effect on (a) the condition (financial or otherwise), or results of operations of Sellers, the Business, or the Purchased Assets, in each case taken as a whole, (b) the ability of the Sellers to conduct the Business consistent with recent history, or (c) the ability of Sellers to perform their obligations under this Agreement and the Related Agreements in material compliance with the requirements thereof or to consummate the Contemplated Transactions, excluding any such change, event, effect, development, condition, circumstance or occurrence to the extent resulting from or arising in connection with (i) the Contemplated Transactions or the public announcement thereof; (ii) changes or conditions affecting the industries generally in which Sellers operate; (iii) changes in national or international business, economic, political or social conditions, including the engagement by the United States of America in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the United States of America or any of its territories, possessions or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States of America; (iv) changes in financial, banking or securities markets (including any disruption thereof or any decline in the price of securities generally or any market or index); (v) any occurrence, threat, or effects of a disease outbreak, epidemic or pandemic; (vi) changes in Law or in generally accepted accounting principles; (vii) changes resulting from the anticipated

commencement or commencement and continuation of the Chapter 11 Cases; or (viii) actions taken by Sellers pursuant to (or as contemplated by) Orders entered by the Bankruptcy Court in the Chapter 11 Cases, and in the case of clauses (ii) through (vii), which do not disproportionately affect Sellers relative to other industry participants.

“Material Contracts” has the meaning set forth in Section 3.6.

“New Jersey Restaurant” means all of Sellers’ restaurants located in New Jersey (whether opened or closed) other than Sellers’ restaurants located in New Jersey that are Continuing Restaurants.

“Offeree” has the meaning set forth in Section 6.4(a).

“Order” means any judgment, decree, ruling, decision, opinion, injunction, assessment, attachment, undertaking, award, charge, writ, executive order, judicial order, administrative order or any other order issued, made or rendered by any Governmental Entity.

“Ordinary Course of Business” means the ordinary course of business of Sellers consistent with past custom and practice and subject to any modifications of such practice as a result of the filing of the Chapter 11 Cases.

“PACA/PASA Claims” means any valid claims against Sellers under the Perishable Agricultural Commodities Act of 1930 or any similar state statutes of similar effect or the Packers and Stockyards Act of 1921, as amended, 7 U.S.C. § 181, *et seq.*, timely filed and served pursuant to an Order of the Bankruptcy Court issued in the Chapter 11 Cases.

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

“Permit” means any franchise, approval, permit, license, Order, registration, certificate, variance, Consent, exemption or similar right issued, granted, given or otherwise obtained from or by any Governmental Entity, under the authority thereof or pursuant to any applicable Law.

“Permitted Liens” means: (a) Liens for Taxes not yet delinquent or which are being contested in good faith by appropriate proceedings, with any such contests and the amounts at issue with respect thereto described on Schedule PL, (b) with respect to leased or licensed personal property, the terms and conditions of the lease or license applicable thereto to the extent constituting an Assigned Contract, (c) mechanics Liens and similar Liens for labor, materials or supplies provided with respect to real property incurred in the Ordinary Course of Business or otherwise approved by the Bankruptcy Court for amounts which are not delinquent or which are being contested in good faith by appropriate proceedings in an aggregate amount not to exceed \$50,000, (d) a Lien in favor of U.S. Foods, Inc. on the assets of Acquisition solely to the extent that, as of the Petition Date, such Lien is validly perfected, enforceable and unavoidable, (e) with respect to real property, zoning, building codes and other land use Laws regulating the use or occupancy of such real property or the activities conducted thereon which are imposed by any Governmental Entity having jurisdiction over such real property which are not violated by the current use or occupancy of such real property or the operation of the Business, except where any such violation would not, individually or in the aggregate, materially impair the use, operation or transfer of the affected property or the conduct of the Business thereon as it is currently being

conducted, (f) Liens securing the Prepetition Secured Note Obligations and the DIP Obligations, and (g) with respect to Leases that constitute Assigned Contracts for each Continuing Restaurant, easements, covenants, conditions, restrictions and other similar matters affecting such real property and other encroachments that do not or would not materially impair the use or occupancy of such real property or materially interfere with the operation of the Business at such real property.

“Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or any other entity, including any Governmental Entity or any group or syndicate of any of the foregoing.

“Petition Date” means the date of the filing of the Chapter 11 Cases.

“Plan” means a plan of reorganization or liquidation proposed by Sellers and/or any party in interest.

“Postpetition Contract Assignment Agreement” has the meaning set forth in Section 2.8(a)(vii).

“Postpetition Contract Schedule” has the meaning set forth in Section 2.6(c)(i).

“Postpetition Contracts” means all Contracts to which any Seller is a party that were entered into on or after the Petition Date, excluding modifications or amendments to any Prepetition Contracts entered into on or after the Petition Date.

“Prepetition Contracts” means all Contracts to which any Seller is a party that were entered into prior to the Petition Date, including modifications or amendments to any such Contracts entered into on or after the Petition Date.

“Prepetition Secured Note” has the meaning given such term in the DIP Order.

“Prepetition Secured Note Obligations” has the meaning given such term in the DIP Order.

“Professional Fees and Expenses” means the accrued and unpaid, reasonable and documented fees and expenses of Sellers’ and Committee’s professionals through Closing in accordance with the Approved Budget, *less* amounts held as retainers by such professionals not previously applied.

“Purchase Price” has the meaning set forth in Section 2.5(c).

“Purchased Actions” means all causes of action, lawsuits, claims, counterclaims, judgments, defenses, demands, credits, allowances, rebates, refunds, and rights of contribution, indemnification, recoupment, recovery, and setoff of each Seller and Debtor and its bankruptcy estate of every kind and nature (at any time or in any manner arising or existing, whether choate or inchoate, known or unknown, now existing or hereafter acquired, contingent or not contingent) that are not Excluded Claims, including those (a) arising under any Assigned Contract, (b) against any current vendor of the Business for goods or services provided or performed on, prior to, or after the Petition Date with respect to Continuing Restaurants, (c) all claims and causes of action

arising under Chapter 5 of the Bankruptcy Code or under any analogous state Law (“Avoidance Actions”) and the proceeds thereof, or (d) arising under any Customer Program.

“Purchased Assets” has the meaning set forth in Section 2.1; provided, however, that, notwithstanding the foregoing or anything contained in this Agreement to the contrary, the Purchased Assets shall not include any Excluded Assets.

“Qualified Bid” means qualified bids in accordance with the Bidding Procedures Order.

“Qualified Bidder” has the meaning set forth in Bidding Procedures Order.

“Recipes” has the meaning set forth in Section 2.1(h).

“Records” means the books, records, information, ledgers, files, invoices, documents, work papers, correspondence, lists (including customer lists, supplier lists and mailing lists), plans (whether written, electronic or in any other medium), drawings, designs, specifications, creative materials, advertising and promotional materials, marketing plans, studies, reports, data and similar materials related to the Business.

“Registered” means issued by, registered with, renewed by or the subject of a pending application before any Governmental Entity or domain name registrar.

“Rejected Contracts” has the meaning set forth in Section 2.6(a)(ii).

“Related Agreements” means the Management Agreement(s), if necessary, the Bill of Sale, the Assignment and Assumption Agreement, the Intellectual Property Assignments, the Post-Petition Contract Assignment Agreement, the Transition Services Agreement, if any, and any other instruments of transfer and conveyance as may be required under applicable Law to convey valid title of the Purchased Assets to Buyer.

“Representative” of a Person means such Person’s Subsidiaries and the officers, directors, managers, employees, advisors, representatives (including its legal counsel and its accountants) and agents of such Person or its Subsidiaries.

“Required Amount” means an amount equal to (i) the Professional Fees and Expenses, *plus* (ii) the Wind Down Cash Amount, *plus* (iii) the amount necessary to satisfy (x) the Hilco Transaction Fee and (y) the A&M Completion Fee.

“Restaurant Support Center” means Acquisition’s leased facility located at 2201 W. Royal Lane Irving, Texas 75063, which serves as the primary support center for the operation of the Business by Sellers.

“Retained Cash” means cash in an amount equal to (i) the Professional Fee Reserve (as defined in the DIP Orders) (but excluding amounts held in the Adequate Assurance Account) *plus* (ii) all Closing Date Cash in an amount up to, but not exceeding, the Required Amount.

“Sale Hearing” means the hearing scheduled with the Bankruptcy Court to consider the sale portion of the Bidding Procedures and Sale Motion.

“Sale Order” means an Order of the Bankruptcy Court, in form and substance satisfactory to Buyer, that approves the sale of the Purchased Assets to Buyer consistent with the terms of this Agreement.

“Seller” or “Sellers” has the meaning set forth in the preamble.

“Seller Transaction Expenses” means the collective amounts payable by Sellers (or for which any Seller could become liable to pay) for all out-of-pocket fees and expenses incurred in connection with the preparation, negotiation, execution and consummation of the Contemplated Transactions, including any (i) “sale transaction fee” owing to Hilco Corporate Finance LLC (“Hilco”) under and as defined in that certain Engagement Agreement between the Sellers and Hilco, dated as of January 10, 2025 (the “Hilco Transaction Fee”), and (ii) any “completion fee” owing to Alvarez & Marsal North America, LLC (“A&M”) under and as defined in that certain Engagement Letter between Sellers and A&M, dated as of January 9, 2025 (“A&M Completion Fee”).

“Sellers’ Knowledge” (or words of similar import) means the actual knowledge (after good faith inquiry of current employees of Sellers, in each case primarily responsible for the subject matter in question) of Chris Rockwood, Jonathan Tibus and Andrew Papai.

“Subsidiary” means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors thereof (or other persons performing similar functions with respect to such corporation) is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (b) if a limited liability company, partnership, association or other business entity (other than a corporation), a majority of partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof. A Person or Persons own a majority ownership interest in a business entity (other than a corporation) if such Person or Persons shall be allocated a majority of such business entity’s gains or losses or shall be or control any managing director, managing member, or general partner of such business entity (other than a corporation). The term “Subsidiary” shall include all direct or indirect Subsidiaries of such Person.

“Tax” or “Taxes” means any United States federal, state or local or non-United States taxes, including income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the IRC), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, real property, personal property, ad valorem, sales, use, liquor, cigarette, transfer, value added, alternative or add-on minimum, estimated or other tax of any kind whatsoever, whether computed on a separate or consolidated, unitary or combined basis or in any other manner, including any interest, penalty or addition thereto, whether or not disputed.

“Tax Proceeding” means any examination, audit, litigation or other proceeding with respect to Taxes attributable to the Business, the Purchased Assets, or the Assumed Liabilities.

“Tax Return” means any return, declaration, report, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Transfer Tax” has the meaning set forth in Section 6.6.

“Transferred Employee” has the meaning set forth in Section 6.4(a).

“Transition Services Agreement” has the meaning set forth in Section 6.11.

“WARN” has the meaning set forth Section 5.4(f).

“Wind Down Cash Amount” means cash in an amount equal to \$650,000 which will be used to fund Sellers’ wind down activities.

“Winning Bidder” has the meaning set forth Section 5.4(f).

ARTICLE II. PURCHASE AND SALE

Section 2.1 Purchase and Sale of Purchased Assets. Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, on the terms and subject to the conditions set forth in this Agreement, at the Closing, Buyer shall purchase, acquire and accept from Sellers, on an “as is, where is” basis (except with respect to the representations and warranties made in ARTICLE III) and without any representation or warranty on the part of Sellers as to fitness, merchantability, or otherwise, and Sellers shall sell, transfer, assign, convey and deliver to Buyer, all of Sellers’ rights, title and interests in and to all (except to the extent it is included in the definition of Excluded Assets) tangible and intangible real and personal property assets used or held for use by Sellers in the operation of the Business (the “Purchased Assets”), free and clear of all Liens (other than Permitted Liens) and Liabilities (other than Assumed Liabilities), for the consideration specified in Section 2.5. Without limiting the generality of the foregoing, the Purchased Assets shall include, without limitation, the following (except to the extent it is included in the definition of Excluded Assets):

(a) all Cash for all Continuing Restaurants other than Retained Cash, the Additional Cash Consideration, if any, and the Adequate Assurance Account (and all Cash therein);

(b) all Accounts Receivable of Sellers for all Continuing Restaurants as of the Closing;

(c) all Credit Card Receivables for all Continuing Restaurants;

(d) all Inventory of Sellers as of the Closing for all Continuing Restaurants, including all rights of Sellers to receive such Inventory, supplies and materials which are on order as of the Closing, but excluding: (i) alcoholic beverage Inventory in jurisdictions where the Law does not permit Buyer to take title to such Inventory through an asset purchase arrangement, (ii) alcoholic beverage Inventory in jurisdictions where the Law

does not permit Buyer to take title to such Inventory until it obtains the requisite Liquor License Approvals from the pertinent Governmental Entity; provided, however, Sellers shall transfer, assign, convey and deliver to Buyer such alcoholic beverage Inventories in each instance upon issuance of the relevant Liquor License Approval or other authorization from the Bankruptcy Court or relevant Governmental Entity, and (iii) Inventory located at a restaurant that is covered by a Lease that does not constitute an Assigned Contract;

(e) (i) all deposits under the Leases at each Continuing Restaurant, (ii) all deposits under all Assigned Contracts that are not Leases, and (iii) other prepaid deposits, charges and expenses of Sellers with respect to each Continuing Restaurant, including, but not limited to, all deposits for electricity, telephone, cable television, internet, Wi-Fi services, satellite television and other utilities (collectively, "Deposits");

(f) to the maximum extent permitted by the Bankruptcy Code, all Assigned Contracts, the rights and benefits accruing thereunder, and all documents related thereto;

(g) all Intellectual Property owned by Sellers;

(h) all of Sellers' recipes, methods, procedures, cooking/preparation/mixing publications, guidelines, or standards, knowhow, ingredient lists, menus, price lists, nutritional, health, or dietary information, publications, or disclosures, and promotional or informational materials, in each case whether related to food, beverages (whether alcoholic or non-alcoholic), or otherwise (in each case, written or oral or in any other form whatsoever) (collectively, "Recipes");

(i) all open purchase orders with suppliers related to the Continuing Restaurants;

(j) all tangible personal property, including all machinery, equipment, tools, point of sale systems, computers, mobile phones, personal digital assistants, computer equipment, hardware, peripherals, information technology infrastructure, telephone systems, furniture, fixtures, furnishings, cutlery, office supplies, production supplies, pots, pans, kitchen equipment, other miscellaneous supplies, and other tangible personal property of any kind owned by Sellers (including any of the foregoing property that is subject to a personal property lease, but only to the extent that Buyer assumes such lease as an Assigned Contract) related to the Restaurant Support Center or the Continuing Restaurants, other than tangible personal property located at a restaurant that is covered by a Lease that does not constitute an Assigned Contract;

(k) all rights under leases for all cars, trucks, or other motor vehicles set forth on Schedule 2.1(k);

(l) all Records, including Records related to Taxes paid or payable by any Seller related to the Continuing Restaurants; provided that Sellers are entitled to retain copies of all Records and Buyer will make all such Records available to Debtors upon reasonable request and at such Debtor's expense;

(m) all goodwill associated with the Business and the Purchased Assets, including all goodwill associated with the Intellectual Property owned by Sellers and all rights under any confidentiality agreements executed by any third party for the benefit of any Seller to the extent relating to the Purchased Assets and/or the Assumed Liabilities (or any portion thereof);

(n) all rights of Sellers under non-disclosure or confidentiality, noninterference, inventions assignment, non-compete, or non-solicitation agreements with current or former employees, directors, consultants, independent contractors and agents of Sellers to the extent relating to the Purchased Assets and/or the Assumed Liabilities (or any portion thereof);

(o) all of the Assumed Permits or all of the rights and benefits accruing under any Permits relating to the Continuing Restaurants and the New Jersey Restaurants, including all Liquor Licenses to the extent transferrable and held by Sellers, other than alcohol permits (including Liquor Licenses) in jurisdictions where the Law does not permit Buyer to take title to such Permits until it obtains the requisite approvals from the pertinent Governmental Entity, in which case Sellers shall transfer, assign convey and deliver to Buyer such Permits, in each instance upon issuance of the requisite approvals from the relevant Governmental Entity;

(p) the amount of, and all rights to any, insurance proceeds received by any of Sellers after the Execution Date in respect of (i) the loss, destruction or condemnation of any Purchased Assets occurring prior to, on or after the Closing or (ii) any Assumed Liabilities, including the Condemnation Proceeds and the Casualty Proceeds;

(q) the Purchased Actions;

(r) all rights under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers, contractors and any other Person to the extent relating to equipment purchased, products sold, or services provided, to Sellers, to the extent affecting any Purchased Assets and/or Assumed Liabilities;

(s) the right to receive and retain mail relating to Accounts Receivable payments and other communications of Sellers and the right to bill and receive payment for services performed but unbilled or unpaid as of the Closing, in each case relating to the Continuing Restaurants;

(t) all telephone numbers, fax numbers, e-mail addresses, websites, URLs and internet domain names owned by Sellers or otherwise utilized by Sellers in conducting the Business;

(u) all rights, interests or claims with respect to or arising under any Customer Program;

(v) all rights or interests of Sellers in and to all domestic and international franchise arrangements; and

(w) all other assets that are related to or used in connection with the Business (but excluding all of the Excluded Assets).

Section 2.2 Excluded Assets. Notwithstanding Section 2.1, Buyer expressly understands and agrees that Buyer is not purchasing or acquiring, and Seller is not selling or assigning, any of the following assets, properties and rights of Sellers (the “Excluded Assets”):

(a) all Retained Cash, the Additional Cash Consideration, if any, and the Adequate Assurance Account (and all Cash therein);

(b) all bank accounts of Sellers, safety deposit boxes, lock boxes and other cash management accounts (including cash amounts in any accounts against which outstanding bank drafts have been written, to the extent of the amount of such bank drafts); provided, however, such bank accounts, safety deposit boxes, lock boxes and other cash management accounts will be held open by Sellers, at Buyer’s sole cost and expense, until the earlier of (i) the date that is at least sixty (60) days following the Closing and (ii) the dismissal of the Sellers’ Chapter 11 Cases;

(c) all of Sellers’ certificates of formation, articles of organization, operating agreements, limited liability company agreements and other organizational documents, qualifications to conduct business as a foreign entity, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, equity transfer books, equity certificates and other documents relating to the organization, maintenance and existence of any Seller as a corporation, limited liability company, limited partnership or other entity;

(d) all equity securities of any Seller and all net operating losses of any Seller;

(e) all Rejected Contracts and all Postpetition Contracts designated by Buyer as “Excluded” pursuant to Section 2.6(c)(ii) below;

(f) the Excluded Claims;

(g) any loans or notes payable to any Seller or any of its Affiliates from any employee of any Seller or any of its Affiliates (other than Ordinary Course of Business employee advances and other than loans or notes from any Transferred Employees);

(h) any (1) confidential personnel and medical Records pertaining to any Current Employees or Former Employees to the extent the disclosure of such information is prohibited by applicable Law, (2) other Records that Sellers are required by Law to retain and (3) any Records or other documents relating to the Chapter 11 Cases that are protected by the attorney-client privilege; provided that Buyer shall have the right to make copies of any portions of such retained Records referenced in subsection (2) to the extent that such portions relate to the Business or any Purchased Asset;

(i) all Permits other than the Assumed Permits;

(j) any Employee Benefit Plan or compensation, including all assets maintained or held (including all deposits) pursuant to or in connection with the Health Plans or the 401(k) plan(s) of Sellers, and any other employee benefit plan or program of Seller, any Affiliate of Seller or any of their ERISA Affiliates;

(k) all Tax returns of Sellers;

(l) any claim, right or interest to any Tax refund or reimbursement due to Sellers or their Affiliates, except to the extent relating to any Tax period or portion of a Tax period for which Buyer is responsible for the applicable Tax under this Agreement;

(m) all amounts owed to any Seller by any one or more of such Seller's Affiliates (including the other Sellers);

(n) all inventory sold and supplies consumed prior to the Closing in the Ordinary Course of Business;

(o) all Insurance Policies (including with respect to directors and officers liability insurance) and all rights, claims and proceeds payable thereunder, except to the extent included in the Purchased Assets, or required to be conveyed to Buyer pursuant to Section 5.11, including rights to discounts, credits and refunds arising from such Insurance Policies;

(p) all retainers held by Debtors' professionals; and

(q) the rights of Sellers under this Agreement and the Related Agreements and all cash and non-cash consideration payable or deliverable to Sellers under this Agreement.

Section 2.3 Assumption of Assumed Liabilities. On the terms and subject to the conditions of this Agreement, at the Closing (or, with respect to Assumed Liabilities under Assigned Contracts or Assumed Permits that are assumed by Buyer after the Closing, such later date of assumption as provided in Section 2.6), the following obligations of Sellers, and no others, shall be assumed by Buyer (the "Assumed Liabilities"):

(a) all Liabilities arising under the Assigned Contracts that become due and payable after Closing and that do not constitute Cure Costs covered under Section 2.3(c);

(b) all Liabilities arising from or related to the Purchased Assets from and after the Closing;

(c) all Cure Costs payable with respect to the Assigned Contracts, including Cure Costs for the Assigned Contracts that are Leases;

(d) all Liabilities of Sellers under the Customer Programs, whether the gift cards issued under such Customer Programs were issued or sold prior to or following the Petition Date;

(e) all Liabilities as of the Closing with respect to trade payables incurred by Sellers in the Ordinary Course of Business and arising from and after the Petition Date;

(f) all Liabilities as of the Closing for accrued but unpaid base wages and base salary owing to all employees of Sellers employed as of the Closing arising from and after the Petition Date;

(g) all Liabilities for the provision of notice or payment in lieu of notice and any applicable penalties under WARN arising as a result of the Contemplated Transactions or Buyer's termination of any Transferred Employee that is combined with any Seller termination of employees, but solely with respect to the New Jersey Restaurants;

(h) all Liabilities as of the Closing for accrued but unpaid sales Taxes arising from and after the Petition Date;

(i) all property Taxes arising in connection with Continuing Restaurants that are (i) due and owing as of the Closing Date and (ii) for a Tax period which includes (but does not end on) the Closing Date;

(j) all property Taxes that accrue on and after the Petition Date and prior to the Closing Date in connection with an Excluded Restaurant;

(k) all rent due and payable on account of any Excluded Restaurant that accrues on and after the Petition Date and prior to the Closing Date;

(l) any and all costs and expenses necessary in connection with providing "adequate assurance of future performance" with respect to the Assumed Contracts (as contemplated by Section 365 of the Bankruptcy Code); and

(m) all Taxes owed to any Tax authority assessed with respect to the Purchased Assets for any period or portion thereof beginning on or after the Closing Date, including, without limitation, all Transfer Taxes.

Section 2.4 Excluded Liabilities. Notwithstanding anything herein to the contrary, except for the Assumed Liabilities, the Parties expressly acknowledge and agree that Buyer shall not assume, be obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for any Liabilities of Sellers whatsoever associated with the Purchased Assets, the Business or with respect to any other properties, rights, contracts or other assets of Sellers, existing on the Closing Date, including but not limited to any of the following Liabilities which, in each case, Sellers shall expressly retain (a) all Taxes owed by Sellers to any Tax authority for any period or portion thereof ending on or prior to the Closing Date (except to the extent such Taxes are expressly provided as Assumed Liabilities pursuant to Section 2.3), (b) all Liabilities of Sellers related to the Excluded Assets, whether such Liabilities arise before or after the Closing Date (except to the extent such Liabilities are expressly provided as Assumed Liabilities pursuant to Section 2.3), (c) all Liabilities of Sellers owing to Parent or any of its Affiliates, (d) all Liabilities with respect to any current or former employee of or other individual service provider providing services to any Seller, any Seller's ERISA Affiliate or any Affiliate of any Seller or arising at any time except for obligations incurred by Buyer with respect to Transferred Employees due to events

occurring with Buyer after Closing, (e) all Liabilities with respect to Seller Transaction Expenses, and (f) all Liabilities or obligations with respect to any Employee Benefit Plan and compensation (other than as provided under Section 2.3(e)) and any other employee benefit plan, program or policy of Seller, any Affiliate of Seller or any of their ERISA Affiliates (all such liabilities that Buyer is not assuming being referred to collectively as the “Excluded Liabilities”).

Section 2.5 Good Faith Deposit; Purchase Price.

(a) No later than two (2) Business Days following the Execution Date, Buyer and Acquisition will enter into the Escrow Agreement and Buyer will deposit with Escrow Agent cash in immediately available federal funds by wire transfer to an account designated by the Escrow Agent in the amount of \$750,000 (the “Good Faith Deposit”). The Good Faith Deposit shall be held in escrow by the Escrow Agent in an interest-bearing bank account. The Parties shall cause the Escrow Agent to disburse the Good Faith Deposit and interest earned thereon to Acquisition or Buyer, as applicable pursuant to Section 2.5(e), Section 8.2(b), and Section 8.2(c).

(b) On the Closing Date and prior to Closing, Sellers shall provide Buyer with statements for all bank accounts maintained by Sellers indicating the Cash of Sellers as of immediately prior to the Closing, including cash drawn by Sellers under the DIP Facility at the Closing (the “Closing Date Cash”). If and to the extent the Closing Date Cash exceeds the Required Amount, (i) the Cash included as a Purchased Asset shall include all Closing Date Cash of Sellers in excess of the Required Amount, (ii) no further payment shall be due from Buyer hereunder other than in respect of Cure Costs, and (iii) the Closing Date Cash up to the Required Amount shall constitute Retained Cash. If and to the extent the Closing Date Cash is less than the Required Amount, Sellers shall pay as additional consideration hereunder, an amount equal to the difference between the Required Amount and the Closing Date Cash (the “Additional Cash Consideration”).

(c) In consideration of the sale of the Purchased Assets to Buyer, and in addition to the Assumed Liabilities, Buyer agrees to pay or cause to be paid to Sellers aggregate consideration for the sale and transfer of the Purchased Assets (the “Purchase Price”), comprised of:

- (i) the aggregate amount of the Prepetition Secured Note Obligations and the DIP Obligations, by means of a credit bid (the “Credit Bid”); *plus*
- (ii) the Additional Cash Consideration, if applicable.

For the avoidance of doubt, the sum of the components of the Purchase Price set forth in this Section 2.5(c) is projected to equal an approximate amount of \$15,900,000.00.

(d) At the Closing, Buyer shall pay or cause to be paid by wire transfer of immediately available funds to a bank account (or accounts) as shall be designated in writing no later than two (2) days prior to the Closing Date by Sellers (or the applicable counterparties to the Assumed Contracts) to Buyer, an amount equal to (x) the Cure Costs paid by Buyer to the applicable counterparties to the Assumed Contracts, *plus* (y) the

Additional Cash Consideration, if applicable, paid to Sellers (collectively, the payments made by Buyer under clauses (x) and (y), "Closing Cash Payment").

(e) In addition, at the Closing, the Parties shall promptly direct the Escrow Agent (by executing and delivering joint instructions to the Escrow Agent) to disburse the Good Faith Deposit to Buyer.

Section 2.6 Assignment and Assumption of Contracts; Excluded Locations.

(a) Assignment and Assumption of Prepetition Contracts at Closing.

(i) Schedule 2.6(a)(i) attached hereto sets forth each Prepetition Contract (including each Lease) to which any Seller is a party or by which any Seller is bound and that is used in or related to the Business or any of the Purchased Assets ("Contract Schedule").

(ii) No later than two (2) days prior to the Sale Hearing, Buyer shall have delivered notice to Sellers (including by e-mail notice from Buyer's counsel to Sellers' counsel), which Sellers shall then file with the Bankruptcy Court, designating each Prepetition Contract on the Contract Schedule as "Assumed" or "Rejected." Each Prepetition Contract so designated as "Assumed" is referred to herein as an "Assumed Contract"; and each Prepetition Contract so designated as "Rejected" is referred to herein as a "Rejected Contract." Notwithstanding the foregoing, and subject to compliance with Section 365 of the Bankruptcy Code, Buyer shall have the right (in its sole and absolute discretion) to change any such designation and to notify Sellers in writing of any such change until the Closing in which case such Prepetition Contract shall become an Assumed Contract or a Rejected Contract as indicated by such changed designation.

(iii) Sellers shall provide timely and proper written notice of the procedures for the assumption and assignment of Prepetition Contracts to parties to all Prepetition Contracts and will take all other actions necessary to cause all Assumed Contracts to be assumed by Sellers (to the extent not already assumed pursuant to prior Bankruptcy Court Order(s)) and assigned to Buyer. Buyer shall, at or prior to Closing, comply with all requirements under Section 365 of the Bankruptcy Code necessary to assign to Buyer the Assumed Contracts at Buyer's sole cost and expense.

(iv) Sellers shall be responsible for the verification of all Cure Costs for each Assumed Contract and shall use commercially reasonable efforts to correctly calculate the proper Cure Costs, if any, for each Assumed Contract prior to the filing of a schedule of all Cure Costs (if any) for each Prepetition Contract. Sellers shall file such schedule of all Cure Costs (if any) by no later than thirty (30) days following the Petition Date. To the extent that any Assumed Contract requires the payment of Cure Costs in order to be assumed pursuant to Section 365 of the Bankruptcy Code, whether determined prior to or after the Closing, the Cure Costs related to such Assumed Contract, or any portion thereof, shall be paid by Buyer

(if the Cure Costs are Assumed Liabilities) on such date that the Assumed Contract is assumed by the applicable Seller and assigned to Buyer or on such other date as agreed to between Buyer and the counterparty to such Assumed Contract.

(v) At Closing, Sellers shall, pursuant to the Sale Order and the Assignment and Assumption Agreement(s) and other transfer and assignment documents requested by Buyer, assign to Buyer (the consideration for which is included in the Purchase Price), and Buyer shall assume from Sellers (to the extent not already assumed pursuant to prior Bankruptcy Court Order(s)), each of the Assumed Contracts.

(b) Assigned Prepetition Contracts. Unless otherwise agreed by Sellers and Buyer, at the Closing, Sellers shall promptly cause all Rejected Contracts to be rejected pursuant to Section 365 of the Bankruptcy Code or as soon after Closing as practicable. On each date that each Assumed Contract is assumed and assigned to Buyer pursuant to this Section 2.6 (including, without limitation, the approval of the assumption and assignment thereof by the Bankruptcy Court), such Assumed Contract shall constitute an “Assigned Prepetition Contract” and shall be an Assigned Prepetition Contract for all purposes under this Agreement; provided that no Assumed Contract shall be assigned or transferred pursuant to this Agreement unless the Bankruptcy Court has previously approved the assumption and assignment thereof to Buyer. In connection with the assumption and assignment of the Assigned Prepetition Contracts pursuant to Section 365 of the Bankruptcy Code, Buyer shall take all actions required to provide “adequate assurance of future performance” by Buyer under the Assigned Prepetition Contracts after the Closing. Sellers and Buyer shall consult with one another in good faith regarding pleadings that either of them intends to file, or positions either of them intend to take, with the Bankruptcy Court in connection with or that might reasonably affect the Bankruptcy Court’s entry of the Sale Order.

(c) Assignment of Postpetition Contracts at Closing.

(i) Schedule 2.6(c)(i) attached hereto sets forth (x) each Postpetition Contract to which any Seller is a party or by which any Seller is bound and that is used in or related to the Business or any of the Purchased Assets, and (y) a description of each such Postpetition Contract (such schedule is referred to herein as the “Postpetition Contract Schedule”).

(ii) No later than two (2) days prior to the Sale Hearing, Buyer shall, by delivering written notice to Sellers, designate each Postpetition Contract on the Postpetition Contract Schedule as “Purchased” or “Excluded.” Notwithstanding the foregoing, subject to compliance with the Bankruptcy Code, Buyer shall have the right (in its sole and absolute discretion) to change any such designation and to notify the Sellers in writing of any such change until Closing in which case such Postpetition Contract shall become an Assigned Postpetition Contract (as defined below) or an Excluded Asset as indicated by such changed designation.

(iii) At Closing, or, subject to compliance with the Bankruptcy Code, at such later date upon which Sellers obtain any necessary consent of a counterparty to a Postpetition Contract, Sellers shall, pursuant to the Sale Order and the Postpetition Contract Assignment Agreement(s) and other transfer and assignment documents requested by Buyer, assign to Buyer (the consideration for which is included in the Purchase Price), and Buyer shall assume from Sellers, each of the Postpetition Contracts designated by Buyer as “Purchased” pursuant to Section 2.6(c)(ii), and each such Postpetition Contract shall constitute an “Assigned Postpetition Contract” and shall be an Assigned Postpetition Contract for all purposes under this Agreement.

(d) Non-Assignment of Postpetition Contracts and Permits. Notwithstanding anything contained in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or transfer any Postpetition Contract or any Permit, if an attempt at assignment or transfer thereof, without the consent or approval required or necessary for such assignment or transfer, would constitute a breach thereof or in any way adversely affect any of the rights of Buyer (unless the restrictions on assignment or transfer thereunder would be rendered ineffective pursuant to Bankruptcy Code Sections 363 or 365 or Sections 9-406 through 9-409, inclusive, of the Uniform Commercial Code, as amended), as the assignee or transferee of such Postpetition Contract or Permit (as the case may be) thereunder. From and after the Execution Date, including through and after the Closing, Sellers shall use their respective reasonable best efforts to obtain all consents or approvals that are required with respect to Assigned Postpetition Contracts and Permits for Sellers to assign to Buyer such Assigned Postpetition Contracts and Permits. For the avoidance of doubt, nothing in this Section 2.6(d) shall be deemed to (x) limit the Liability, if any, of Sellers pursuant to this Agreement for failing to have obtained any required consent or approval or (y) alter or limit any rights of Buyer under Section 8.1.

(e) Excluded Locations. As of the Closing, (i) any of Sellers’ restaurant locations with respect to which the associated Leases have been designated by Buyer as Assumed Contracts shall be deemed to have been classified as Continuing Restaurants, and (ii) any of Sellers’ restaurant locations with respect to which the associated Leases have been classified as Rejected Contracts shall be deemed to have been classified as Excluded Restaurants.

Section 2.7 Closing. The closing of the Contemplated Transactions (the “Closing”) shall take place remotely by electronic exchange of counterpart signature pages on the first Business Day on which all conditions to the obligations of Sellers and Buyer to consummate the Contemplated Transactions set forth in ARTICLE VII shall have been satisfied or waived (other than conditions with respect to actions Sellers and/or Buyer will take at the Closing itself, but subject to the satisfaction or waiver of those conditions) (the “Closing Date”). The Closing shall occur at 11:00 a.m. Eastern Time on the Closing Date, but shall be deemed to have occurred at 12:01 a.m. (prevailing time at each Continuing Restaurant) on the Closing Date, or at such other time or on such other date as shall be mutually agreed upon by Sellers and Buyer prior thereto.

Section 2.8 Deliveries at Closing.

(a) At the Closing, Sellers shall deliver to Buyer and/or its Permitted Designees the following documents and other items, duly executed by Sellers, as applicable:

(i) one or more Bills of Sale substantially in the form of Exhibit A attached hereto (each, a “Bill of Sale”) (if requested by Buyer, Sellers shall execute a separate Bill of Sale with respect to each Continuing Restaurant);

(ii) one or more Assignment and Assumption Agreements substantially in the form of Exhibit B attached hereto (each, an “Assignment and Assumption Agreement”) (if requested by Buyer, Sellers shall execute a separate Assignment and Assumption Agreement with respect to each Continuing Restaurant);

(iii) instruments of assignment substantially in the forms of Exhibit C, and Exhibit D attached hereto for each registered trademark and domain name, respectively, transferred or assigned hereby and for each pending application therefor (collectively, the “Intellectual Property Assignments”);

(iv) instruments of assignment reasonably requested by Buyer pursuant to which each Seller assigns any right, title or interest in any other Intellectual Property of such Seller;

(v) a completed and duly executed IRS Form W-9 from each Seller, or, to the extent any Seller is disregarded as an entity separate from its owner for U.S. federal income tax purposes, from the Person into which such Seller is disregarded for such purposes;

(vi) if deemed necessary by Buyer, one or more Management Agreements;

(vii) one or more Postpetition Contract Assignment and Assumption Agreements substantially in the form of Exhibit E attached hereto (each, a “Postpetition Contract Assignment Agreement”);

(viii) the Transition Services Agreement, if any, pursuant to Section 6.11;

(ix) originals (or, to the extent originals are not available, copies) of all Assigned Contracts (together with all material amendments, supplements or modifications thereto) to the extent not otherwise already made available to Buyer;

(x) physical possession of all of the Purchased Assets capable of passing by delivery with the intent that title in such Purchased Assets shall pass by and upon delivery;

(xi) certificates of title and title transfer documents to all titled motor vehicles included within the Purchased Assets; and

(xii) all other documents, instruments and writings reasonably requested by Buyer to be delivered by Sellers at or prior to the Closing pursuant to this Agreement.

(b) At the Closing, Buyer shall deliver to Sellers, or the designated third-party recipients pursuant to Section 2.5(d), the following documents, cash amounts and other items, duly executed by Buyer, as applicable:

(i) the Bill(s) of Sale;

(ii) the Assignment and Assumption Agreement(s);

(iii) the Closing Cash Payment by wire transfer of immediately available funds to the account(s) designated by Sellers and the applicable counterparties to the Assumed Contracts;

(iv) if deemed necessary by Buyer, one or more Management Agreements;

(v) the Postpetition Contract Assignment Agreement(s);

(vi) the Transition Services Agreement, if any, pursuant to Section 6.11; and

(vii) all other documents, instruments and writings reasonably requested by Sellers to be delivered by Buyer at or prior to the Closing pursuant to this Agreement.

Section 2.9 Allocation. As soon as reasonably practicable following the Closing Date, but no later than 90 calendar days after the Closing Date, Buyer shall in good faith prepare an allocation of the Purchase Price (and all capitalized costs and other relevant items) among the Purchased Assets in accordance with Section 1060 of the IRC and the Treasury Regulations thereunder (and any similar provision of United States state or local or non-United States Law, as appropriate) (the “Allocation”) and deliver a copy of same to Sellers. Sellers shall notify Buyer in writing within thirty (30) days of receipt of the Allocation of any comments or objections to the Allocation. If Sellers do not deliver any written notice of objection to the Allocation within such thirty (30) day period, Sellers shall be deemed to have agreed to the Allocation, and the Allocation shall be final, conclusive, and binding on the Parties. If Sellers timely deliver a written notice of objection, the Parties will negotiate in good faith for a period of twenty (20) days to resolve such dispute. If Buyer and Sellers are unable to resolve any disputes within such twenty (20) day period, the matters in dispute shall be (at the shared expense of Buyer and Sellers) submitted to the Independent Accounting Firm. The decision of the Independent Accounting Firm shall be conclusive upon Buyer and Sellers. The Parties shall (a) prepare and timely file, and cause their respective Affiliates to prepare and timely file all forms and Tax Returns required to be filed in connection with the Allocation (including Internal Revenue Service Form 8594) in all respects and for all purposes consistent with the Allocation, (b) be bound by the Allocation for the purpose of determining Taxes, (c) prepare and file, and cause their respective Affiliates to prepare and file, all Tax Returns on a basis consistent with the Allocation, and (d) not take any position (whether

in audits, Tax Returns or otherwise), or cause their respective Affiliates to take any position, which is inconsistent with the Allocation on any Tax Return or in any Tax Proceeding, unless required to do so by applicable Law; provided, however, that the foregoing shall not limit the ability of Buyer or Sellers to settle or compromise any matter with respect to any Tax related audit or other proceeding with any Governmental Entity; provided, further, that notwithstanding anything in this Section 2.9 to the contrary, the Parties shall be permitted to take a position inconsistent with that set forth in this Section 2.9 if required to do so by a change in Law after the date hereof or by a “determination” within the meaning of Section 1313(a) of the IRC or IRS Form 870-AD, or successor form. If additional amounts are paid pursuant to this Agreement following the finalization of the Allocation pursuant to this Section 2.9, the Parties agree to amend the Allocation in accordance with the methodology set forth in this Section 2.9 and Section 1060 of the IRC.

ARTICLE III. SELLERS’ REPRESENTATIONS AND WARRANTIES

Each Seller, jointly and severally, represents and warrants to Buyer that except as set forth in the disclosure schedule accompanying this Agreement (the “Disclosure Schedule”):

Section 3.1 Organization of Sellers; Good Standing

(a) Each Seller is duly formed, validly existing and in good standing under the Laws of its state of formation and has all necessary power and authority to own, lease and operate its properties and to conduct its business in the manner in which its Business is currently being conducted. Each Seller has all requisite limited liability company power and authority to own, lease and operate its assets and to carry on the Business as currently conducted.

(b) Each Seller is duly authorized to do business and is in good standing as a foreign limited liability company in each jurisdiction where the ownership or operation of the Purchased Assets or the conduct of the Business requires such qualification, except for failures to be so authorized or be in such good standing, as would not, individually or in the aggregate, have a Material Adverse Effect.

Section 3.2 Authorization of Transaction. Subject to the Sale Order having been entered and still being in effect and not subject to any stay pending appeal at the time of Closing:

(a) each Seller has all requisite power and authority to execute and deliver this Agreement and all Related Agreements to which it is a party and to perform its obligations hereunder and thereunder; the execution, delivery and performance of this Agreement and all Related Agreements to which such Seller is a party have been duly authorized by such Seller and no other action on the part of such Seller is necessary to authorize this Agreement or the Related Agreements to which it is party or to consummate the Contemplated Transactions; and

(b) this Agreement has been duly and validly executed and delivered by each Seller, and, upon its execution and delivery in accordance with the terms of this Agreement, each of the Related Agreements to which any Seller is a party will have been duly and

validly executed and delivered by each such Seller, as applicable. Assuming that this Agreement constitutes a valid and legally-binding obligation of Buyer, this Agreement constitutes the valid and legally-binding obligations of Sellers, enforceable against Sellers in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity. Assuming, to the extent that a Seller is a party thereto, that each Related Agreement constitutes a valid and legally-binding obligation of Buyer, each Related Agreement to which any Seller is a party, when executed and delivered, constituted or will constitute the valid and legally-binding obligations of such Seller, as applicable, enforceable against each such Seller, as applicable, in accordance with their respective terms and conditions, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

Section 3.3 Noncontravention. Neither the execution and delivery of this Agreement, nor the consummation of the Contemplated Transactions (including the Related Agreements), will, subject to the Sale Order having been entered and still being in effect and not subject to any stay pending appeal at the time of Closing, (a) conflict with or result in a breach of the certificate of formation, articles of organization, operating agreement, limited liability company agreement, or other organizational documents of any Seller, (b) violate any Law to which any Seller is, or its respective assets or properties are, subject, or (c) subject to the entry of the Sale Order, conflict with, any Assumed Contract, and, in the case of clause (b) or (c), for such conflicts, breaches, defaults, accelerations, rights or failures to give notice as would not, individually or in the aggregate, have a Material Adverse Effect.

Section 3.4 Compliance with Laws. Sellers are and have been in compliance in all material respects with all applicable Laws applicable to the Business or the Purchased Assets. To Sellers' Knowledge, no Seller has received any oral or written notice or other written communication from any Governmental Entity or other Person (a) asserting any violation of, or failure to comply with, any requirement of any Law, or (b) notifying such Seller that it is under governmental investigation with respect to the violation of any applicable Permit.

Section 3.5 Title to Purchased Assets. Sellers, as of the Closing, will have good and valid title to, or, in the case of leased assets, will have good and valid leasehold interests in, the Purchased Assets, free and clear of all Liens (except for Permitted Liens) and Liabilities (other than Assumed Liabilities), subject to entry of the Sale Order. At the Closing or such time as title is conveyed under Section 2.6(d), Sellers will transfer, sell, assign and convey, subject to the Sale Order having been entered and still being in effect and not subject to any stay pending appeal at such time, good and valid title to, or valid leasehold interests in, all of the Purchased Assets, free and clear of all Liens (except for Permitted Liens) and Liabilities (other than Assumed Liabilities), to the fullest extent permissible under Section 363(f) of the Bankruptcy Code and subject to the rights of licensees under Section 365(n) of the Bankruptcy Code.

Section 3.6 Contracts. Schedule 3.6 of the Disclosure Schedule sets forth the following Contracts (all Contracts listed or required to be listed herein are referred to as "Material Contracts") as of the Execution Date:

- (a) all Leases (including all amendments thereto) that pertain to each Continuing Restaurant;
- (b) all Contracts under which any Seller leases personal property in connection with the Business;
- (c) all Contracts under which the Sellers have paid in excess of \$100,000 over the immediately preceding 12-month period;
- (d) all Contracts that are material to the operation of the Business, in the reasonable discretion of Sellers, and that Sellers' counterpart(y)(ies) may terminate without more than 90 days' prior notice without a breach thereof by Sellers;
- (e) all Contracts between any Seller, on the one hand, and any Affiliate of such Seller, on the other;
- (f) all Contracts for the sale of any Purchased Assets or for the grant to any Person of any option, right of first refusal or preferential or similar right to purchase any of the Purchased Assets;
- (g) all franchise agreements or other similar Contracts relating to the Business;
- (h) all employment, confidentiality, and/or noncompetition Contracts with employees of any Seller and Contracts with independent contractors or consultants (or similar arrangements for personal services) engaged in connection with the Business that (i) are not terminable at will without the payment of any severance or post-termination pension, welfare benefits or other compensation or benefits, or (ii) provide for base compensation in excess of \$150,000 per year;
- (i) all collective bargaining agreements related to the Business;
- (j) all Contracts with any material supplier of the Business;
- (k) all Postpetition Contracts (which, for the avoidance of doubt, shall be separately identified on Schedule 3.6 of the Disclosure Schedule);
- (l) all Contracts with any Governmental Entity related to the Business; and
- (m) all other Contracts that are material to the operation of the Business at the Continuing Restaurants and not previously disclosed pursuant to this Section 3.6.

Except as set forth on Schedule 3.6 of the Disclosure Schedule, each of the Material Contracts is in full force and effect and is the legal, valid and binding obligation of the applicable Seller and, to Sellers' Knowledge, of the other parties thereto, enforceable against each of them in accordance with its terms, and upon consummation of the Contemplated Transaction, shall continue in full force and effect without penalty or other adverse consequences. Except as set forth on Schedule 3.6 of the Disclosure Schedule, no Seller is in material default under any Material Contract, nor, to Sellers' Knowledge, is any other party to any Material Contract in breach of or default

thereunder, and no event has occurred that with the lapse of time or the giving of notice or both would constitute a breach or default by any Seller or any other party thereunder. Except as set forth on Schedule 3.6 of the Disclosure Schedule, no party to any of the Material Contracts has exercised any termination rights with respect thereto, and no party has given notice of any significant dispute with respect to any Material Contract. Sellers have and will transfer to Buyer at the Closing, good and valid title to the Assigned Contracts, free and clear of all Liens (other than Permitted Liens) and Liabilities (other than Assumed Liabilities). To Sellers' Knowledge and except as set forth on Schedule 3.6 of the Disclosure Schedule, Sellers have delivered to Buyer true, correct and complete copies of all of the Material Contracts, together with all amendments, modifications or supplements thereto.

Section 3.7 Intellectual Property.

(a) To Sellers' Knowledge and except for those items of Intellectual Property described in clause (d) of the definition thereof, Schedule 3.7 of the Disclosure Schedule sets forth a true and complete list of (i) all material items of Intellectual Property that are owned by any Seller or used in or related to the Business, (ii) all material Contracts pursuant to which any Seller obtains the right to use any Intellectual Property, excluding licenses for off-the-shelf software, and (iii) all material Contracts pursuant to which any Seller grants to any other Person the right to use any Intellectual Property. To Sellers' Knowledge, except for any Intellectual Property owned by Buyer, Sellers own all such Intellectual Property free and clear of all Liens (except for Permitted Liens) and Liabilities (other than Assumed Liabilities) and subject to entry of the Sale Order, and all such Intellectual Property is valid, subsisting and, to Sellers' Knowledge, enforceable, and is not subject to any outstanding Order adversely affecting Sellers' use thereof or rights thereto.

(b) To Sellers' Knowledge and except as set forth on Schedule 3.7 of the Disclosure Schedule, none of the use of the Intellectual Property included in the Purchased Assets, the conduct of the Business as currently conducted, nor any of the products sold or services provided by Sellers or any of their Affiliates in connection therewith, infringes upon or otherwise violates the Intellectual Property of any other Person. To Sellers' Knowledge and except as set forth on Schedule 3.7 of the Disclosure Schedule, no third party is infringing any Intellectual Property owned by any Seller and included in the Purchased Assets, except as would not reasonably be expected to have a Material Adverse Effect.

Section 3.8 Litigation. Schedule 3.8 of the Disclosure Schedule sets forth all unresolved material Litigation brought by or against the Business, the Purchased Assets, or any Seller, and to Sellers' Knowledge, there is no other material Litigation threatened in writing, before any Governmental Entity against any Seller which is reasonably likely to have a Material Adverse Effect or which in any manner challenges or seeks to prevent, enjoin, alter or materially delay the Contemplated Transactions.

Section 3.9 Employees and Employment Matters.

(a) Schedule 3.9(a) of the Disclosure Schedule sets forth a list as of the Execution Date of Current Employees of Sellers and their respective (i) name and identification number, (ii) titles, responsibilities, and classification as exempt or non-exempt, (iii) dates of hire, (iv) current base salary or wages, and whether they are paid hourly or salary or another basis, (v) all bonuses, commissions, and incentive compensation paid during 2024 and targeted for 2025, (vi) accrued vacation and sick leave, (vii) the restaurant location at which such employee performs services, (viii) full or part-time status, and (ix) active or inactive status, including identification of any current paid or unpaid leave of absence. Except as set forth on Schedule 3.9(a) of the Disclosure Schedule, no Seller is a party to or bound by any collective bargaining agreement covering the Current Employees (as determined as of the Execution Date), nor is there any ongoing strike, walkout, work stoppage, or other material collective bargaining dispute affecting any Seller with respect to the Business. To Sellers' Knowledge, there is no organizational effort being made or threatened by or on behalf of any labor union with respect to the Current Employees (as determined as of the Execution Date).

(b) Except as set forth on Schedule 3.9(b) of the Disclosure Schedule, no Seller is a party to or bound by any collective bargaining agreement covering the Current Employees (as determined as of the Execution Date). There are no, and within the past five (5) years there have been no threatened or ongoing strikes, walkouts, work stoppages, or other material collective bargaining disputes affecting any Seller with respect to the Business. To Sellers' Knowledge, no labor organization or group of Current Employees has made a demand for recognition or certification with respect to the Current Employees (as determined as of the Execution Date).

(c) Except as set forth on Schedule 3.9(c) of the Disclosure Schedule, Sellers are and have been in compliance with all applicable Laws in all material respects concerning labor and employment. No individual providing services to Sellers is classified as an independent contractor.

(d) To Sellers' Knowledge, there are no (and during the three (3) years preceding the date hereof, there have not been any) pending or threatened (i) unfair labor practice complaints against Sellers before the National Labor Relations Board or any other Governmental Authority, (ii) charges with respect to or relating to any Seller's employment practices before the Equal Employment Opportunity Commission, any state fair employment practice agency or any other Governmental Authority, or (iii) employment claims, investigations, or actions concerning alleged violations of labor or employment Laws. To Sellers' Knowledge, during the past three (3) years, no Seller has received a citation or has been subject to an investigation by the Occupational Safety and Health Administration.

(e) Except as set forth on Schedule 3.9 of the Disclosure Schedule, no WARN Liability exists as of the Execution Date with respect to the Current Employees, and no event was incurred in the preceding three (3) years that could have resulted in WARN Liability.

(f) During the past three (3) years, Sellers have not been, nor have they received any written notice that any Seller is or has been the subject of, any audit or investigation relating to its violation of the Immigration Reform and Control Act of 1986 and all related Laws promulgated thereunder (the “Immigration Laws”), nor has any Seller been warned in writing, fined or otherwise penalized by reason of any failure to comply with the Immigration Laws, nor is any such Proceeding pending or, to Sellers’ Knowledge, threatened. Sellers are in compliance with all Immigration Laws. Sellers have complied with E-Verify requirements in accordance with applicable state Law, if any.

Section 3.10 Employee Benefit Plans.

(a) None of Sellers nor any of their ERISA Affiliates currently or within the past six years has maintained or had an obligation to contribute to or has, within the past six years had or could have any Liability (whether direct or contingent) with respect to (i) a “single employer plan” (as such term is defined in Section 4001(a)(15) of ERISA) or any plan subject to Section 412 of the IRC or Section 302 of Title I of ERISA, (ii) any plan subject to Title IV of ERISA, (iii) a “multiemployer plan” (meaning a plan sponsored by more than one employer within the meaning of ERISA Sections 4063 or 4064 or Section 413(c) of the IRC), (iv) a “multiemployer plan” (as such term is defined in Sections 3(37) or 4001(a)(3) of ERISA) (a “Multiemployer Plan”), (v) a “multiple employer welfare arrangement” (as such term is defined in Section 3(40) of ERISA), or (vi) a funded welfare benefit plan (as such term is defined in Section 419 of the IRC).

(b) Each Employee Benefit Plan and all related trusts have been maintained, funded and administered, in material accordance with the terms of such Employee Benefit Plan and applicable Law; each Employee Benefit Plan that is a group health plan has at all times complied in all material respects, with the requirements of IRC Section 4980H, including the distribution of a “summary of benefits and coverage” to employees and calculations of full-time employees and full-time equivalent employees, and no material “Employer Shared Responsibility” payments described in IRC Section 4980H have been incurred; and there are no facts or circumstances that would be reasonably likely to subject Buyer or its affiliates to any material assessable penalty or material payment under Section 4980H of the IRC with respect to any period prior to the Closing. Sellers and each Employee Benefit Plan that is a “group health plan” as defined in Section 733(a)(1) of ERISA (an “Employee Health Plan”) (i) are currently in material compliance with the Patient Protection and Affordable Care Act (“PPACA”), the Health Care and Education Reconciliation Act of 2010 (“HCERA”) and all regulations and guidance issued thereunder (collectively, with PPACA and HCERA, the “Healthcare Reform Laws”), (ii) have been in material compliance with applicable Healthcare Reform Laws since March 23, 2010, and (iii) no event has occurred and, to any Sellers’ Knowledge, no condition or circumstance exists, that could reasonably be expected to subject Sellers or any Employee Health Plan to penalties or excise taxes under Sections 4980D, 4980H, or 4980I of the IRC or any other provision of the Healthcare Reform Laws.

(c) None of Sellers nor any of their ERISA Affiliates has (i) incurred or reasonably expects to incur, either directly or indirectly, any Liability under ERISA or the IRC or applicable local Law with respect to any Employee Benefit Plan or with respect to

any state mandated employee benefit or compensation program, (ii) failed to timely pay contributions or premiums with respect to any Employee Benefit Plan, (iii) within the past six years withdrawn from any Multiemployer Plan or terminated any pension plan that is subject to Title IV of ERISA, (iv) engaged in any transaction which would give rise to Liability under Section 4069 or Section 4212(c) of ERISA, or (v) incurred Taxes under Section 4971 of the IRC with respect to any Single Employer Plan.

(d) There are no Contracts with any professional employer organization providing employment or benefits to Current Employees or for which there is any liability.

(e) None of the Sellers nor any of their ERISA Affiliates has any Liability with respect to any employee benefit, policy or program that is subject to the Laws of a foreign jurisdictions.

Section 3.11 Real Property.

(a) Sellers do not own any real property.

(b) Schedule 3.11(b) of the Disclosure Schedule sets forth the address of each Leased Real Property, and a true and complete list of all Leases for such Leased Real Property. Sellers have made available to Buyer true and complete copies of such Leases, as amended through the Execution Date.

Section 3.12 Permits.

(a) Schedule 3.12(a) of the Disclosure Schedule contains a list of all material Permits that, to Sellers' Knowledge, Sellers hold as of the Execution Date in connection with the operation of the Business. Sellers are in compliance with, and during the past three (3) years have complied with, all Permits in all material respects. No Seller has received any oral or written notice or other written communication from any Governmental Entity or other Person (i) asserting any violation of, or failure to comply with, any requirement of any Assumed Permit, (ii) notifying such Seller of the non-renewal, revocation, material modification or withdrawal of any Assumed Permit, or (iii) notifying such Seller that it is under governmental investigation with respect to the violation of any applicable Assigned Permit. As of the Execution Date, there is no Litigation pending or, to Sellers' Knowledge, threatened in writing that seeks the revocation, cancellation, suspension, failure to renew or adverse modification of any material Assumed Permits. To Sellers' Knowledge, all required filings with respect to the Assumed Permits have been made and all required applications for renewal thereof have been filed.

(b) Schedule 3.12(b) of the Disclosure Schedule sets forth a complete and correct list as of the Execution Date of all liquor licenses (including, without limitation, beer and wine licenses) held or used by Sellers, including the Seller in whose name such license is issued, a general description of the restaurant location to which the license relates, and the license number (collectively, the "Liquor Licenses"). To Sellers' Knowledge, except as set forth on Schedule 3.12(b) of the Disclosure Schedule, each Seller is in compliance in all material respects with all applicable state, municipal and other Laws with

respect to the sale of liquor and all alcoholic beverages and has the right to sell liquor at retail for consumption within each of the Continuing Restaurants, subject to and in accordance with all applicable provisions of the Liquor Licenses. To Sellers' Knowledge, since December 31, 2022, (i) there has been no material Litigation brought or threatened in writing to be brought by or before a Governmental Entity in respect of any such Liquor License or the activities of any Seller in connection with any such Liquor License (or in connection with any other liquor licenses previously held or used by such Seller), (ii) no such Liquor License is subject to any due but unpaid Tax obligation owed to a Governmental Entity, the outstanding nature of which would preclude transfer of such Liquor License from any Seller to Buyer, and (iii) no such Liquor License has been threatened by a Governmental Entity to be revoked, limited or not renewed.

Section 3.13 Environmental. To Sellers' Knowledge, except as set forth on Schedule 3.13 of the Disclosure Schedule, Sellers are and have been in compliance in all material respects with all applicable Laws relating to the protection of the environment, pollution or health and human safety, and Sellers have not received any written notice, demand, claim or request for information alleging that Sellers may be in violation of, liable under or have obligations under any such Laws.

Section 3.14 Taxes. Solely with respect to the Business, the Purchased Assets, and the Assumed Liabilities:

(a) To Sellers' Knowledge, all Tax Returns required to have been timely filed by Sellers in connection with the Business, the Purchased Assets and the Assumed Liabilities have been filed (taking into account any extension of time to file granted or obtained) and such Tax Returns were true, correct and complete in all material respects.

(b) To Sellers' Knowledge, all Taxes required to have been paid by Sellers with respect to the Business, the Purchased Assets, and the Assumed Liabilities have been paid, other than Taxes of Sellers the payment of which is prohibited or stayed by the Bankruptcy Code.

(c) There are no Liens with respect to Taxes on any of the Purchased Assets, other than Permitted Liens and such Liens that will be released upon entry of the Sale Order, as applicable.

(d) To Sellers' Knowledge, there are no audits, examinations, investigations, or other proceedings in respect of Taxes or Tax Returns of Sellers with respect to the Business, the Purchased Assets, and the Assumed Liabilities, pending or threatened.

Section 3.15 Brokers' Fees. Except with respect to Hilco Corporate Finance, LLC, Sellers' investment banker, and as otherwise set forth on Schedule 3.15 of the Disclosure Schedule, no Seller has entered into any Contract to pay any fees or commissions to any broker, finder or agent with respect to the Contemplated Transactions for which Buyer could become liable or obligated to pay.

Section 3.16 No Other Representations or Warranties. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS ARTICLE III (AS QUALIFIED, AMENDED, SUPPLEMENTED AND MODIFIED BY THE DISCLOSURE SCHEDULE), NEITHER SELLERS NOR ANY OTHER PERSON MAKES (AND BUYER IS NOT RELYING UPON) ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO SELLERS, THE BUSINESS, THE PURCHASED ASSETS (INCLUDING THE VALUE, CONDITION OR USE OF ANY PURCHASED ASSET), THE ASSUMED LIABILITIES OR THE CONTEMPLATED TRANSACTIONS, AND SELLERS DISCLAIM ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER MADE BY SELLERS, ANY AFFILIATE OF SELLERS OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS ARTICLE III (AS QUALIFIED, AMENDED, SUPPLEMENTED AND MODIFIED BY THE DISCLOSURE SCHEDULE), EACH SELLER (I) EXPRESSLY DISCLAIMS AND NEGATES ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT COMMON LAW, BY STATUTE OR OTHERWISE, RELATING TO THE CONDITION OF THE PURCHASED ASSETS (INCLUDING ANY IMPLIED OR EXPRESSED WARRANTY OF TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR OF THE PROBABLE SUCCESS OR PROFITABILITY OF THE OWNERSHIP, USE OR OPERATION OF THE BUSINESS OR THE PURCHASED ASSETS BY BUYER AFTER THE CLOSING), AND (II) DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR ANY REPRESENTATION, WARRANTY, PROJECTION, FORECAST, STATEMENT OR INFORMATION MADE, COMMUNICATED OR FURNISHED (ORALLY OR IN WRITING) TO BUYER OR ITS AFFILIATES OR REPRESENTATIVES (INCLUDING ANY OPINION, INFORMATION, PROJECTION OR ADVICE THAT MAY HAVE BEEN OR MAY BE PROVIDED TO BUYER BY ANY DIRECTOR, OFFICER, EMPLOYEE, AGENT, CONSULTANT OR REPRESENTATIVE OF ANY SELLER OR ANY OF THEIR AFFILIATES).

THE PROVISIONS OF THIS SECTION 3.16 SHALL SURVIVE THE CLOSING OR EARLIER TERMINATION OF THIS AGREEMENT AND SHALL BE INCORPORATED INTO THE CLOSING DOCUMENTS TO BE DELIVERED AT CLOSING.

ARTICLE IV. BUYER'S REPRESENTATIONS AND WARRANTIES

Buyer represents and warrants to Sellers as follows:

Section 4.1 Organization of Buyer. Buyer is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Texas and has all requisite limited liability company power and authority to own, lease and operate its assets and to carry on its business as now being conducted.

Section 4.2 Authorization of Transaction.

(a) Buyer has full limited liability company power and authority to execute and deliver this Agreement and all Related Agreements to which it is a party and to perform its obligations hereunder and thereunder.

(b) The execution, delivery and performance of this Agreement and all other Related Agreements to which Buyer is a party have been duly authorized by Buyer, and no other limited liability company action on the part of Buyer is necessary to authorize this Agreement or the Related Agreements to which it is a party or to consummate the Contemplated Transactions.

(c) This Agreement has been duly and validly executed and delivered by Buyer, and, upon its execution and delivery in accordance with the terms of this Agreement, each of the Related Agreements to which Buyer is a party will have been duly and validly executed and delivered by Buyer. Assuming that this Agreement constitutes a valid and legally-binding obligation of Sellers, this Agreement constitutes a valid and legally-binding obligation of Buyer, enforceable against Buyer in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity. Assuming, to the extent that they are a party thereto, that each Related Agreement constitutes a valid and legally-binding obligation of Sellers, each Related Agreement to which Buyer is a party, when executed and delivered, constituted or will constitute the valid and legally-binding obligation of Buyer, enforceable against Buyer in accordance with their respective terms and conditions, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

Section 4.3 Noncontravention. Neither the execution and delivery of this Agreement, nor the consummation of the Contemplated Transactions (including the Related Agreements) will (a) conflict with or result in a breach of the certificate of formation or other organizational documents of Buyer, (b) subject to any consents required to be obtained from any Governmental Entity, to the knowledge of Buyer, violate any Law to which Buyer is, or its assets or properties are subject, or (c) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice under any Contract to which Buyer is a party or by which it is bound, except, in the case of either clause (b) or (c), for such conflicts, breaches, defaults, accelerations, rights or failures to give notice as would not, individually or in the aggregate, reasonably be expected to prevent, materially delay or materially impair to the ability of Buyer to consummate the Contemplated Transactions. Buyer is not required to give any notice to, make any filing with, or obtain any authorization, consent or approval of any Governmental Entity in order for the Parties to consummate the Contemplated Transactions, except where the failure to give notice, file or obtain such authorization, consent or approval would not, individually or in the aggregate, reasonably be expected to prevent, materially delay or materially impair to the ability of Buyer to consummate the Contemplated Transactions.

Section 4.4 Financial Capacity. As of the Closing, Buyer (a) will have the resources (including sufficient funds available to pay the Cure Costs and any other expenses and payments

incurred by Buyer in connection with the Contemplated Transactions) and capabilities (financial or otherwise) to perform its obligations hereunder, and (b) will not have incurred any obligation, commitment, restriction or Liability of any kind, that would materially impair or materially adversely affect such resources and capabilities.

Section 4.5 Adequate Assurances Regarding Executory Contracts. Buyer will use commercially reasonable efforts to assure that, as of the Closing, it will be capable of satisfying the conditions contained in Sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Assigned Prepetition Contracts.

Section 4.6 Good Faith Purchaser. Buyer is a “good faith” purchaser, as such term is used in the Bankruptcy Code and the court decisions thereunder. Buyer is entitled to the protections of Section 363(m) of the Bankruptcy Code with respect to all of the Purchased Assets. Buyer has negotiated and entered into this Agreement in good faith.

Section 4.7 Brokers’ Fees. Neither Buyer nor any of its Affiliates has entered into any Contract to pay any fees or commissions to any broker, finder or agent with respect to the Contemplated Transactions for which any Seller could become liable or obligated to pay.

Section 4.8 Condition of Business. Buyer is an informed and sophisticated purchaser, and has engaged or had the opportunity to engage advisors, experienced in the evaluation and purchase of properties and assets such as the Purchased Assets and assumption of Liabilities such as the Assumed Liabilities as contemplated hereunder. Buyer has undertaken such investigation and has been provided with and has evaluated such documents and information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement. Buyer acknowledges that Sellers have given Buyer reasonable and open access to the key employees, documents and facilities of the Business. Buyer hereby acknowledges and agrees that notwithstanding anything expressed or implied herein to the contrary, except as expressly set forth in ARTICLE III of this Agreement, Sellers (including each of their directors, officers, employees, agents, stockholders, Affiliates, consultants, counsel, accountants and other representatives) make no express or implied representations or warranties whatsoever, including, without limitation, any representation or warranty as to physical condition or value of any of the Purchased Assets or the future profitability or future earnings performance of the Business. Buyer will accept the Purchased Assets and assume the Assumed Liabilities at the Closing “AS IS,” “WHERE IS” AND “WITH ALL FAULTS”.

ARTICLE V. PRE-CLOSING COVENANTS

The Parties agree as follows with respect to the period between the execution of this Agreement and the Closing (except as otherwise expressly stated to apply to a different period):

Section 5.1 Certain Efforts; Cooperation.

(a) Subject to the terms and conditions of this Agreement, each of the Parties shall use its commercially reasonable efforts, subject to the Orders of the Bankruptcy Court, to make effective the Contemplated Transactions (including satisfaction, but not

waiver, of the conditions to the obligations of the Parties to consummate the Contemplated Transactions set forth in ARTICLE VII), except as otherwise provided in Section 5.2; provided, however, Sellers shall be entitled to take such actions as are required in connection with the discharge of their fiduciary duties during the Chapter 11 Cases.

(b) On and after the Closing, Sellers and Buyer shall use their commercially reasonable efforts to take, or cause to be taken, all appropriate action, to do or cause to be done by Sellers and Buyer all things necessary under applicable Law, and to execute and deliver such documents, ancillary agreements and other papers as may be required to carry out the provisions of this Agreement and consummate and make effective the Contemplated Transactions, including in order to more effectively vest in Buyer all of Sellers' right, title and interest to the Purchased Assets, free and clear of all Liens (other than Permitted Liens) and Liabilities (other than Assumed Liabilities) expressly contemplated by the Sale Order; provided, however, that Sellers' obligations hereunder shall only continue until the later of the day that (i) all Liquor Licenses have been transferred to Buyer and/or replacements thereof have been obtained by Buyer, as determined by Buyer in its reasonable discretion, and (ii) the Chapter 11 Cases are closed or dismissed. Buyer shall at all times take all appropriate actions necessary to permit, and shall refrain from taking any action that would prevent, the Bankruptcy Court to make findings in the Sale Order that (i) Buyer is a good-faith buyer under Section 363(m) of the Bankruptcy Code, (ii) that the sale of the Purchased Assets contemplated hereby did not involve any improper conduct, including collusion, and cannot be avoided under grounds set forth under Section 363(n) of the Bankruptcy Code, and (iii) Buyer is not a successor to Sellers with respect to the Purchased Assets.

Section 5.2 Notices and Consents.

(a) To the extent required by the Bankruptcy Code or the Bankruptcy Court, Sellers shall give any notices to third parties, and each Seller shall use its commercially reasonable efforts to obtain any third party Consents or sublicenses; provided, however, that (i) Sellers shall not incur any costs associated with the obligations hereunder, other than such ordinary and reasonable professional fees and other costs as described in this Agreement as are required for Sellers to comply with the obligations hereunder and (ii) Sellers' obligations hereunder shall only continue until the later of the day that (A) all Liquor Licenses have been transferred to Buyer and/or replacements thereof have been obtained by Buyer, as determined by Buyer in its reasonable discretion, and (B) the Chapter 11 Cases are closed or dismissed.

(b) Sellers and Buyer shall cooperate with one another in promptly determining whether any filings are required to be or should be made or consents, approvals, permits or authorizations are required to be or should be obtained under any applicable Law in connection with this Agreement and the Contemplated Transactions and in promptly making any such filings, furnishing information required in connection therewith and seeking to obtain timely any such consents, permits, authorizations, approvals or waivers; provided, however, that (i) Sellers shall not incur any costs associated with the obligations hereunder, other than such ordinary and reasonable professional fees and other costs as described in this Agreement as are required for Sellers to comply with the obligations

hereunder and (ii) Sellers' obligations hereunder shall only continue until the later of the day that (A) all Liquor Licenses have been transferred to Buyer and/or replacements thereof have been obtained by Buyer, as determined by Buyer in its reasonable discretion, and (B) the Chapter 11 Cases are closed or dismissed.

(c) Subject to the terms and conditions set forth in this Agreement and applicable Law, Buyer and Sellers shall (i) promptly notify the other Party of any communication to that Party from any Governmental Entity in respect of any filing, investigation or inquiry concerning this Agreement or the Contemplated Transactions, (ii) if practicable, permit the other Party the opportunity to review in advance all the information relating to Sellers and their respective Subsidiaries or Buyer and its Subsidiaries and/or Affiliates, as the case may be, that appears in any filing made with, or written materials submitted to, any third party and/or any Governmental Entity in connection with the Agreement and the Contemplated Transactions and incorporate the other Party's reasonable comments, (iii) not participate in any substantive meeting or discussion with any Governmental Entity in respect of any filing, investigation, or inquiry concerning this Agreement and the Contemplated Transactions unless it consults with the other Party in advance, and, to the extent permitted by such Governmental Entity, gives the other Party the opportunity to participate in and/or attend such meeting and/or discussion, and (iv) furnish the other Party with copies of all correspondences, filings, and written communications between them and their Subsidiaries and/or Affiliates and Representatives, on the one hand, and any Governmental Entity or its respective staff, on the other hand, with respect to this Agreement and the Contemplated Transactions; provided, however, that any materials or information provided pursuant to any provision of this Section 5.2(c) may be redacted before being provided to the other Party (A) to remove references concerning the valuation of Buyer, Sellers, or any of their Subsidiaries, (B) to remove references concerning financing arrangements, (C) as necessary to comply with contractual arrangements, and (D) as necessary to address reasonable privilege or confidentiality issues. Sellers and Buyer may, as each deems advisable and necessary, reasonably designate any competitively sensitive material provided to the other under this Section 5.2(c) as "outside counsel only." Such materials and the information contained therein shall be given only to the outside legal counsel and any retained consultants or experts of the recipient and shall not be disclosed by such outside counsel to employees, officers or directors of the recipient, unless express written permission is obtained in advance from the source of the materials (Sellers or Buyer, as the case may be). Each of Sellers and Buyer shall promptly notify the other Party if such Party becomes aware that any third party has any objection to the Agreement on antitrust or anti-competitive grounds.

Section 5.3 Bankruptcy Actions.

(a) Bidding Procedures and Sale Motion. Buyer shall file the Bidding Procedures and Sale Motion on or before the date hereof.

(b) Bid Protections. To the extent provided in Section 8.2(d), Buyer shall be entitled to an amount equal to \$600,000 (the "Breakup Fee"), and Buyer's reasonable, documented out-of-pocket fees, costs and expenses (the "Expense Reimbursement") actually incurred, owed or paid to third parties in an aggregate amount not to exceed

\$350,000.00 (such amount shall be inclusive of attorneys' fees and expenses, consulting fees and expenses, accounting fees and expenses and Buyer's out-of-pocket expenses) in the preparation of a bid for the Business, the Purchased Assets and the Assumed Liabilities, the negotiations and execution of this Agreement and the other Related Agreements, and efforts related to consummation of the Contemplated Transactions (collectively, the "Bid Protections").

(c) Alternate Transactions. From and after the Petition Date, Sellers and their respective Affiliates and Representatives shall be permitted to market and solicit inquiries, proposals, offers or bids from, any Person other than Buyer regarding an Alternate Transaction, and may take any other affirmative action in connection therewith (including (i) entering into any Alternate Agreement (or letter-of-intent with respect thereto), (ii) issuing press releases, placing advertisements or making other releases or disclosures in connection therewith), or (iii) seeking approval of the Bankruptcy Court for any Alternate Transaction), and nothing in this Agreement will, or is intended to, in any way be deemed to restrict such actions or efforts. None of Sellers nor any of their respective Affiliates or Representatives shall have any liability to Buyer or any of its Affiliates or Representatives, either under or relating to this Agreement or any applicable Law, by virtue of entering into or seeking Bankruptcy Court approval of such an Alternate Agreement (or letter-of-intent with respect thereto) provided that Buyer is paid the Bid Protections to the extent required to be paid pursuant to Section 5.3(b) and Section 8.2(d) at the time provided for therein.

(d) Auction. The Auction shall take place no later than four (4) Business Days following the Qualified Bid Deadline. At the conclusion of the Auction, Sellers will determine the highest or best qualified bid (the "Highest or Best Bid") submitted by a Qualified Bidder (as defined in the Bidding Procedures and Sale Motion) and the next highest or best qualified bid (the "Back-Up Bid") submitted by a Qualified Bidder (the "Back-Up Bidder"). Sellers will seek approval of the Highest or Best Bid at the Sale Hearing. If for any reason, Buyer is selected as the Back-Up Bidder, and the Qualified Bidder submitting the Highest or Best Bid fails to timely consummate the purchase of the Purchased Assets, Sellers may seek to consummate a sale to Buyer pursuant to this Agreement without further approval by the Bankruptcy Court. If Buyer is selected as the Back-Up Bidder, its Back-Up Bid and the obligation of Buyer to consummate the Contemplated Transactions shall remain open and in full force, including with respect to the Deposit, until the close of a sale of the Purchased Assets to the Person making the Highest or Best Bid.

(e) Interim DIP Order. Buyer shall use commercially reasonable efforts to cause the Interim DIP Order to be entered by the Bankruptcy Court on or before the date that is five (5) days following the Petition Date.

(f) Bidding Procedures Order. Buyer shall use commercially reasonable efforts to cause the Bidding Procedures Order to be entered by the Bankruptcy Court no later than the date that is thirty (30) days after the Petition Date.

(g) Final DIP Order. Buyer shall use commercially reasonable efforts to cause the Final DIP Order to be entered by the Bankruptcy Court on or before the date that is thirty (30) days following the Petition Date.

(h) Sale Order. Buyer shall use commercially reasonable efforts to cause the Sale Order to be entered by the Bankruptcy Court no later than the End Date. The Sale Order shall be in a form acceptable to Buyer in its reasonable discretion and provide, among other things, that:

- (i) this Agreement is valid and enforceable;
- (ii) this Agreement and the Contemplated Transactions are approved;
- (iii) the Purchase Price may be paid Buyer by way of the Credit Bid;

(iv) on the Closing Date, the Purchased Assets shall be sold to Buyer free and clear of any and all Liens (except for Permitted Liens), including any Liens granted during the Chapter 11 Cases, and Liabilities (other than Assumed Liabilities);

(v) on the Closing Date, the Assigned Contracts shall be assumed by Sellers and assigned to Buyer pursuant to Section 365 of the Bankruptcy Code, and, unless a counterparty to an Assigned Contract has agreed otherwise in writing, the Buyer shall pay the Cure Costs that are Assumed Liabilities due in connection with the assumption and assignment of the Assigned Contracts;

(vi) all causes of actions against any counterparty to the Assigned Contracts, related in any way to the Assigned Contracts, shall be forever released and waived by Sellers. Sellers, however, shall be entitled to assert any defenses against any claim asserted by any counterparty to the Assigned Contracts; and

(vii) all persons and entities, including, governmental, tax and regulatory authorities, lenders, trade and other creditors holding interests or claims of any kind or nature whatsoever against Sellers or their assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, senior or subordinated), arising under or out of, in connection with or in any way relating to Sellers, the Business, the Purchased Assets, or the operations of Sellers prior to the Closing shall have no claims against Buyer, its Affiliates, or their respective successors or assigns, the Business, or the Purchased Assets, subject to rights of parties or individuals for claims arising out of Assumed Liabilities.

(i) Sale Order Findings. The Sale Order shall contain findings by the Bankruptcy Court that (i) Buyer is a good-faith buyer under Section 363(m) of the Bankruptcy Code, (ii) Buyer is not a successor to Sellers, and (iii) the sale of the Purchased Assets contemplated hereby did not involve any improper conduct, including collusion, and cannot be avoided under grounds set forth under Section 363(n) of the Bankruptcy Code.

(j) Cooperation. Sellers and Buyer agree to use commercially reasonable efforts to cooperate, assist and consult with each other to obtain the issuance and entry of the Bidding Procedures Order and Sale Order, including furnishing affidavits, declarations or other documents or information for filing with the Bankruptcy Court. The Sale Order shall also indicate that the transactions set forth in this Agreement may be consummated immediately upon entry of the Sale Order and pursuant to Fed. R. Bankr. P. 6004(h), the sale of the Purchased Assets is not stayed pending the expiration of 14 days from the date of entry of the Sale Order. In the event the Sale Order is appealed, Sellers shall use their commercially reasonable efforts to oppose any such appeal.

(k) Liquor Licenses. Sellers shall seek to have included in the Sale Order a provision that immediately upon the Closing, subject to applicable Law, Buyer shall be entitled to continue to sell alcoholic beverages at the premises included in the Purchased Assets upon the same terms as Sellers were selling such alcoholic beverages until such time as Buyer has had the time and opportunity to obtain its own Liquor Licenses.

Section 5.4 Conduct of Business. From the Execution Date until the earlier of the termination of this Agreement pursuant to Section 8.1 or the Closing Date, except (i) as disclosed on Schedule 5.4, (ii) as may be required by the Bankruptcy Court, (iii) for the consequences resulting from the continuation of the Chapter 11 Cases, or (iv) as may be required or contemplated by this Agreement, subject to the terms of the DIP Loan Agreement, each Seller shall conduct, and shall cause its Affiliates to conduct, the Business and maintain the Purchased Assets in the Ordinary Course of Business and use its commercially reasonable efforts to preserve intact the Purchased Assets (and all goodwill relating thereto) and all respective relationships with customers, vendors, creditors, employees, landlords, agents, each Governmental Entity, and others having business relationships with them. Without limiting the generality of the foregoing, during the period from the date of this Agreement to the Closing, except as otherwise contemplated by this Agreement or as Buyer shall otherwise consent in writing, each Seller shall, and shall cause each of its respective Affiliates to, do the following:

(a) Subject to necessary approval by the Bankruptcy Court, if applicable, pay all post-petition bills and invoices for post-petition goods or services when due, including rent, CAM, Taxes (to the extent that the nonpayment of such Taxes could reasonably give rise to a Lien on any Purchased Asset or such Taxes otherwise relate to the Business or the Purchased Assets) and other amounts due under the Leases that may become part of the Purchased Assets;

(b) notify Buyer of any material adverse change in its condition (financial or otherwise), business, properties, assets or liabilities, or of the commencement of or any material development or disposition with respect to any material governmental complaints, investigations, or hearings (or any written threats thereof);

(c) in the Ordinary Course of Business, maintain and repair all of the material equipment on the premises and the premises themselves;

(d) maintain in the Ordinary Course of Business customary amounts of cash, cash equivalents and similar cash items at the location of each restaurant in cash registers, safes, strongboxes and lock boxes;

(e) maintain in the Ordinary Course of Business customary amounts and quality of Inventory;

(f) comply in all material respects with all Laws applicable to it or having jurisdiction over the Business or any Purchased Asset and, without prior consent of the Buyer, will not incur any event that results in liability under the Worker Adjustment and Retraining Notification Act or any similar Law (collectively, “WARN”);

(g) use its commercially reasonable efforts to keep and maintain possession of and compliance with the terms of all Permits (including Liquor Licenses) necessary or required by Law to own, lease and operate its respective properties (and the Purchased Assets) and to carry on the Business or that are material to the operation of the Business or the Purchased Assets, including by taking all actions and submitting all payments, applications, and filings necessary to renew any such Permit due to expire at any time before the Closing Date (or 60 days thereafter);

(h) use commercially reasonable efforts to (i) conduct the Business in substantially the same manner as conducted as of the Petition Date and only in the Ordinary Course of Business, (ii) preserve the existing business organization and management of the Business intact, (iii) use commercially reasonable efforts to keep available the services of the current Employees, to the extent reasonably feasible, (iv) use commercially reasonable efforts to maintain the existing relations with customers, carriers, centers, distributors, suppliers, creditors, business partners, Current Employees and others having business dealings with the Business, and (v) refrain from changing in any material respect any of its product or service prices or pricing policies (e.g., discount policies) for any of its products or services; and

(i) maintain insurance coverage with financially responsible insurance companies duly licensed in the states in which Sellers are then operating, substantially similar in all material respects to the insurance coverage maintained by the Business and Sellers on the Petition Date.

Section 5.5 Certain Restricted Conduct. Except as in the Ordinary Course of Business or as otherwise consented to in advance in writing by Buyer, during the period from the Execution Date to the Closing, no Seller shall, and each Seller shall cause each of its respective Affiliates not to, with respect to the Purchased Assets:

(a) sell, lease, license, transfer, or dispose of any Purchased Assets;

(b) directly or indirectly, (i) enter into any Contract, or (ii) assume, amend, modify, supplement or terminate, or waive any rights under, any Contract to which Seller is a party or by which it is bound and that is used in or related to the Business or the

Purchased Assets (including any Assumed Contract) or take any affirmative action not required by the terms of any such Contract;

(c) dispose of or permit to lapse any rights in, to or for the use of any material Intellectual Property right;

(d) including maintenance and repair, authorize, undertake, make, or enter into any commitments obligating any Seller to (i) make or accelerate any capital expenditures that cannot reasonably be substantially completed prior to the Closing or (ii) undertake or approve any material renovation, repair or rehabilitation of any Leased Real Property that cannot reasonably be substantially completed prior to the Closing, except pursuant to a budget approved by the DIP Lender under the DIP Loan Agreement (the “Approved Budget”);

(e) other than (i) as approved by the Bankruptcy Court and provided for in the Approved Budget or (ii) required under the terms of any existing Employee Benefit Plan or applicable Law, (w) increase any compensation or enter into or amend, in a way that increases benefits, any employment, severance or other agreement with any of its officers, directors or Current Employees, (x) adopt any new Employee Benefit Plan or amend or terminate or increase the benefits under any existing Employee Benefit Plan, except for changes which are not more favorable to participants than provisions presently in effect, (y) hire any employee or individual independent contractor with annual compensation in excess of \$50,000 (except to the extent such hire is in replacement of a Current Employee with comparable compensation), or enter into any new employment or severance agreements that would result in post-termination payments that in the aggregate would exceed \$5,000 becoming due or payable upon termination of employment or of the individual independent contractor, or (z) assume or enter into any labor or collective bargaining agreement relating to the Business, any Current Employee or future employee, or any Purchased Asset;

(f) take any action which, if taken, or omit to take any act which, if omitted to be taken, would constitute or result in an “Event of Default” or “Default” under the Prepetition Secured Note, the DIP Loan Agreement or the DIP Order, as applicable;

(g) permit, offer, agree or commit (in writing or otherwise) to permit, any of the Purchased Assets to become subject, directly or indirectly, to any Lien, except for Permitted Liens;

(h) directly or indirectly, cancel, forgive, settle, or compromise any debt or claim or waive or release any right of Sellers (i) under the PHI MSA, or (ii) that constitutes a Purchased Asset;

(i) do any other act that would, to Sellers’ Knowledge, cause any representation or warranty of any Seller in this Agreement to be or become untrue in any material respect or intentionally omit to take any action necessary to prevent any such representation or warranty from being untrue in any material respect;

(j) terminate the Health Plans; or

(k) authorize or enter into any Contract, agreement, or commitment with respect to any of the foregoing.

No Seller nor any of its Affiliates shall: (i) renew any Lease nor suffer any Person other than such Seller, its employees, agents, servants and invitees to occupy or use the premises or any portion thereof, without in any case the express written consent of Buyer, which consent shall not be unreasonably withheld, or (ii) terminate, amend, extend, renew, modify, waive or allow any rights to lapse under any Lease. If Sellers request such a consent from Buyer, the request shall be in writing specifying the terms of the renewal, termination, amendment, extension, modification and/or waiver, the identity of the proposed third party, assignee or sub-lessee; the duration of said desired sublease or renewal, the date same is to occur, the exact location of the space affected thereby and the proposed rentals on a square foot basis chargeable thereunder. Such request for Buyer consent shall be submitted to Buyer at least five (5) days in advance of the date on which Sellers desire to make such event occur.

Section 5.6 Notice of Developments. From the Execution Date until the Closing Date, each of Sellers (with respect to itself), as the case may be, shall promptly disclose to Buyer, on the one hand, and Buyer shall promptly disclose to Sellers, on the other hand, in writing (in the form of an updated Disclosure Schedule, if applicable) after attaining knowledge (as applicable to each of Sellers and Buyer) of any material failure of any of Sellers or Buyer to comply with or satisfy any of their respective covenants, conditions or agreements to be complied with or satisfied by it under this Agreement in any material respect; provided, however, that the delivery of any notice pursuant to this Section 5.6 shall not limit or otherwise affect the remedies available to the party receiving such notice under this Agreement if such party objects to the disclosures contained in such notice within five (5) days of receipt of such notice.

Section 5.7 Access. Upon reasonable advance written request by Buyer, Sellers shall permit Buyer and its Representatives to have reasonable access during customary business hours, and in a manner so as not to interfere unreasonably with the regular business operations of Sellers, to all premises, properties, personnel, Records and Contracts related to the Business, in each case, for the sole purpose of evaluating the Business; provided, however, that, for avoidance of doubt, the foregoing shall not require any Party to waive, or take any action with the effect of waiving, its attorney-client privilege or any confidentiality obligation to which it is bound with respect thereto or take any action in violation of applicable Law.

Section 5.8 Press Releases and Public Announcements. Provided that Sellers shall provide notice to and consult with Buyer in advance, to the extent permitted by Law or the Order of the Bankruptcy Court, Sellers shall be entitled to disclose, if required by applicable Law or by Order of the Bankruptcy Court, this Agreement and all information provided by Buyer in connection herewith to the Bankruptcy Court, the United States Trustee, the Committee, parties in interest in the Chapter 11 Cases and other Persons bidding on assets of Sellers. Other than statements made in the Bankruptcy Court (or in pleadings filed therein), Sellers shall not issue (prior to, on or after the Closing) any press release or make any public statement or public communication regarding Buyer without the prior written consent of Buyer, which shall not be unreasonably withheld or delayed; provided, however, Sellers, without the prior consent of Buyer, may issue such press release or make such public statement as may, upon the advice of counsel, be required by applicable Law or any Governmental Entity with competent jurisdiction. Buyer,

without the prior consent of Sellers, may issue such press release or make such public statement, filing or disclosure (x) prior to Closing, as may, upon the advice of counsel, be required by applicable Law or any Governmental Entity with competent jurisdiction and (y) after Closing, as it may wish.

Section 5.9 Bulk Transfer Laws. The Parties intend that pursuant to Section 363(f) of the Bankruptcy Code, the transfer of the Purchased Assets shall be free and clear of any Liens on the Purchased Assets (other than Permitted Liens) and Liabilities (other than Assumed Liabilities), including any Liens arising out of the bulk transfer Laws, and the Parties shall take such steps as may be necessary or appropriate to so provide in the Sale Order.

Section 5.10 Contracts. If at any time Sellers become aware, on or before the Closing, of any heretofore unrejected Contract to which any of Sellers is a party that satisfies the conditions of Section 3.6, but has not been included on Schedule 3.6 of the Disclosure Schedule, Sellers shall promptly thereafter advise Buyer of the existence of such Contract and provide Buyer with a copy thereof. Buyer shall have the right, for a period of five (5) Business Days following the delivery of any such Contract, to review such Contract and during such period Sellers shall refrain from modifying, terminating or rejecting such Contract without Buyer's express prior written consent. Buyer shall have the option, exercisable by written notice to Sellers given within such five (5) Business Day period, to request that Sellers assume (if applicable), assign and sell such Contract to Buyer. If Buyer timely exercises such option and subject to compliance with Section 365 of the Bankruptcy Code, Sellers shall use commercially reasonable efforts to assume (if applicable), assign and sell such Contract to Buyer, as promptly as reasonably practicable, on the same terms and conditions as would be applicable under this Agreement to the Assumed Contracts or the Prepetition Contracts to be acquired hereunder, as applicable; provided, however, that Buyer shall be responsible for the payment of any Cure Cost in connection with the assumption and assignment of such Assumed Contract (if applicable), except as otherwise provided in Section 2.6 and provided such Cure Cost is an Assumed Liability. If Buyer fails or declines to exercise such option, Sellers shall reject such Contract upon five (5) Business Days' notice to Buyer.

Section 5.11 Casualty, Condemnation, Loss of Lease.

(a) If, prior to Closing, any Leased Real Property and the associated improvements or any part thereof shall be subject to a taking by any Governmental Entity through condemnation, eminent domain or otherwise (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such taking) (collectively, the "Condemnation"), Buyer shall take title to the Purchased Assets relating to such affected Leased Real Property and improvements notwithstanding such Condemnation. At the Closing, Buyer shall succeed to (x) the rights of Sellers to the Condemnation proceeds, including insurance proceeds, with respect to a Condemnation (the "Condemnation Proceeds"), and (y) the rights to settle any such Condemnation proceeding, and Buyer shall, at Closing succeed to the rights of Sellers to all required proofs of loss, assignments of claims and similar items. Sellers, at Closing, shall assign to Buyer all right, title and interest to any claims or proceeds Sellers may have. Sellers shall not settle any such proceedings without the consent of Buyer, such consent not to be unreasonably withheld or delayed.

(b) If, prior to Closing, any Leased Real Property and the associated improvements or any part thereof shall be destroyed or damaged by fire, earthquake, flood or other casualty (collectively, “Casualty”), Buyer shall take title to the Purchased Assets relating to such affected Leased Real Property and improvements. At the Closing, Buyer shall succeed to (x) the rights of Sellers to the Casualty proceeds, including insurance proceeds, with respect to such Casualty (the “Casualty Proceeds”), including without duplication, giving Buyer a credit against the Purchase Price in the amount of the Casualty Proceeds actually received by Sellers and not applied by Sellers to repair prior to Closing, and (y) the rights to settle after Closing any loss under all Insurance Policies applicable to the Casualty, and Buyer shall, at Closing and thereafter, succeed to the rights of Sellers to all required proofs of loss, assignments of claims and other similar items and Sellers shall, at Closing, assign same to Buyer. Sellers shall not settle any such claims without the consent of Buyer; such consent not to be unreasonably withheld or delayed.

ARTICLE VI. OTHER COVENANTS

The Parties agree as follows with respect to the period from and after the Closing; provided that Sellers’ obligations hereunder shall only continue until the later of the day that (i) all Liquor Licenses have been transferred to Buyer and/or replacements thereof have been obtained by Buyer, as determined by Buyer in its reasonable discretion, and (ii) the Chapter 11 Cases are closed or dismissed:

Section 6.1 Cooperation. Each of the Parties shall cooperate with each other, and shall use their commercially reasonable efforts to cause their respective Representatives to cooperate with each other, to provide an orderly transition of the Purchased Assets and Assumed Liabilities from Sellers to Buyer and to minimize the disruption to the Business resulting from the Contemplated Transactions.

Section 6.2 Further Assurances. In case at any time from and after the Closing any further action is necessary or reasonably required to carry out the purposes of this Agreement, subject to the terms and conditions of this Agreement and the terms and conditions of the Sale Order, at any Party’s request and sole cost and expense, each Party shall promptly take such further action (including the execution and delivery to any other Party of such other reasonable instruments of sale, transfer, conveyance, assignment, assumption and confirmation and providing materials and information) as another Party may reasonably request as shall be necessary to transfer, convey and assign to Buyer all of the Purchased Assets, to confirm Buyer’s assumption of the Assumed Liabilities and to confirm Sellers’ retention of the Excluded Assets and Excluded Liabilities. Without limiting the generality of this Section 6.2, to the extent that either Buyer or Sellers discover any additional assets or properties which the Parties mutually agree should have been transferred or assigned to Buyer as Purchased Assets but were not so transferred or assigned, Buyer and Sellers shall cooperate and promptly execute and deliver any instruments of transfer or assignment necessary to transfer and assign such asset or property to Buyer.

Section 6.3 Availability of Business Records. From and after the Closing, Buyer shall promptly provide to Sellers, Parent’s equity holders, and their respective Representatives (after reasonable notice and during normal business hours and without charge to Sellers) access to all

Records included in the Purchased Assets for periods prior to the Closing and reasonable access to Transferred Employees to the extent such access is necessary in order for Sellers (as applicable) to comply with applicable Law or any contract to which it is a party, for liquidation, winding up, Tax reporting or other proper purposes and so long as such access is subject to an obligation of confidentiality, and shall preserve such Records until the latest of (i) seven (7) years after the Closing Date, (ii) the required retention period for all government contact information, records or documents, or (iii) the conclusion of all bankruptcy proceedings relating to the Chapter 11 Cases. Such access shall include access to any information in electronic form to the extent reasonably available. Buyer acknowledges that Sellers have the right to retain copies of all of Records included in the Purchased Assets for periods prior to the Closing. Prior to destroying any Records included in the Purchased Assets for periods prior to the Closing, Buyer shall notify Sellers thirty (30) days in advance of any such proposed destruction of its intent to destroy such Records, and Buyer shall permit Sellers to retain such Records, at Sellers' cost and expense.

Section 6.4 Employee Matters.

(a) Prior to the Closing, Buyer may, but shall not be obligated to offer (or cause an Affiliate or Permitted Designee to offer), to employ those Current Employees desired to be employed by Buyer, in Buyer's sole discretion, to operate the Continuing Restaurants, with employment commencing as of the Closing Date. For purposes of this Agreement, each Current Employee who receives such an offer of employment shall be collectively referred to as an "Offeree." Prior to the Closing Date, Buyer will provide Sellers with a schedule setting forth a list of the names of all Offerees and Sellers shall terminate the employment of each Offeree effective as of the end of the day prior to the Closing Date. Each Offeree who accepts such offer prior to the Closing shall be referred to herein as a "Transferred Employee." Each Current Employee of Sellers who is not a Transferred Employee shall be referred to herein as an "Excluded Employee."

(b) Following the Execution Date:

(i) Sellers shall allow Buyer or any of its Representatives reasonable access upon reasonable advance notice to meet with and interview the Current Employees who are members of executive management and other employees reasonably requested during normal business hours.

(ii) Sellers shall not, nor shall Sellers authorize or direct or give express permission to any Affiliate, officer, director or employee of any Seller or any Affiliate of any Seller to, (A) interfere with Buyer's or its Representatives' rights under Section 6.4(a) to make offers of employment to any Current Employee, or (B) solicit or encourage any Offeree not to accept, or to reject, any such offer of employment.

(iii) Sellers shall provide reasonable cooperation and legally permitted information to Buyer or the relevant Representative as reasonably requested by Buyer or such Representative with respect to its determination of appropriate terms and conditions of employment for any Offeree.

(c) Except as provided in Section 2.3(f), Buyer shall not assume, and Sellers shall retain, any liability or obligation whatsoever relating to any of the Employee Benefit Plans and compensation (other than as provided under Section 2.3(f)). Buyer shall assume and be responsible for group health continuation coverage under COBRA with respect to all employees of Sellers and their dependents and any other individual who is an “M & A qualified beneficiary” within the meaning of Treasury Regulation Section 54.4980B-9, Q&A-4 in connection with the Contemplated Transactions and associated with the Purchased Assets.

(d) Sellers shall process the payroll for and pay, or cause to be paid, the base wages, base salary, paid time-off and benefits and any other amounts due under any Employee Benefit Plan or compensation arrangement or as required under applicable Law that are due and payable on or prior to the Closing Date or in connection with the Contemplated Transactions with respect to all Current Employees no later than the date such wages or salary are due under applicable Law. Sellers shall withhold, fund and remit all applicable payroll Taxes as required by Law that are due and payable on or prior to the Closing Date with respect to all Transferred Employees no later than the date such wages or salary are due under applicable Law.

(e) Buyer shall process the payroll for and shall pay, or cause to be paid, base wages, base salary and benefits that accrue after the Closing Date with respect to all Transferred Employees. Buyer shall withhold and remit all applicable payroll Taxes as required by Law after the Closing Date with respect to Transferred Employees. In addition, as part of the wind-down expenses, Sellers shall (or shall cause its designee to) process all employee and Tax reporting covering the periods prior to the Closing in connection with the Excluded Employees and the Transferred Employees that will be required to be prepared and delivered after the Closing. Nothing herein shall be construed as requiring, and neither Sellers nor any of their Affiliates shall take any affirmative action that would have the effect of requiring Buyer to continue any specific Employee Benefit Plan or any other employee benefit plan or to continue the employment of any specific person.

(f) Nothing in this Agreement shall affect the right of the Buyer or its Affiliates to terminate the employment of its employees. Nothing in this Agreement shall be construed to grant any employee of any Seller or its Affiliates a right to continued employment by, or to receive any payment or benefits from, any Seller, Buyer, their Affiliates or through any Employee Benefit Plan or other benefit plan. This Agreement shall not limit Sellers', Buyers' or their Affiliates' ability or right to amend or terminate any benefit or compensation plan or program of Sellers, Buyer or their Affiliates and nothing contained herein shall be construed as an amendment to or modification of any such plan. Nothing contained in this Section 6.4, express or implied, shall constitute an amendment to any Employee Benefit Plan or other plan, create any third party beneficiary rights or inure to the benefit of or be enforceable by any employee of the Buyer, of any Seller, their Affiliates, or any Person representing the interest of any employees.

(g) Except as provided in Section 2.3(g), Sellers shall retain all Liability for WARN incurred prior to or on the Closing Date or otherwise in connection with the Contemplated Transactions, including Buyer's failure to hire any Current Employee on or

after the Closing. Sellers shall retain all Liability under all employment Laws for Current Employees and former employees and any other service provider of Sellers incurred at any time, except as provided in Section 2.3(g). Buyer shall retain or assume all Liability under all employment Laws and WARN with respect to Transferred Employees that are incurred with Buyer after Closing.

Section 6.5 Recording of Intellectual Property Assignments. All of the Intellectual Property Assignments shall be recorded and filed by Buyer with the appropriate Governmental Entities as promptly as practicable following the Closing.

Section 6.6 Taxes.

(a) Tax Cooperation. Buyer and Sellers agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Business, the Purchased Assets and the Assumed Liabilities (including access to books and records) as is reasonably necessary for the preparation and filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any Tax authority, and the prosecution or defense of any claim, suit or proceeding relating to any Tax. Sellers and Buyer shall cooperate with each other in good faith in the conduct of any Tax Proceeding. Such cooperation shall include the retention and (upon the other Party's reasonable request) the provision of Tax books and records and information that are reasonably relevant to any such Tax Proceeding during normal business hours and making employees available (as reasonably required) on a mutually convenient basis to provide additional information and explanation of any materials provided under this Section 6.6(a) or to testify at any such Tax Proceeding; provided, however, that none of Sellers, Buyer and their respective Affiliates shall be required to disclose the contents of their Tax Returns to any Person. Sellers and Buyer agree to retain all Tax books and records pertinent to the Business, the Purchased Assets or the Assumed Liabilities until the expiration of the applicable statute of limitations. Sellers and Buyer further agree, upon request, to use their reasonable best efforts to obtain any certificate or other document from any Tax authority or any other Person or take any other action as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed on any Party relating to the Contemplated Transactions.

(b) Transfer Taxes. To the extent not exempt under Section 1146 of the Bankruptcy Code, Buyer shall pay any stamp, documentary, registration, transfer, added-value or similar Tax (each, a "Transfer Tax") imposed under any applicable Law in connection with the Contemplated Transactions. Each Seller and Buyer shall cooperate to prepare and timely file any Tax Returns required to be filed in connection with Transfer Taxes described in the immediately preceding sentence, with the Parties as required by applicable Law to file any such Tax Returns and the other Parties to join therein to the extent required under applicable Law.

Section 6.7 Wage Reporting. For purposes of payroll taxes with respect to the Transferred Employees, Sellers shall treat the Contemplated Transactions, as a transaction described in Treasury Regulation Sections 31.3121(a)(1)-1(b)(2) and 31.3306(b)(1)-(b)(2) (i.e., Buyer shall be treated as a successor for payroll tax purposes); and as such, Sellers and Buyer shall

report on a predecessor/successor basis as set forth under the “Standard Procedure” provided in Section 4 of Revenue Procedure 2004-53, 2004-2 C.B. 320.

Section 6.8 Collection of Accounts Receivable.

(a) As of the Closing Date, each Seller hereby (i) authorizes Buyer to open any and all mail addressed to any Seller relating to the Business or the Purchased Assets and delivered to the offices of the Business or otherwise to Buyer if received on or after the Closing Date, and (ii) appoints Buyer or its attorney-in-fact to endorse, cash and deposit any monies, checks or negotiable instruments received by Buyer after the Closing Date with respect to Accounts Receivable that are Purchased Assets or accounts receivable relating to work performed by Buyer after the Closing, as the case may be, made payable or endorsed to any Seller or Sellers’ order, for Buyer’s own account.

(b) As of the Closing Date, each Seller agrees that any monies, checks or negotiable instruments received by any Seller after the Closing Date with respect to Accounts Receivable that are Purchased Assets or accounts receivable relating to work performed by Buyer after the Closing, as the case may be, shall be held in trust by such Seller for Buyer’s benefit and account, and promptly upon receipt by a Seller of any such payment (but in any event within five (5) Business Days of such receipt), such Seller shall pay over to Buyer or its designee the amount of such payments. In addition, Buyer agrees that, after the Closing, it shall hold and shall promptly transfer and deliver to Sellers, from time to time as and when received by Buyer or its Affiliates (but in any event within 5 Business Days of such receipt), any cash, checks with appropriate endorsements, or other property that Buyer or its Affiliates may receive on or after the Closing which properly belongs to Sellers hereunder, including any Excluded Assets.

(c) As of the Closing Date, Buyer shall have the sole authority to bill and collect Accounts Receivable that are Purchased Assets and accounts receivable relating to work performed, good sold or services provided by Buyer after the Closing.

Section 6.9 Use of Name and Marks. Neither Sellers nor any of their respective Affiliates or Subsidiaries shall use, license or authorize any third party to use, any name, slogan, logo or trademark which is similar or deceptively similar to any of the names, trademarks or service marks included in the Intellectual Property included in the Purchased Assets.

Section 6.10 Liquor License Approvals.

(a) Sellers shall reasonably cooperate in a timely manner with Buyer (and at Buyer’s sole cost and expense) in connection with Buyer’s filings or any applications or other submittals with any Governmental Entity or third party with respect to any of the Liquor Licenses and obtaining the necessary consents and approvals pertaining to the transfer and/or issuance of the Liquor Licenses to Buyer to enable Buyer or its Permitted Designee to sell and serve alcohol at each Continuing Restaurant on and after the Closing Date consistent with their respective current service hours and days of operation as of the Execution Date (the “Liquor License Approvals”), including if deemed necessary by Buyer, by entering into the Management Agreement(s) and, if reasonably requested by

Buyer, initiating and/or participating, at Buyer's sole cost and expense, in such legal proceedings reasonably requested by Buyer to obtain such Liquor License Approvals; provided, however, that (i) to the extent that the applicable Governmental Entity requires that a new license be purchased, the purchase price for such Liquor Licenses shall be paid by Buyer, without an adjustment to the Purchase Price, (ii) Buyer shall be responsible for all costs and fees charged by any third party, including but not limited to any escrow fee and fees for the processing of any vendor claims submitted to Buyer related to the Liquor Licenses for periods prior to Closing and this obligation of Buyer shall survive the Closing, and (iii) Buyer shall be responsible for all costs and fees charged by any third party, including but not limited to any escrow fee and fees for the processing of any vendor claims submitted to Buyer related to the Liquor Licenses for periods from and after Closing, to the extent arising from or relating to the Liquor Licenses, after Closing, and these obligations of Buyer shall survive the Closing.

(b) Prior to Closing, Sellers shall notify Buyer within five (5) Business Days of (i) the receipt from any applicable Governmental Entity of any complaint or notification of violation or (ii) any event of suspended operations occurring of any of the Continuing Restaurants, which in the case of either provision (i) or (ii), are related to the Liquor Licenses.

(c) Sellers and Buyer acknowledge that due to the procedures established by the applicable Governmental Entities for the transfer of Liquor Licenses, Sellers may be operating the Continuing Restaurants for the benefit of Buyer for an undetermined period of time following the approval of the transfer of the Liquor Licenses from Sellers to Buyer by the applicable Governmental Entities through the Closing.

(d) In the event that the issuance of new Liquor Licenses to Buyer or the suitable transfer of Sellers' existing Liquor Licenses for each Continuing Restaurant to Buyer cannot be obtained by Buyer from the applicable Governmental Entities prior to Closing for one (1) or more Liquor Licenses (including without limitation, temporary Liquor Licenses until permanent Liquor Licenses are transferred to or obtained by Buyer), to the extent permitted by Law, Buyer and Seller shall enter into one or more Management Agreements in order to permit Buyer to operate the Business and utilize the Liquor License for each Continuing Restaurant during the period commencing upon the Closing Date and terminating upon the receipt of the applicable Liquor Licenses for each respective Continuing Restaurant as issued to Buyer or its designated Affiliate and/or Subsidiary by the applicable Governmental Entities.

Section 6.11 Transition Services Agreement. As promptly as practicable following the date hereof and, in any event, prior to the Closing, if determined to be necessary by Buyer in its sole discretion, Buyer and the Sellers shall negotiate in good faith and use their respective commercially reasonable efforts to mutually agree on the form of transition service agreement (the "Transition Services Agreement") to be entered into at closing regarding the provision of services following the Closing by Sellers (and/or their respective Affiliates) in favor of Buyer (and/or its respective Affiliates).

Section 6.12 Avoidance Actions. Following the Closing (and purchase of the Avoidance Actions pursuant to Section 2.1(q) hereof), Buyer (on behalf of itself and its Affiliates) will not pursue or cause to be pursued, and hereby releases, any Avoidance Actions against any party. Such parties shall be express third-party beneficiaries of this Section 6.12.

ARTICLE VII. CONDITIONS TO CLOSING

Section 7.1 Conditions to Buyer's Obligations. Subject to Section 7.3, Buyer's obligation to consummate the Contemplated Transactions in connection with the Closing is subject to satisfaction or waiver of the following conditions:

(a) as of the Execution Date and as of the Closing Date (in each case, except for any representation or warranty that is expressly made as of a specified date, in which case as of such specified date), (i) each representation or warranty contained in Section 3.1 through Section 3.3 and Section 3.5 shall be true and correct in all respects, and (ii) each other representation or warranty set forth in ARTICLE III shall be true and correct in all respects, except where the failure of such representations and warranties referred to in this clause (ii) to be true and correct, individually or in the aggregate with other such failures, has not had, and would not reasonably be expected to have, a Material Adverse Effect; provided, however, that for purposes of determining the accuracy of representations and warranties referred to in clause (ii) for purposes of this condition, all qualifications as to "materiality" and "Material Adverse Effect" contained in such representations and warranties shall be disregarded;

(b) Sellers shall have performed and complied with their covenants and agreements hereunder to the extent required to be performed prior to the Closing in all material respects, and Sellers shall have caused the documents and instruments required by Section 2.8(a) to be delivered to Buyer (or tendered subject only to Closing);

(c) no Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Order that is in effect and that has the effect of making the Closing illegal or otherwise prohibiting the consummation of the Closing;

(d) the Bidding Procedures Order and the Sale Order are both in form and substance satisfactory to Buyer in its reasonable discretion;

(e) the Sale Order and Bidding Procedures Order shall have been entered by the Bankruptcy Court, which shall include a waiver of the fourteen (14) day stay set forth in Rule 6004(h) of the Federal Rules of Bankruptcy Procedure, and shall be final, non-appealable Orders; provided that nothing in this Agreement shall preclude Buyer and Sellers from consummating the Contemplated Transactions if Buyer, in its sole discretion, waives the requirement that the Sale Order or any other Order shall have become final Orders;

(f) from the Execution Date until the Closing Date, there shall not have occurred and be continuing any Material Adverse Effect; and

(g) Sellers shall have delivered a certificate from an authorized officer of each Seller to the effect that each of the conditions specified in Section 7.1(a), Section 7.1(b), and Section 7.1(f) has been satisfied.

Section 7.2 Conditions to Sellers' Obligations. Subject to Section 7.3, Sellers' obligation to consummate the Contemplated Transactions in connection with the Closing are subject to satisfaction or waiver of the following conditions:

(a) as of the Execution Date and as of the Closing Date (in each case, except for any representation or warranty that is expressly made as of a specified date, in which case as of such specified date), (i) each representation or warranty contained in Section 4.1 through Section 4.3 shall be true and correct in all respects, and (ii) each other representation or warranty set forth in ARTICLE IV shall be true and correct in all respects, except where the failure of such representations and warranties referred to in this clause (ii) to be true and correct, individually or in the aggregate with other such failures, would not reasonably be expected to materially prevent, restrict or delay the consummation of the Contemplated Transactions or the transactions contemplated by any Related Agreement; provided, however, that for purposes of determining the accuracy of representations and warranties referred to in clause (ii) for purposes of this condition, all qualifications as to "materiality" contained in such representations and warranties shall be disregarded;

(b) Buyer shall have performed and complied with its covenants and agreements hereunder to the extent required to be performed prior to the Closing in all material respects, and Buyer shall have caused the documents, instruments and payments required by Section 2.8(b) to be delivered to Sellers (or tendered subject only to Closing);

(c) no Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Order that is in effect and that has the effect of making the Closing illegal or otherwise prohibiting the consummation of the Closing;

(d) the Sale Order entered by the Bankruptcy Court and shall not be subject to a stay pending appeal; provided that nothing in this Agreement shall preclude Buyer and Sellers from consummating the Contemplated Transactions if Buyer, in its sole discretion, waives the requirement that the Sale Order or any other Order shall have become final Orders;

(e) Seller shall have received the Closing Cash Payment and the Adequate Assurance Account; and

(f) Buyer shall have delivered a certificate from an authorized officer of Buyer to the effect that each of the conditions specified in Section 7.2(a) and Section 7.2(b) has been satisfied.

Section 7.3 No Frustration of Closing Conditions. Neither Buyer nor Sellers may rely on the failure of any condition to its obligation to consummate the Contemplated Transactions

set forth in Section 7.1 or Section 7.2, as the case may be, to be satisfied if such failure was caused by such Party's failure to use its commercially reasonable efforts with respect to those matters contemplated by the applicable Sections of this Agreement to satisfy the conditions to the consummation of the Contemplated Transactions or other breach of a representation, warranty or covenant hereunder.

ARTICLE VIII. TERMINATION

Section 8.1 Termination of Agreement. This Agreement may be terminated and the Contemplated Transactions abandoned at any time prior to the Closing:

(a) by the mutual written consent of Buyer, on the one hand, and Sellers, on the other hand;

(b) by either Buyer, on the one hand, or Sellers, on the other hand, if the Sale Order shall not have been entered on the docket in the Bankruptcy Case on or before sixty six (66) days after the Petition Date (the "End Date"); provided, however, that (i) neither Buyer nor Sellers may terminate this Agreement under this Section 8.1(b) if such failure is due to the failure of such Party to perform or comply with the covenants hereof to be performed or complied with by it/them prior to the End Date and (ii) the End Date may be extended with the prior written consent of Buyer in its sole discretion;

(c) by either Buyer, on the one hand, or Sellers, on the other hand, if there shall be any applicable Law that makes consummation of the Contemplated Transactions illegal or otherwise prohibited or if consummation of the Contemplated Transactions would violate any nonappealable final Order of any Governmental Entity having competent jurisdiction;

(d) by Sellers by giving written notice to Buyer at any time prior to Closing in the event Buyer has breached any representation, warranty, agreement, or covenant contained in this Agreement such that any condition set forth in Section 7.2 shall become incapable of being satisfied without cure, Sellers have notified Buyer of the breach, and the breach has continued without cure for a period of ten (10) Business Days after the notice of the breach, unless the failure of such condition shall be due to the failure of any Seller to perform or comply with any of the agreements or covenants hereof to be performed or complied with by it prior to the Closing, and such condition is not waived by Sellers;

(e) by Buyer by giving written notice to Sellers at any time prior to Closing in the event any Seller has breached any representation, warranty, agreement, or covenant contained in this Agreement such that any condition set forth in Section 7.1 shall become incapable of being satisfied without cure, Buyer has notified Sellers of the breach, and the breach has continued without cure for a period of ten (10) Business Days after the notice of the breach, unless the failure of such covenant shall be due to the failure of Buyer to perform or comply with any of the covenants hereof to be performed or complied with by it prior to the Closing, and such condition is not waived by Buyer; or

(f) by Buyer if:

(i) an “Event of Default” or “Default” is declared by the applicable administrative agent or lender(s) under the DIP Order or the DIP Loan Agreement, as applicable;

(ii) by Buyer if for any reason whatsoever, Buyer is unable to Credit Bid the Purchase Price pursuant to Section 2.5(c)(i);

(iii) if any of the following occurs:

(A) the Sale Order shall not have been entered by the Bankruptcy Court by the End Date;

(B) the Bankruptcy Court enters an Order for the appointment of a trustee or examiner with managerial powers, other than at the request of Buyer or any of its Affiliates, under Section 1104 of the Bankruptcy Code and such trustee or examiner takes any action to interfere with or impair the Contemplated Transactions;

(C) the Chapter 11 Cases are dismissed or converted to cases under Chapter 7 of the Bankruptcy Code or the Bankruptcy Court enters a final Order appointing a trustee or an examiner with expanded powers (beyond those set forth under Section 1106(a)(3) of the Bankruptcy Code) in the Chapter 11 Cases prior to the Closing Date;

(D) any Seller consummates a chapter 11 Plan;

(E) any Seller executes an Alternate Agreement or takes affirmative steps to effect an Alternate Transaction; provided that this Agreement may not be terminated pursuant to this clause if and for so long as Buyer is the Back-Up Bidder; or

(F) Buyer is not the Winning Bidder at the Auction pursuant to the Bidding Procedures Order; provided that this Agreement may not be terminated pursuant to this clause if and for so long as Buyer is the Back-Up Bidder.

Section 8.2 Effect of Termination.

(a) In the event of termination and abandonment by Buyer, on the one hand, or Sellers, on the other hand, or both, pursuant to Section 8.1 (other than pursuant to Section 8.1(a)), written notice thereof shall forthwith be given to the other Party or Parties pursuant to Section 9.7, and this Agreement shall terminate (other than Section 8.2 and the provisions of ARTICLE IX and such portions of ARTICLE I as are necessary to give effect to the foregoing, all of which shall survive the termination of this Agreement) and the

Contemplated Transactions shall be abandoned, without further action by Buyer or Sellers); provided, however, that notwithstanding anything herein to the contrary, if such termination shall result from the willful and knowing (i) failure of either Party to fulfill a condition to the performance of the obligations of the other Party, (ii) failure to perform a covenant or agreement of this Agreement, or (iii) breach by any Party hereto of any representation, warranty, covenant or agreement contained herein, such Party shall be fully liable for any and all Adverse Consequences incurred or suffered by the other Party as a result of such failure or breach.

(b) If this Agreement is terminated for any reason, then the Parties shall promptly direct the Escrow Agent (by executing and delivering joint instructions to the Escrow Agent) to disburse the Good Faith Deposit (and all interest earned thereon) to Buyer free and clear of any claims thereon by Sellers; provided, however, if this Agreement is terminated by Sellers pursuant to (i) Section 8.1(d) or (ii) Section 8.1(b) because of the failure of Buyer to close in the instance where, as of the End Date, (A) all of the conditions set forth in Section 7.1 (excluding conditions that, by their terms, cannot be satisfied until the Closing) have been satisfied (or waived, or deemed to have been waived, by Buyer), (B) Sellers are ready, willing and able to close, and (C) Buyer nevertheless elects not to promptly close, Sellers would not have any adequate remedy at Law and would suffer Adverse Consequences that are not practicable to ascertain, and in the case of either clause (i) or (ii) of this Section 8.2(b), Sellers shall be entitled to terminate this Agreement, and the Parties shall promptly direct the Escrow Agent (by executing and delivering joint instructions to the Escrow Agent) to disburse the Good Faith Deposit (and all interest earned thereon) to Acquisition, on behalf of Sellers, as liquidated damages. Sellers agree that, to the fullest extent permitted by applicable Law, Sellers' right to the payment of the Good Faith Deposit (and all interest earned thereon) as provided in this Section 8.2(b) shall be the sole and exclusive remedy against Buyer or any of its Affiliates or any of their respective stockholders, partners, members or Representatives for any and all Adverse Consequences that may be suffered based upon, resulting from or arising out of the circumstances giving rise to such termination, and upon payment of the Good Faith Deposit (and all interest earned thereon) to Sellers in accordance with this Section 8.2(b), none of Buyer, any of its Affiliates nor any of their respective stockholders, partners, members or Representatives shall have any further Liability or obligation relating to or arising out of this Agreement or the Contemplated Transactions except as provided in Section 8.2(a).

(c) Notwithstanding Section 8.2(b), if this Agreement is terminated by Buyer pursuant to Section 8.1(f)(iii)(D), Section 8.1(f)(iii)(E) or Section 8.1(f)(iii)(F), then the Escrow Agent shall retain the Good Faith Deposit (and all interest earned thereon) until the earlier to occur of (i) the consummation of an Alternate Transaction or (ii) the End Date, at which time the Parties shall promptly direct the Escrow Agent (by executing and delivering joint instructions to the Escrow Agent) to disburse the Good Faith Deposit (and all interest earned thereon) to Buyer, free and clear of any claims thereon by Sellers.

(d) In addition to the remedies in Section 8.2(b), Seller shall pay to Buyer, and Buyer shall be entitled to receive the Bid Protections if and only if (i) Sellers have consummated an Alternate Transaction; (ii) Buyer has terminated this Agreement in accordance with its terms (other than pursuant to Section 8.1(a)); and (iii) this Agreement

has not been terminated by Sellers pursuant to Section 8.1(a) or Section 8.1(d). If owed pursuant to the immediately preceding sentence, the Bid Protections shall be treated as an allowed administrative expense claim in the Chapter 11 Cases pursuant to Section 503(b)(1)(A) of the Bankruptcy Code and shall be payable from the sale proceeds paid by the third party buyer in the Alternate Transaction upon the consummation of the Alternate Transaction. Notwithstanding anything to the contrary contained in this Agreement, the Bid Protections shall be subject to a carve out from any Lien, security interest or superpriority administrative expense claim with respect to the proceeds of any Alternate Transaction pursuant to Sections 105, 363, 364, 503(b) or 507 of the Bankruptcy Code in the Chapter 11 Cases.

(e) Except as otherwise expressly set forth in this Agreement, nothing herein shall relieve any Party from Liability for any breach of covenant occurring prior to any termination of this Agreement.

ARTICLE IX. MISCELLANEOUS

Section 9.1 Intentionally Omitted.

Section 9.2 Expenses. Except for the Bid Protections and as otherwise provided in this Agreement or a Related Agreement, each of Sellers and Buyer shall bear their own expenses, including attorneys' fees, incurred in connection with the negotiation and execution of this Agreement, the Related Agreements and each other agreement, document and instrument contemplated by this Agreement and the consummation of the Contemplated Transactions. Notwithstanding the foregoing, in the event of any action or proceeding to interpret or enforce this Agreement, the prevailing Party in such action or proceeding (i.e., the Party who, in light of the issues contested or determined in the action or proceeding, was more successful) shall be entitled to have and recover from the non-prevailing Party such costs and expenses (including, but not limited to, all court costs and reasonable attorneys' fees) as the prevailing Party may incur in the pursuit or defense thereof.

Section 9.3 Entire Agreement. This Agreement and the Related Agreements constitute the entire agreement among the Parties and supersede any prior understandings, agreements or representations (whether written or oral) by or among the Parties, written or oral, with respect to the subject matter hereof; provided, however, the Confidentiality Agreement shall survive in accordance with its terms. The recitals set forth above are expressly incorporated herein by reference.

Section 9.4 Incorporation of Schedules, Exhibits and Disclosure Schedule. The schedules to this Agreement (the "Schedules") and the Disclosure Schedule, appendices and exhibits to this Agreement, the documents and other information made available in the Schedules and the Disclosure Schedule are incorporated herein by reference and made a part hereof; provided, however, that the Parties agree that the Schedules and the Disclosure Schedule are not in final form on the Execution Date, and Sellers shall deliver final versions of the Schedules and the Disclosure Schedule, in form and substance reasonably satisfactory to Buyer, by no later than March 14, 2025.

Section 9.5 Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by each Party except as expressly provided herein. No waiver of any breach of this Agreement shall be construed as an implied amendment or agreement to amend or modify any provision of this Agreement. No waiver by any Party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver, nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent default, misrepresentation or breach of warranty or covenant. No conditions, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement the terms or conditions of this Agreement shall be binding unless this Agreement is amended or modified in writing pursuant to the first sentence of this Section 9.5 except as expressly provided herein. Except where a specific period for action or inaction is provided herein, no delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

Section 9.6 Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. None of the Parties may assign either this Agreement or any of its rights, interests or obligations hereunder without the prior written approval of all Parties; provided, however, that Buyer may elect to have any or all of the Purchased Assets conveyed or transferred to, or any or all of the Assumed Liabilities assumed by, one or more of its Permitted Designees without the consent of any of Sellers; provided, however, Buyer shall remain liable for all of its obligations to Sellers under this Agreement after any such assignment; provided, further, that Sellers shall be permitted to assign any of their rights hereunder pursuant to a confirmed chapter 11 Plan or pursuant to an Order of the Bankruptcy Court.

Section 9.7 Notices. All notices, requests, demands, claims and other communications hereunder shall be in writing except as expressly provided herein. Any notice, request, demand, claim or other communication hereunder shall be deemed duly given (i) when delivered personally to the recipient, (ii) one (1) Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid), (iii) when sent by email (with written confirmation of transmission), or (iv) three (3) Business Days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

If to any Seller, then to:

OTB Holding LLC
One Buckhead Plaza,
3060 Peachtree Road,
NW, Atlanta, GA 30305

Attention: Jonathan Tibus
Email: jtibus@alvarezandmarsal.com

with a copy to:

King & Spalding LLP
1180 Peachtree Street
Atlanta, Georgia 30309
Attention: Jeffrey R. Dutson
Email: jdutson@kslaw.com

If to Buyer, then to:

OTB Hospitality, LLC
c/o Pappas Restaurants, Inc.
13939 NW Freeway
Houston, TX 77040
Attention: Eric Swanson and Anna Marchand
Email: eswanson@pappas.com and amarchand@pappas.com

with copies (which shall not constitute notice) to:

Porter Hedges LLP
1000 Main Street
36th Floor
Houston, TX 77002
Attn: Eric M. English and Joshua W. Wolfshohl
Email: eenglish@porterhedges.com / jwolfshohl@porterhedges.com

Any Party may change the mailing address or email address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other Party notice in the manner set forth in this Section 9.7.

Section 9.8 Governing Law; Jurisdiction. This Agreement shall in all aspects be governed by and construed in accordance with the internal Laws of the State of New York without giving effect to any choice or conflict of Law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the New York , and the obligations, rights and remedies of the Parties shall be determined in accordance with such Laws. Prior to the closing of the Chapter 11 Cases, the Parties hereto agree that any Litigation seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement, any Related Agreement or the Contemplated Transactions shall be brought exclusively in the Bankruptcy Court, and each of the Parties hereby irrevocably consents to the jurisdiction of the Bankruptcy Court (and of the appropriate appellate courts therefrom) in any such Litigation and irrevocably waives, to the fullest extent permitted by Law, any objection that it may now or hereafter have to the laying of the venue of any such Litigation in the Bankruptcy Court or that any such Litigation which is brought in the Bankruptcy Court has been brought in an inconvenient forum. Process in any such Litigation may be served on any Party

anywhere in the world, whether within or without the jurisdiction of the Bankruptcy Court. Without limiting the foregoing, each Party agrees that service of process on such Party as provided in Section 9.7 shall be deemed effective service of process on such Party. After the closing of the Chapter 11 Cases, except as otherwise expressly provided in this Agreement, the Parties hereto agree that any Litigation seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement, any Related or the Contemplated Transactions may be brought in any court having subject matter jurisdiction over such Litigation, and that any cause of action arising out of this Agreement or any Related Agreement shall be deemed to have arisen from a transaction of business in the State of Georgia, and each of the Parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such Litigation and irrevocably waives, to the fullest extent permitted by Law, any objection that it may now or hereafter have to the laying of the venue of any such Litigation in any such court or that any such Litigation which is brought in any such court has been brought in an inconvenient forum. Process in any such Litigation may be served on any Party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each Party agrees that service of process on such Party as provided in Section 9.7 shall be deemed effective service of process on such Party.

Section 9.9 WAIVERS OF JURY TRIAL. EACH OF THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE RELATED AGREEMENTS OR THE CONTEMPLATED TRANSACTIONS OR THEREBY.

Section 9.10 Severability. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision, and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability in any one jurisdiction affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

Section 9.11 No Third Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

Section 9.12 No Survival of Representations, Warranties and Agreements. None of the Parties' representations, warranties, covenants and other agreements in this Agreement, including any rights of any other Party or any third party arising out of any breach of such representations, warranties, covenants and other agreements, shall survive the Closing, except for (i) those covenants and agreements contained herein that by their terms apply or are to be performed in whole or in part after the Closing, (ii) this ARTICLE IX, and (iii) all defined terms set forth in ARTICLE I that are referenced in the foregoing provisions referred to in clauses (i) and (ii) above.

Section 9.13 Construction. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of names and pronouns shall include the plural and vice versa. The word “including” and “include” and other words of similar import shall be deemed to be followed by the phrase “without limitation.” The words “herein,” “hereto” and “hereby,” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision of this Agreement. Unless expressly stated in connection therewith or the context otherwise requires, the phrase “relating to the Business” and other words of similar import shall be deemed to mean “relating to the operation of the Business as conducted as of the Execution Date.” Except as otherwise provided herein, references to Articles, Sections, clauses, subclauses, subparagraphs, Schedules, Exhibits, Appendices and the Disclosure Schedule herein are references to Articles, Sections, clauses, subclauses, subparagraphs, Schedules, Appendices, Exhibits and the Disclosure Schedule of this Agreement. Any reference herein to any Law (or any provision thereof) shall include such Law (or any provision thereof) and any rule or regulation promulgated thereunder, in each case, including any successor thereto, and as it may be amended, modified or supplemented from time to time. Any reference herein to “dollars” or “\$” means United States dollars.

Section 9.14 Computation of Time. In computing any period of time prescribed by or allowed with respect to any provision of this Agreement that relates to Sellers or the Chapter 11 Cases, the provisions of Rule 9006(a) of the Federal Rules of Bankruptcy Procedure shall apply.

Section 9.15 Mutual Drafting. Each of the Parties has participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

Section 9.16 Disclosure Schedule. All capitalized terms not defined in the Disclosure Schedule shall have the meanings ascribed to them in this Agreement. The representations and warranties of Sellers in this Agreement are made and given, and the covenants are agreed to, subject to the disclosures and exceptions set forth in the Disclosure Schedule. The disclosure of any matter in any section of the Disclosure Schedule shall be deemed to be a disclosure with respect to any other sections of the Disclosure Schedule to which such disclosed matter reasonably relates, but only to the extent that such relationship is reasonably apparent on the face of the disclosure contained in the Disclosure Schedule. The listing of any matter shall expressly not be deemed to constitute an admission by Sellers, or to otherwise imply, that any such matter is material, is required to be disclosed under this Agreement or falls within relevant minimum thresholds or materiality standards set forth in this Agreement. No disclosure in the Disclosure Schedule relating to any possible breach or violation of any Contract or Law shall be construed as an admission or indication that any such breach or violation exists or has actually occurred. In no event shall the disclosure of any matter in the Disclosure Schedule be deemed or interpreted to expand the scope of Sellers’ representations, warranties and/or covenants set forth in this Agreement. All attachments to the Disclosure Schedule are incorporated by reference into the Disclosure Schedule in which they are directly or indirectly referenced.

Section 9.17 Headings; Table of Contents. The section headings and the table of contents contained in this Agreement and the Disclosure Schedule are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 9.18 Counterparts; Facsimile and Email Signatures. This Agreement may be executed 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. This Agreement or any counterpart may be executed and delivered by facsimile, email with scan attachment copies, or other electronic signature method, including DocuSign, each of which shall be deemed an original.

Section 9.19 Time of Essence. Time is of the essence of this Agreement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

SELLERS:

OTB HOLDING LLC,
a Delaware limited liability company

By: 

Name: Jonathan Tibus

Title: Chief Restructuring Officer

OTB ACQUISITION LLC,
a Delaware limited liability company

By: 

Name: Jonathan Tibus

Title: Chief Restructuring Officer

OTB ACQUISITION OF NEW JERSEY LLC,
a New Jersey limited liability company

By: 

Name: Jonathan Tibus

Title: Chief Restructuring Officer

MT. LAUREL RESTAURANT OPERATIONS LLC,
a New Jersey liability company

By: 

Name: Jonathan Tibus

Title: Chief Restructuring Officer

SELLERS, continued:

OTB ACQUISITION OF HOWARD COUNTY LLC,
a Maryland limited liability company

By: 

Name: Jonathan Tibus

Title: Chief Restructuring Officer

OTB ACQUISITION OF BALTIMORE COUNTY, LLC,
a Maryland limited liability company

By: 

Name: Jonathan Tibus

Title: Chief Restructuring Officer

OTB ACQUISITION OF KANSAS LLC,
a Kansas limited liability company

By: 

Name: Jonathan Tibus

Title: Chief Restructuring Officer

BUYER:

OTB HOSPITALITY, LLC,
a Texas limited liability company

By: *Chris Pappas*
Name: Chris Pappas
Title: Authorized Representative

EXHIBIT A

Bill of Sale

See attached.

[Exhibit A]

EXHIBIT A

BILL OF SALE

This Bill of Sale, dated as of [____], 2025 (this “Bill of Sale”), is made and entered into by and among OTB Holding LLC, a Delaware limited liability company (“Parent”), OTB Acquisition LLC, a Delaware limited liability company (“Acquisition”), OTB Acquisition of New Jersey LLC, a New Jersey limited liability company (“New Jersey”), Mt. Laurel Restaurant Operations LLC, a New Jersey limited liability company (“Mt. Laurel”), OTB Acquisition of Howard County LLC, a Maryland limited liability company (“Howard”), OTB Acquisition of Baltimore County, LLC, a Maryland limited liability company (“Baltimore”), and OTB Acquisition of Kansas LLC, a Kansas limited liability company (“Kansas” and, collectively with Parent, Acquisition, New Jersey, Mt. Laurel, Howard, and Baltimore, “Sellers”, and each are individually a “Seller”), and OTB Hospitality, LLC, a Texas limited liability company (together with its permitted successors, designees and assigns, “Buyer”). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Asset Purchase Agreement dated as of March 7, 2025 (the “Asset Purchase Agreement”), by and among Buyer and Sellers.

RECITALS

1. Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code and the Asset Purchase Agreement, Sellers have, among other things, agreed to sell, transfer, assign, convey and deliver to Buyer and Buyer has agreed to purchase, acquire and accept from Sellers, upon the terms and conditions set forth in the Asset Purchase Agreement, all of the right, title and interest of Sellers in and to the Purchased Assets, free and clear of all Liens (other than Permitted Liens) and Liabilities (other than Assumed Liabilities); and

2. Sellers desire to deliver to Buyer such instruments of sale, transfer assignment, conveyance and delivery as are required to vest in Buyer all of Sellers’ right, title and interest in and to the Purchased Assets.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the Asset Purchase Agreement, the Parties hereto, intending to be legally bound, hereby agree as follows:

AGREEMENT

1. In accordance with the Asset Purchase Agreement, each Seller hereby sells, transfers, assigns, conveys and delivers to Buyer all of its right, title and interest in and to the Purchased Assets, free and clear of all Liens (other than Permitted Liens) and Liabilities (other than Assumed Liabilities) at each of the respective locations set forth on Exhibit A.

2. This Bill of Sale is being executed by Sellers and Buyer and shall be binding upon each of Sellers and Buyer, their respective successors and assigns, for the respective uses and purposes herein set forth and referred to, and shall be effective as of the date hereof.

3. No provision of this Bill of Sale, express or implied, is intended or shall be construed to confer upon or give to any Person, other than the Parties hereto and their respective successors and permitted assigns, any remedy or claim under or by reason of this Bill of Sale or any term, covenant or condition hereof, and all of the terms, covenants, conditions, promises and agreements contained in this Bill of Sale shall be for the sole and exclusive benefit of each of Sellers and Buyer, their respective successors and permitted assigns.

4. This Bill of Sale may not, without the prior written consent of all parties hereto, be assigned, directly or indirectly, by operation of law or otherwise, and any attempted assignment shall be null and void *ab initio*; provided that, notwithstanding the foregoing, Buyer may assign this Bill of Sale to one (1) or more of its Affiliates. Subject to the foregoing, this Bill of Sale shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

5. None of the provisions of this Bill of Sale may be amended or waived except if such amendment or waiver is in writing and is signed, in the case of an amendment, by Sellers and Buyer, or in the case of a waiver, by the Party(ies) against whom the waiver is to be effective.

6. This Bill of Sale is subject in all respects to the terms and conditions of the Asset Purchase Agreement. Nothing contained in this Bill of Sale shall be deemed to supersede, enlarge or modify any of the representations, warranties, covenants or other agreements contained in the Asset Purchase Agreement, all of which survive the execution and delivery of this Bill of Sale as provided by, and subject to the limitations set forth in, the Asset Purchase Agreement. To the extent any provision of this Bill of Sale is inconsistent with the Asset Purchase Agreement, the provisions of the Asset Purchase Agreement shall govern and control.

7. EXCEPT AS AND TO THE EXTENT PROVIDED IN THE ASSET PURCHASE AGREEMENT, SELLERS EXPRESSLY AND SPECIFICALLY DISCLAIM ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, WHETHER ORAL OR WRITTEN, AND WHETHER GIVEN OR MADE OR DEEMED TO HAVE BEEN GIVEN OR MADE AT ANY TIME OR TIMES IN THE PAST, PRESENT OR FUTURE, OF, AS TO, OR CONCERNING THE NATURE OR CONDITION OF THE PURCHASED ASSETS, INCLUDING WITHOUT LIMITATION ANY AND ALL WARRANTIES AS TO THE MERCHANTABILITY OF THE PURCHASED ASSETS OR THE SUITABILITY OR FITNESS OF THE PURCHASED ASSETS FOR ANY PARTICULAR PURPOSE OR FOR ANY PURPOSE.

8. Section 9.8 of the Asset Purchase Agreement shall apply to this Bill of Sale *mutatis mutandis*.

9. This Bill of Sale may be executed 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. This Bill of Sale or any counterpart may be executed and delivered by facsimile or email with scan attachment copies, or other electronic signature method, including DocuSign, each of which shall be deemed an original.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have caused this Bill of Sale to be duly executed by their respective authorized officers as of the date first above written.

SELLERS:

OTB HOLDING LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

OTB ACQUISITION LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

OTB ACQUISITION OF NEW JERSEY LLC,
a New Jersey limited liability company

By: _____
Name: _____
Title: _____

MT. LAUREL RESTAURANT OPERATIONS LLC,
a New Jersey liability company

By: _____
Name: _____
Title: _____

SELLERS, continued:

OTB ACQUISITION OF HOWARD COUNTY LLC,
a Maryland limited liability company

By: _____
Name: _____
Title: _____

OTB ACQUISITION OF BALTIMORE COUNTY, LLC
a Maryland limited liability company

By: _____
Name: _____
Title: _____

OTB ACQUISITION OF KANSAS LLC,
a Kansas limited liability company

By: _____
Name: _____
Title: _____

BUYER:

OTB HOSPITALITY, LLC
a Texas limited liability company

By: _____
Name: _____
Title: _____

Exhibit A

Locations of Purchased Assets

EXHIBIT B

Assignment and Assumption Agreement

See attached.

[Exhibit B]

EXHIBIT B

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement, dated as of [_____], 2025 (this “Agreement”), is made and entered into by and among OTB Holding LLC, a Delaware limited liability company (“Parent”), OTB Acquisition LLC, a Delaware limited liability company (“Acquisition”), OTB Acquisition of New Jersey LLC, a New Jersey limited liability company (“New Jersey”), Mt. Laurel Restaurant Operations LLC, a New Jersey limited liability company (“Mt. Laurel”), OTB Acquisition of Howard County LLC, a Maryland limited liability company (“Howard”), OTB Acquisition of Baltimore County, LLC, a Maryland limited liability company (“Baltimore”), and OTB Acquisition of Kansas LLC, a Kansas limited liability company (“Kansas” and, collectively with Parent, Acquisition, New Jersey, Mt. Laurel, Howard, and Baltimore, “Sellers”, and each are individually a “Seller”), and OTB Hospitality, LLC, a Texas limited liability company (together with its permitted successors, designees and assigns, “Buyer”). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Asset Purchase Agreement dated as of March 7, 2025 (the “Asset Purchase Agreement”), by and among Buyer and Sellers.

RECITALS

1. Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code and the Asset Purchase Agreement, Sellers have, among other things, agreed to sell, transfer, assign, convey and deliver to Buyer and Buyer has agreed to purchase, acquire and accept from Sellers, upon the terms and conditions set forth in the Asset Purchase Agreement, all of the right, title and interest of Sellers in and to the Purchased Assets including, without limitation, the Assumed Contracts, free and clear of all Liens (other than Permitted Liens) and Liabilities (other than Assumed Liabilities); and

2. Pursuant to Section 2.3 of the Asset Purchase Agreement, Buyer has agreed to assume, effective as of the Closing, the Assumed Liabilities.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the Asset Purchase Agreement, the Parties hereto, intending to be legally bound, hereby agree as follows:

AGREEMENT

1. In accordance with the Asset Purchase Agreement, Sellers hereby assign the Assumed Contracts set forth on Exhibit A of this Agreement and delegate all of the Liabilities arising from and after the Closing under such Assumed Contracts to Buyer, and Buyer hereby accepts assignment and delegation of and assumes such Assumed Contracts and the Assumed Liabilities on the terms as set forth in the Asset Purchase Agreement. Buyer assumes none of the Excluded Liabilities (including, without limitation, with respect to the Rejected Contracts) and the Parties agree that all such Excluded Liabilities remain the responsibility of Sellers.

2. This Agreement is being executed by Sellers and Buyer and shall be binding upon each of Sellers and Buyer, their respective successors and assigns, for the respective uses and purposes herein set forth and referred to, and shall be effective as of the date hereof.

3. No provision of this Agreement, express or implied, is intended or shall be construed to confer upon or give to any Person, other than the Parties hereto and their respective successors and permitted assigns, any remedy or claim under or by reason of this Agreement or any term, covenant or condition hereof, and all of the terms, covenants, conditions, promises and agreements contained in this Agreement shall be for the sole and exclusive benefit of each of Sellers and Buyer, their respective successors and permitted assigns.

4. This Agreement may not, without the prior written consent of all parties hereto, be assigned, directly or indirectly, by operation of law or otherwise, and any attempted assignment shall be null and void *ab initio*; provided that, notwithstanding the foregoing, Buyer may assign this Agreement to one (1) or more of its Affiliates. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

5. None of the provisions of this Agreement may be amended or waived except if such amendment or waiver is in writing and is signed, in the case of an amendment, by Sellers and Buyer, or in the case of a waiver, by the Party(ies) against whom the waiver is to be effective.

6. This Agreement is subject in all respects to the terms and conditions of the Asset Purchase Agreement. Nothing contained in this Agreement shall be deemed to supersede, enlarge or modify any of the representations, warranties, covenants or other agreements contained in the Asset Purchase Agreement, all of which survive the execution and delivery of this Agreement as provided and subject to the limitations set forth in the Asset Purchase Agreement. To the extent any provision of this Agreement is inconsistent with the Asset Purchase Agreement, the provisions of the Asset Purchase Agreement shall govern and control.

7. Section 9.8 of the Asset Purchase Agreement shall apply to this Agreement *mutatis mutandis*.

8. This Agreement may be executed 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. This Agreement or any counterpart may be executed and delivered by facsimile or email with scan attachment copies, or other electronic signature method, including DocuSign, each of which shall be deemed an original.

[Signature pages follow]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized officers as of the date first above written.

SELLERS:

OTB HOLDING LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

OTB ACQUISITION LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

OTB ACQUISITION OF NEW JERSEY LLC,
a New Jersey limited liability company

By: _____
Name: _____
Title: _____

MT. LAUREL RESTAURANT OPERATIONS LLC,
a New Jersey liability company

By: _____
Name: _____
Title: _____

SELLERS, continued:

OTB ACQUISITION OF HOWARD COUNTY LLC,
a Maryland limited liability company

By: _____
Name: _____
Title: _____

OTB ACQUISITION OF BALTIMORE COUNTY, LLC
a Maryland limited liability company

By: _____
Name: _____
Title: _____

OTB ACQUISITION OF KANSAS LLC,
a Kansas limited liability company

By: _____
Name: _____
Title: _____

BUYER:

OTB HOSPITALITY, LLC
a Texas limited liability company

By: _____
Name: _____
Title: _____

Exhibit A

Assumed Contracts

EXHIBIT C

Intellectual Property Assignment – Registered Trademarks

See attached.

[Exhibit C]

EXHIBIT C

TRADEMARK ASSIGNMENT AGREEMENT

This Trademark Assignment Agreement (“Assignment”), dated as of [____], 2025, is made and entered into by and between OTB Acquisition LLC, a Delaware limited liability company (“Seller”), and OTB Hospitality, LLC, a Texas limited liability company (together with its permitted successors, designees and assigns, “Buyer”). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Asset Purchase Agreement, dated as of March 7, 2025 (the “Asset Purchase Agreement”), by and among Buyer, Seller and the other parties thereto.

RECITALS

1. Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code and the Asset Purchase Agreement, Seller has, among other things, agreed to sell, transfer, assign, convey and deliver to Buyer and Buyer has agreed to purchase, acquire and accept from Seller, upon the terms and conditions set forth in the Asset Purchase Agreement, all of the right, title and interest of Seller in and to the Purchased Assets including, without limitation, Seller’s rights and benefits with respect to all trademarks and trademark applications owned by Seller, which are set forth on Exhibit A attached hereto (collectively, the “Marks”), free and clear of all Liens (other than Permitted Liens) and Liabilities (other than Assumed Liabilities); and

2. Seller desires to deliver to Buyer such instruments of sale, transfer assignment, conveyance and delivery as are required to vest in Buyer all of Seller’s right, title and interest in and to the Marks.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the Asset Purchase Agreement, the Parties hereto, intending to be legally bound, hereby agree as follows:

AGREEMENT

1. In accordance with the Asset Purchase Agreement, Seller hereby sells, transfers, assigns, conveys and delivers to Buyer all of its right, title and interest in and to the Marks listed on Exhibit A, together with the goodwill of the business symbolized by and associated with the Marks, the right to sue for past, present, and future infringement of, dilution of, or unauthorized use of such Marks and the registrations thereof free and clear of all Liens (other than Permitted Liens) and Liabilities (other than Assumed Liabilities), and hereby instructs, authorizes and directs the United States Patent and Trademark Office, and the corresponding entity or agency in any applicable foreign country, to record Buyer as assignee and owner of the Marks. Seller owns all right, title, and interest in and to the Marks.

2. This Assignment is being executed by Seller and Buyer and shall be binding upon each of Seller and Buyer, their respective successors and assigns, for the respective uses and purposes herein set forth and referred to, and shall be effective as of the date hereof. This Assignment is not confidential and may be publicly disclosed and filed.

3. No provision of this Assignment, express or implied, is intended or shall be construed to confer upon or give to any Person, other than the Parties hereto and their respective successors and permitted assigns, any remedy or claim under or by reason of this Assignment or any term, covenant or condition hereof, and all of the terms, covenants, conditions, promises and agreements contained in this Assignment shall be for the sole and exclusive benefit of each of Seller and Buyer, their respective successors and permitted assigns.

4. This Assignment may not, without the prior written consent of all parties hereto, be assigned, directly or indirectly, by operation of law or otherwise, and any attempted assignment shall be null and void *ab initio*; provided that, notwithstanding the foregoing, Buyer may assign this Assignment to one (1) or more of its Affiliates. Subject to the foregoing, this Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

5. None of the provisions of this Assignment may be amended or waived except if such amendment or waiver is in writing and is signed, in the case of an amendment, by Seller and Buyer, or in the case of a waiver, by the Party(ies) against whom the waiver is to be effective.

6. This Assignment is subject in all respects to the terms and conditions of the Asset Purchase Agreement. Nothing contained in this Assignment shall be deemed to supersede, enlarge or modify any of the representations, warranties, covenants or other agreements contained in the Asset Purchase Agreement, all of which survive the execution and delivery of this Assignment as provided by, and subject to the limitations set forth in, the Asset Purchase Agreement. To the extent any provision of this Assignment is inconsistent with the Asset Purchase Agreement, the provisions of the Asset Purchase Agreement shall govern and control.

7. Section 9.8 of the Asset Purchase Agreement shall apply to this Assignment *mutatis mutandis*.

8. This Assignment may be executed 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. This Assignment or any counterpart may be executed and delivered by facsimile or email with scan attachment copies, or other electronic signature method, including DocuSign, each of which shall be deemed an original.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Assignment to be duly executed by their respective authorized officers as of the date first above written.

SELLER:

OTB ACQUISITION LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

BUYER:

OTB HOSPITALITY, LLC
a Texas limited liability company

By: _____
Name: _____
Title: _____

Exhibit A

[illegible]

EXHIBIT D

Intellectual Property Assignment – Domain Names

See attached.

[Exhibit D]

EXHIBIT D

DOMAIN NAME ASSIGNMENT AGREEMENT

This Domain Name Assignment Agreement (“Assignment”), dated as of [____], 2025, is made and entered into by and between OTB Acquisition LLC, a Delaware limited liability company (“Seller”), and OTB Hospitality, LLC, a Texas limited liability company (together with its permitted successors, designees and assigns, “Buyer”). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Asset Purchase Agreement, dated as of March 7, 2025 (the “Asset Purchase Agreement”), by and among Buyer, Seller and the other parties thereto.

RECITALS

1. Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code and the Asset Purchase Agreement, Seller has, among other things, agreed to sell, transfer, assign, convey and deliver to Buyer and Buyer has agreed to purchase, acquire and accept from Seller, upon the terms and conditions set forth in the Asset Purchase Agreement, all of the right, title and interest of Seller in and to the Purchased Assets including, without limitation, Seller’s rights and benefits with respect to all domain names (including all sub-domain names and extensions thereof and thereto) owned by Seller, which are set forth on Exhibit A attached hereto (collectively, the “Domain Names”), free and clear of all Liens (other than Permitted Liens) and Liabilities (other than Assumed Liabilities); and

2. Seller desires to deliver to Buyer such instruments of sale, transfer assignment, conveyance and delivery as are required to vest in Buyer all of Seller’s right, title and interest in and to the Domain Names.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the Asset Purchase Agreement, the Parties hereto, intending to be legally bound, hereby agree as follows:

AGREEMENT

1. In accordance with the Asset Purchase Agreement, Seller hereby sells, transfers, assigns, conveys and delivers to Buyer all of its right, title and interest in and to the Domain Names free and clear of all Liens (other than Permitted Liens) and Liabilities (other than Assumed Liabilities), and hereby instructs, authorizes and directs any and all registrars thereof to transfer the Domain Names to Buyer. Seller shall provide all information necessary to permit full access to, control of, and use of the Domain Names by the Buyer, including all usernames, passwords, and access or administrative information or codes related to each of the Domain Names. For each Domain Name, Seller shall also provide Buyer with the renewal deadline. Seller is the registrant for each Domain Name.

2. This Assignment is being executed by Seller and Buyer and shall be binding upon each of Seller and Buyer, their respective successors and assigns, for the respective uses and purposes herein set forth and referred to, and shall be effective as of the date hereof.

3. No provision of this Assignment, express or implied, is intended or shall be construed to confer upon or give to any Person, other than the Parties hereto and their respective successors and permitted assigns, any remedy or claim under or by reason of this Assignment or any term, covenant or condition hereof, and all of the terms, covenants, conditions, promises and agreements contained in this Assignment shall be for the sole and exclusive benefit of each of Seller and Buyer, their respective successors and permitted assigns.

4. This Assignment may not, without the prior written consent of all parties hereto, be assigned, directly or indirectly, by operation of law or otherwise, and any attempted assignment shall be null and void *ab initio*; provided that, notwithstanding the foregoing, Buyer may assign this Assignment to one (1) or more of its Affiliates. Subject to the foregoing, this Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

5. None of the provisions of this Assignment may be amended or waived except if such amendment or waiver is in writing and is signed, in the case of an amendment, by Seller and Buyer, or in the case of a waiver, by the Party(ies) against whom the waiver is to be effective.

6. This Assignment is subject in all respects to the terms and conditions of the Asset Purchase Agreement. Nothing contained in this Assignment shall be deemed to supersede, enlarge or modify any of the representations, warranties, covenants or other agreements contained in the Asset Purchase Agreement, all of which survive the execution and delivery of this Assignment as provided by, and subject to the limitations set forth in, the Asset Purchase Agreement. To the extent any provision of this Assignment is inconsistent with the Asset Purchase Agreement, the provisions of the Asset Purchase Agreement shall govern and control.

7. Section 9.8 of the Asset Purchase Agreement shall apply to this Assignment *mutatis mutandis*.

8. This Assignment may be executed 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. This Assignment or any counterpart may be executed and delivered by facsimile or email with scan attachment copies, or other electronic signature method, including DocuSign, each of which shall be deemed an original.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Assignment to be duly executed by their respective authorized officers as of the date first above written.

SELLER:

OTB ACQUISITION LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

BUYER:

OTB HOSPITALITY, LLC
a Texas limited liability company

By: _____
Name: _____
Title: _____

Exhibit A

Domain Names

EXHIBIT E

Post-Petition Contract Assignment Agreement

See attached.

[Exhibit E]

EXHIBIT E

POSTPETITION CONTRACT ASSIGNMENT AND ASSUMPTION AGREEMENT

This Postpetition Contract Assignment and Assumption Agreement, dated as of [____], 2025 (this “Agreement”), is made and entered into by and among OTB Holding LLC, a Delaware limited liability company (“Parent”), OTB Acquisition LLC, a Delaware limited liability company (“Acquisition”), OTB Acquisition of New Jersey LLC, a New Jersey limited liability company (“New Jersey”), Mt. Laurel Restaurant Operations LLC, a New Jersey limited liability company (“Mt. Laurel”), OTB Acquisition of Howard County LLC, a Maryland limited liability company (“Howard”), OTB Acquisition of Baltimore County, LLC, a Maryland limited liability company (“Baltimore”), and OTB Acquisition of Kansas LLC, a Kansas limited liability company (“Kansas” and, collectively with Parent, Acquisition, New Jersey, Mt. Laurel, Howard, and Baltimore, “Sellers”, and each are individually a “Seller”), and OTB Hospitality, LLC, a Texas limited liability company (together with its permitted successors, designees and assigns, “Buyer”). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Asset Purchase Agreement dated as of March 7, 2025 (the “Asset Purchase Agreement”), by and among Buyer and Sellers.

RECITALS

1. Pursuant to the Asset Purchase Agreement, Sellers have, among other things, agreed to sell, transfer, assign, convey and deliver to Buyer and Buyer has agreed to purchase, acquire and accept from Sellers, upon the terms and conditions set forth in the Asset Purchase Agreement, all of the right, title and interest of Sellers in and to the Purchased Assets including, without limitation, the Assigned Postpetition Contracts, free and clear of all Liens (other than Permitted Liens) and Liabilities (other than Assumed Liabilities); and

2. Pursuant to Section 2.3 of the Asset Purchase Agreement, Buyer has agreed to assume, effective as of the Closing, the Assumed Liabilities.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the Asset Purchase Agreement, the Parties hereto, intending to be legally bound, hereby agree as follows:

AGREEMENT

1. In accordance with the Asset Purchase Agreement, Sellers hereby assign the Assigned Postpetition Contracts set forth on Exhibit A of this Agreement, which constitute the Postpetition Contracts designated by Buyer as “Purchased” pursuant to Section 2.6(c)(ii) of the Asset Purchase Agreement, and delegate all of the Liabilities arising from and after the Closing under such Assigned Postpetition Contracts to Buyer, and Buyer hereby accepts assignment and delegation of such Assigned Postpetition Contracts and the Assumed Liabilities on the terms as set forth in the Asset Purchase Agreement. Buyer assumes none of the Excluded Liabilities (including, without limitation, Liabilities with respect to the Postpetition Contracts designated as “Excluded” by Buyer pursuant to Section 2.6(c)(ii) of the Asset Purchase Agreement) and the

Parties agree that all Excluded Liabilities (including, without limitation, Liabilities with respect to the Postpetition Contracts designated as “Excluded”) remain the responsibility of Sellers.

2. This Agreement is being executed by Sellers and Buyer and shall be binding upon each of Sellers and Buyer, their respective successors and assigns, for the respective uses and purposes herein set forth and referred to, and shall be effective as of the date hereof.

3. No provision of this Agreement, express or implied, is intended or shall be construed to confer upon or give to any Person, other than the Parties hereto and their respective successors and permitted assigns, any remedy or claim under or by reason of this Agreement or any term, covenant or condition hereof, and all of the terms, covenants, conditions, promises and agreements contained in this Agreement shall be for the sole and exclusive benefit of each of Sellers and Buyer, their respective successors and permitted assigns.

4. This Agreement may not, without the prior written consent of all parties hereto, be assigned, directly or indirectly, by operation of law or otherwise, and any attempted assignment shall be null and void *ab initio*; provided that, notwithstanding the foregoing, Buyer may assign this Agreement to one (1) or more of its Affiliates. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns

5. None of the provisions of this Agreement may be amended or waived except if such amendment or waiver is in writing and is signed, in the case of an amendment, by Sellers and Buyer, or in the case of a waiver, by the Party(ies) against whom the waiver is to be effective.

6. This Agreement is subject in all respects to the terms and conditions of the Asset Purchase Agreement. Nothing contained in this Agreement shall be deemed to supersede, enlarge or modify any of the representations, warranties, covenants or other agreements contained in the Asset Purchase Agreement, all of which survive the execution and delivery of this Agreement as provided and subject to the limitations set forth in the Asset Purchase Agreement. To the extent any provision of this Agreement is inconsistent with the Asset Purchase Agreement, the provisions of the Asset Purchase Agreement shall govern and control.

7. Section 9.8 of the Asset Purchase Agreement shall apply to this Agreement *mutatis mutandis*.

8. This Agreement may be executed 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. This Agreement or any counterpart may be executed and delivered by facsimile or email with scan attachment copies, or other electronic signature method, including DocuSign, each of which shall be deemed an original.

[Signature pages follow]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized officers as of the date first above written.

SELLERS:

OTB HOLDING LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

OTB ACQUISITION LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

OTB ACQUISITION OF NEW JERSEY LLC,
a New Jersey limited liability company

By: _____
Name: _____
Title: _____

MT. LAUREL RESTAURANT OPERATIONS LLC,
a New Jersey liability company

By: _____
Name: _____
Title: _____

SELLERS, continued:

OTB ACQUISITION OF HOWARD COUNTY LLC,
a Maryland limited liability company

By: _____
Name: _____
Title: _____

OTB ACQUISITION OF BALTIMORE COUNTY, LLC
a Maryland limited liability company

By: _____
Name: _____
Title: _____

OTB ACQUISITION OF KANSAS LLC,
a Kansas limited liability company

By: _____
Name: _____
Title: _____

BUYER:

OTB HOSPITALITY, LLC
a Texas limited liability company

By: _____
Name: _____
Title: _____

Exhibit A

Assigned Postpetition Contracts

SCHEDULES

[To come]