

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re)	Chapter 11
)	
LUCKY # 5409, Inc. <i>et al.</i> ,)	Case No. 16-16264
)	
Debtors.)	Hon. Pamela S. Hollis
)	
)	Date: February 16, 2017
)	Time: 10:00 a.m.

NOTICE OF THE DEBTORS' MOTION FOR ENTRY OF
(I) AN ORDER (A) APPROVING BIDDING PROCEDURES AND BID PROTECTIONS
IN CONNECTION WITH THE SALE OF BRIDGEVIEW IHOP, (B) APPROVING THE
FORM AND MANNER OF NOTICE, (C) SCHEDULING A SALE HEARING AND, IF
NECESSARY, AN AUCTION, (D) APPROVING THE STALKING HORSE BID, AND
(E) GRANTING RELATED RELIEF; AND (II) AN ORDER (A) APPROVING THE
ASSET PURCHASE AGREEMENT, (B) AUTHORIZING THE SALE OF BRIDGEVIEW
IHOP FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND
INTERESTS, (C) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF THE
FRANCHISE AGREEMENT AND CERTAIN OTHER EXECUTORY CONTRACTS
AND UNEXPIRED LEASES, AND (D) GRANTING RELATED RELIEF

PLEASE TAKE NOTICE that on February 16, 2017 at 10:00 a.m. (prevailing Central Time) or as soon thereafter as counsel may be heard, we shall appear before the Honorable Pamela S. Hollis in Courtroom 644 in the United States Courthouse, 219 South Dearborn Street, Chicago, Illinois, or before any other judge who may be sitting in his place and stead, and present the *Debtors' Motion for Entry of (I) an Order (a) Approving Bidding Procedures and Bid Protections in Connection with the Sale of Bridgeview IHOP, (b) Approving the Form and Manner of Notice, (c) Scheduling a Sale Hearing and, If Necessary, an Auction, (d) Approving the Stalking Horse Bid, and (e) Granting Related Relief; and (II) an Order (a) Approving the Asset Purchase Agreement, (b) Authorizing the Sale of Bridgeview IHOP Free and Clear of All Liens, Claims, Encumbrances, and Interests, (c) Authorizing the Assumption and Assignment of the Franchise Agreement and Certain Other Executory Contracts and Unexpired Leases, and (d) Granting Related Relief* (the "Motion"), at which time and place you may appear if you so desire

Respectfully submitted,

LUCKY # 5409, INC., *et al.*
Debtors and Debtors in Possession

By: /s/ Kevin H. Morse
One of their Attorneys

Eugene J. Geekie (06195060)
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CERTIFICATE OF SERVICE

I, Kevin H. Morse, an attorney, certify that I caused a copy of the foregoing Notice of Motion and Motion to be served on the parties listed on the service lists below by overnight mail, messenger service or the Court's ECF System, on February 9, 2017.

By: /s/ Kevin H. Morse

Via U.S. Mail:

Lucky # 5409, Inc.
Azhar Chaudhry
7240 W 79th Street
Bridgeview, IL 60455

Azim Hemani
5219 N. Harlem Ave.
Chicago, IL 60656

B&E Dishwashing
P.O. Box 2155
Northbrook, IL 60065

Grove Leasing
8704 West 98th Place
Palos Hills, IL 60465

Heartland Food Products
1900 West 47th Place
Westwood, KS 66205

IHOP Equipment Lease
450 N. Brand Boulevard, 7th Floor
Glendale, CA 91203

IHOP Franchise Agreement
450 N. Brand Boulevard, 7th Floor
Glendale, CA 91203

Van Eerden Foodservice
650 Ionia Avenue SW
Grand Rapids, MI 49503

Internal Revenue Service
P.O. Box 7346

Philadelphia, PA 19101-7346

Illinois Department of Revenue
Bankruptcy Section
P O Box 64338
Chicago IL 60664-0338

Illinois Department of Employment
Security
33S. State Street, 10th Floor
Chicago, IL 60603-2804

International House of Pancakes LLC
Robert King, c/o Dentons
233 South Wacker Drive, Suite 5900
Chicago, IL 60606-6361

Via ECF:

Sarah E Barngrover
JPMORGAN CHASE BANK,
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UNITED STATES BANKRUPTCY COURT
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MOTION FOR ENTRY OF (I) AN ORDER (A) APPROVING BIDDING PROCEDURES AND BID PROTECTIONS IN CONNECTION WITH THE SALE OF BRIDGEVIEW IHOP, (B) APPROVING THE FORM AND MANNER OF NOTICE, (C) SCHEDULING A SALE HEARING AND, IF NECESSARY, AN AUCTION, (D) APPROVING THE STALKING HORSE BID, AND (E) GRANTING RELATED RELIEF; AND (II) AN ORDER (A) APPROVING THE ASSET PURCHASE AGREEMENT, (B) AUTHORIZING THE SALE OF BRIDGEVIEW IHOP FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS, (C) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF THE FRANCHISE AGREEMENT AND CERTAIN OTHER EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (D) GRANTING RELATED RELIEF

Lucky # 5409, Inc. and Azhar H. Chaudhry, debtors and debtors in possession (collectively, “Debtors”), by and through their undersigned counsel, hereby submit this motion (the “Motion”) for the entry of (I) an order, substantially in the form attached hereto as **Exhibit A** (the “Bidding Procedures Order”): (a) authorizing and approving the bidding procedures in connection with the sale of Bridgeview IHOP;¹ (b) approving the form and manner of notice of an auction and sale hearing with respect to the sale of Bridgeview IHOP free and clear of all liens, claims, encumbrances, and interests (the “Sale”); (c) scheduling such auction and sale hearing; (d) approving the selection of a stalking horse bidder (the “Stalking Horse”

¹ “Bridgeview IHOP” means the Debtors’ interest in the International House of Pancakes restaurant franchise # 5304 located at 7240 West 79th Street in Bridgeview, Illinois.

Bidder”); and (e) granting related relief; and (II) at the conclusion of the Sale Hearing (as defined herein), an order (the “Sale Order”):² (a) approving the asset purchase agreement, attached hereto as **Exhibit B** (the “Agreement”)³; (b) authorizing and approving the Sale of Bridgeview IHOP free and clear of all liens, claims, encumbrances, and other interests pursuant to the Agreement, or a marked version thereof by any Stalking Horse Bidder or Successful Bidder (as defined herein); (c) authorizing the assumption and assignment of the Franchise Agreement and certain other executory contracts and unexpired leases (the “Executory Contracts”) summarized in **Exhibit C** attached hereto; and (d) granting certain related relief. In support of this Motion, Debtors respectfully state as follows:

Jurisdiction

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b).
2. Venue is proper in this Court pursuant to 28 U.S.C. § 1408.
3. The statutory bases for the relief requested herein are sections 105(a), 363, 365, 505, and 507 of title 11 of the United States Code §§ 101–1532 (the “Bankruptcy Code”), and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

² A copy of the Sale Order will be served at least one (1) week prior to the Sale Hearing (as defined herein) to all parties receiving notice of this Motion and all parties that submit a Qualifying Bid, counterparties to any Executory Contract, and all parties that request notice related to the Sale or the Bankruptcy Case.

³ In the event prospective purchasers and the Debtors agree to modify the Agreement prior to the Sale Hearing, the Debtors shall file a notice of revised Agreement with the Court, along with a comparison of the revised Agreement against the Agreement attached hereto as **Exhibit B**.

Preliminary Statement⁴

4. On May 13, 2016 (the "Petition Date"), Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, Debtors continue to operate their business and manage their financial affairs as debtors-in-possession. No trustee, examiner or committee has been appointed in this Chapter 11 Case.

5. Debtor Azhar Chaudhry ("Chaudhry") is an individual and franchisee of an International House of Pancakes restaurant located at 7240 W. 79th Street, Bridgeview, Illinois 60455 ("Bridgeview IHOP"). Bridgeview IHOP is operated through the corporate debtor, Lucky # 5409, Inc. ("Lucky"). Chaudhry is the sole shareholder and president of Lucky, and Bridgeview IHOP is his sole source of income to support his wife and four children. From February 2016 through February 2017, Bridgeview IHOP's day-to-day operations were run by the restaurant's manager, Mohammed "Ron" Matin ("Matin"). Bridgeview IHOP continues to grow and improve its business operations.

6. On May 5, 2016, without ever issuing the Debtors a written notice of default, IHOP filed a complaint against the Debtors in the United States District Court for the Northern District of Illinois seeking specific performance of IHOP's purported exercise of its right of first refusal. On May 13, 2016, IHOP filed a motion for preliminary injunction to force the sale of Bridgeview IHOP for far less than its market value and without material terms of the Sale. That same day, after receiving notice of the preliminary injunction motion, the Debtors filed their voluntary petitions under Chapter 11.

⁴ Capitalized terms used in this Preliminary Statement but not defined herein shall have the meanings set forth elsewhere in the Motion.

7. On August 30, 2016, IHOP filed an adversary complaint (Case No. 16-ap-381) (the “Adversary Case”) against the Debtors seeking a declaratory judgment with respect to the Debtors’ alleged refusal to honor IHOP’s purported exercise of right of first refusal to sell Bridgeview IHOP for \$600,000.⁵

8. IHOP has made it clear that it no longer wanted Chaudhry to be a franchisee or own Bridgeview IHOP. In light of IHOP’s position, since the Petition Date the Debtors have marketed Bridgeview IHOP in an attempt to maximize its value for the Debtors’ bankruptcy estates.

9. On or about January 25, 2017, the Debtors received an offer from a third-party, Mr. Azim Hemani (“Purchaser”) to buy Bridgeview IHOP for \$1,200,000 (the “Purchase Price”). The \$1,200,000 Purchase Price is expected to pay creditors of Bridgeview IHOP in full and provide a substantial, if not full, distribution to Chaudhry’s personal creditors. On February 3, 2017, the Purchaser executed the Agreement contingent on the resolution of the Adversary Proceeding and entry of a Sale Order. *See Exhibit B.*

10. Debtors now intend to sell Bridgeview IHOP for the highest and best offer, contingent on resolution of the Adversary Proceeding, with the Purchaser’s offer of \$1.20 million as the stalking horse bid and any subsequent bids to be a minimum of \$1.275 million, with the exception of IHOP’s right of first refusal at \$1.26 million to include the ROFR Protection.

⁵ IHOP seeks to be unjustly enriched by exercising its right of first refusal to force Debtors to sell Bridgeview IHOP to IHOP for the “fire sale” price of \$600,000, with minimal return to creditors, if any. Debtors have filed a counterclaim to the Adversary Proceeding under 11 U.S.C. § 548(a)(1)(B) to avoid any obligation Debtors incurred as a result of IHOP’s exercise of its right of first refusal. Debtors further believe that IHOP has not properly exercised its right of first refusal and has an absolute defense to the Adversary Proceeding.

11. On February 9, 2017, pursuant to section 11.03(a)(i) of the Franchise Agreement, the Debtors gave IHOP notice of their intent to assign Bridgeview IHOP to the Purchaser. A copy of the Notice of Intent to Assign, without exhibits, is attached as **Exhibit D**.

12. Debtors will continue to informally market Bridgeview IHOP until the Court enters a judgment in the Adversary Proceeding (the “Ruling Date”). In the event Debtors prevail in the Adversary Proceeding, within two (2) business days of the Ruling Date, the Debtors will serve notice of the sale (the “Sale Notice”) as detailed below.

13. Debtors will then formally market Bridgeview IHOP for the thirty (30) day period following the service of the Sale Notice to continue efforts to maximize interest and potentially secure one or more overbids for Bridgeview IHOP. As part of the formal marketing process, Debtors will also request from IHOP a list of the 200 largest franchisees in the country, from which Debtors will solicit auction bids, in order to ensure that the Debtors obtain the highest and best bid for Bridgeview IHOP. Furthermore, should IHOP refuse to cooperate with Debtors’ Sale of Bridgeview IHOP after service of the Sale Notice, Debtors will advertise the Sale in a trade publication and/or website to market the Sale of Bridgeview IHOP. Debtors shall file a certificate of service with respect to any and all other forms of marketing, including without limitation, notice of publication

14. Accordingly, Debtors currently seek approval of the stalking horse bidder for Bridgeview IHOP, including Debtors’ ability to provide customary bid protections and a breakup fee of two percent (5%) of the purchase price. The bid procedures further include a right of first refusal protection for the stalking horse bidder should IHOP exercise its right of first refusal for this offer after the Ruling Date. Debtors are confident that such procedures will maximize the

Debtors' ability to obtain the highest possible value for the Debtors' estate while also minimizing unnecessary expenses associated with presenting multiple petitions before the Court.

15. Selling Bridgeview IHOP is critical to the administration of Debtors' estates, and the Debtors believe that the bidding procedures described herein will result in a sale process to the benefit of all creditors and parties in interest. Accordingly, Debtors respectfully submit that the proposed Sale is a sound exercise of their business judgment, is in the best interests of their Chapter 11 estates and creditors, and should be approved.

Relief Requested

16. By this Motion, Debtors seek entry of the Bidding Procedures Order:

- a. authorizing and approving the Bidding Procedures for competitive bidding in connection with the Sale;
- b. approving the form and manner of the Sale Notice, substantially in the form attached as Exhibit 1 to the Bidding Procedures Order, and Auction (as defined herein), if necessary, the Sale Hearing (as defined herein), and related matters;
- c. authorizing and approving the Stalking Horse Bidder, including Debtors' ability to grant customary Bid Protections to the Stalking Horse Bidder; and
- d. approve the following deadlines, subject to modification and establishment after the Ruling Date:
 - Sale Notice Service: The Debtors are authorized to serve the Sale Notice, as attached to the Bidding Procedures Order as Exhibit 1, within **two (2) business days after the Ruling Date** (entry of the judgment in favor of the Debtors in the Adversary Proceeding);
 - Bid Deadline: **Thirty (30) days after the Ruling Date** as the deadline by which all bids for Bridgeview IHOP (as well as the deposit and all other required documentation under the Bidding Procedures for Qualified Bidders) must be actually received pursuant to the Bidding Procedures (the "Bid Deadline");
 - Auction: **Two (2) business days after the Bid Deadline**, as the date and time the auction, if one is needed (the "Auction"), will be

held at the offices of Arnstein & Lehr LLP, located at 120 S. Riverside Plaza, Suite 1200, Chicago, Illinois 60606;

- **Sale Objection Deadline: Two (2) business days after the Auction, if one is held, or four (4) business days after the Bid Deadline**, as the deadline to object to the Sale transactions (the “Objection Deadline”); and
- **Sale Hearing: The first available court date in the week following the Objection Deadline**, as the date and time for the hearing to approve the Sale (the “Sale Hearing”).

17. By this Motion, Debtors also seek entry of the Sale Order at the conclusion of the Sale Hearing:

- a. authorizing and approving the Sale on the terms substantially set forth in the Agreement to the Stalking Horse Bidder or a successful bidder arising from the Auction, if any (collectively, the “Successful Bidder”); and
- b. authorizing and approving the assumption and assignment of the Franchise Agreement and certain other executory contracts and unexpired leases to the Successful Bidder.

18. Debtors reserve the right to file and serve any supplemental pleading or declaration, including any pleading summarizing the competitive bidding and sale process and the results thereof, in support of their request for entry of the Sale Order before the Sale Hearing, as appropriate and necessary in Debtors’ reasonable business judgment.

Overview of the Agreement

A. Material Terms of the Agreement.⁶

19. The principal terms of the Agreement are summarized in the following chart:⁷

Agreement Provision	Summary Description
Agreement Parties	<u>Sellers:</u> Lucky # 5409, Inc. and Azhar H. Chaudhry

⁶ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

⁷ This summary is provided for the convenience of the Court and parties in interest. To the extent there is any conflict between this summary and the Agreement, the Agreement shall govern in all respects.

Agreement Provision	Summary Description
(Recitals)	<u>Stalking Horse Bidder</u> : Azim Hemani
Purchase Price (§ C.1)	Total consideration equaling one million two hundred thousand dollars (\$1,200,000.00).
Acquired Assets (§ B.1)	Acquired assets shall consist generally of the following: <ul style="list-style-type: none"> • Bridgeview IHOP and all personal property of Sellers used in the operation thereof
Assumed Obligations (§ D)	Assumed Obligations shall consist generally of those obligations provided for in the Franchise Agreement and other agreements related to Bridgeview IHOP.
Excluded Assets (§ B.2)	Excluded Assets shall consist generally of the following: <ul style="list-style-type: none"> • Bank accounts related to Bridgeview IHOP and all personal assets of Chaudhry, except his interest in Bridgeview IHOP
Excluded Liabilities (§ B.4)	Excluded Liabilities shall consist generally of liabilities arising from the following: <ul style="list-style-type: none"> • Any and all liabilities not arising out of the Franchise Agreement or other unexpired agreements related to Bridgeview IHOP
Closing Consideration Adjustment	Customary closing consideration adjustment.
Representations and Warranties (§§ F-G)	Customary representations and warranties by Purchaser and Seller.
Deposit (§ C.2)	\$60,000.00 in immediately available funds. (5% of the Stalking Horse Bid)

Bidding Procedures

A. The Bidding Procedures

20. To efficiently solicit, receive, and evaluate bids in a fair and accessible manner, Debtors have developed and proposed certain bidding procedures (the “Bidding Procedures”) as detailed below. The Bidding Procedures are designed to encourage all entities to put their best bids forward and to maximize the value of the Debtors’ estate. The proposed Bidding Procedures are as follows:

- a. **Bridgeview IHOP**. Bridgeview IHOP means Debtors’ interest in the International House of Pancake restaurant located at 7240 W. 79th Street, Bridgeview, Illinois 60455. Bridgeview IHOP will be sold to the Stalking Horse Bidder subject to qualified overbids.

- b. **Bid Requirements.** Any Bid for Bridgeview IHOP must be submitted in writing and determined by Debtors, in their reasonable business judgment, to have satisfied the following requirements (the satisfaction of which creates a “Qualified Bid” and “Qualified Bidder”):
- (i) **Stalking Horse Initial Overbid:** Debtors have entered into the Agreement with Purchaser, Azim Hemani, to be the Stalking Horse Bidder (the “Stalking Horse Bidder”) for the purchase of Bridgeview IHOP. The consideration proposed by each Bid seeking to acquire Bridgeview IHOP must equal or exceed the sum of:
 - (A) cash in the amount of \$1,200,000.00 (the “Stalking Horse Bid”); plus
 - (B) \$75,000 in cash (together with the Stalking Horse Bid, the “Stalking Horse Initial Overbid”).
 - (ii) **Deposit:** Each Bid must be accompanied by a cash deposit in the amount of five percent (5%) of the Bid to be held in an escrow account to be identified and established by Debtors (the “Deposit”).
 - (iii) **Agreement:** Each Bid seeking to acquire Bridgeview IHOP shall include a blackline clearly marked to show any changes requested by the Bidder versus the Agreement with respect to Bridgeview IHOP.
 - (iv) **Closing Date:** Each Bid must provide for a closing to occur on or within thirty (30) days of entry of the Sale Order, unless continued by agreement.
 - (v) **Superior Proposal; Bid Documents:** Except as otherwise provided herein, each Bid must be, in Debtors’ reasonable business judgment, substantially on the same or better terms than the terms of the Agreement and the Stalking Horse Bid. Each Bid must include duly executed transaction documents necessary to effectuate the restructuring transactions contemplated in the Bid (the “Bid Documents”). The Bid Documents shall include a copy of the applicable Agreement clearly marked to show all changes requested by the Bidder (including those related to the Purchase Price) as well as all other material documents integral to such Bid.
 - (vi) **Demonstrated Financial Capacity; Committed Financing:** A Bidder must have, in IHOP and Debtors’ reasonable business judgment, the necessary financial capacity to consummate the

proposed transactions required by its Bid. Each Bid must also include committed financing, documented to Debtors' reasonable satisfaction, that demonstrates the Bidder has received sufficient debt and/or equity funding commitments to satisfy the Bidder's Purchase Price and other obligations under its Bid, including the identity and contact information of the specific person(s) or entity(s) responsible for such committed financing whom Arnstein & Lehr LLP should contact regarding such committed financing. Such funding commitments or other financing shall not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions reasonably acceptable to Debtors.

- (vii) Identity: Each Bid must fully disclose the identity of each entity that will be bidding or otherwise participating in connection with such Bid (including each equity holder or other financial backer of the Bidder if such Bidder is an entity formed for the purpose of consummating the proposed transaction contemplated by such Bid), and the complete terms of any such participation. Under no circumstances shall any undisclosed principals, equity holders, or financial backers be associated with any Bid. Each Bid must also include contact information for the specific person(s) whom Arnstein & Lehr LLP should contact regarding such Bid.
- (viii) Contingencies; No Financing or Diligence Outs: A Bid shall not be conditioned on the obtaining or the sufficiency of financing or any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy at the closing of specified representations and warranties or the satisfaction at the closing of specified conditions, which shall not be more burdensome, in Debtors' reasonable business judgment, than those set forth in the Agreement.
- (ix) Irrevocable: A Bidder's Bid shall be irrevocable unless and until Debtors' accept a higher Qualified Bid (as defined herein) and such Bidder is not selected as the Backup Bidder (as defined herein).
- (x) Expenses: Each Bidder presenting a Bid or Bids shall bear its own costs and expenses (including legal fees) in connection with the proposed transaction.
- (xi) Authorization: Each Bid must contain evidence that the Bidder has obtained authorization or approval from its Board of Directors (or a comparable governing body acceptable to Debtors) with respect

to the submission of its Bid and the consummation of the transactions contemplated in such Bid.

- (xii) As-Is, Where-Is: Each Bid must include a written acknowledgement and representation that the Bidder: (i) has had an opportunity to conduct any and all due diligence regarding Bridgeview IHOP prior to making its offer; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or Bridgeview IHOP in making its Bid; and (iii) 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 Bridgeview IHOP or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Bidder's proposed Agreement.

- c. **Bid Deadline.** Each Bid must be transmitted via email (in .pdf or similar format) so as to be **actually received** on or before **thirty (30) days after the Ruling Date** (the "**Bid Deadline**") by each of the following:
 - (i) Debtors' counsel, Arnstein & Lehr LLP, 120 S. Riverside Plaza, Suite 1200, Chicago, Illinois 60606, Attn.: Kevin H. Morse (khmorse@arnstein.com).
 - (ii) IHOP's counsel, Dentons US LLP, 233 S. Wacker, Suite 5900, Chicago, Illinois 60606, Attn: Robert Richards (robert.richards@dentons.com).
- d. **The Auction.** If one or more Qualified Bids are submitted, in addition to the Stalking Horse Bid, Debtors will conduct an auction (the "**Auction**") to determine the highest and best offer with respect to Bridgeview IHOP. The Qualified Bid that, in Debtors' reasonable business judgment, constitutes the highest and best offer will become the "**Successful Bid**" and the applicable Qualified Bidder, the "**Successful Bidder.**" Subject to court approval, the Successful Bidder will then be entitled to purchase Bridgeview IHOP in accordance with the terms of the Successful Bid. If no additional Qualified Bids are submitted, Debtors will cancel the Auction and proceed with the Stalking Horse Bid as the Successful Bid.
- e. **Terms of Overbids.** During the course of the Auction, Debtors shall, after the submission of each Overbid, promptly inform each Qualified Bidder which Overbid reflects, in Debtors' view, the highest or otherwise best Bid for Bridgeview IHOP. All Overbids at the Auction shall initially be in minimum increments of \$25,000 in cash.

- f. **Highest or Otherwise Best Bid.** When determining the highest or otherwise best Qualified Bid, as compared to other Qualified Bids, the Debtors may, in their sole discretion, consider the following factors in addition to any other factors that Debtors deem appropriate: (a) the number, type, and nature of any changes to the applicable Agreement requested by the Qualified Bidder; (b) the amount and nature of the total consideration; (c) the likelihood of the Bidder's ability to close a transaction and the timing thereof; (d) the net economic effect of any changes to the value to be received by each of the Sellers' estate from the transaction contemplated by the Bid Documents; and (e) the tax consequences of such Qualified Bid.
- g. **Backup Bidder.** If an Auction is conducted, the Qualified Bidder with the next-highest or otherwise second-best Qualified Bid at the Auction for Bridgeview IHOP, as determined by Debtors in the exercise of their reasonable business judgment, shall be required to serve as "**Backup Bidder.**" Should the Successful Bidder fail to consummate the sale of Bridgeview IHOP, for any reason whatsoever, the Backup Bidder will become the new Successful Bidder and will be both entitled and obligated to consummate the sale of Bridgeview IHOP. Debtors may designate as many Backup Bidders as necessary until either Bridgeview IHOP is sold or no Qualified Bidders remain eligible to serve as Backup Bidder.
- h. **Bid Protections.**
- (i) **Stalking Horse:** In the event that Debtors accept a Qualified Bid in accordance with the Bidding Procedures Order, the Stalking Horse Bidder shall be entitled to payment of an expense reimbursement fee (the "**Break-Up Fee**") in the amount of Sixty Thousand Dollars (\$60,000.00), equal to five percent (5%) of the Purchase Price, as may be permitted by and to be paid in accordance with the Bidding Procedures Order, which Break-Up Fee is intended to reimburse Purchaser for expenses incurred entering into and prosecuting this transaction, including but not limited to Purchaser's due diligence, travel and other out-of-pocket expenses, and professional fees and costs. The Break-Up Fee shall be paid in cash from the proceeds of and concurrent with the closing of any Superior Proposal or as otherwise ordered by the Bankruptcy Court. The Break-Up Fee shall be paid as and constitute an administrative expense of Seller under Sections 503(b)(1) and 507(a)(1) of the Bankruptcy Code.
- (ii) **Right of First Refusal Protection:** Pursuant to § 11.04 of the Franchise Agreement, IHOP may accept for itself or its assignee any proposed assignment of Bridgeview IHOP on the terms and conditions specified in the notice of the proposed assignment provided by Debtors for IHOP's approval (the "**Notice**"). To

promote open bidding and to allay concerns that IHOP might exercise its right of first refusal to preempt the Successful Bidder, Debtors request the Court approve and authorize the Notice and Agreement to include compensatory protection in the amount of \$60,000 (the “ROFR Protection”) to be paid by IHOP to the Successful Bidder should IHOP reject the assignment to the Successful Bidder or exercise its right of first refusal. \$60,000 represents five percent (5%) of the Purchase Price. For avoidance of doubt, in the event the right of first refusal is exercised as to the Stalking Horse Bid as the Successful Bidder, the amount paid by IHOP must equal the sum of full value of the Stalking Horse Bid paid, in cash, plus the Break-Up Fee (\$1,260,000).

- i. **Return of Deposit.** The Successful Bidder’s Deposit shall be applied to the purchase price of such transaction at closing. The Deposits for each Qualified Bidder, including the Stalking Horse Bidder if it is not the Successful Bidder or Backup Bidder, shall be held in one or more interest-bearing escrow accounts on terms acceptable to Debtors at their sole discretion and shall be returned (other than with respect to any Successful Bidder or Backup Bidder) on or within five (5) business days after the Auction. Upon return of the Deposits, their respective owners shall receive any and all interest that will have accrued thereon. If a Successful Bidder fails to consummate a proposed transaction because of a breach by such Successful Bidder, Debtors will not have any obligation to return the Deposit attributable to such Successful Bidder, which may be retained by Debtors as damages, without limiting any and all rights, remedies, and/or causes of action that may be available to Debtors, and Debtors shall be free to consummate the proposed transaction with the Backup Bidder without the need for an additional hearing or order of the Bankruptcy Court.
- j. **Reservation of Rights.** Debtors reserve their right to modify these Bidding Procedures, in their reasonable business judgment, in any manner that will best promote the goals of the bidding process, or impose, at or prior to the Auction, additional customary terms and conditions on the sale of the Franchise, including, without limitation: (a) extending the deadlines set forth in these Bidding Procedures; (b) adjourning the Auction at the Auction and/or adjourning the Sale Hearing in open court without further notice; (c) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction, including by requesting that Qualified Bidders submit last or final bids on a “blind” basis; (d) canceling the Auction; (e) rejecting any or all Bids or Qualified Bids (other than the Stalking Horse Bid); and (f) increasing the Minimum Overbid Increment.

21. Importantly, the Bidding Procedures recognize Debtors' fiduciary obligations to maximize sale value, and, as such, do not impair Debtors' ability to consider all qualified bid proposals, and preserve Debtors' right to modify the Bidding Procedures as necessary or appropriate to maximize value for Debtors' estate.

B. Form and Manner of Sale Notice.

22. On or within two (2) business days of entry of a judgment in the Adversary Proceeding in their favor, Debtors will cause the Sale Notice to be served on: (a) the U.S. Trustee; (b) counsel to IHOP; (c) the Stalking Horse Bidder; (d) all entities known to have expressed a bona fide interest in acquiring Bridgeview IHOP; (e) the two hundred (200) largest franchisees from IHOP; (f) all creditors of Debtors; (g) all federal, state, and local taxing authorities, recording offices or any other governmental authorities that may have claims, contingent or otherwise, against the Debtors' estates, or that are parties to governmental approvals or permits, or that have a reasonably known interest in the relief requested by the Motion; (h) all contractual counterparties to the Executory Contracts; and (i) all parties who have filed appearances or requested notices through the Court's CM/ECF system.

23. Debtors will continue to market the Sale of Bridgeview IHOP until the Bid Deadline (or entry of an adverse judgment in the Adversary Proceeding). Upon entry of judgment in their favor, as noted above, Debtors will seek a list of the two hundred (200) largest franchisees from IHOP to dispel any concerns IHOP may have regarding the legitimacy of the Sale. Furthermore, in the event IHOP refuses to cooperate with Debtors' Sale of Bridgeview IHOP, Debtors shall advertise the Sale in a trade publication and/or website to market the Sale of Bridgeview IHOP. Debtors shall file a certificate of service with respect to any and all other forms of marketing, including without limitation, notice of publication.

24. Debtors respectfully submit that the Sale Notice is reasonably calculated to provide all interested parties with timely and proper notice of the proposed Sale, including: (a) the date, time and place of the Auction (if one is held); (b) the Bidding Procedures; (c) the deadline for filing objections to the Sale and entry of the Sale Order, and the date, time, and place of the Sale Hearing; (d) a reasonably specific identification of Bridgeview IHOP; (e) instructions for promptly obtaining a copy or copies of the applicable Agreement; and (f) a description of the Sale as being free and clear of liens, claims, interests, and other encumbrances, with all such liens, claims, interests, and other encumbrances attaching with the same validity and priority to the Sale proceeds.

25. Debtors further submit that notice of this Motion and the related hearing to consider entry of the Bidding Procedures Order, coupled with service of the Sale Notice as provided for herein, constitutes good and adequate notice of the Sale and the proceedings with respect thereto in compliance with, and satisfaction of, the applicable requirements of Bankruptcy Rule 2002. Debtors propose that no other or further notice of the Sale shall be required. Accordingly, Debtors request that this Court approve the form and manner of the Sale Notice.

C. Summary of the Executory Contracts and Unexpired Leases to be Assumed and Assigned

26. Debtors also seek approval of certain procedures to facilitate the fair and orderly assumption and assignment of the Franchise Agreement and certain other executory contracts and unexpired leases, summarized in Exhibit C (collectively, including the Franchise Agreement, the “Executory Contracts”), in connection with the Sale. In addition to the Franchise Agreement, the Executory Contracts include certain ongoing agreements with IHOP and other third party

vendors for goods and services critical to Bridgeview IHOP's operation as a going-concern, including without limitation, equipment, and food products. The assumption and assignment of the Executory Contracts is necessary to enable Debtors or any Successful Bidder to continue operating Bridgeview IHOP. If the Executory Contracts are not assumed and assigned, the Bridgeview IHOP will lose all value, thereby greatly prejudicing Debtors' estates. Upon the entry of the Bidding Procedures Order, Debtors shall provide notice to applicable contractual counterparties of Debtors' intent to assume and assign the Executory Contracts to the Successful Bidder (the "Assumption and Assignment Notice"). Debtors request that the Court approve and authorize the Objection Deadline as the deadline for counterparties to object to the assumption and assignment of the Executory Contracts.

Basis for Relief

A. The Relief Sought in the Bidding Procedures Order Is in the Best Interests of Debtors' Estate and Should be Approved.

27. Courts have made clear that a debtor's business judgment is entitled to substantial deference with respect to the procedures to be used in selling an estate's assets. *See, e.g., Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991) ("Under Section 363, the debtor in possession can sell property of the estate . . . if he has an 'articulated business justification' . . .") (internal citations omitted); *In re Integrated Resources, Inc.*, 147 B.R. 650, 656–7 (S.D.N.Y. 1992) (noting that bidding procedures that have been negotiated by a debtor in possession are to be reviewed according to the deferential "business judgment" standard, under which such procedures and arrangements are "presumptively valid"); *In re 995 Fifth Ave. Assocs., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (same).

28. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See, e.g., Corp. Assets, Inc. v. Paloian*, 368 F.3d 761, 765

(7th Cir. 2004) (in a bankruptcy sale, the “governing principle . . . is to secure the highest price for the benefit of the estate and creditors”); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 564–65 (8th Cir. 1997) (in bankruptcy sales, “a primary objective of the Code [is] to enhance the value of the estate at hand”); *Integrated Resources*, 147 B.R. at 659 (“[I]t is a well-established principle of bankruptcy law that the objective of the bankruptcy rules and the trustee’s duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.”) (quoting *In re Atlanta Products, Inc.*, 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988)).

29. To that end, courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore are appropriate in the context of bankruptcy transactions. *See, e.g., Integrated Resources*, 147 B.R. at 659 (bidding procedures “are important tools to encourage bidding and to maximize the value of the debtor’s assets”); *In re Fin. News Network, Inc.*, 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1991) (“court-imposed rules for the disposition of assets . . . [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estate”); *In re AQP Liquidating Inc. f/k/a QT, Inc.*, No. 07-03227 (Bankr. N.D. Ill. Nov. 28, 2007) (requiring minimum overbids to exceed purchaser’s offer of \$410,000 by at least \$41,000 (10.0 percent of total purchase price)); *In re Comdisco, Inc.*, No. 01-24795 (Bankr. N.D. Ill. Aug. 9, 2001) (requiring minimum overbids to exceed purchaser’s offer of \$610 million by at least \$43.3 million (approximately 7.0 percent of total purchase price)).

30. Debtors submit that the proposed Bidding Procedures will promote active bidding from seriously interested parties and will elicit the best and highest offers available for Bridgeview IHOP. The proposed Bidding Procedures will allow Debtors to conduct the Sale in a controlled, fair, and open fashion that will encourage participation by financially capable bidders

who will submit the best offer for Bridgeview IHOP and who can demonstrate the ability to close a transaction. In particular, the Bidding Procedures contemplate an open auction process with minimum barriers to entry and provide potential bidding parties with sufficient time to perform due diligence and acquire the information necessary to submit a timely and well-informed bid.

31. Debtors submit that the proposed Bidding Procedures will encourage competitive bidding, are appropriate under the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings, and are consistent with other procedures previously approved by this Court and other Courts in this District. *See In re Qualteq, Inc.*, No. 12-05861 (Bankr. N.D. Ill. Oct. 4, 2012); *In re Giordano's Enters., Inc.*, No. 11-06098 (Bankr. N.D. Ill. Oct. 25, 2011); *In re Canopy Financial, Inc.*, No. 09-44943 (Bankr. N.D. Ill. Jan. 27, 2010); *In re Gas City, Ltd.*, No. 10-47879 (Bankr. N.D. Ill. Jan. 13, 2010); *In re Kimball Hill, Inc.*, No. 08-10095 (Bankr. N.D. Ill. Sept. 9, 2008); *In re Neumann Homes, Inc.*, No. 07-20412 (Bankr. N.D. Ill. Feb. 28, 2008).

B. The Form and Manner of the Sale Notice Should be Approved.

32. Pursuant to Bankruptcy Rule 2002(a), Debtors are required to provide creditors with 21 days' notice of the Sale Hearing. Pursuant to Bankruptcy Rule 2002(c), such notice must include the time and place of the Auction and the Sale Hearing and the deadline for filing any objections to the relief requested herein.

33. As noted above, within two business days of entry of the Bidding Procedures Order, Debtors will cause the Sale Notice to be served upon the following parties: (a) the U.S. Trustee; (b) counsel to IHOP; (c) the Stalking Horse Bidder; (d) all entities known to have expressed a bona fide interest in acquiring Bridgeview IHOP; (e) the two hundred (200) largest franchisees from IHOP; (f) all creditors of Debtors; (g) all federal, state, and local taxing

authorities, recording offices or any other governmental authorities that may have claims, contingent or otherwise, against the Debtors' estates, or that are parties to governmental approvals or permits, or that have a reasonably known interest in the relief requested by the Motion; (h) all contractual counterparties to the Executory Contracts; and (i) all parties who have filed appearances or requested notices through the Court's CM/ECF system.

34. In addition, to the service of the Sale Notice in paragraph 28 above, Debtors will immediately commence the diligent marketing process for the Sale of Bridgeview IHOP and will continue to market the Sale of Bridgeview IHOP until the Bid Deadline. As noted above, Debtors will seek a list of the two hundred (200) largest franchisees from IHOP to dispel any concerns IHOP may have regarding the legitimacy of the Sale. Furthermore, in the event IHOP refuses to cooperate with Debtors' Sale of Bridgeview IHOP, Debtors shall advertise the Sale in a trade publication and/or website to market the Sale of Bridgeview IHOP. Debtors shall file a certificate of service with respect to any and all other forms of marketing, including without limitation, notice of publication.

35. Debtors submit that notice of this Motion and the related hearing to consider entry of the Bidding Procedures Order, coupled with service of the Sale Notice as provided for herein, constitutes good and adequate notice of the Sale and the proceedings with respect thereto in compliance with, and satisfaction of, the applicable requirements of Bankruptcy Rule 2002. Accordingly, Debtors request that this Court approve the form and manner of the Sale Notice.

C. The Stalking Horse Bid, Break-Up Fee, Right of First Refusal Protection are Appropriate and Should be Approved.

36. As noted above, Debtors have entered into the Agreement with Mr. Hemani as Purchaser for Bridgeview IHOP, and designated him as the "Stalking Horse Bidder" in

accordance with the Bidding Procedures. In addition, the Stalking Horse Bidder will subject its bid to higher and better offers, and has requested customary bid protections if the Stalking Horse Bidder is outbid at the Auction by other bidders. Accordingly, Debtors also seek authority to offer customary bid protections for the Stalking Horse Bidder, in an amount of sixty thousand (\$60,000.00) (which amount represents five (5%) percent of the Purchase Price), which Break-Up Fee and ROFR Protection (collectively, the “Bid Protections”) is intended to reimburse the Stalking Horse Bidder for expenses incurred entering into and prosecuting this Sale, including but not limited to the Stalking Horse Bidder's due diligence, travel and other out-of-pocket expenses, and professional fees and costs.

37. The use of a stalking horse bidder in a public auction process for sales pursuant to section 363 of the Bankruptcy Code is a customary practice in chapter 11 cases, as the use of a stalking horse bid is, in many circumstances, the best way to maximize value in an auction process by “establish[ing] a framework for competitive bidding and facilitat[ing] a realization of that value.” *Official Committee of Unsecured Creditors v. Interforum Holding LLC*, 2011 WL 2671254, No. 11-219, *1 (E.D. Wis. July 7, 2011). In addition, stalking horse bidders virtually always require break-up fees and, in many cases, other forms of bidding protections as an inducement for “setting the floor at auction, exposing its bid to competing bidders, and providing other bidders with access to the due diligence necessary to enter into an asset purchase agreement.” *Id.* (internal citations omitted).

38. Courts considering the propriety of a proposed break-up fee consider whether it is in the best interests of the debtor's estate. *See In re Twenver, Inc.*, 149 B.R. 954, 956 (Bankr. D. Colo. 1992) (considering “(1) whether the relationship of the parties who negotiated the fee is marked by self-dealing or manipulation; (2) whether the fee hampers, rather than

encourages, bidding; and (3) whether the amount of the fee is reasonable in relation to the proposed purchase price”); *Integrated Resources*, 147 B.R. at 657 (same).

39. Debtors believe that the approval of the Stalking Horse Bid, including the allowance of the Bid Protections, is in the best interests of the Debtors’ estate and their creditors. Any Stalking Horse Bid establishes a floor for further bidding and could potentially increase the value of Bridgeview IHOP for the benefit of their estate. In this case, the five percent (5%) Break-Up Fee is within the range of such fees approved by this and other courts and necessary given the nature of the transaction and Debtors’ history with IHOP. *See In re Qualteq, Inc.*, No. 12-05861 (Bankr. N.D. Ill. Oct. 4, 2012) (approving break-up fee of 2.9 percent of the aggregate purchase price); *In re Giordano’s Enters., Inc.*, No. 11-06098 (Bankr. N.D. Ill. Oct. 25, 2011) (approving break-up fee of 3.0 percent of the cash purchase price plus \$100,000 in expense reimbursements); *In re Canopy Financial, Inc.*, No. 09-44943 (Bankr. N.D. Ill. Dec. 23, 2009) (approving break-up fee of 2.5 percent of the cash purchase price plus \$150,000 in expense reimbursements); *In re Neumann Homes, Inc.*, No. 07-20412 (Bankr. N.D. Ill. Feb. 28, 2008) (approving break-up fee of 3 percent of the purchase price).

40. Further, the contemplated Bid Protections are a critical inducement for the Stalking Horse Bidder who has expended time and resources negotiating, drafting, and performing due diligence activities necessitated by the Sale transactions, despite the fact that its bid will be subject not only to Court approval, but also to overbidding by third parties and a proper exercise of IHOP’s right of first refusal. Similarly, the ROFR Bid Protection is necessary to allay any concerns prospective bidders might have with respect to IHOP’s right of first refusal. Without the ROFR Bid Protection, prospective bidders may be reluctant to invest time and resources to investigate and participate in the Sale of Bridgeview IHOP. Thus, the use of the Bid

Protections, including the Break-Up Fee and ROFR Protection, will facilitate the best and highest sale price for Bridgeview IHOP and is in the best interests of Debtors' estates.

D. The Sale Should Be Approved as an Exercise of Sound Business Judgment.

41. Section 363(b)(1) of the Bankruptcy Code provides that a debtor, "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). A sale of the debtor's assets should be authorized pursuant to section 363 of the Bankruptcy Code if a sound business purpose exists for the proposed transaction. *See, e.g., In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991) ("Under Section 363, the debtor in possession can sell property of the estate . . . if he has an 'articulated business justification'"); *see also In re Martin*, 91 F.3d 389, 395 (3d. Cir. 1996) (*citing In re Schipper*); *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *In re Telesphere Communications, Inc.*, 179 B.R. 544, 552 (Bankr. N.D. Ill. 1999).

42. Once Debtors articulate a valid business justification, "[t]he business judgment rule 'is a presumption that in making the business decision the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action was in the best interests of the company.'" *Integrated Resources*, 147 B.R. at 656; *In re Johns-Manville Corp.*, 60 B.R. 612, 615–16 (Bankr. S.D.N.Y. 1986) ("a presumption of reasonableness attaches to a debtor's management decisions.").

1. A Sound Business Purpose Exists for the Sale.

43. As set forth above, Debtors have a sound business justification for selling Bridgeview IHOP at this time. Debtors have designated a Stalking Horse Bid; however, Bridgeview IHOP has been and will continue to be marketed to entities interested in acquiring

such interest. The sale of Bridgeview IHOP will be subject to competing bids, enhancing Debtors' ability to receive the highest or otherwise best value for Bridgeview IHOP. Consequently, the ultimately successful bid or bids, whether it is the Stalking Horse Bid or any Overbid, will constitute, in Debtors' reasonable business judgment, the highest or otherwise best offer for Bridgeview IHOP and will provide a greater recovery for the bankruptcy estate than any known or practicably available alternative.

2. Adequate and Reasonable Notice of the Sale Will Be Provided.

44. As described above, the Sale Notice: (a) will be served in a manner that provides more than 21 days' notice of the date, time, and location of the Sale Hearing; (b) informs interested parties of the deadlines for objecting to the Sale; and (c) otherwise includes all information relevant to parties interested in or affected by the Sale. Significantly, the form and manner of the Sale Notice will have been approved by this Court pursuant to the Bidding Procedures Order after notice and a hearing before it is served on parties in interest.

3. The Sale and Purchase Price Will Reflect a Fair Value Transaction.

45. It is well-settled that, where there is a court-approved auction process, a full and fair price is presumed to have been obtained for the assets sold, as the best way to determine value is exposure to the market. *See Bank of Am. Nat'l Trust & Sav. Ass'n. v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 457 (1999); *see also In re Trans World Airlines, Inc.*, No. 01-00056, 2001 WL 1820326, *4 (Bankr. D. Del. 2001) (while a "section 363(b) sale transaction does not require an auction procedure, . . . the auction procedure has developed over the years as an effective means for producing an arm's length fair value transaction."). This is especially true where, as here, Bridgeview IHOP will be subjected to a marketing process and scrutinized by Debtors and their creditors, including IHOP.

46. Moreover, as noted above, Debtors will market Bridgeview IHOP and solicit offers consistent with the Bidding Procedures through the Bid Deadline. In this way, the number of bidders that are eligible to participate in a competitive Auction process will be maximized.

4. The Sale Has Been Proposed in Good Faith and Without Collusion, and the Successful Bidder Will Be a “Good Faith Purchaser.”

47. Debtors request that the Court find that the Successful Bidder is entitled to the benefits and protections provided by section 363(m) of the Bankruptcy Code in connection with the sale of Bridgeview IHOP.

48. Section 363(m) of the Bankruptcy Code provides in pertinent part:

[t]he 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, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

49. Section 363(m) of the Bankruptcy Code thus protects the purchaser of assets sold pursuant to section 363 of the Bankruptcy Code from the risk that it will lose its interest in the purchased assets if the order allowing the sale is reversed on appeal, as long as such purchaser leased or purchased the assets in “good faith.” While the Bankruptcy Code does not define “good faith,” courts have held that the good faith of a purchaser is shown by the integrity of his conduct during the course of the sale proceedings, finding that where there is a lack of such integrity, a good faith finding may not be made. *See, e.g., In the Matter of Andy Frain Servs., Inc.*, 798 F.2d 1113 (7th Cir. 1986) (a purchaser’s good faith is lost by “fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of

other bidders”) (internal citations omitted); *In re Sasson Jeans, Inc.*, 90 B.R. 608, 610 (S.D.N.Y. 1988) (same).

50. Debtors submit that the Successful Bidder will be a “good faith purchaser” within the meaning of section 363(m) of the Bankruptcy Code, and the Agreement, or any marked versions thereof, will be good faith agreements on arms’ length terms entitled to the protections of section 363(m) of the Bankruptcy Code. First, any Sale agreement with a Successful Bidder will be the culmination of a competitive Auction process in which all parties will presumably be represented by counsel and all negotiations will be conducted on an arm’s-length, good faith basis. Accordingly, Debtors believe the consideration to be received pursuant to the Auction will be fair and reasonable. Second, the Bidding Procedures are designed to ensure that no party is able to exert undue influence over the Sale process. Debtors will not choose as the Successful Bidder or Backup Bidder (as defined in the Bidding Procedures) any entity whose good faith under section 363(m) of the Bankruptcy Code can reasonably be doubted, and, as may be necessary, will be prepared to present the Court through testimony or proffer at the Sale Hearing with sufficient evidence to allow the Court to find that the “good faith” standard of section 363(m) of the Bankruptcy Code has been satisfied. Finally, any bids that Debtors ultimately determine to be a Successful Bid will have been evaluated and approved by Debtors with notice to all creditors. Accordingly, Debtors believe that any Successful Bidder and the Agreement (or marked version thereof) should be entitled to the full protections of section 363(m) of the Bankruptcy Code.

5. The Sale Should be Approved “Free and Clear” Under § 363(f).

51. Section 363(f) of the Bankruptcy Code permits a debtor to sell property free and clear of another party’s interest in the property if: (a) applicable nonbankruptcy law permits

such a free and clear sale; (b) the holder of the interest consents; (c) the interest is a lien and the sale price of the property exceeds the value of all liens on the property; (d) the interest is the subject of a bona fide dispute; or (e) the holder of the interest could be compelled in a legal or equitable proceeding to accept a monetary satisfaction of its interest. *See* 11 U.S.C. § 363(f). The term “any interest,” as used in section 363(f) of the Bankruptcy Code, is not defined anywhere in the Bankruptcy Code. The Seventh Circuit, however, has construed the term “any interest” to be “very broad.” *See Precision Indus., Inc. v. Qualitech Steel SBQ, LLC*, 327 F.3d 537, 545 (7th Cir. 2003); *Compak Co., LLC v. Johnson*, 415 B.R. 334, 338–39 (N.D. Ill. 2009).

52. Section 363(f) is drafted in the disjunctive. Thus, satisfaction of any of the requirements enumerated therein will suffice to warrant Debtors’ sale of Bridgeview IHOP free and clear of all interests (i.e., all liens, claims, rights, interests, charges, or encumbrances), except with respect to any interests that may be assumed liabilities under the applicable Agreement. *See Compak*, 415 B.R. at 338 (“Section 363(f) authorizes bankruptcy courts to approve the sale of a debtor’s property ‘free and clear of any interest in such property’ if one of five conditions is satisfied.”).

53. Debtors submit that any interest that will not be an assumed liability satisfies or will satisfy at least one of the five conditions of section 363(f) of the Bankruptcy Code, and that any such interest will be adequately protected by either being paid in full at the time of closing, by having it attach to the net proceeds of the Sale, subject to any claims and defenses Debtors may possess with respect thereto, or by consenting to the Sale. Debtors accordingly request authority to convey Bridgeview IHOP to the Successful Bidder, upon Debtors’ receipt of the purchase price (net of closing costs), free and clear of all liens, claims, rights, interests, charges,

and encumbrances, excluding any assumed liabilities, with any such liens, claims, rights, interests, charges, and encumbrances to attach to the proceeds of the Sale.

E. The Assumption and Assignment of the Executory Contracts Should Be Approved.

1. The Assumption and Assignment of the Executory Contracts Reflects the Debtors' Reasonable Business Judgment.

54. To facilitate and effectuate the sale of Bridgeview IHOP, Debtors seek authority to assign or transfer the Executory Contracts to the Successful Bidder to the extent required by such bidders.

55. Section 365 of the Bankruptcy Code authorizes a debtor in possession to assume and/or assign executory contracts and unexpired leases, subject to the approval of the Court, provided that the defaults under such lease, if any, are cured and adequate assurance of future performance is provided. Debtors' decision to assume or reject an unexpired lease must only satisfy the "business judgment rule" and will not be subject to review unless such decision is clearly an unreasonable exercise of such judgment. *See, e.g., Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific Ry. Co.*, 318 U.S. 523 (1943) (applying Bankr. Act section 77(b), predecessor to Bankruptcy Code section 365, and rejecting test of whether executory contract was burdensome in favor of whether rejection is within debtor's business judgment); *In re Del Grosso*, 115 B.R. 136, 138 (Bankr. N.D. Ill. 1990) ("[T]he standard to be applied for approval of the assumption [of an executory contract] is the business judgment standard . . .").

56. Here, the Court should approve the decision to assume and assign the Executory Contracts in connection with the Sale as a sound exercise of Debtors' business judgment. The Executory Contracts are beneficial to the Debtors' estate, and as such, is essential to inducing the best offer for Bridgeview IHOP. In addition, the Executory Contracts will be assumed and

assigned through the process approved by the Court and, thus, will be reviewed by key constituents in this case. Accordingly, Debtors submit that the assumption and assignment of the Executory Contracts by way of the Assumption and Assignment Notice should be approved as an exercise of their business judgment.

2. Defaults, If Any, Under the Assumed Franchise Agreement Will Be Cured Through the Sale.

57. Upon finding that a debtor in possession has exercised its business judgment in determining that assuming an executory contract is in the best interest of its estate, courts must then evaluate whether the assumption meets the requirements of section 365(b) of the Bankruptcy Code: that a debtor (a) cure, or provide adequate assurance of promptly curing, prepetition defaults in the executory contract; (b) compensate parties for pecuniary losses arising therefrom; and (c) provide adequate assurance of future performance thereunder. This section “attempts to strike a balance between two sometimes competing interests, the right of the contracting nondebtor to get the performance it bargained for and the right of the debtor’s creditors to get the benefit of the debtor’s bargain.” *Matter of Luce Indus., Inc.*, 8 B.R. 100, 107 (Bankr. S.D.N.Y. 1980).

58. Debtors submit that the statutory requirements of section 365(b)(1)(A) of the Bankruptcy Code will be satisfied (and promptly) because if any defaults exist that must be cured, such cure will be achieved fairly, efficiently, and properly, consistent with the Bankruptcy Code and with due respect to the rights of non-debtor parties.

3. Non-Debtor Parties Will Be Adequately Assured of Future Performance.

59. Similarly, Debtors submit that the third requirement of section 365(b)(1)(C) of the Bankruptcy Code—adequate assurance of future performance—is also satisfied given the facts and circumstances present here. “The phrase ‘adequate assurance of future performance’

adopted from section 2-609(1) of the Uniform Commercial Code, is to be given a practical, pragmatic construction based upon the facts and circumstances of each case.” *Matter of U.L. Radio Corp.*, 19 B.R. 537, 542 (Bankr. S.D.N.Y. 1982). Although no single solution will satisfy every case, “the required assurance will fall considerably short of an absolute guarantee of performance.” *In re Prime Motor Inns Inc.*, 166 B.R. 993, 997 (Bankr. S.D. Fla. 1994). Among other things, adequate assurance may be given by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. *See In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance present where a prospective assignee has financial resources and has expressed a willingness to devote sufficient funding to a business to give it a strong likelihood of succeeding).

60. Debtors believe that they can and will demonstrate that the requirements for assumption and assignment of the Executory Contracts will be satisfied. As required by the Bidding Procedures, Debtors will evaluate the financial wherewithal of potential bidders before designating such party a Qualified Bidder (as defined in the Bidding Procedures) (e.g., financial credibility, willingness, and ability of the interested party to perform under the Franchise Agreement) and will demonstrate such financial wherewithal, willingness, and ability to perform under the Executory Contracts. Further, the Assumption and Assignment Notice provides the Court and other interested parties with ample opportunity to evaluate and, if necessary, challenge the ability of the Successful Bidder to provide adequate assurance of future performance and object to the assumption and assignment of the Executory Contracts or proposed cure amounts. The Court therefore should have a sufficient basis to authorize Debtors to reject or assume and assign the Executory Contracts as set forth in the Agreement.

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

61. 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 14 days after entry of the order, unless the court orders otherwise.” Debtors request that the Sale Order be effective immediately upon its entry by providing that the 14-day stays under Bankruptcy Rules 6004(h) and 6006(d) are waived.

62. The purpose of Bankruptcy Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting party to appeal before an order can be implemented. See Advisory Committee Notes to Fed. R. Bankr. P. 6004(h) and 6006(d). Although Bankruptcy Rules 6004(h) and 6006(d) and the Advisory Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce the 14-day stay period, *Collier* suggests that the 14-day stay period should be eliminated to allow a sale or other transaction to close immediately “where there has been no objection to the procedure.” 10 COLLIER ON BANKRUPTCY ¶ 6004.11 (15 rev. ed. 2006). Furthermore, if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay should also be reduced to the amount of time actually necessary to file such appeal. *Id.*

63. To maximize the value received for Bridgeview IHOP, Debtors seek to close the Sale as soon as possible after the Sale Hearing. Accordingly, Debtors hereby request that the Court waive the 14-day stay period under Bankruptcy Rules 6004(h) and 6006(d).

Notice

64. Debtors have caused notice of this Motion to be given to the following parties: (a) the U.S. Trustee; (b) counsel to IHOP; (c) the Stalking Horse Bidder; (d) the Internal Revenue Service; (e) all relevant state and local taxing authorities; (f) all contractual counterparties to the Executory Contracts; and (g) all parties who have filed appearances or requested notices through the Court's CM/ECF system.

65. Further, within two (2) business days of the Ruling Date, the Sale Notice will be provided in accordance with the notice procedures described herein and given to the following parties: (a) the U.S. Trustee; (b) counsel to IHOP; (c) the Stalking Horse Bidder; (d) all entities known to have expressed a bona fide interest in acquiring Bridgeview IHOP; (e) the two hundred (200) largest franchisees from IHOP; (f) all creditors of Debtors; (g) all federal, state, and local taxing authorities, recording offices or any other governmental authorities that may have claims, contingent or otherwise, against the Debtors' estates, or that are parties to governmental approvals or permits, or that have a reasonably known interest in the relief requested by the Motion; (h) all contractual counterparties to the Executory Contracts; and (i) all parties who have filed appearances or requested notices through the Court's CM/ECF system. Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

Waiver of Page Limit Restrictions

66. Given the extent of issues addressed herein, Debtors respectfully request that the fifteen page limit established by Rule 5005-3(D) of the Local Rules for the United States Bankruptcy Court for the Northern District of Illinois be waived for this Motion.

No Prior Request

67. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, for the reasons set forth herein, Debtors respectfully requests that the Court enter (I) an order, substantially in the form attached hereto as **Exhibit A** (the “Bidding Procedures Order”): (a) authorizing and approving the Bidding Procedures in connection with the sale of Bridgeview IHOP; (b) approving the form and manner of notice of an auction and sale hearing with respect to the sale of Bridgeview IHOP free and clear of all liens, claims, encumbrances, and interests (the “Sale”); (c) scheduling such auction and sale hearing; (d) approving the selection of a Stalking Horse Bidder or bidders; and (e) granting related relief; and (II) at the conclusion of the Sale Hearing, the Sale Order: (a) approving the Agreement, attached hereto as **Exhibit B**; (b) authorizing and approving the Sale of Bridgeview IHOP free and clear of all liens, claims, encumbrances, and other interests pursuant to the Agreement, or a marked version thereof by any Stalking Horse Bidder or Successful Bidder (as defined herein); (c) authorizing the assumption and assignment of the Executory Contracts as summarized in **Exhibit C**; and (d) granting certain related relief.

Dated: February 9, 2017

LUCKY # 5409, INC., *et al.*
Debtors and Debtors in Possession

By: /s/ Kevin H. Morse
One of Their Attorneys

Eugene J. Geekie (06195060)
Kevin H. Morse (6297244)
William A. Williams (6321738)
ARNSTEIN & LEHR LLP
120 S. Riverside Plaza, Suite 1200
Chicago, Illinois 60606

Tel: (312) 876-7100
Fax: (312) 876-0288

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is made this ____ day of February, 2017 by and between Azim Hemani ("PURCHASER") and the bankruptcy estates of Lucky # 5409, Inc. ("LUCKY") and Azhar H. Chaudhry ("CHAUDHRY" together with Lucky, the "SELLERS").

WITNESSETH:

WHEREAS, Sellers are presently engaged in the operation of the International House of Pancakes franchise located at 7240 W. 79th Street, Bridgeview, Illinois 60455 (the "Franchise") as debtors-in-possession pursuant to 11 U.S.C. § 1101, *et seq.*;

WHEREAS, Chaudhry is the franchisee of franchisor International House of Pancakes, LLC ("IHOP") store # 5304 pursuant to a Consent to Assignment dated February 2, 1999 of the Franchise Agreement (the "Franchise Agreement") for the Franchise.

WHEREAS, the Franchise is operated through the corporate entity, Lucky.

WHEREAS, Purchaser wishes to purchase substantially all of the assets of the Franchise pursuant to the terms of this Agreement (the "Sale");

WHEREAS, Sellers are Chapter 11 debtors in jointly administered cases pending in the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division (the "Bankruptcy Court") under the lead case number 16-16264 (collectively, the "Bankruptcy Case");

WHEREAS, prior to submission to the Bankruptcy Court, Sellers shall seek the written consent of IHOP of the assignment of the Franchise to Purchaser as required in the Franchise Agreement and as set forth in this Agreement;

WHEREAS, Sellers shall seek the entry of an order by the Bankruptcy Court approving the sale of the Franchise free and clear of all liens, encumbrances, and claims pursuant to Section 363 of the Bankruptcy Code (the "Sale Order");

WHEREAS, Purchaser hereby submits this binding agreement as a stalking horse bid: (i) which is subject to any better bids pursuant to the proposed bidding procedures set forth in the Sellers' Motion for Entry of (I) an Order (a) Approving Bidding Procedures and Bid Protections in Connection with the Sale of Bridgeview IHOP, (b) Approving the Form and Manner of Notice, (c) Scheduling a Sale Hearing and, If Necessary, an Auction, (d) Approving the Stalking Horse Bid, and (e) Granting Related Relief; and (II) an Order (a) Approving the Asset Purchase Agreement, (b) Authorizing the Sale of Bridgeview IHOP Free and Clear of All Liens, Claims, Encumbrances, and Interests, (c) Authorizing the Assumption and Assignment of the Franchise Agreement and Certain Other Executory Contracts and Unexpired Leases, and (d) Granting Related Relief (the "Bidding Procedures") to be filed with the Bankruptcy Court; and (ii) upon

which it is prepared to promptly close as set forth herein if the Bankruptcy Court enters the Sale Order to Purchaser.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

A. **TURNOVER AND CLOSING.** Subject to the entry of the Sale Order, the Sale shall close (the "Closing") on a date as soon as possible after the entry of the Sale Order, and in any event, no later than 30 days after an entry of the Sale Order (the "Closing Date"), unless the Sale Order is subject to a stay pending appeal or by written agreement of Purchaser and Sellers.

B. **TRANSFER OF ASSETS.**

1. Subject to the terms and conditions set forth in this Agreement, upon approval by the Bankruptcy Court in the Sale Order, Sellers will deliver to the Purchaser, and Purchaser will receive and accept from Sellers the following assets (the "Franchise Assets"), which are utilized in and located at the Franchise:

a. All customer and business records and lists associated with the Franchise (including, without limitation, digital and/or electronic records and files), personnel records, and all other operating records relating to the Franchise, including, without limitation, financial, accounting, billing, accounts receivable, credit records, correspondence, supplies, and office materials, including paper goods and other materials used or useful in the operation of the Franchise, wherever located;

b. All of Sellers' right in and to the use of all of the Franchise's current telephone and fax numbers, domain names, web sites, internet addresses, software licenses, and all operations manuals and, to the extent assignable, all trademarks, service marks, trade names, assumed names, and all other intellectual property rights of Seller related to the Franchise, with Sellers remaining responsible for payment of such services for the period prior to the Closing Date;

c. All of Sellers' usable and saleable inventory of food products and ingredients in the Franchise on hand on the Closing Date;

d. Any other assets used in the operation of the Franchise, including, to the extent owned by the Sellers, any tangible personal property, furniture, computer equipment and software, or fixtures used in the Franchise; and

e. Any and all rights and interest of Sellers under the Franchise Agreement.

f. All of Sellers' rights, interests and benefits under any contracts, agreements, commitments, understandings, purchase orders and all other rights of

a contractual nature relating to the Franchise ("Contracts") all as more specifically set forth on *Schedule B(1)(f)*.

g. To the extent assignable, all guaranties, warranties and similar rights in favor of Sellers with respect to any of the Franchise Assets.

h. To the extent assignable, those certain permits, licenses, approvals, registrations, consents and authorizations of governmental units issued to or held by Sellers in connection with the Franchise.

2. Notwithstanding any other provisions of this Agreement to the contrary, the parties acknowledge and agree that the following assets shall not be sold or transferred to Purchaser (collectively the "Excluded Assets"):
 - a. Any real property of Sellers.
 - b. Cash, cash equivalents, credit balances and securities of Sellers or the Franchise.
 - c. All personal effects of Chaudhry, located at the Franchise.
 - d. Any and all causes of action relating to Seller's operation of the Franchise or otherwise.
 - e. All of Sellers' rights, interests and benefits under any contracts, agreements, commitments, understanding, purchase orders and all other rights of a contractual nature relating to the Franchise not specifically listed on *Schedule B(1)(f)*.
3. Contemporaneously with the closing of the transaction contemplated herein, Sellers shall deliver to Purchaser the Bill of Sale, attached hereto as Exhibit A, for the Franchise Assets together with such other instruments or documents as may be necessary to convey all rights, title and interest in and to the Franchise Assets free and clear of all liens, encumbrances and claims pursuant to Sections 363 and 365 of the Bankruptcy Code.
4. Except as otherwise specifically set forth herein, the parties acknowledge and agree that Purchaser is not assuming any of Sellers' accounts payable, debts, liabilities or other obligations, whether fixed, contingent or mixed, including, without limitation, those based on tort, contract (whether oral or written), statutory or other claims involving fines or penalties payable to any governmental authority ("Liabilities"). Purchaser shall promptly provide Sellers with any and all information Purchaser receives about all Liabilities and obligations of Sellers, if any, relating to the Franchise or the Franchise Assets prior to the Closing. Sellers agree to promptly pay, perform and discharge in full all such Liabilities.

C. PURCHASE PRICE.

1. In consideration of the covenants set forth in this Agreement and the transfer and assignment of the Franchise Assets, Purchaser shall remit to Sellers on the Closing Date total consideration of One Million Two Hundred Thousand Dollars (\$1,200,000.00) (the "**Purchase Price**"). The Purchase Price shall be allocated among the Franchise Assets as set forth on *Schedule C(1)* ("**Purchase Price Allocation**"). The parties agree to abide by the Purchase Price Allocation when filing any and all tax returns (Federal, state, and local, as applicable), including, without limitation, IRS Form 8594.
2. Immediately upon the Bankruptcy Court's approval of the Bidding Procedures, Purchaser shall deliver to Sellers an initial cash deposit in the amount of five percent (5%) of the Purchase Price (the "**Deposit**"). The Deposit shall be held in an interest bearing escrow account to be identified and established by Sellers. The Deposit shall be credited towards the Purchase Price on the Closing Date or otherwise returned in accordance with the Bidding Procedures.
3. Purchaser shall pay the Purchase Price, less the Deposit, on or before the Closing Date by delivering to Seller a certified or bank check or wire transfer made payable to Sellers.
4. The Franchise Assets are being sold pursuant to 11 U.S.C. § 363, and to the extent provided by § 363, are free and clear of any liens, claims and encumbrances, any and all of which shall attach solely to the Purchase Price with the same validity, perfection and priority as existed against the Franchise Assets prior to the Sale; however, for the avoidance of doubt, any liens, claims and encumbrances arising in favor of IHOP and required under the Franchise Agreement shall remain with the same validity, perfection and priority.
5. Except as expressly provided for in this Agreement, Purchaser is not assuming any liabilities of Sellers of any nature whatsoever. Sellers shall not be responsible for any obligations under any new or reinstated leases, subleases, equipment leases or franchise agreements for the Franchise arising after the Closing Date, including, without limitation, as to real estate taxes required to be paid thereunder and remodeling obligations set forth therein on the timetable set forth therein.
6. Purchaser may, but is under no obligation to, offer employment on such terms as it considers appropriate to such employees of the Sellers as it wishes to hire. Sellers shall be deemed to have terminated all of their employees as of the Closing Date. Prior to the Closing Date, Sellers shall pay to, or for the account of, all employees all expenses related to the employment or engagement of all such employees, including, without limitation, any amounts due to IDES (as defined below), salaries, overtime pay, payroll tax expenses, tax withholdings, social security withholdings, unemployment insurance, contributions to Employee

Benefit Plans, uniform allowances, severance pay, medical insurance, and vacation and sick pay benefits, to the extent any of the foregoing apply, and all other sums (collectively, the "Employee Expenses") accrued to such employees as of the Closing Date. Lucky and Chaudhry shall indemnify and hold Purchaser harmless from any and all claims of any employees arising out of or related to the Employee's Expenses accrued prior to the Closing Date or relating to their engagement or employment by Seller. Such indemnification shall survive the Closing.

D. FRANCHISE AGREEMENTS, EQUIPMENT LEASES AND SUBLEASES.

1. Chaudhry is a party to the Franchise Agreement. Subject to the entry of the Sale Order, and approval by IHOP, Chaudhry will assign to Purchaser, and Purchaser will enter into, the Franchise Agreement, and Purchaser shall perform all obligations and assume all liabilities arising under the Franchise Agreement after the Closing Date.
2. Sellers are also parties to certain additional unexpired leases (the "Leases") as summarized and set forth on *Schedule D(2)*. The Sale Order shall provide for the assumption and assignment of the Leases. Sellers will assign and the Purchaser will enter into the Leases, and perform all exc and assume all liabilities arising under such Leases after the Closing Date.
3. Purchaser may elect to take title to the Franchise (or certain Franchise Assets of the Franchise) through wholly owned affiliates pursuant to and upon terms authorized in the Franchise Agreement.

E. IHOP APPROVAL AND BIDDER QUALIFICATION

1. This Agreement shall be submitted to IHOP for approval of the Purchaser, not to be unreasonably withheld, and Purchaser's compliance with all relevant provisions of the Franchise Agreement, including Purchaser's financial capability to perform all obligations of a franchisee. IHOP may reasonably withhold approval of such sale and assignment as set forth in Section 11.03(a)(ii) of the Franchise Agreement. IHOP retains the right to review and approve any qualified bidder should Sellers receive one or more qualified bids for the Franchise.

F. BULK SALES AND IDES COMPLIANCE.

1. Prior to the Closing, Sellers shall obtain a bulk sales release letter ("Bulk Sales Release Letter") from the Illinois Department of Revenue ("IDR"). Sellers, jointly and severally, agree to pay any taxes relating to or affecting bulk transfers and sales and shall comply with holdbacks required by any governmental units and Sellers, jointly and severally, shall indemnify and hold Purchaser harmless from any loss related to Sellers' failure to pay same. In the event such a holdback

or payment is required, Purchaser may set-off the amount of any such holdback or payment against any amounts due to Sellers under this Agreement.

2. Prior to the Closing, Sellers shall obtain a release letter from the Illinois Department of Employment Security ("IDES") ("IDES Release Letter") releasing Sellers from any further amounts or payments. Sellers, jointly and severally, agree to pay any employment related taxes relating to Sellers' employees and Sellers, jointly and severally, shall indemnify and hold Purchaser harmless from any loss related to Seller's failure to pay same. In the any payments are due to IDES, Purchaser may set-off the amount of any such payment against any amounts due to Sellers under this Agreement.

G. SELLERS' REPRESENTATIONS AND WARRANTIES.

1. Lucky is a corporation duly organized, validly existing and in good standing under the laws of the State of Illinois, with full corporate power and authority to operate the Franchise as now operated and to own or use the Franchise Assets.
2. Each of Lucky and Chaudhry has the requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated hereby. The execution, delivery and performance of this Agreement by Lucky and Chaudhry has: (i) on behalf of Company, been duly and validly authorized and approved by all necessary corporate action, and this Agreement constitutes the legal and binding obligation of Lucky, enforceable against Lucky in accordance with its terms, and (ii) on behalf of Chaudhry, constitutes the legal and binding obligation of Chaudhry, enforceable against Chaudhry in accordance with its terms.
3. The execution of this Agreement and the consummation of the transactions contemplated hereunder do not and will not result in a breach of, or constitute a default under: (i) any applicable Federal, state and/or local law, regulation, rule or order, (ii) the articles of incorporation or by-laws of Lucky, (iii) or any mortgage, lien, lease, agreement, contract, instrument, order, judgment, decree or other agreement to which Lucky or Chaudhry are a party or to which any of the Franchise Assets are subject.
4. To the best of Lucky's and Chaudhry's knowledge, Lucky and Chaudhry have good and marketable title to the Franchise Assets. The Franchise Assets are being transferred in "as-is" condition.
5. Except as specifically provided in this Agreement, the Franchise has been and is being conducted in accordance with all applicable Federal, state and/or local laws, rules, regulations and orders in all material respects. Neither Lucky nor Chaudhry has received notice that: (i) the Franchise or any of the Franchise Assets are not in compliance with any statute, law, rule or regulation, or (ii) either Lucky or Chaudhry are in default with respect to any judgment, order, injunction or decree

of any court, administrative agency or other governmental authority in any respect material to the transactions contemplated hereunder. Neither Lucky nor Chaudhry has any knowledge of any laws or other facts relevant to the Franchise which would preclude Purchaser from operating the Franchise as currently operated.

6. Sellers and the Franchise Assets are insured in amounts and against risks usually and customarily insured against by persons and entities operating businesses similar to the Franchise and by insurance carriers licensed to do business in the State of Illinois. Seller shall maintain such insurance policies through the Closing Date. A certificate of insurance indicating general and/or tail liability insurance coverage for pre-Closing liabilities of the Franchise will be provided at Closing to Purchaser by Sellers, at Lucky's sole cost and expense.
7. Seller currently holds, and at times has held, all licenses necessary or desirable for the lawful operation of the Franchise and the use of the Franchise Assets, all of which are in full force and effect.
8. Except as specifically provided in this Agreement, there are no pending, or threatened lawsuits, investigations, judgments, proceedings or other claims by or against Lucky or Chaudhry that may adversely affect the Franchise, the Franchise Assets or the ability of Lucky or Chaudhry to perform Lucky's or Chaudhry's respective covenants, duties and obligations hereunder.
9. Except as specifically provided in this Agreement and Section 11.03(a)(ii) of the Franchise Agreement, unless otherwise ordered by the Bankruptcy Court, no consents or approvals of any parties are required or will be required in order to permit the consummation of the transactions contemplated by this Agreement.

H. PURCHASER'S REPRESENTATIONS AND WARRANTIES.

1. Purchaser has the requisite authority to enter into this Agreement and all necessary legal action has been taken by Purchaser to permit it to enter into this Agreement.
2. Purchaser has applied for, and expects to obtain, sufficient financing to enable Purchaser to fulfill all obligations incurred under this Agreement.
3. Purchaser is represented by its own independent counsel with respect to this Agreement.
4. Purchaser has had an opportunity to conduct any and all due diligence with respect to the Franchise. Purchaser has relied solely upon its own independent review, investigation, and inspection of the Franchise in entering into this Agreement. Purchaser did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, by Sellers or any other entity regarding the Franchise or the completeness of any information provided in connection

therewith. Purchaser has inspected all Franchise Assets and acknowledges that, except as set forth in this Agreement, Sellers make no warranty or representation, express or implied, as to condition, character or quality of any nature and accepts same in "AS IS" condition.

5. Purchaser has reviewed the Franchise Agreement and Leases and acknowledges that, except as set forth in this Agreement, Sellers make no warranty or representation, express or implied, as to the nature, character, or quality thereof, and accepts the assignment of the Franchise Agreement and Leases on an "AS IS" basis.
6. The execution and delivery of this Agreement and the agreements and instruments delivered in connection herewith shall constitute valid and legally binding obligations of Purchaser, enforceable against it in accordance with their respective terms.
7. The execution of this Agreement and the consummation of the transactions contemplated hereunder do not and will not conflict with, or result in a breach of, or constitute a default under, any Federal, state and/or local law, regulation or order or any contract, lease, mortgage or other agreement to which Purchaser is a party.
8. No consents or approvals of parties with whom Purchaser has contractual or other agreements are required or will be required in order to permit the consummation of the transactions contemplated by this Agreement.
9. There are no pending or threatened lawsuits, investigations, judgments, proceedings or other claims by or against Purchaser that may adversely affect the ability of Purchaser to perform Purchaser's covenants, duties and obligations hereunder.
10. Purchaser has not retained any broker or agent entitled to a fee in connection with the transaction set forth in this Agreement.

I. CLOSING DELIVERABLES.

1. At the Closing, Lucky and Chaudhry, as applicable, shall deliver to Purchaser the following:
 - a. A Bill of Sale, substantially in form and substance as Exhibit A, attached hereto and made a part hereof, selling, assigning, transferring, conveying and delivering to Purchaser all of the Franchise Assets;
 - b. Possession of the Franchise Assets;

- c. A certified copy of the joint resolutions of the shareholders and directors of Lucky, authorizing the execution, delivery and performance of, and the transactions contemplated by, this Agreement;
- d. An incumbency certificate of Lucky;
- e. A good standing certificate of Lucky issued by the Illinois Secretary of State dated not more than ten (10) days prior to the Closing Date;
- f. A certificate that all of Lucky's and Chaudhry's representations and warranties are true and accurate as of the Closing Date;
- g. The Bulk Sales Release Letter;
- h. The IDES Release Letter;
- i. Such consents, assignments, approvals, permits, certificates, instruments and documents of transfer, if any, executed by Lucky and Chaudhry, as applicable, as may be necessary to consummate the transactions contemplated by this Agreement or as are otherwise reasonably requested by Purchaser or Purchaser's attorney.

2. At the Closing Purchaser shall deliver to Lucky and Chaudhry the following:

- a. The Purchase Price, as adjusted pursuant to this Agreement;
- b. A certificate that all of Purchaser's representations and warranties are true and accurate as of the Closing Date; and
- c. Such consents, assignments, approvals, permits, certificates, instruments and documents of transfer, if any, executed by Purchaser, as may be necessary to consummate the transactions contemplated by this Agreement or as are otherwise reasonably requested by Lucky or Chaudhry or their respective attorneys.

J. **SALE ORDER ENTRY.** Sellers shall make reasonable efforts to have the Sale Order entered by the Bankruptcy Court. Sellers will serve notice of the Bidding Procedures on all creditors and equityholders listed in the schedules, or parties who have filed proofs of claim in the Bankruptcy Cases as of the date of the sale approval hearing, and undertake any further marketing efforts the Bankruptcy Court may require. Sellers will conduct the Auction (if necessary and as defined in the Bidding Procedures) after the entry of the Sale Order. If the Sale Order is entered, then Sellers shall have the authority, and shall be bound, to close a sale of the Franchise as set forth in the Sale Order and, if Purchaser is the prevailing bidder under the Bidding Procedures, shall close with Purchaser pursuant to this Agreement. Sellers shall share a draft of the Sale Order with Purchaser for

Purchaser's input and the form of the Sale Order as entered by the Bankruptcy Court shall be reasonably acceptable to Purchaser. For the avoidance of doubt, neither Purchasers nor Sellers shall be obligated to proceed under this Agreement if the Bankruptcy Court denies the entry of the Sale Order.

K. BREAK-UP FEE AND BID PROTECTIONS.

1. Sellers shall seek the Bankruptcy Court's approval in the Bidding Procedures of a break-up fee in the amount of Sixty Thousand Dollars (\$60,000.00), equal to five percent (5%) of the Purchase Price (the "Break-Up Fee"), which shall provide reasonable reimbursement for Purchaser's out-of-pocket expenses, and shall be payable from proceeds of Closing if: (i) Purchaser is not the prevailing bidder; and (ii) Purchaser is not in material breach of any obligation under this Agreement. Purchaser shall be obligated to proceed under this Agreement even if such break-up fee and/or expense reimbursement are not approved by the Bankruptcy Court or approved in an amount less than stated herein.
2. Sellers shall seek the Bankruptcy Court's approval in the Bidding Procedures of right of first refusal protection for the Purchaser should IHOP exercise its right of first refusal, pursuant to Section 11.04 of the Franchise Agreement, and accept for itself or its assignee the proposed assignment of the Franchise pursuant to this Agreement (the "ROFR Protection"). In the event the right of first refusal is exercised as to Purchaser, as the stalking horse bidder, the amount paid by IHOP to Sellers shall be One Million Two Hundred Sixty Thousand Dollars (\$1,260,000.00), such amount being equal to the sum of the Purchase Price plus the Break-Up Fee.
3. Sellers shall further seek the Bankruptcy Court's approval of bid protection for Purchaser in the form of a requirement in the Bidding Procedures that the next highest qualified bid contain total consideration equivalent to an amount at least Seventy Five Thousand Dollars (\$75,000.00) greater than the Purchase Price contained herein. In the event that a bid is made in conformity with the preceding sentence, subsequent bidding increments shall be in amounts set by the Seller in its sole discretion, as announced from time to time during the bidding process and auction.

- L. INDEMNIFICATION.** Purchaser hereby indemnifies and holds Lucky and Chaudhry and their respective shareholders, officers, directors, employees, agents, heirs, executors and assigns (respectively, "Lucky's and Chaudhry's Indemnified Parties") harmless from and against any and all known or unknown claims, demands, liabilities (including, but not limited to, any transferee liabilities imposed by law), obligations, losses, fines, penalties, damages, assessments, judgments, costs, expenses (including, but not limited to, reasonable attorneys' fees, court costs and other reasonable costs and expenses incurred in investigating, preparing or defending against any litigation, claim, action, suit, proceeding or demand of any kind or character or in enforcing this Paragraph, directly or indirectly arising from or related to: (i) Sellers' ownership or possession of the Franchise

Assets and operation of the Franchise, (whether or not in the ordinary course of business); (ii) Purchaser's breach of any of Purchaser's representations or warranties, or Purchaser's failure to perform any of Purchaser's covenants, duties or obligations under this Agreement or any other agreement or document executed in connection herewith; and/or (iii) any inaccuracy or omission in any certificate, schedule or other instrument furnished by Purchaser under this Agreement or any other agreement or document executed in connection herewith.

M. MISCELLANEOUS.

1. Purchaser shall have no post-Closing recourse to Lucky, Chaudhry and IHOP or against the Purchase Price. Moreover, Purchaser shall have no rights whatsoever under this Agreement unless Purchaser is the prevailing bidder under the Bidding Procedures and a Sale Order to the Purchaser is entered in its favor.
2. Whether or not the transaction contemplated by this Agreement is consummated, the parties hereto shall bear their own legal fees and expenses incurred incident to the preparation, negotiation, and execution of this Agreement, except in the event of a breach of this Agreement, in which case the unsuccessful Party shall be liable for the reasonable attorneys' fees and costs incurred by the prevailing Party in any resulting litigation.
3. The parties agree to cooperate in good faith and to take all further actions, including the execution and delivery of documents or instruments, reasonably necessary or appropriate to affect the purposes and intent of this Agreement.
4. The subject headings of the paragraphs in this Agreement are included for the purpose of convenience only and shall not affect the construction or interpretation of any of its provisions.
5. Except as otherwise expressly provided herein, this Agreement represents the entire agreement between the parties regarding the subject matter hereof and supersedes all prior written and oral agreements, promises, representations and/or understandings among the parties regarding the subject matter hereof. All Exhibits and Schedules attached hereto are incorporated herein by this reference.
6. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, and assigns.
7. The warranties, covenants, and agreements set forth in this Agreement shall survive the Closing of the transaction contemplated by this Agreement.
8. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given, made, or served if delivered personally or sent by U.S. Mail, first class, registered or certified,

postage pre-paid, and properly addressed to the party to whom notice is to be given as follows:

SELLERS:

Lucky:
Lucky #5409, Inc.
Azhar Chaudhry
7240 W. 79th Street
Bridgeview, IL 60455

with a copy to:

Kevin H. Morse
Arnstein & Lehr LLP
120 S. Riverside Plaza, Suite
1200
Chicago, IL 60601

PURCHASER:

Azim Hemani
5219 N. Harlem Ave.
Chicago, IL 60656

with a copy to:

Chaudhry:
Azhar Chaudhry
7240 W. 79th Street
Bridgeview, IL 60455

with a copy to:

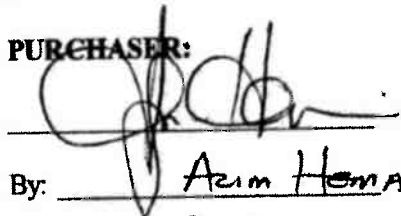
Kevin H. Morse
Arnstein & Lehr LLP
120 S. Riverside Plaza, Suite
1200
Chicago, IL 60601

Either party may change its address for purposes of this paragraph by giving the other party written notice of said change.

9. This Agreement shall be governed by the laws of the State of Illinois. The parties agree that exclusive venue for all litigation arising under this Agreement lies with the state courts of Illinois in Cook County, and further agree to submit to the personal jurisdiction of such state courts.
10. Each of the parties hereto hereby waive any right to trial by jury in connection with any dispute arising under or related in any way to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed
and effective as of the date first written above.

PURCHASER:



By: Azim Hamawi

Name: Bridgeway LLP Inc

Date: 2/3/17

SELLERS' SIGNATURE PAGE TO BE DELIVERED UPON ENTRY OF THE SALE ORDER

EXHIBIT A

BILL OF SALE

This BILL OF SALE (this "Agreement") is made and entered into as of January ___, 2017, by and among Azim Hemani ("Purchaser") and the bankruptcy estates of Lucky # 5409, Inc. ("Lucky") and Azhar H. Chaudhry ("Chaudhry" together with Lucky, the "Sellers"). Capitalized terms used, but not defined herein are defined in the Purchase Agreement (as defined below).

RECITALS

WHEREAS, this Agreement is executed pursuant to that certain Asset Purchase Agreement, dated as of the date hereof (the "Purchase Agreement"), by and between Purchaser and Sellers, which provides, among other things, for the sale and assignment by Seller to Purchaser of the Franchise Assets free and clear of any and all; and

WHEREAS, subject to the terms and conditions set forth in the Purchase Agreement, Sellers desire to sell, assign, transfer, convey and deliver to Purchaser and Purchaser desires to purchase, acquire and accept from Sellers, all right, title and interest in and to the Franchise Assets free and clear of any and all liens.

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual covenants contained herein, and other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Purchaser and Seller do hereby agree as follows:

AGREEMENT

Section 1. **Transfer of Assets.** In accordance with and subject to the terms and conditions of the Purchase Agreement, Sellers do hereby sell, convey, assign, transfer and deliver to Purchaser, and Purchaser does hereby purchase, acquire and accept, all of Sellers' right, title and interest in, to and under the Franchise Assets free and clear of any and all liens.

Section 2. **Assumption of Liabilities.** In accordance with and subject to the terms and conditions of the Purchase Agreement, Purchaser does not hereby assume any of the excluded Liabilities.

Section 3. **Miscellaneous.**

(a) The transfer and assignment set forth herein is made by Sellers without any express or implied representation or warranty of any kind, except as expressly set forth in and subject to the limitations described in the Purchase Agreement. In the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms hereof, the Purchase Agreement shall govern, supersede and control this Agreement in all respects.

(b) Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon, or give to, any person or entity, other than the parties to this Agreement, any rights, remedies, obligations or liabilities.

(c) This Agreement shall be binding solely upon and inure to the benefit of Purchaser and Sellers and their respective successors and permitted assigns.

(d) This Agreement may be executed in two or more original, facsimile or electronic (PDF) counterparts, each of which shall be deemed an original copy and all of which together will constitute a single instrument.

(e) This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Illinois without regard to its conflict of laws rules.

(f) The recitals set forth above are incorporated herein by reference as reflecting the general understanding and intent of the parties.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Lucky and Chaudhry have executed this Bill of Sale as of
the date first written above.

LUCKY:

Lucky #5409, Inc., an Illinois corporation,

By: _____

Name: Azhar H. Chaudhry

Its: President

CHAUDHRY:

Azhar H. Chaudhry

SCHEDULE B(1)(f)

CONTRACTS

SCHEDULE C(1)

PURCHASE PRICE ALLOCATION

Furniture/Equipment	\$
Inventory	\$
Goodwill	\$
 TOTAL:	 \$

SCHEDULE D(2)

LEASES