

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
EASTERN DIVISION

In re: )  
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 PIZZA PALZ, INC. ) Case No: 17-40556  
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 Debtor. )

**DEBTOR’S MOTION FOR (A) AN ORDER (I) ESTABLISHING BIDDING PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS; (II) APPROVING BID PROTECTIONS; (III) ESTABLISHING PROCEDURES RELATING TO THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (IV) APPROVING FORM AND MANNER OF THE SALE, CURE, AND OTHER NOTICES; AND (V) SCHEDULING AN AUCTION AND A HEARING TO CONSIDER THE APPROVAL OF THE SALE; (B) ORDER (I) APPROVING THE SALE OF THE DEBTOR’S ASSETS FREE AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES; AND (II) APPROVING THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (C) CERTAIN RELATED RELIEF**

The debtor and debtor in possession in the above-captioned case (the “**Debtor**” or the “**Company**”), by and through its undersigned counsel, hereby submits this motion (the “**Bidding Procedures Motion**”) pursuant to Sections 105, 363, 364, 365, and 503 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (as amended, the “**Bankruptcy Code**”), and Rules 2002, 6004, 6006, 9006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (each a “**Bankruptcy Rule**,” and, collectively, the “**Bankruptcy Rules**”), for (A) an order (the “**Bidding Procedures Order**”), substantially in the form attached hereto as **Exhibit A**, (I) approving the Debtor’s proposed auction and bidding procedures (the “**Bidding Procedures**”), in substantially the form attached as an exhibit to the Bidding Procedures Order, to be employed in connection with the proposed sale (the “**Sale(s)**”) of one or more categories of the Debtor’s assets (each a “**Lot**” and, collectively, the “**Lots**”), which Lots are identified in an exhibit to the Bidding Procedures (collectively, the “**Acquired Assets**”); (II) approving Bid Protections (as defined

below) pursuant to the terms of that certain asset purchase agreement (including all exhibits, schedules, and ancillary agreements related thereto, and as may be amended and in effect, the “**APA**”) by and among the Debtor (the “**Seller**”) and Mountain Valley Pizza, LLC (the “**Buyer**”), dated as of April 13, 2017, a copy of which is attached hereto as **Exhibit B**; (III) establishing procedures for the assumption and assignment of executory contracts and unexpired leases; (IV) approving the form and manner of notice of the Sale(s), the notice of assumption and assignment of executory contracts and unexpired leases, including the form and manner of notice of proposed cure amounts (the “**Cure Notice**”), and the other notices set forth herein; and (V) scheduling an auction (the “**Auction**”) and a hearing (the “**Sale Hearing**”) to consider approval of the Sale(s); and (B) order(s) (the “**Sale Order(s)**”)<sup>1</sup> authorizing (I) the Sale(s) of one or more Lots to the bidder(s) with the highest or otherwise best bid(s) (each, a “**Successful Bidder**”) pursuant to the APA, in each case free and clear of all liens, claims (for the purposes of this Order, the term “claim” shall have the meaning ascribed to such term in Section 101(5) of the Bankruptcy Code), encumbrances, and interests, including rights or claims based on any successor or transferee liability; as provided therein; and (II) the Debtor’s assumption and assignment of the applicable executory contracts and/or unexpired leases to the Successful Bidder(s) for the relevant Lot(s); and (C) certain related relief.<sup>2</sup> In support of the Motion, the Debtor respectfully represent as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the Standing Order referring to Bankruptcy Judges for the Northern District of

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<sup>1</sup> The proposed form of a Sale Order will be available before the Bid Deadline (as defined below).

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the APA or the Bidding Procedures Order, as applicable.

Alabama any and all proceedings under Title 11 of the Bankruptcy Code, dated July 16, 1984, as thereafter amended or appended. This matter is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2). Venue of this proceeding and this Motion is proper in this judicial district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are in Sections 105, 363, 364, 365, and 503 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9006, 9007, and 9014.

### **BACKGROUND**

3. On March 23, 2017 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, thereby commencing the above-captioned case (the “**Chapter 11 Case**”). The Debtor has continued in possession of its property and to operate and maintain its businesses as debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

4. No official committees have been appointed in the Chapter 11 Case as of the date hereof.

5. The Debtor has determined, in the exercise of its business judgment, that the best way to maximize the value of substantially all of its assets is to sell those assets through the Sale(s) pursuant to Section 363 of the Bankruptcy Code. To this end, the Debtor has executed the APA with the Buyer to provide for the sale of the Acquired Assets to the Buyer (subject to higher or otherwise better bids) for, among other things, assumption and assignment of the Debtor’s franchise agreements with Domino’s Pizza Franchising LLC (“**DPF**” and together with its affiliates and subsidiaries, “**Domino’s Pizza**”, plus cash in the amount of \$75,000.00, as more particularly set forth in the APA. As part of the Sale(s), the relevant buyer(s) will assume the

applicable executory contracts and/or unexpired leases relating to such executory contracts and/or unexpired leases.

6. The Sale(s) of the Acquired Assets are intended to preserve the jobs of a substantial portion of the Debtor's employees, relieve the estate of substantial obligations relating to such assets, reduce the estate's liabilities through the assumption and assignment of the relevant executory contracts and/or unexpired leases, and avoid the further deterioration in the value of the Acquired Assets.

7. The Debtor has been and will continue exposing the Acquired Assets to competitive bidding through a marketing and auction process pursuant to the Bidding Procedures. If no timely, conforming Qualified Bids, other than the Qualified Bid submitted by the Buyer, for the Acquired Assets are received, there shall be no Auction for such Acquired Assets, and the Buyer shall be the Successful Bidder for the Acquired Assets. With respect to Bids for any Acquired Assets (other than as expressly set forth in the Bidding Procedures with respect to the minimum bid amounts for the Acquired Assets), the Debtor will determine whether any individual Bid or combination of Bids is a Qualified Bid and will conduct an Auction with respect to such Bids for the Acquired Assets as Debtor, after consulting with the Consultation Parties (as defined below), as they deem appropriate and in the best interests of Debtor and its estate.

8. The factual background regarding the Debtor, including their business operations, their capital and debt structures, and the events leading to the filing of the Chapter 11 Case were proffered at the hearing on first day motions held before the Court on March 24, 2017 (the "**First Day Declaration**"), which is incorporated herein by reference.

9. Before the Petition Date, the Company made efforts to market and sale the

Acquired Assets to third parties. However, due to the overwhelming debt owed by the Debtor and certain creditors' efforts to seek payment and/or levy or encumber assets owned by the Debtor, a sale was not feasible.

10. Following the Petition Date, the Debtor re-visited prior efforts to sell the Debtor's assets through the Chapter 11 Case. The Debtor has fostered an environment that encourages a robust sale and auction process. Moreover, the Debtor believes that pursuing the Sale(s) as contemplated in the Bidding Procedures, including a Sale of the Acquired Assets to the Buyer (subject to higher and better offers), is the course of action most likely to maximize the value of the Acquired Assets, while ensuring that a consummation of a Sale of the Acquired Assets will occur if no other bids are received. As a result, and in an exercise of their fiduciary obligation to maximize the recoverable value of their estates, the Debtor has determined to execute the APA and to launch the Sale(s) process contemplated by this Motion.

11. Accordingly, by this Motion, the Debtor seeks authority to implement the Bidding Procedures outlined herein so as to market and solicit offers for the Acquired Assets efficiently. Pursuant to this Motion, the Debtor requests that the Court enter the proposed Bidding Procedures Order, which approves the Bidding Procedures, the Bid Protections, the Assumption and Assignment Procedures (as defined below), and the various notices set forth herein. In addition, the Bidding Procedures set forth the timetable for conducting the Auction and having a Sale Hearing. Upon conclusion of the Auction and selection of the highest or otherwise best bid(s), the Debtor will request that the Court enter the proposed Sale Order(s) authorizing the Sale(s). At the Sale Hearing, the Debtor will also seek approval pursuant to Section 365 of the Bankruptcy Code of the assumption and assignment of the relevant executory contracts and/or unexpired leases to the Successful Bidder(s) for the applicable Acquired Assets.

## **RELIEF REQUESTED**

12. By this Motion, the Debtor respectfully requests, pursuant to Sections 105, 363, 364, 365 and 503 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9006, 9007, and 9014, the entry of (A) an order (i) establishing bidding procedures for the Sale(s) of the Acquired Assets; (ii) approving Bid Protections; (iii) establishing procedures relating to the assumption and assignment of executory contracts and unexpired leases (the “**Assumption and Assignment Procedures**”); (iv) approving form and manner of sale, cure and other related notices; and (v) scheduling an auction, if needed, and a hearing to consider the proposed Sale(s); (B) an order (i) approving the Sale(s) of the Acquired Assets free and clear of all claims, encumbrances; and (ii) approving the assumption and assignment of the relevant executory contracts and unexpired leases to the Successful Bidder(s); and (C) certain related relief.

## **THE PROPOSED SALE OF THE ACQUIRED ASSETS**

### **A. The Stalking Horse APA**

13. A summary of the principal terms of the APA is as follows:<sup>3</sup>

- a. Purchase Price: Under section 4 of the APA, the aggregate consideration (the “**Purchase Price**”) for the purchase, sale, assignment, and conveyance of the Acquired Assets consists of: (i) cash (the “**Cash Consideration**”) in an amount equal to \$75,000.00 and (ii) the assumption by the Buyer or a buyer designee, as applicable, of the Assumed Liabilities from Sellers under section 3 of the APA;
- b. Acquired Assets: Under section 2 of the APA, Acquired Assets consist of, among other things: Any and all tangible personal property located at the Stores, as defined in the APA, including but not limited to any and all promotional materials, marketing supplies, utensils, cookware, warming bags and equipment.

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<sup>3</sup> The following summary is qualified in its entirety by reference to the provisions of the APA. In the event of any inconsistencies between the provisions of the APA and the terms herein, the terms of the APA shall govern. Capitalized terms used in this Section B that are not otherwise defined in this Motion shall have the meanings assigned to such terms in the APA.

- c. Excluded Assets: The Buyer will not acquire any right, title, or interest in, among others, any assets or obligations of the Debtor not included in Section 2 of the APA.
- d. Assumed Liabilities: Section 3 of the APA provides that the Buyer will assume and perform and discharge in accordance with their respective terms, among others, the following Liabilities: Those certain franchise agreements between Seller and Domino's Pizza for the Stores.
- e. Excluded Liabilities: The Buyer shall not assume and shall not be deemed to have assumed, among others, any of the liabilities not included in Section 3 of the APA.
- f. Termination. Section 10 of the APA provides for the termination thereof prior to the Closing Date, if applicable.
- g. Bid Protections: The Seller shall promptly pay, in cash, a break-up fee payable to the Buyer of \$10,000.00 to, in part, reimburse Buyer the fees and expenses incurred with regard to the Acquired Assets if the Acquired Assets are sold to a Successful Bidder, other than the Buyer. The amounts referred to above in this paragraph are collectively referred to herein as the "**Bid Protections**."
- j. Closing Conditions. In addition to customary closing conditions, including Court approval and certain regulatory matters, the obligation of the Buyer to consummate the transactions contemplated by the APA is subject to the satisfaction of, among others, the following conditions:

**B. Bidding Procedures**

14. While all interested bidders should read the Bidding Procedures in their entirety, the following describes the salient points of the Bidding Procedures:<sup>4</sup>

- a. Bid Requirements: Any bid by a Bidder must be submitted in writing and be reasonably determined by the Debtor, in consultation with the Consultation Parties, to have satisfied the following requirements:
  - (1) Good Faith Deposit: Each Bid must be accompanied by a cash deposit in the amount of ten percent (10%) of the purchase price (excluding any Assumed Liabilities) contained in the APA, which deposit shall be held in an interest-bearing escrow account to be identified and established by the Debtor.

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<sup>4</sup> The following summary is qualified in its entirety by reference to the provisions of the Bidding Procedures. In the event of any inconsistencies between the provisions of the Bidding Procedures and the terms herein, the terms of the Bidding Procedures shall govern. Unless otherwise defined in the summary set forth in the accompanying text or elsewhere in this Motion, capitalized terms shall have the meanings ascribed to them in the Bidding Procedures.

- (2) Same or Better Terms: In connection with any Bid for the Core Acquired Assets, such Bid must be on terms that the Debtor, in its business judgment and after consulting with the Consultation Parties, determine are substantially the same or better for the Debtor than the terms of the APA.
- (3) Executed Agreement: Each Bid must be based on the APA and must include binding, executed transaction documents, signed by an authorized representative of such Bidder, pursuant to which the Bidder proposes to effectuate an Alternate Transaction. A Bid must also include a copy of the counter APA (including all exhibits thereto) marked against the APA to show all changes requested by the Bidder (including those related to purchase price and to remove any provisions that apply only to the Buyer, such as the expense reimbursement and break-up fee provisions contained in the APA, which shall not be in any counter APA.
- (4) Scope of Bid: A Bid must be for all or substantially all of the Acquired Assets.
- (5) Minimum Bid: A Bid for all or substantially all of the Acquired Assets must, individually or in conjunction with one or more other Bids, have a purchase price, including any assumption of liabilities, that in the Debtor's reasonable business judgment (after consulting with the Consultation Parties) has a value greater than the sum of (i) the Purchase Price (as set forth in section 4 the APA) *plus* (ii) \$20,000.00. A Bid for the Acquired Assets must, individually or in conjunction with one or more other Bids, have a purchase price, including any assumption of liabilities associated with the Acquired Assets, that in the Debtor's reasonable business judgment (after consulting with the Consultation Parties) has a value greater than \$95,000.00.
- (6) Designation of Assigned Contracts and Leases: A Bid must identify the executory contracts and unexpired leases with respect to which the Bidder seeks assignment from the Sellers.
- (7) Designation of Assumed Liabilities: A Bid must identify all liabilities that the Bidder proposes to assume.
- (8) Corporate Authority: A Bid must include written evidence reasonably acceptable to the Debtor demonstrating appropriate corporate authorization to consummate the proposed Alternate Transaction; provided that, if the Bidder is an entity specially formed for the purpose of effectuating the Alternate Transaction, then the Bidder must furnish written evidence reasonably acceptable to the Debtor of the approval of the Alternate Transaction, by the equity holder(s) of such Bidder.



- (9) Disclosure of Identity of Bidder: A Bid must fully disclose the identity of each entity that will be bidding for or purchasing the subject Assets (or one or more Lots), including any equity holders in the case of a Bidder that is an entity specially formed for the purpose of effectuating the contemplated transaction, or otherwise participating in connection with such Bid, and the complete terms of any such participation, including any agreements, arrangements, or understandings concerning a collaborative or joint bid or any other combination concerning the proposed Bid. A Bid must also fully disclose any connections or agreements with the Debtor, the Buyer, or any other known, potential, prospective Bidder or Qualified Bidder, and/or any officer, director, or equity security holder of the Debtor.
- (10) Proof of Financial Ability to Perform: A Bid must include written evidence that the Debtor may conclude after consulting with the Consultation Parties, demonstrates that the Bidder has the necessary financial ability to close the Alternate Transaction, and comply with Section 365 of the Bankruptcy Code, including providing adequate assurance of future performance under all contracts and leases to be assumed and assigned in such Alternate Transaction. Such information must include, *inter alia*, the following:
- (a) contact names and numbers for verification of financing sources;
  - (b) evidence of the Bidder's internal resources and proof of unconditional debt funding commitments from a recognized banking institution and, if applicable, equity commitments in an aggregate amount equal to the cash portion of such Bid or the posting of an irrevocable letter of credit from a recognized banking institution issued in favor of the Debtor in the amount of the cash portion of such Bid, in each case, as are needed to close such Alternate Transaction;
  - (c) the Bidder's current financial statements (audited if they exist) or other similar financial information reasonably acceptable to the Debtor;
  - (d) a description of the Bidder's pro forma capital structure; and
  - (e) any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtor, in consultation with the Consultation Parties, demonstrating that such Bidder has the ability to close the Alternate Transaction.

- (11) Regulatory and Third Party Approvals:
- (a) A Bid must set forth each regulatory and third-party approval, if any, required for the Bidder to consummate the Alternate Transaction, and the time period within which the Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval is expected to take more than [seven (7)] days following execution and delivery of the counter APA, those actions the Bidder will take to ensure receipt of such approval(s) as promptly as possible).
  - (b) A Bidder must be approvable by Domino's Pizza as a qualified franchisee to operate the Debtor's Stores.
  - (c) A Bidder for any of the Lots that contain assets that require governmental or regulatory permits for usual operation shall assume the risk that it will pass any compliance check of such governmental or regulatory permitting authority related to the operation of the Debtor's business operations.
- (12) Contact Information and Affiliates: A Bid must provide the identity and contact information for the Bidder and full disclosure of any affiliates of the Bidder.
- (13) Contingencies: Each Bid (i) may not contain representations and warranties, covenants, or termination rights materially more onerous in the aggregate to the Debtor than those set forth in the APA, as determined by the Debtor in good faith, and (ii) may not be conditioned on obtaining financing, internal approvals, or due diligence time or cost requirements that are materially more onerous in the aggregate to the Debtor than those set forth in the APA, as determined by the Debtor in good faith.
- (14) Irrevocable: Each Bid must be irrevocable until five (5) business days after the Sale Hearing; provided that if such Bid is accepted as the Successful Bid or the Backup Bid for any one or more of the Lots, such Bid shall continue to remain irrevocable until after the closing of the sale of such Lot(s).
- (15) Compliance with Diligence Requests: The Bidder submitting the Bid must have complied with reasonable requests for additional information and due diligence access from the Debtor to the reasonable satisfaction of the Debtor, after consulting with the Consultation Parties.
- (16) [INTENTIONALLY DELETED]
- (17) Termination Fees: The Bid (other than the Bid pursuant to the APA) must not entitle the Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment or reimbursement and, by submitting the Bid, the Bidder waives the

right to pursue a substantial contribution claim under Section 503 of the Bankruptcy Code related in any way to the submission of its Bid or participation in any Auction.

- (18) Closing Date: The Bid must include a commitment to close the transactions contemplated by the counter APA by no later than **May 22, 2017**.
- (19) Bid Deadline: All Bids must be submitted on or prior to **May 17, 2017 at 4 p.m.** (prevailing Central Time) (the "**Bid Deadline**").

**C. The Notices**

15. Under Bankruptcy Rule 2002(a) and (c), the Debtor must notify their creditors of the proposed Sale(s) of the Acquired Assets, including disclosure of the time and place of the Auction and the Sale Hearing, the terms and conditions of the Sale(s), the Bidding Procedures and the deadline for filing any objections thereto. Accordingly, the Debtor have served a copy of this Motion and the proposed Bidding Procedures Order (the "**Notice of Motion**") in the manner set forth in paragraph 69 below.

16. The Debtor also proposes, within two (2) Business Days after the entry of this Order, or as soon thereafter as practicable (the "**Mailing Date**"), to mail a copy of the Sale Notice (as defined below), the Bidding Procedures Order, and the Bidding Procedures by first-class mail, postage prepaid, or by email, where available, upon (a) all entities known to have expressed a *bona fide* interest in purchasing any of the Acquired Assets after the Petition Date and such other parties identified by the Consultation Parties prior to the date hereof; (b) the Notice Parties; (c) all entities known to have asserted any lien, claim, or encumbrance in or upon any of the Acquired Assets; (d) all federal, state, and local environmental, regulatory, or taxing authorities or recording offices that have a reasonably known interest in the relief requested by the Motion; (e) the United States Bankruptcy Administrator for the Northern District of Alabama; (f) the U.S. Attorney for the Northern District of Alabama; and (i) all persons and entities that have filed a request for service of filings in this Chapter 11 Case pursuant to

Bankruptcy Rule 2002.

17. In addition, on the Mailing Date, or as soon thereafter as practicable, the Debtor (or their agents) will serve by first-class mail, postage prepaid, the notice of the sale(s), substantially in the form attached as **Exhibit 2** to the Bidding Procedures Order (the “**Sale Notice**”), upon all other known creditors of the Debtor and all counterparties to the Debtor’s executory contracts and unexpired leases.

18. Finally, on the Mailing Date or as soon as practicable thereafter, the Debtor will cause the Sale Notice to be published on the Domino’s Pizza intranet for existing franchisees, commonly known as dLive.

**D. Assumption and Assignment of the Executory Contracts and Unexpired Leases**

19. In accordance with the proposed Bidding Procedures Order, within five (5) Business Days after the entry of the Bidding Procedures Order or as soon as practicable thereafter, the Debtor will file with this Court and serve the Cure Notice on each counterparty to an executory contract or unexpired lease related to the Acquired Assets, substantially in the form attached as **Exhibit 3** to the Bidding Procedures Order, which Cure Notice shall: (i) state the amounts necessary to cure defaults, if any, that the Debtor believe are necessary to assume such contracts or leases in accordance with Section 365 of the Bankruptcy Code (the “**Cure Amount**”); (ii) notify the non-Debtor counterparty that such party’s contract(s) or lease(s) may be assumed and assigned to the Successful Bidder of one or more of the Acquired Assets at the conclusion of the Auction; (iii) state the date of the Sale Hearing and that objections to any Cure Amount or to assumption and assignment will be heard at the Sale Hearing, or at a later hearing, as determined by the Debtor; and (iv) state the deadline by which the non-Debtor counterparty shall file an objection to the Cure Amount(s) or to the assumption and assignment of the

applicable contract(s) and/or lease(s); provided, however, that the inclusion of a contract, lease or agreement on the Cure Notice shall not constitute an admission that such contract, lease or agreement is an executory contract or unexpired lease or that it will, in fact, be assumed and assigned in connection with any Sale(s) of the Acquired Assets. If no Cure Amount is listed, the Debtor believes that no amount to cure defaults under the respective executory contract or unexpired lease is owed by it thereunder. The Debtor reserves all of its rights, claims, and causes of action with respect to the contracts, leases, and agreements listed on the Cure Notice.

20. The Debtor proposes that any objection to the Cure Amount or the assumption and assignment of the applicable contract(s) and/or lease(s) must be filed with the Court electronically via the CM/ECF system, and served so as to be received by: (a) counsel to the Debtor, Brian Walding (bwalding@waldinglaw.com) and Donna Byrd (dbyrd@waldinglaw.com), Walding, LLC, 2227 First Avenue South, Suite 100, Birmingham, Alabama 35233; (b) counsel to Domino's Pizza, Eric Goldstein (EGoldstein@goodwin.com), Shipman & Goodwin, LLP, One Constitution Plaza, Hartford, Connecticut 06103; (c) counsel to the Buyer, Justin Little (JLittle@RRLLaw.com), Reynolds, Reynolds & Little, LLC, 2115 11<sup>th</sup> Street, Tuscaloosa, Alabama 35401 and William Poole (poole@poolelawoffices.com), The Poole Law Offices, LLC, 2918 7<sup>th</sup> Street, Tuscaloosa, Alabama 35401; and (d) the United States Bankruptcy for the Northern District of Alabama, Robert Landry (Robert\_Landry@alnb.uscourts.gov), 1129 Noble Street, Anniston, Alabama 36201 (collectively, the "Notice Parties"), on or before **May 15, 2017 at 4 p.m. (prevailing Central Time)** (the "Cure Objection Deadline"). Any such objection must also state (i) the basis for such objection and (ii) with specificity what Cure Amount(s) the non-Debtor counterparty to the relevant executory contract(s) or unexpired lease(s) believes is required (in all cases with

appropriate documentation in support thereof).

21. Any objection solely to the Cure Amount(s) may not prevent or delay the Debtor's assumption and assignment of assumed and assigned contract(s) or lease(s). If an entity objects solely to Cure Amount(s), the Debtor may, with the consent of the relevant Successful Bidder, hold the claimed Cure Amount(s) in reserve pending further order of the Court or mutual agreement of the parties. So long as the Cure Amount(s) are held in reserve, and there are no other unresolved objections to assumption and assignment of the applicable assumed and assigned contract(s) or lease(s), the Debtor can, without further delay, assume and assign such contract(s) or lease(s). Under such circumstances, the objecting non-Debtor counterparty's recourse is limited to the funds held in reserve.

22. If no objection to the Cure Amount(s) is timely received, the Cure Amount(s) set forth in the Cure Notice shall be controlling notwithstanding anything to the contrary in any assigned contract(s) or lease(s) or other document(s) as of the date of the Cure Notice.

23. As described in the APA, the Buyer has provided to the Debtor a list of those executory contracts and unexpired leases that the Buyer elects to have assumed and assigned (the "**Buyer Designated Contracts**") to the Buyer at Closing pursuant to Section 365 of the Bankruptcy Code.

24. If different than identified in the APA, the Debtor will file with the Court, (i) the list of the Buyer Designated Contracts, which the Debtor will update as and when executory contracts or unexpired leases are added or deleted by the Buyer and (ii) a description of the Buyer and information as to the Buyer's ability to perform the Debtor's obligations under the Buyer Designated Contracts.

25. As soon as reasonably practicable after receiving the schedule from each Qualified Bidder of those executory contracts or unexpired leases it wishes to assume and have assigned to it as part of the Qualified Bidder's alternate APA, and no later than the date of the Auction, the Debtor shall file with the Court together with information related to the adequate assurance with respect to such Qualified Bidder.

26. To the extent that any non-Debtor counterparty wishes to object to the adequate assurance of future performance by the Buyer or another Qualified Bidder under the applicable executory contract(s) or unexpired lease(s), then such non-Debtor counterparty shall file a written objection with the Court and serve on the Notice Parties and the applicable Qualified Bidder(s) so that such objection is received on or before **[noon]** (prevailing Central Time) no later than **[one (1)]** day prior to the Sale Hearing.

27. To the extent that any non-Debtor counterparty does not timely file and serve an objection as set forth above herein, such counterparty will be: (i) deemed to have consented to the Cure Amount(s), if any, set forth in the Cure Notice; (ii) barred, estopped, and enjoined from asserting any additional Cure Amount(s) under the assumed and assigned executory contract(s) or unexpired lease(s); (iii) barred from objecting to the assumption and assignment of the applicable assumed and assigned executory contract(s) or unexpired lease(s) to the Successful Bidder(s); and (iv) barred from objecting to adequate assurance of future performance by the assignee.

### **GROUND FOR APPROVAL OF THE MOTION**

#### **E. The Bidding Procedures Are Fair and Reasonable**

28. In accordance with Bankruptcy Rule 6004(f)(1), sales of property outside the ordinary course of business may be by private sale or by auction. In accordance with the Bidding

Procedures, the Debtor seeks to market the Assets through a competitive bidding process to maximize value and avoid the further deterioration of the Debtor's business through a prompt sale of the Assets. Consequently, the Debtor believes that good cause exists to expose their assets to sale at auction and to approve the procedures proposed herein. An auction conducted substantially in accordance with the Bidding Procedures, together with the APA, will enable the Debtor to obtain the highest and best offers for the Assets.

29. The Debtor believes that the Bidding Procedures are appropriate under Sections 105 and 363 of the Bankruptcy Code to ensure that the bidding and sale process is conducted fairly and will yield the highest value for their estates and creditors. The Bidding Procedures are designed to facilitate a competitive bidding process in which all potential bidders are encouraged to participate and submit competing bids, including bids for all or a portion of the Assets as provided in the Bidding Procedures. The Bidding Procedures also provide potential bidders with sufficient notice and opportunity to acquire information necessary to submit a timely and informed bid. Thus, the Debtor and all parties in interest can be assured that the consideration for the Assets, including the Purchase Price being paid by the Buyer for the Assets if no other party submits a Qualified Bid for such assets, will be fair and reasonable. At the same time, the Bidding Procedures provide the Debtor with the opportunity to consider all competing offers and to select, in their reasonable business judgment, and after consulting with the Consultation Parties, the highest or otherwise best offer, individually or in combination with other bids, for the Assets.

30. The Debtor believes that the Bidding Procedures provide an appropriate framework for the sale of their assets that will enable the Debtor to review, analyze, and compare, in a relatively uniform fashion, all offers received to determine which offer (or offers)



is the highest or otherwise best and in the best interests of the Debtor's estate and creditors. Moreover, given the discussions the Debtor has had with other potential bidders both before and after the Petition Date, the Debtor believes that the proposed deadlines and milestones for noticing, marketing and selling the Assets offer potential bidders ample opportunity to prepare and submit Qualified Bids for such assets.

31. Accordingly, the Debtor believes the Court should approve the Bidding Procedures. Similar procedures have been routinely approved. *See, e.g., In re the Great Atlantic & Pacific Tea Company, Inc.*, Case No. 15-23007 (SCC) (Bankr. S.D.N.Y. Aug. 11, 2015); *In re Delia's, Inc.*, Case No. 14-23678 (RDD) (Bankr. S.D.N.Y. Feb. 10, 2015); *In re Synagro Technologies, Inc.*, Case No. 13-11041 (BLS) (Bankr. D. Del. May 13, 2013); *In re ICL Holding Company, Inc. (f/k/a LCI Holding Company, Inc.)*, Case No. 12-13319 (KG) (Bankr. D. Del. Jan. 25, 2013); *In re Moore-Handley, Inc.*, Case No. 09-04198-TBB-11 (Bankr. N.D. Ala. Sept. 4, 2009); *In re Bruno's Supermarkets*, Case No. 09-00634-BGC-11 (Bankr. N.D. Ala. April 14, 2009); *In re Bill Heard Enterprises*, Case No. 08-83029-JAC-11 (Bankr. N.D. Ala. Oct. 5, 2008); *In re Carraway Methodist Health Systems*, Case No. 06-03501-TOM-11 (Bankr. N.D. Ala. Oct. 6, 2006).

**F. Approval of the Sale(s) Is Warranted Under Section 363(b) of the Bankruptcy Code**

32. Compelling business justifications exist for the proposed Sale(s). First, the Debtor does not have sufficient liquidity or access to financing to fund their operations, let alone through a protracted and contentious chapter 11 case. As a result, and cognizant of its current monthly cash outlay, continued use of cash collateral, the depletion of its assets through normal operation, and its fiduciary obligations, the Debtor believes that a sale of substantially all of its assets offers the best available alternative at this juncture. Accordingly, the Debtor has determined that it

should pursue the Sale(s) of the Assets to the Buyer on the terms set forth in the APA, subject to higher and better offers as provided in the Bidding Procedures.

33. Notwithstanding the Debtor's conclusion that the terms of the APA are fair and reasonable, it will nonetheless expose the Assets to higher or otherwise better offers. The Sale(s) of the Assets pursuant to Section 363 of the Bankruptcy Code will enable the expeditious transfer of such assets, an approach necessary to maximize and preserve the going-concern value of such assets.

34. Section 363(b) of the Bankruptcy Code provides that “[t]he [debtor-in-possession], 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). Following the decision in *In re Abbotts Diaries of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986), courts have used the “sound business purpose” standard for approving sales pursuant to section 363. *See, e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *In re Lionel Corp.*, 722 F.2d 1063, 1070-71 (2d Cir. 1983); *In re Gulf Coast Oil Corp.*, 404 B.R. 407, 417-18 (Bankr. S.D. Tex. 2009); *Dai-Ichi Kangyo Bank Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (Bankr. D. Del. 1999); *In re Gulf States Steel, Inc. of Ala.*, 285 B.R. 497, 515 (Bankr. N.D. Ala. 2002).

35. The “sound business purpose” test requires a debtor to establish: “(1) a sound business purpose exists; (2) the sale price is fair; (3) the debtor has provided adequate and reasonable notice; and (4) the purchaser has acted in good faith.” *In re Delaware & H. R. Co.*, 124 B.R. 169, 176 (D. Del. 1991).

36. As discussed above, the Debtor has concluded that, in light of the distressed nature of the Debtor's business, the regulatory and taxing authority challenges it faces, the

Sale(s) of the Assets represents the best alternative currently available to them. Commencing the Sale(s) process now, particularly with the benefit of an APA with respect to the Acquired Assets, will ensure that the Debtor can complete a transaction within a reasonable time. Consequently, the proposed Sale(s) of the Assets in accordance with the Bidding Procedures satisfies the “sound business purpose” test for the sale of assets outside the ordinary course of business under Section 363(b) of the Bankruptcy Code.

37. While the Debtor is confident that its efforts have yielded fair and reasonable consideration for the Assets, adequate “market exposure” and the auction process—the best means for establishing whether a fair and reasonable price is being paid—will provide additional support.

38. In addition to a fair and reasonable value offered by the Buyer (or the Successful Bidder) for the Acquired Assets and by Successful Bidder(s) for the other Assets, the APA will be the product of vigorous arms’-length, good faith negotiations between the relevant parties. In particular, the negotiations of the APA involved substantial time and energy by the Seller and the Buyer and their respective professionals, and the APA reflects give-and-take, with substantial compromises and concessions made by both sides.

39. Accordingly, the Debtor submits that the Sale(s) of the Assets, including the Acquired Assets, as contemplated herein and in the Bidding Procedures is in the best interests of the Debtor, its estate and creditors, and should be approved.

**G. The Assets Should Be Sold Free and Clear of Claims, Liens, and Encumbrances Under Section 363(f) of the Bankruptcy Code**

40. The Debtor also submits that the Sale(s) of the Assets should be free and clear of any and all claims and encumbrances under Section 363(f) of the Bankruptcy Code. Section

363(f) of the Bankruptcy Code permits a debtor to sell property free and clear of third-party interests only if:

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interests; (2) such entity consents; (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; or (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). Since section 363(f) is written in the disjunctive, any of the five conditions provides authority to sell free and clear of claims, liens and encumbrances. See Gulf States Steel, 285 B.R. at 506; *In re Pacific Energy Resources Ltd.*, Case No. 09-10785 (KJC) (Bankr. D. Del. Aug. 18, 2009); *In re Flying J Inc.*, Case No. 08-1334 (MFW) (Bankr. D. Del. July 27, 2009); *In re Dundee Equity Corp.*, 1992 WL 53743, at \*4 (Bankr. S.D.N.Y. Mar. 6, 1992); *In re Collins*, 180 B.R. 447, 450 (Bankr. E.D. Va. 1995).

41. The Debtor submits that each encumbrance satisfies at least one of the five conditions of Section 363(f) of the Bankruptcy Code. If an entity with an encumbrance on the Assets does not consent to the proposed Sale(s) of such assets, the Debtor intends to demonstrate at the Sale Hearing their satisfaction of the requirements of Section 363(f) of the Bankruptcy Code. Alternatively, the Debtor may sell the Assets free and clear of any other interests under Section 363(f)(5) of the Bankruptcy Code because the encumbrance on any assets sold will attach to the cash proceeds of such Sale(s) in their order of priority and entities holding such interests could be compelled to accept money satisfaction in legal or equitable proceedings. Accordingly, pursuant to Section 363 of the Bankruptcy Code, the Debtor may sell the Assets free and clear of all claims, liens and encumbrances.

42. Moreover, the Debtor has sent or will send the Sale Notice to any purported lienholders. If such lienholders do not object to the proposed Sale(s), then their consent should

reasonably be presumed. Accordingly, the Debtor requests that unless an entity asserting a lien or encumbrance on any of the Assets (other than with respect to Assumed Liabilities and Permitted Encumbrances) timely objects to this Motion, such entity shall be deemed to have consented to any Sale(s) approved at the Sale Hearing.

43. It is also appropriate to sell the Assets free and clear of successor liability relating to the Debtor's businesses. Such limitations on successor liability ensure that the Successful Bidder(s) is protected from any claims or lawsuits premised on the theory that the Successful Bidder(s) is a successor in interest to one or more of the Debtor. Courts have consistently held that a buyer of a debtor's assets pursuant to a Section 363 of the Bankruptcy Code sale takes free and clear from successor liability relating to the debtor's business. *See e.g., In re Tran World Airlines, Inc.*, 322 F.3d 283, 288-90 (3d Cir. 2003) (sale of assets pursuant to section 363(f) barred successor liability claims for employment discrimination and rights under travel voucher program); *In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 585 (4th Cir. 1996) (affirming the sale of debtors' assets free and clear of certain taxes); *In re Insilco Techs., Inc.*, 351 B.R. 313, 322 (Bankr. D. Del. 2006) (stating that a 363 sale permits a buyer to take ownership of property without concern that a creditor will file suite based on a successor liability theory); *see also In re General Motors Corp.*, 407 B.R. 463, 505-06 (Bankr. S.D.N.Y. 2009) (holding that "[T]he law in this Circuit and District is clear; the Court will permit GM's assets to pass to the purchaser free and clear of successor liability claims, and in that connection, will issue the requested findings and associated injunction"); *In re Chrysler LLC*, 405 B.R. 84, 111 (Bankr. S.D.N.Y. 2009) ("[I]n *personam* claims, including any potential state successor or transferee liability claims against New Chrysler, as well as *in rem* interests, are encompassed by section 363(f) and are therefore extinguished by the Sale Transaction").

44. The purpose of a sale order purporting to authorize the transfer of assets free and clear of all claims, liens, and encumbrances would be defeated if claimants could thereafter use the transfer as a basis to assert claims against a purchaser arising from a seller's pre-sale conduct. Moreover, without such assurances, potential bidders may choose not to participate in the Auction or, if they did, would submit reduced bid amounts. To that end, the Successful Bidder(s) should not be liable under any theory of successor liability relating to the Debtor's businesses, but should hold the Assets free and clear.

**H. A Successful Bidder Should Be Entitled to the Protections of Section 363(m) of the Bankruptcy Code**

45. Pursuant to Section 363(m) of the Bankruptcy Code, a good faith purchaser is one who purchases assets for value, in good faith, and without notice of adverse claims. *See Miami Ctr. Ltd. P'ship v. Bank of New York*, 838 F.2d 1547, 1554 (11th Cir. 1988); *In re Mark Bell Furniture Warehouse, Inc.*, 992 F.2d 7, 9 (1st Cir. 1993); *In re Willemain v. Kivitz*, 764 F.2d 1019, 1023 (4th Cir. 1985); *Abbotts Dairies of Penn.*, 788 F.2d at 147.

46. As noted above, the APA was negotiated at arm's-length, with each of the parties represented by its own advisors and counsel. Accordingly, the Debtor requests that the Sale Order(s) include a provision that the Successful Bidder for the relevant Asset(s) is a "good faith" purchaser within the meaning of Section 363(m) of the Bankruptcy Code. The Debtor maintains that providing the Successful Bidder(s) with such protection will ensure that the maximum price will be received by the Debtor for the Assets.

**I. Assumption and Assignment of Certain Executory Contracts and Unexpired Leases**

47. To enhance the value of the Debtor's estate (by curtailing further administrative liability and eliminating substantial rejection claims), the Debtor requests authority under Section 365 of the Bankruptcy Code to assume and assign the executory contracts and/or unexpired

leases associated with the Assets to the relevant Successful Bidder. The Debtor further requests that the Sale Order(s) provide that the assigned executory contracts and/or unexpired leases will be transferred to, and remain in full force and effect for the benefit of, the Successful Bidder(s) notwithstanding any provisions in such assigned contracts and/or leases, including those described in Sections 365(b)(2), (f)(1), and (f)(3) of the Bankruptcy Code, that prohibit such assignments.

48. The Debtor may, subject to Court approval, assume and assign executory contracts and unexpired leases under Section 365 of the Bankruptcy Code. 11 U.S.C. § 365(a). Courts routinely approve motions to assume, assume and assign, or reject executory contracts or unexpired leases upon a showing that a debtor's decision to take such action will benefit the debtor's estate and is an exercise of sound business judgment. *See, e.g., In re Gardinier, Inc.*, 831 F.2d 974, 976 n. 2 (11th Cir. 1987); *L.R.S.C. Co. v. Rickel Home Ctrs., Inc. (In re Rickel Home Ctrs., Inc.)*, 209 F.3d 291, 298 (3d Cir. 2000); *Sharon Steel Corp. v. National Fuel Gas Distrib. Corp. (In re Sharon Steel Corp.)*, 872 F.2d 36, 39-40 (3d Cir. 1989); *In re NII Holdings, Inc.*, Case No. 14-12611 (SCC) (Bankr. S.D.N.Y. Apr. 20, 2015); *In re Delia's, Inc.*, Case No. 14-23678 (RDD) (Bankr. S.D.N.Y. Dec. 24, 2014). The assumption and assignment of the executory contracts and/or unexpired leases related to the Assets is an integral component of the Sale(s), without which the Sale(s) would not be a viable option.

49. Section 365(b)(1) of the Bankruptcy Code requires that, if there has been a default in a debtor's unexpired lease or executory contract, other than certain nonmonetary defaults as set forth in the statute, such unexpired lease or executory contract may not be assumed unless, at the time of the assumption, (i) such default is cured or there is adequate assurance that such default will be cured, (ii) compensation or adequate assurance of compensation is provided for any actual

pecuniary loss resulting from such default, and (iii) adequate assurance of future performance under the lease is provided. 11 U.S.C. § 365(b)(1)(A)-(C).

50. As set forth above, pursuant to the terms of the proposed Bidding Procedures Order, the Debtor will send the Cure Notice to all counterparties to the executory contracts and unexpired leases notifying such counterparties of the potential assumption by the Debtor and assignment to the relevant Successful Bidder(s) of such contract(s) and/or lease(s). The Cure Notice will also set forth the Cure Amount, if any, owing for each such contract(s) and/or lease(s) according to the Debtor's books and records.

51. Counterparties to such contract(s) and/or lease(s) will be given sufficient time (as set forth herein and in the proposed Bidding Procedures Order) to object to the proposed Cure Amounts, if any, set forth in the Cure Notice. If no objection is filed with regard to a particular Cure Amount, such Cure Amount shall be binding on the Debtor, the Successful Bidder(s) and the applicable non-Debtor counterparty. The payment of the Cure Amounts specified in the Cure Notice (or a different amount, either agreed to by the Debtor or resolved by the Court as a result of a timely-filed objection by the relevant non-Debtor counterparty) will be in full and final satisfaction of all obligations to cure defaults and compensate the counterparties for any pecuniary losses under the applicable executory contract(s) and/or lease(s) pursuant to Section 365(b)(1) of the Bankruptcy Code, unless the Debtor determine, before the Sale Hearing, that a particular contract or lease is not executory or unexpired, and does not need to be cured to transfer the relevant Assets to the Successful Bidder(s).

52. Section 365(f)(2)(B) of the Bankruptcy Code states that a debtor may assign its unexpired leases and executory contracts if, among other things, the assignee provides "adequate assurance of future performance." 11 U.S.C. § 365(f)(2)(B). If necessary, the Successful



Bidder(s) must submit, among other things, written evidence of the ability to provide adequate assurance of future performance under the applicable contracts or leases as set forth above and in the Bidding Procedures Order. The affected non-Debtor counterparties will also be able to challenge the ability of the Successful Bidder(s) to provide adequate assurance as provided in the Bidding Procedures Order.

53. Any assumption and assignment of an assigned contract(s) and/or lease(s) will be subject to all of the provisions of such contract(s) and/or lease(s), to the extent required by applicable law and in accordance with applicable provisions of the Bankruptcy Code. The Bidding Procedures are designed to ensure that any Successful Bidder is financially able and prepared to undertake all of the relevant obligations under the assigned contract(s) and/or lease(s), and the Debtor, together with the relevant Successful Bidder, will establish, as necessary, at the Sale Hearing, the requisite adequate assurance of future performance pursuant to Section 365 of the Bankruptcy Code with respect to the potential assumption and assignment of the applicable assigned contract(s) and/or lease(s). Consequently, assumption and assignment of the assigned executory contract(s) and/or lease(s) in connection with the Sale(s) of the Assets is appropriate under the circumstances.

**J. The Bid Protections Are Fair and Reasonable and Should Be Approved**

54. Approval of bid protections in connection with the sale of significant assets is analyzed under the business judgment standard and courts routinely deem bid protections appropriate in chapter 11 cases. *See Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 657-58 (S.D.N.Y. 1992) (noting that overbid procedures and break-up fee arrangements that have been negotiated by a debtor 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. Assoc., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (holding that the business judgment standard protects break-up fees and other provisions negotiated in good faith). *See, e.g., Reliant Energy Channelview LP v. Kelson Channelview LLC (In re Reliant Energy Channelview LP)*, 594 F.3d 200, 206–08 (3d Cir. 2010); *Calpine Corp. v. O’Brien Envtl. Energy, Inc. (In re O’Brien Envtl. Energy, Inc.)*, 181 F.3d 527 (3d Cir. 1999) (bid incentives must provide some post-petition benefit to the debtor’s estate).

55. Courts routinely approve protections in the form of a break-up fee and expense reimbursement. *See In re Carraway Methodist Health Systems*, No. 06-03501-TOM-11 (Bankr. N.D. Ala. Oct. 6, 2006); *In re Bill Heard Enterprises, Inc.*, No. 08-83029-JAC-11 (Bankr. N.D. Ala. Oct. 15, 2008); *In re Moore-Handley, Inc.*, No. 09-04198-TBB-11 (Bankr. N.D. Ala. Sept. 4, 2009); *In re Caché Inc.*, No. 15-10172 (MFW) (Bankr. D. Del. Feb. 25, 2015) (authorizing expense reimbursement and break-up fee); *In re Deb Stores Holding LLC*, Case No. 14-12676 (KG) (Bankr. D. Del. Dec. 18, 2014) (same); *In re Hostess Brands, Inc.*, No. 12-22052 (RDD) (Bankr. S.D.N.Y. Feb. 11, 2013).

56. Here the Bid Protections are reasonable and appropriate in light of the size and nature of the transactions contemplated in the APA, the efforts that have been expended by the Buyer in connection therewith and the circumstances of this Chapter 11 Case, and therefore should be approved. Moreover, the Bid Protections here are a necessary incentive to ensure that the Buyer is committed to the Sale(s) process and to purchasing the Acquired Assets and assuming the assumed liabilities for what the Debtor believe is fair consideration. Without the Bid Protections, the Buyer may not be willing to enter into an APA. Further, payment of the Bid Protections will not diminish the value of the Debtor’s estate, as the Debtor does not intend to

terminate or breach the APA and pay the Bid Protections, unless doing so would permit the Debtor to accept a better Bid.

57. Pursuant to the APA and Bidding Procedures Order, in the absence of a breach by the Sellers, the Bid Protections are payable in accordance with the terms of the APA. Upon payment by Sellers of the Bid Protections, the Buyer is precluded from pursuing any other remedy against the Sellers.

**K. The Form, Manner, and Extent of Notice of the Motion and the Proposed Sale(s) are Appropriate and Adequate Under the Circumstances**

58. The Debtor will serve the Sale Notice and the Cure Notice in accordance with the Bidding Procedures Order, and have served the Notice of Motion as set forth herein. The notice of the proposed Sale(s) to be provided by the Debtor as set forth herein sufficiently describes the terms and conditions of the proposed Sale(s).

59. Several sections of the Bankruptcy Code and Bankruptcy Rules dictate the sufficiency of notice and adequacy of service. As discussed below, the content and manner of service of this Motion and the related notices satisfy all such requirements.

60. Section 363 of the Bankruptcy Code provides that a trustee may sell property “after notice and hearing.” Under Section 102(1) of the Bankruptcy Code, the phrase “after notice and hearing” means “notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances.” 11 U.S.C. § 102(1)(A). As set forth above, creditors have been provided notice of the salient details regarding this Motion and the Sale Hearing. Accordingly, notice is sufficient under Section 363 of the Bankruptcy Code.

61. Although Bankruptcy Rule 2002 requires twenty-one (21) days’ notice of the proposed sale of property other than in the ordinary course of business, Rule 9007(c) allows for a

reduction of time “for cause shown.” The Debtor’s general liability insurance will expire on May 31, 2017 and the Debtor’s insurer has indicated it will not consider renewing the Debtor’s insurance policy, which is necessary for its continued business operations. Moreover, the Debtor’s interim debtor-in-possession financing acquired at the outset of this Chapter 11 Case [Doc. No. 29] incorporates approval of a credit agreement whereby the Debtor must meet a deadline of May 19, 2017 to obtain a Sale Order. Accordingly, if the number of days between the Mailing Date and approval of this Motion’s Sale Notice, the Bidding Procedures Order, and the Bidding Procedures is less than twenty-one (21) days, cause exists for reduction of this time pursuant to Rules 2002 and 9007.

62. In addition, Bankruptcy Rule 2002 provides that notice of a sale shall “include the time and place of any public sale, the terms and conditions of any private sale and the time fixed for filing objections.” Bankruptcy Rule 2002. As set forth above, the notice of this Motion that has been and will be provided by the Debtor satisfies each of these requirements.

63. Bankruptcy Rule 6004 requires that notice of sales of property out of the ordinary course of business complies with Bankruptcy Rule 2002. As set forth above, the Debtor has complied with Bankruptcy Rule 2002. Bankruptcy Rule 6006 requires notice of a motion to assume and assign an executory contract or unexpired lease to be served on the counterparty to such contract or lease, as well as on other parties in interest as the Court may direct. The Sale Notice and the Cure Notice have been or will be served on counterparties to the Assigned Contracts, thereby satisfying this requirement.

64. The notices of this Motion that are being provided as described herein, including the notice being provided by publication on the Domino’s Pizza franchisee intranet known as dLive as set forth above, are “reasonably calculated” to apprise interested parties of the pendency

of the matter and to afford them an opportunity to object. *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). Parties in interest have been and should be found to have been afforded adequate notice of this Motion, the Sale(s), the Bidding Procedures and the other relief requested herein.

65. The Debtor submits that the notice it has provided and intends to provide as outlined above with respect to the proposed Sale(s), the Bidding Procedures, the Bid Protections, and the Cure Amounts, as applicable, is reasonable and appropriate and constitutes good and adequate notice of the sale of the Assets and the procedures and proceedings related thereto and therefore should be approved by this Court.

**N. The Stay of the Sale Order(s) Should Be Waived**

66. Pursuant to Bankruptcy Rules 6004(h) and 6006(d), an order authorizing the sale of property or the assignment of an unexpired lease is stayed for fourteen (14) days after the entry of an order unless the Court orders otherwise.

67. The Debtor requests that this Court order that such stay is not applicable with respect to the sale of the Assets and assignment and assumption of the related executory contracts and/or unexpired leases. To require the Debtor to effectively be liable under the applicable executory contracts and/or unexpired leases for an extra fourteen (14) days and to delay the closing and the resulting reductions of the Debtor's secured obligations and related adequate protection obligations will burden the estates and require unnecessary expenditures of the Debtor's limited resources. The Debtor notes that similar requests to waive the stay imposed under Bankruptcy Rules 6004(h) and 6006(d) are routinely granted. *See, e.g., In re the Great Atlantic & Pacific Tea Co., Inc.*, No. 15-23007 (SCC) (Bankr. S.D.N.Y. Aug. 11, 2015); *In re Delia's, Inc.*, No. 14-23678 (RDD) (Bankr. S.D.N.Y. Feb. 10, 2015); *In re Midway Games Inc.*,

No. 09-10465 (KG) (Bankr. D. Del. June 3, 2009); *In re Nortel Networks Inc.*, No. 09-10138 (Bankr. D. Del. Mar. 3, 2009).

**NO PRIOR REQUEST**

68. No prior request for the relief sought herein has been requested from this Court or any other court.

**NOTICE**

69. Notice of this Motion has been provided to: (a) the Notice Parties; (b) the Internal Revenue Service; (c) the U.S. Attorney for the Northern District of Alabama; and (d) all persons and entities that have filed a request for service of filings in these Chapter 11 Cases pursuant to Bankruptcy Rule 2002.

70. The Debtor submit that, under the circumstances, no other or further notice is required.

WHEREFORE, the Debtor respectfully requests that the Court grant the relief requested in this Motion and grant the Debtor such other and further relief as this Court deems just and proper.

DATE: April 12, 2017

*/s/ Brian R. Walding*  
Brian R. Walding  
WALDING, LLC  
2227 First Avenue South  
Suite 100  
Birmingham, Alabama 35233  
*Counsel for Pizza Palz, Inc., Debtor and  
Debtor in Possession*

**EXHIBIT A**

*Proposed Bidding Procedures Order*

**UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
EASTERN DIVISION**

**In re:** )  
 )  
**PIZZA PALZ, INC.** ) **Case No: 17-40556**  
 )  
**Debtor.** )

**ORDER (I) ESTABLISHING BIDDING PROCEDURES FOR  
THE SALE(S) OF CERTAIN OF THE DEBTOR’S ASSETS; (II) APPROVING  
BID PROTECTIONS; (III) ESTABLISHING PROCEDURES RELATING TO THE  
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES; (IV) APPROVING FORM AND MANNER OF THE  
SALE, CURE, AND OTHER NOTICES; (V) SCHEDULING AN  
AUCTION AND A HEARING TO CONSIDER THE APPROVAL OF  
THE SALE(S); AND (VI) GRANTING CERTAIN RELATED RELIEF**

Upon the motion (the “**Motion**”)<sup>5</sup> of the Debtor (A) for an order (this “**Order**” or the “**Bidding Procedures Order**”): (I) approving the proposed auction and bidding procedures, which are attached as **Exhibit 1** hereto (the “**Bidding Procedures**”), to be employed in connection with the proposed sale(s) (the “**Sale(s)**”) of one or more categories of the Debtor’s assets (each a “**Lot**” and collectively, the “**Lots**”), which Lots are identified in an exhibit to the Bidding Procedures and comprise substantially all of the Debtor’s assets (collectively, the “**Acquired Assets**”); (II) approving Bid Protections pursuant to the terms of that certain Asset Purchase Agreement, dated as of April 13, 2017, by and among the Pizza Palz, Inc. (the “**Seller**”) and Mountain Valley Pizza, LLC (the “**Buyer**”), together with all related documents and agreements as well as all exhibits, schedules, and addenda thereto (the “**APA**”); (III) establishing procedures for the assumption and assignment of executory contracts and unexpired leases; (IV) approving the form and manner of notice of the Sale(s), the notice of

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<sup>5</sup> Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Bidding Procedures Motion, the Bidding Procedures (as defined below) or the APA (as defined below), as applicable.



**EXHIBIT A**

*(Proposed Bidding Procedures Order)*

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assumption and assignment of executory contracts and unexpired leases, including the form and manner of notice of proposed cure amounts (the “**Cure Notice**”) and the other notices set forth herein; (V) scheduling an auction (the “**Auction**”) and a hearing (the “**Sale Hearing**”) to consider approval of the Sale(s) and (VI) granting related relief (collectively, (A)(I) through (VI) above, the “**Bidding Procedures Relief**”); and (B) for order(s) (the “**Sale Order(s)**”) authorizing (I) the Sale(s) of one or more of the Lots to the bidder(s) with the highest or otherwise best bid(s) (each, a “**Successful Bidder**”) pursuant to the APA free and clear of all Encumbrances other than Permitted Encumbrances as provided therein; and (II) the Debtor’s assumption and assignment of the applicable executory contracts and/or unexpired leases to the Successful Bidder(s) for the relevant Lot(s); and the Court having considered that portion of the Bidding Procedures Motion seeking the Bidding Procedures Relief, and the arguments of counsel made and the evidence adduced, at the hearing on that portion of the Motion (the “**Bidding Procedures Hearing**”); and due and sufficient notice of the Bidding Procedures Hearing and the relief sought therein having been given under the particular circumstances; and it appearing that no other or further notice need be provided; and the Court having reviewed the Bidding Procedures Motion and all objections thereto (the “**Objections**”) and it appearing that the Bidding Procedures Relief requested in the Bidding Procedures Motion is in the best interests of the Debtor, its estate, creditors and other parties in interest; and after due deliberation thereon and good and sufficient cause appearing therefor, it is hereby,

**EXHIBIT A**

*(Proposed Bidding Procedures Order)*

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**FOUND, CONCLUDED AND DETERMINED THAT:<sup>6</sup>**

A. This Court has jurisdiction to consider this Bidding Procedures Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Bidding Procedures Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested in the Bidding Procedures Motion are Sections 105, 363, 364, 365, and 503 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, and 9014.

B. The relief granted herein is in the best interests of the Debtor, its estates and creditors, and other parties in interest.

C. The Debtor has articulated good and sufficient business reasons for the Court to (i) approve the Bidding Procedures, Bid Protections, the Assumption and Assignment Procedures, the form and manner of the Sale Notice, the Cure Notice and the other notices of the Motion, the Auction, and the Sale Hearing as set forth herein, (ii) set the date for the Auction, the Sale Hearing and the other dates set forth herein, and (iii) grant the relief requested in the Motion as provided herein.

D. Due, sufficient and adequate notice of the Bidding Procedures Hearing and the relief granted in this Order have been given in light of the circumstances and the nature of the relief requested, and no other or further notice thereof is required. The Debtor's notice of the Bidding Procedures Motion and the relief requested in the Bidding Procedures Motion for which approval was sought at the Bidding Procedures Hearing is appropriate and reasonably calculated to provide all interested parties with timely and proper notice under Bankruptcy Rules 2002,

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<sup>6</sup> The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

**EXHIBIT A**

*(Proposed Bidding Procedures Order)*

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4001, 6004, and 6006, and no other or further notice of, or hearing on, this Order and that portion of the Bidding Procedures Motion being approved hereby is required.

E. The Debtor's proposed Sale Notice, Cure Notice, and other notices contemplated hereunder with respect to the Sale(s), the Auction, the Assumption and Assignment Procedures, and the Sale Hearing are appropriate and reasonably calculated to provide all interested parties with timely and proper notice thereof and no further notice of each is necessary or required.

F. The Bidding Procedures, substantially in the form attached hereto as **Exhibit 1**, and incorporated herein by reference as if fully set forth herein, and the Bid Protections are fair, reasonable, and appropriate, were negotiated in good faith by the Debtor and the Buyer and represent the best method for maximizing the value of the Debtor's estates in connection with the Sale(s).

G. The Bid Protections, to the extent payable under the APA, (i) shall be deemed an actual and necessary cost of preserving the Debtor's estates within the meaning of Section 503(b), (ii) of the Bankruptcy Code are of substantial benefit to the Debtor's estate, (iii) are reasonable and appropriate, including in light of the size and nature of the transactions and the efforts that have been and will be expended by the Buyer, (iv) have been negotiated by the parties and their respective advisors at arm's-length and in good faith, and (v) are necessary to ensure that the Buyer will continue to pursue the proposed Sale of the Acquired Assets. The Bid Protections are material inducements for, and a condition of, the Buyer's entry into the APA. The Buyer is unwilling to commit to purchase the Acquired Assets under the terms of the APA unless the Buyer receives the Bid Protections.

H. The Assumption and Assignment Procedures are reasonable and appropriate.

**EXHIBIT A**

*(Proposed Bidding Procedures Order)*

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**IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is GRANTED as set forth herein.
2. Any objection to the portions of the Motion seeking approval of the Bidding Procedures Relief or any other relief granted in this Order, to the extent not resolved, waived, or withdrawn, and all reservations of rights included therein, is hereby overruled and denied on the merits.
3. The form of the APA (which may be obtained from counsel to the Debtor upon written request), is hereby approved and is appropriate and reasonably calculated to enable the Debtor and other parties in interest to easily compare and contrast the differing terms of the bids presented at the Auction.

**Bidding Procedures**

4. The Bidding Procedures in the form attached hereto as **Exhibit 1** and incorporated herein by reference as if fully set forth in this Order, are hereby approved. The Debtor is authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures. The failure to specifically include or reference any particular provision of the Bidding Procedures in this Order shall not diminish or impair the effectiveness of such procedures, it being the intent of this Court that the Bidding Procedures be authorized and approved in their entirety.

**The Bid Deadline**

5. As further described in the Bidding Procedures, a potential Bidder who desires to make a Bid for one or more Lots shall deliver its Bid for such Lot(s) that satisfies the bidding requirements set forth in the Bidding Procedures to: (a) counsel to the Debtor, Brian Walding (bwalding@waldinglaw.com) and Donna Byrd (dbyrd@waldinglaw.com), Walding, LLC, 2227

**EXHIBIT A**

*(Proposed Bidding Procedures Order)*

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First Avenue South, Suite 100, Birmingham, Alabama 35233; (b) counsel to Domino's Pizza, Eric Goldstein (EGoldstein@goodwin.com), Shipman & Goodwin, LLP, One Constitution Plaza, Hartford, Connecticut 06103; (c) counsel to the Buyer, Justin Little (JLittle@RRLLaw.com), Reynolds, Reynolds & Little, LLC, 2115 11th Street, Tuscaloosa, Alabama 35401 and William Poole (poole@poolelawoffices.com), The Poole Law Offices, LLC, 2918 7th Street, Tuscaloosa, Alabama 35401; and (d) the United States Bankruptcy for the Northern District of Alabama, Robert Landry (Robert\_Landry@alnb.uscourts.gov), 1129 Noble Street, Anniston, Alabama 36201, so as to be received by no later than **4 p.m. (prevailing Central Time) on May 15, 2017**] (the "**Bid Deadline**").

**Notices of Sale(s), Bidding Procedures, Bid Protections and the Sale Hearing**

6. The notices described below are hereby approved, and service or publication thereof (as applicable) as set forth herein constitutes proper, timely, adequate, and sufficient notice of the Sale(s), the Bidding Procedures, the Bid Protections, and the Sale Hearing, and no other or further notice is required.

7. Within two (2) Business Days after the entry of this Order, or as soon thereafter as practicable (the "**Mailing Date**"), the Debtor (or their agents) shall mail a copy of the Sale Notice (as defined below), this Order, and the Bidding Procedures by first-class mail, postage prepaid, or by email, where available, upon: (a) all entities known to have expressed a bona fide interest in purchasing any of the Acquired Assets after the Petition Date and such other parties identified by the Consultation Parties prior to the date hereof; (b) the Notice Parties; (c) all entities known to have asserted any lien, claim, or encumbrance in or upon any of the Acquired Assets; (d) all federal, state, and local environmental, regulatory, or taxing authorities or recording offices that have a reasonably known interest in the relief requested by the Motion; (e)

**EXHIBIT A**

*(Proposed Bidding Procedures Order)*

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the United States Bankruptcy Administrator for the Northern District of Alabama; (f) the U.S. Attorney for the Northern District of Alabama; and (i) all persons and entities that have filed a request for service of filings in this Chapter 11 Case pursuant to Bankruptcy Rule 2002.

8. On the Mailing Date, or as soon thereafter as practicable, the Debtor (or their agents) shall serve by first-class mail, postage prepaid, the notice of the Sale(s), substantially in the form attached hereto as **Exhibit 2** (the "**Sale Notice**"), upon all other known creditors of the Debtor and all counterparties to the Debtor's executory contracts and unexpired leases.

9. The Debtor shall publish a notice, substantially in the form of the Sale Notice, on the Domino's Pizza intranet for existing franchisees, commonly known as dLive, beginning on the Mailing Date or as soon as practicable thereafter through the Bid Deadline. Such publication notice shall be deemed sufficient and proper notice of the Sale(s) to any other interested parties whose identities are unknown to the Debtor.

10. The Sale Hearing to approve the Sale(s) shall be held on **[May 18, 2017 at \_\_\_\_\_ a.m.] (prevailing Central Time)**, at the United States Bankruptcy Court for the Northern District of Alabama, Eastern Division, 1129 Noble Street, Anniston, Alabama 36201, before the Honorable James J. Robinson.

11. Objections, if any, to the relief sought in the Sale Order ("**Sale Objection(s)**")<sup>7</sup> shall be in writing, filed with the Clerk of this Court (the "**Clerk**") via the electronic CM/ECF service, together with proof of service, and served so as to be received by the Notice Parties, on or before **[May 15, 2017 at 4 p.m.] (prevailing Central Time)**; provided, however, that objections to the conduct of the Auction or selection of the Successful Bid(s) or Back-Up Bids(s) (the "**Supplement**") shall be in writing, filed with the Clerk, together with proof of service, and

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<sup>7</sup> Procedures for filing objections to the assumption and assignment of relevant executory contracts and unexpired leases are addressed below.

## **EXHIBIT A**

*(Proposed Bidding Procedures Order)*

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served so as to be received by the Notice Parties on or before **[noon]** (prevailing Central Time) one (1) day prior to the Sale Hearing, or **[May 17, 2017]**.

12. Failure to file and serve a Sale Objection or Supplement as set forth herein shall be deemed to be consent to the Sale(s) for purposes of Section 363(f) of the Bankruptcy Code.

13. The Sale Hearing may be adjourned by the Debtor, after consulting with the Consultation Parties, from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing, or by filing a notice on the docket of the Debtor's Chapter 11 Case.

### **The Auction**

14. The Debtor are authorized to conduct an auction (the "**Auction**") with respect to the Assets. The Auction shall take place on **[May 16, 2017 at 9 a.m.]** (prevailing Central Time) at the offices of Walding, LLC, 2227 First Avenue South, Suite 100, Birmingham, Alabama 35233, or such other place and time as the Debtor shall notify all Qualified Bidders, the Consultation Parties, and each of their respective counsel and advisors. The Debtor is authorized, subject to the terms of this Order, to take actions reasonably necessary, in the discretion of the Debtor, to conduct and implement the Auction.

15. Only the Debtor, the Consultation Parties, the Buyer, and any other Qualified Bidder, in each case, along with their respective counsel and advisors, may attend the Auction (such attendance to be in person) and only the Buyer and other Qualified Bidder(s) will be entitled to make any Bids at the Auction; provided, however, that any creditor may attend (but, other than the Buyer and other Qualified Bidder(s), may not participate in) the Auction if it provides the Debtor written notice of its intention to attend the Auction on or before the Bid Deadline. Such written notice must be sent to counsel for the Debtor via electronic mail to Brian

## **EXHIBIT A**

### *(Proposed Bidding Procedures Order)*

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Walding (bwalding@waldinglaw.com) and Teresa Adams (tadams@waldinglaw.com). The Debtor and their professionals shall direct and preside over the Auction and the Auction shall be recorded.

16. The Buyer (in its capacity as a Qualified Bidder) and each other Qualified Bidder participating in the Auction must confirm that it has (a) not engaged in any collusion with respect to the bidding or Sale(s) of any of the Assets, (b) reviewed, understands, and accepts the Bidding Procedures, and (c) consented to the core jurisdiction of this Court and to the entry of a final order by this Court on any matter related to this Order, the Sale(s) or the Auction if it is determined that this Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the parties.

17. Subject to the rights of parties in interest to (i) challenge the Sale(s) or the sale process, (ii) challenge the Debtor's decisions with respect to the sale process, (iii) argue that such decisions are not governed by the "business judgment" standard, or (iv) such other rights as such parties may have under applicable law, the Debtor may, after consulting with the Consultation Parties, (a) determine, in their business judgment, pursuant to the Bidding Procedures, which Qualified Bid is the highest or otherwise best proposal for the applicable Lot(s) and which is the next highest or otherwise best proposal for such Lot(s) and (b) reject any bid that, in the Debtor's business judgment, is (x) inadequate or insufficient, (y) not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, or the Bidding Procedures, or (z) contrary to the best interests of the Debtor and their estates, creditors, interest holders, or other parties-in-interest.

18. Notwithstanding anything to the contrary herein, and for the avoidance of doubt, for all purposes under the Bidding Procedures, the Buyer shall be considered a Qualified Bidder.



**EXHIBIT A**

*(Proposed Bidding Procedures Order)*

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19. In accordance with Section 363(k) of the Bankruptcy Code, the Buyer may submit subsequent and increased credit bids at the Auction in compliance with the Bidding Procedures.

**The APA and Bid Protections**

20. Any obligations of the Debtor set forth in the APA that are intended to be performed prior to the Sale Hearing and/or entry of the Sale Order are authorized as set forth herein.

21. The Bid Protections, to the extent payable under the APA, are granted.

22. Pursuant to Sections 105, 363, 364, and 503 of the Bankruptcy Code, the Debtor is hereby authorized to pay the Bid Protections pursuant to and subject to the terms and conditions set forth in the APA.

23. Upon entry of this Order, the Bid Protections shall constitute a superpriority administrative expense of the Debtor with priority over any and all administrative expenses of any kind, including those specified in Sections 503(b) or 507(b) of the Bankruptcy Code, but shall be *pari passu* with the obligations owed by Debtor to the lender providing debtor-in-possession financing.

24. Seller shall pay to the Buyer, in cash, by wire transfer of immediately available funds, a break-up fee payable to the Buyer of \$10,000.00 if the Assets are sold to a Successful Bidder, other than the Buyer, or if the APA is terminated as a result of the Seller's breach thereof.

25. The Bid Protections shall be the sole remedy of the Buyer if the APA is terminated under circumstances where the Bid Protections are payable.

**EXHIBIT A**

*(Proposed Bidding Procedures Order)*

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**Assumption and Assignment Procedures**

26. The Assumption and Assignment Procedures as set forth in the Motion are hereby approved and made part of this Order as if fully set forth herein. The Assumption and Assignment Procedures are appropriate and fair to all non-Debtor counterparties and comply in all respects with the Bankruptcy Code.

***a. Cure Notice***

27. The Cure Notice, substantially in the form attached hereto as **Exhibit 3**, is (i) reasonably calculated to provide sufficient effective notice to all non-Debtor counterparties to assumed and assigned contracts or leases and any other affected parties of the Debtor's intent to assume and assign some or all of such contracts or leases and to afford the non-Debtor counterparty to each such contract or lease the opportunity to exercise any rights affected by the Motion pursuant to Bankruptcy Rules 2002, 6004, and 6006, and (ii) hereby approved.

28. The inclusion of a contract on a Cure Notice shall not constitute or be deemed a determination or admission by the Debtor, the Buyer, any Successful Bidder, or any other party in interest that such document is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code or that such contract or lease will be assumed in connection with the Sale(s) of the Assets. The Debtor reserves all of its rights, claims and causes of action with respect to the contracts or leases listed on the Cure Notice.

29. Within five (5) Business Days after the entry of this Order, or as soon thereafter as is practicable, the Debtor shall file with this Court and serve the Cure Notice on each counterparty to an executory contract or unexpired lease related to the Assets, which Cure Notice shall: (i) state the cure amounts, if any, that the Debtor believes are necessary to assume such contracts or leases pursuant to Section 365 of the Bankruptcy Code (the "**Cure Amount**"); (ii)

## **EXHIBIT A**

*(Proposed Bidding Procedures Order)*

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notify the non-Debtor counterparty that such party's contract or lease may be assumed and assigned to a Successful Bidder of one or more of the relevant Assets at the conclusion of the Auction; (iii) state the date of the Sale Hearing and that objections to any Cure Amount or to assumption and assignment will be heard at the Sale Hearing, or at a later hearing, as determined by the Debtor; and (iv) state the deadline by which the non-Debtor counterparty shall file an objection to the Cure Amount(s) or to the assumption and assignment of the applicable contract(s) and/or lease(s).

30. Any objection to the Cure Amount or the assumption and assignment of the applicable contract(s) and/or lease(s) must be filed with the Clerk in this Chapter 11 Case via the CM/ECF system and served on the Notice Parties so as to be received on or before **[May 15, 2017 at 4 p.m.]** (prevailing Central Time) (the "**Cure Objection Deadline**"). Any such objection must also state (i) the basis for such objection and (ii) with specificity what Cure Amount(s) the non-Debtor counterparty to the relevant executory contract(s) or unexpired lease(s) believes is required (in all cases with appropriate documentation in support thereof).

31. Any objection solely to the Cure Amount(s) may not prevent or delay the Debtor's assumption and assignment of assumed and assigned contract(s) or lease(s). If a party objects solely to Cure Amount(s), the Debtor may, with the consent of the relevant Successful Bidder(s), hold the claimed Cure Amount(s) in reserve pending further order of the Court or mutual agreement of the parties. So long as the Cure Amount(s) are held in reserve, and there are no other unresolved objections to assumption and assignment of the applicable assumed and assigned contract(s) or lease(s), the Debtor can, without further delay, assume and assign such contract(s) or lease(s) to the applicable Successful Bidder. Under such circumstances, the objecting non-Debtor counterparty's recourse is limited to the funds held in reserve.

**EXHIBIT A**

*(Proposed Bidding Procedures Order)*

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32. If no objection to the Cure Amount(s) is timely received, the Cure Amount(s) set forth in the Cure Notice shall be controlling notwithstanding anything to the contrary in any assigned contract(s) or lease(s) or other document(s) as of the date of the Cure Notice.

***b. Designation of Contracts/Leases and Adequate Assurance of Future Performance***

33. As described in the APA, the Buyer has provided to the Debtor a list of those executory contracts and unexpired leases that the Buyer elects to have assumed and assigned (the “**Buyer Designated Contracts**”) to the Buyer at Closing pursuant to Section 365 of the Bankruptcy Code.

34. If different than identified in the APA, the Debtor shall file with the Court, (i) the list of the Buyer Designated Contracts, which the Debtor will update as and when executory contracts or unexpired leases are added or deleted by the Buyer and (ii) a description of the Buyer and information as to the Buyer’s ability to perform the Debtor’s obligations under the Buyer Designated Contracts.

35. As soon as reasonably practicable after receiving the schedule from each Qualified Bidder of those executory contracts or unexpired leases it wishes to assume, and no later than the date of the Auction, the Debtor shall file with the Court together with information related to the adequate assurance with respect to such Qualified Bidder.

36. To the extent that any non-Debtor counterparty wishes to object to the adequate assurance of future performance by the Buyer or another Qualified Bidder under the applicable executory contract(s) or unexpired lease(s), then such non-Debtor counterparty shall file a written objection with the Court and serve on the Notice Parties and the applicable Qualified Bidder(s) so that such objection is received on or before **[noon]** (prevailing Central Time) **[one (1)]** day prior to the Sale Hearing.

**EXHIBIT A**

*(Proposed Bidding Procedures Order)*

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37. To the extent that any non-Debtor counterparty does not timely file and serve an objection as set forth above, such counterparty will be: (i) deemed to have consented to the Cure Amount(s), if any, set forth in the Cure Notice; (ii) barred, estopped, and enjoined from asserting any additional Cure Amount(s) under the assumed and assigned executory contract(s) or unexpired lease(s); (iii) barred from objecting to the assumption and assignment of the applicable assumed and assigned executory contract(s) or unexpired lease(s) to the Successful Bidder(s); and (iv) barred from objecting to adequate assurance of future performance by the Successful Bidder(s).

**Related Relief**

38. The Debtor is hereby authorized and empowered to take such actions as may be reasonably necessary to implement and effect the terms and requirements established by this Order.

39. This Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon execution hereof.

40. The Debtor is authorized to proceed with the Sale(s) without the necessity of complying with any state or local bulk transfer laws or requirements.

41. This Order shall be binding on the Debtor, including any chapter 7 or chapter 11 trustees or other fiduciary appointed for the Debtor's estates.

42. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d), 7052, 9014, or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

43. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

**EXHIBIT A**

*(Proposed Bidding Procedures Order)*

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[EXHIBIT 1 TO BIDDING PROCEDURES ORDER]

**EXHIBIT 1**  
**Bidding Procedures**<sup>8</sup>

By motion, Pizza Palz, Inc. (the “**Company**”), which is a debtor and debtor in possession (the “**Debtor**”) in the chapter 11 case (the “**Chapter 11 Case**”) pending in the United States Bankruptcy Court for the Northern District of Alabama (the “**Bankruptcy Court**”) under Case No. 17-40556, sought approval of, among other things, the procedures through which they will, in consultation with the Consultation Parties (as defined below) determine the highest or otherwise best offer(s) for the sale(s) of one or more categories of the Debtor’s assets (each, a “**Lot**” and collectively, the “**Lots**”), which Lots are identified in **Schedule 1** hereto, together with the assets therein, comprise and constitute substantially all of the Debtor’s assets (collectively, the “**Assets**”) (the “**Motion**”).

As referenced in the Motion, an asset purchase agreement (including all exhibits, schedules and ancillary agreements related thereto, and as amended and in effect, the “**APA**”) has been entered into by and among the Company (the “**Seller**”) and Mountain Valley Pizza, LLC (the “**Buyer**”), dated as of April 13, 2017, which APA contemplates a purchase and sale of the Acquired Assets to the Buyer, on the terms and subject to the conditions provided therein. A copy of the APA is attached as **Exhibit B** to the Motion.

On April [DATE], 2017, the Bankruptcy Court entered an order (the “**Bidding Procedures Order**”), which, among other things, authorized the Debtor to determine the highest or otherwise best offer(s) for one or more of the Lots through the process and procedures set forth herein (the “**Bidding Procedures**”).

**Assets to Be Sold**

A party may participate in the bidding process by submitting a Bid (as defined below) for (a) substantially all of the Acquired Assets (as defined below) and/or (b) one or more, or any combination of, Lots comprising the Non-Core Assets (as defined below) that such party may desire.

The APA is an offer to purchase all of the Acquired Assets. The “**Core Acquired Assets**” is defined herein to mean the Acquired Assets as set forth in the APA and as generally identified and described in **Schedule 1**. Bidders who intend to submit Bids for all or substantially all of the Core Acquired Assets should reference the APA in connection with such Bids.

All of the Debtor’s right, title, and interest in and to the Assets subject thereto shall be sold free and clear of any charge, claim, community or other marital property interest, condition, equitable interest, lien, option, pledge, security interest, mortgage, right of way, easement, encroachment, servitude, right of first option, right of first refusal or similar restriction, including any restriction on use, voting (in the case of any security or equity interest), transfer, receipt of income or exercise of any other attribute of ownership (collectively, the

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<sup>8</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the APA.

**EXHIBIT A**

*(Proposed Bidding Procedures Order)*

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“**Encumbrances**”), with such Encumbrances to attach to the proceeds of the sale of the Assets with the same validity and priority as such Encumbrances applied against the Assets, except as otherwise specifically provided in the APA submitted by a Successful Bidder (as defined below) (including any exhibits or schedules thereto) and reflected in the Sale Order.

**Bidding Process**

The Debtor, subject to the other provisions of these Bidding Procedures (a) determines whether any person is a Qualified Bidder (as defined below), (b) coordinates the efforts of Preliminary Interested Investors (as defined below) in conducting their due diligence investigations, (c) receives offers from Bidders, and (d) negotiates any offers made to purchase all or substantially all of the Core Acquired Assets.

**Key Dates For Potential Competing Bidders**

The Bidding Procedures provide interested parties with the opportunity to qualify for and participate in the Auction to be conducted by the Debtor and to submit competing bids for the Assets. The Debtor shall assist Preliminary Interested Investors in conducting their respective due diligence investigations and shall accept Bids until **[May 15, 2017 at 4 p.m.]** (prevailing Central time) (the “**Bid Deadline**”).

The key dates for the sale process are as follows:<sup>9</sup>

<b>[May 15, 2017 at 4 p.m.]</b> (prevailing Central time)	Bid Deadline - Due Date for Bids and Deposits
<b>[May 16, 2017 at 4 p.m.]</b> (prevailing Central time)	<u>Auction, which will be held at:</u> Walding, LLC 2227 First Avenue South, Suite 100 Birmingham, Alabama 35233
<b>[May 16, 2017 at 4 p.m.]</b> (prevailing Central time)	<u>Sale Hearing, which will be held at:</u> U.S. Bankruptcy Court, Northern District of Alabama, Eastern Division, 1129 Noble Street, Anniston, Alabama 36201

***Access to Diligence Materials.***

To participate in the bidding process and to receive access to due diligence materials (the “**Diligence Materials**”), a party must submit to the Debtor reasonable evidence demonstrating the party’s financial capability to consummate a sale transaction for the Core Acquired Assets (an “**Alternate Transaction**”), as determined by the Debtor after consulting with the Consultation Parties.

A party who qualifies for access to Diligence Materials shall be a “**Preliminary Interested Investor**.” The Debtor will afford any Preliminary Interested Investor the time and opportunity to conduct reasonable due diligence; provided, however, that the Debtor shall not be obligated to

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<sup>9</sup> These dates are subject to extension or adjournment as provided for herein.

## EXHIBIT A

*(Proposed Bidding Procedures Order)*

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furnish any due diligence information after the Bid Deadline to any party that has not submitted a Qualified Bid (as defined below) and may, after consulting with the Consultation Parties, limit the amount of further due diligence available to Qualified Bidders after the Bid Deadline.

The Debtor reserves the right to withhold any Diligence Materials that the Debtor, after consulting with the Consultation Parties, determines are business-sensitive or otherwise not appropriate for disclosure to a Preliminary Interested Investor who is a competitor of the Debtor or is affiliated with any competitor of the Debtor. Neither the Debtor nor its representatives shall be obligated to furnish information of any kind whatsoever to any person that is not determined to be a Preliminary Interested Investor.

All due diligence requests must be directed to: **Brian Walding** ([bwalding@waldinglaw.com](mailto:bwalding@waldinglaw.com) / 205.307.5050) or **Teresa Adams** ([tadams@waldinglaw.com](mailto:tadams@waldinglaw.com) / 205.307.5049).

### *Due Diligence from Bidders.*

Each Preliminary Interested Investor and each Bidder shall comply with all reasonable requests for additional information and due diligence access by the Debtor or their advisors regarding such Preliminary Interested Investor or Bidder, as applicable, and its contemplated transaction. Failure by a Preliminary Interested Investor or Bidder (other than the Buyer) to comply with requests for additional information and due diligence access may be a basis for the Debtor to determine that such Bidder is not a Qualified Bidder.

### **Auction Qualification Process**

To be eligible to participate in the Auction, each offer, solicitation or proposal (each, a "**Bid**"), and each party submitting such a Bid, other than the Buyer (each, a "**Bidder**"), must be reasonably determined by the Debtor, after consulting with the Consultation Parties, to satisfy each of the following conditions:

- (a) **Good Faith Deposit**: Each Bid must be accompanied by a cash deposit in the amount of ten percent (10%) of the purchase price contained in the counter APA, which deposit shall be held in an interest-bearing escrow account to be identified and established by the Debtor (the "**Good Faith Deposit**").
- (b) **Same or Better Terms**: In connection with any Bid for the Core Acquired Assets, such Bid must be on terms that the Debtor, in its business judgment and after consulting with the Consultation Parties, determines are the same or better for the Debtor than the terms of the APA.
- (c) **Executed Agreement**: Each Bid must be based on the APA and must include binding, executed transaction documents, signed by an authorized representative of such Bidder, pursuant to which the Bidder proposes to effectuate an Alternate Transaction. A Bid must also include a copy of the counter APA (including all exhibits thereto) marked against the APA to show all changes requested by the Bidder (including those related to purchase price and to remove any provisions



## EXHIBIT A

### *(Proposed Bidding Procedures Order)*

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that apply only to the Buyer, such as the break-up fee provisions contained in the APA, which shall not be in any counter APA).

- (d) **Scope of Bid:** A Bid must be for (i) all or substantially all of the Core Acquired Assets.
- (e) **Minimum Bid:** A Bid for all or substantially all of the Core Acquired Assets must, individually or in conjunction with one or more other Bids, have a purchase price, including any assumption of liabilities, that in the Debtor's reasonable business judgment (after consulting with the Consultation Parties) has a value greater than the sum of (i) the Purchase Price (as defined in the APA) *plus* (ii) \$20,000.00. A Bid for the Non-Core Assets must, individually or in conjunction with one or more other Bids, have a purchase price, including any assumption of liabilities associated with the Assets, that in the Debtor's reasonable business judgment (after consulting with the Consultation Parties) has a value greater than \$95,000.00.
- (f) **Designation of Assigned Contracts and Leases:** A Bid must identify the executory contracts and unexpired leases with respect to which the Bidder seeks assignment from the Sellers.
- (g) **Designation of Assumed Liabilities:** A Bid must identify all liabilities which the Bidder proposes to assume.
- (h) **Corporate Authority:** A Bid must include written evidence reasonably acceptable to the Debtor demonstrating appropriate corporate authorization to consummate the proposed Alternate Transaction; provided that, if the Bidder is an entity specially formed for the purpose of effectuating the Alternate Transaction, then the Bidder must furnish written evidence reasonably acceptable to the Debtor of the approval of the Alternate Transaction, by the equity holder(s) of such Bidder.
- (i) **Disclosure of Identity of Bidder:** A Bid must fully disclose the identity of each entity that will be bidding for or purchasing the subject Assets (or one or more Lots), including any equity holders in the case of a Bidder which is an entity specially formed for the purpose of effectuating the contemplated transaction, or otherwise participating in connection with such Bid, and the complete terms of any such participation, including any agreements, arrangements or understandings concerning a collaborative or joint bid or any other combination concerning the proposed Bid. A Bid must also fully disclose any connections or agreements with the Debtor, the Buyer or any other known, potential, prospective Bidder or Qualified Bidder, and/or any officer, director, or equity security holder of the Debtor. All information disclosed pursuant to this paragraph shall be made available by the Debtor to the Consultation Parties promptly upon Debtor's receipt thereof but in any event no later than one (1) business day following the Bid Deadline.
- (j) **Proof of Financial Ability to Perform:** A Bid must include written evidence that the Debtor may conclude, in consultation with their advisors and after consulting with the Consultation Parties, demonstrates that the Bidder has the

## EXHIBIT A

### (Proposed Bidding Procedures Order)

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necessary financial ability to close the Alternate Transaction, and comply with Section 365 of the Bankruptcy Code, including providing adequate assurance of future performance under all contracts to be assumed and assigned in such Alternate Transaction. Such information must include, *inter alia*, the following:

- (1) contact names and numbers for verification of financing sources;
- (2) evidence of the Bidder's internal resources and proof of unconditional debt funding commitments from a recognized banking institution and, if applicable, equity commitments in an aggregate amount equal to the cash portion of such Bid or the posting of an irrevocable letter of credit from a recognized banking institution issued in favor of the Debtor in the amount of the cash portion of such Bid, in each case, as are needed to close such Alternate Transaction;
- (3) the Bidder's current financial statements (audited if they exist) or other similar financial information reasonably acceptable to the Debtor;
- (4) a description of the Bidder's pro forma capital structure; and
- (5) any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtor, after consulting with the Consultation Parties, demonstrating that such Bidder has the ability to close the Alternate Transaction.

(k) **Regulatory and Third Party Approvals:**

- (i) A Bid must set forth each regulatory and third-party approval required for the Bidder to consummate the Alternate Transaction, and the time period within which the Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval is expected to take more than seven (7) days following execution and delivery of the counter APA, those actions the Bidder will take to ensure receipt of such approval(s) as promptly as possible).
- (ii) A Bidder must be approved by Domino's Pizza Franchising LLC ("DPF" and together with its affiliates and subsidiaries, "Domino's Pizza") as a qualified franchisee to operate the Stores.

(l) **Contact Information and Affiliates:** A Bid must provide the identity and contact information for the Bidder and full disclosure of any affiliates of the Bidder.

(m) **Contingencies:** Each Bid (i) may not contain representations and warranties, covenants, or termination rights materially more onerous in the aggregate to the Debtor than those set forth in the APA as determined by the Debtor in good faith, and (ii) may not be conditioned on obtaining financing, any internal approvals or credit committee approvals, or on the outcome or

## EXHIBIT A

### (Proposed Bidding Procedures Order)

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review of due diligence, including with respect to any Environmental Laws, or employee, labor, health and/or safety matters.

- (n) **Irrevocable:** Each Bid must be irrevocable until five (5) business days after the Sale Hearing; provided that if such Bid is accepted as the Successful Bid or the Backup Bid (each as defined herein) for any one or more of the Lots, such Bid shall continue to remain irrevocable until the closing of the sale of such Lot(s).
- (o) **Compliance with Diligence Requests:** The Bidder submitting the Bid must have complied with reasonable requests for additional information and due diligence access from the Debtor to the reasonable satisfaction of the Debtor, in consultation with the Consultation Parties.
- (p) [INTENTIONALLY OMITTED.]
- (q) **Termination Fees:** The Bid (other than the Bid pursuant to the APA) must not entitle the Bidder to any break-up fee, termination fee, expense reimbursement, or similar type of payment or reimbursement and, by submitting the Bid, the Bidder waives the right to pursue a substantial contribution claim under Section 503 of the Bankruptcy Code related in any way to the submission of its Bid or participation in any Auction.
- (r) **Closing Date:** The Bid must include a commitment to close the transactions contemplated by the counter APA by no later than [May 22, 2017].
- (s) **Bid Deadline:** The following parties must receive a Bid in writing (in both PDF and Word format), on or before the Bid Deadline: (a) counsel to the Debtor, Brian Walding (bwalding@waldinglaw.com) and Donna Byrd (dbyrd@waldinglaw.com), Walding, LLC, 2227 First Avenue South, Suite 100, Birmingham, Alabama 35233; (b) counsel to Domino's Pizza, Eric Goldstein (EGoldstein@goodwin.com), Shipman & Goodwin, LLP, One Constitution Plaza, Hartford, Connecticut 06103; (c) counsel to the Buyer, Justin Little (JLittle@RRLLaw.com), Reynolds, Reynolds & Little, LLC, 2115 11th Street, Tuscaloosa, Alabama 35401 and William Poole (poole@poolelawoffices.com), The Poole Law Offices, LLC, 2918 7th Street, Tuscaloosa, Alabama 35401; and (d) the United States Bankruptcy for the Northern District of Alabama, Robert Landry (Robert\_Landry@alnb.uscourts.gov), 1129 Noble Street, Anniston, Alabama 36201.

A Bid received from a Bidder before the Bid Deadline that meets the above requirements for substantially all of the Core Acquired Assets as determined by the Debtor after consulting with the Consultation Parties, shall constitute a "**Qualified Bid**" with respect to such Lot(s), and such Bidder shall constitute a "**Qualified Bidder**" for such Lot(s); provided that if the Debtor receive a Bid prior to the Bid Deadline that is not a Qualified Bid, the Debtor may, after consulting with the Consultation Parties, provide the Bidder with the opportunity to remedy any deficiencies prior to the Auction; provided, further, that, for the avoidance of doubt, if any Qualified Bidder fails to comply with reasonable requests for additional information and due diligence access from the Debtor to the satisfaction of the Debtor, after consulting with the Consultation Parties, the Debtor may, after consulting with the Consultation Parties, disqualify any Qualified Bidder and

## **EXHIBIT A**

### *(Proposed Bidding Procedures Order)*

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Qualified Bid, in the Debtor's discretion and such Bidder shall not be entitled to attend or participate in the Auction. Any amendments, supplements, or other modifications to any Bids (including pursuant to this paragraph) shall be delivered to the parties listed in paragraph (s) above as provided therein. All Qualified Bids will be considered, but the Debtor reserve its right to reject any or all bids. However, bids that are unconditional and contemplate sales that may be consummated on or soon after the Sale Hearing are preferred. Additionally, notwithstanding anything herein to the contrary, the APA submitted by the Buyer shall be deemed a Qualified Bid, and the Buyer a Qualified Bidder. The Debtor shall inform counsel to the Buyer, the Consultation Parties, and any Qualified Bidders whether the Debtor consider any Bid to be a Qualified Bid as soon as practicable but no event later than one (1) business day before the Auction.

Each Qualified Bidder, by submitting a Bid, shall be deemed to acknowledge and agree that it is not relying upon any written or oral statements, representations, promises, warranties, or guarantees of any kind whether expressed or implied, by operation of law or otherwise, made by any person or party, including the Seller and its agents and representatives (other than as may be set forth in a definitive agreement executed by the Debtor), regarding the Debtor, any of the Assets, the Auction, these Bidding Procedures or any information provided in connection therewith.

### **Auction**

If (a) one or more Qualified Bids (other than the APA) comprising all or substantially all of the Core Acquired Assets are submitted by the Bid Deadline, the Debtor will conduct an auction (the "**Auction**") to determine the highest or otherwise best Qualified Bid with respect to the applicable Lot(s). This determination shall take into account any factors the Debtor, after consulting with the Consultation Parties, reasonably deem relevant to the value of the Qualified Bid to the Debtor's estate and may include, but are not limited to, the following: (i) the amount and nature of the consideration, including any assumed liabilities; (ii) the number, type and nature of any modifications to the APA, requested by each Bidder in such Bidder's counter APA; (iii) the extent to which such modifications are likely to delay closing of the sale of the applicable asset(s) and the cost to the Debtor of such modifications or delay; (iv) the total consideration to be received by the Debtor; (v) the likelihood of the Bidder's ability to close a transaction and the timing thereof; and (vi) the net benefit to the Debtor's estates (collectively, the "**Bid Assessment Criteria**").

If no timely, conforming Qualified Bids (other than the Qualified Bid submitted by the Buyer) for the Core Acquired Assets are received, the Auction for the Core Acquired Assets shall be canceled and the APA shall be the Successful Bid for the Core Acquired Assets and the Buyer shall be the Successful Bidder for the Core Acquired Assets.

### **Procedures for Auction**

## **EXHIBIT A**

*(Proposed Bidding Procedures Order)*

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If (a) one or more Qualified Bids (other than the APA) comprising all or substantially all of the Core Acquired Assets are submitted by the Bid Deadline, the Debtor shall conduct the Auction on **[May 16, 2017 at 9 a.m.]** (prevailing Central Time) at the offices of Walding, LLC, 2227 First Avenue South, Suite 100, Birmingham, Alabama 35233 or such other place and time as the Debtor shall notify all Qualified Bidders, the Buyer, Domino's Pizza, the U.S. Bankruptcy Administrator for the Northern District of Alabama and each of their respective counsel. The Auction shall be conducted according to the following procedures:

### ***Participation.***

Only the Debtor, the Consultation Parties, the Buyer, and any other Qualified Bidder, in each case, along with their representatives and counsel, may attend the Auction (such attendance to be in person) and only the Buyer and such other Qualified Bidders will be entitled to make any Bids at the Auction; provided, however, that any other creditor may attend (but not participate in) the Auction if it provides the Debtor written notice of its intention to attend the Auction on or before the Bid Deadline. Such written notice must be sent to counsel for the Debtor via electronic mail, to Brian Walding (bwalding@waldinglaw.com) and Teresa Adams (tadams@waldinglaw.com).

### ***The Debtor Shall Conduct the Auction.***

The Debtor shall direct and preside over the Auction and the Auction shall be recorded. Other than as expressly set forth herein, the Debtor (after consulting with the Consultation Parties) may conduct the Auction in the manner it reasonably determines will result in the highest or otherwise best Qualified Bid(s).

One (1) day prior to the Auction, the Debtor will:

- (i) notify each Qualified Bidder that has timely submitted a Qualified Bid that its Bid is a Qualified Bid; and
- (ii) provide each Qualified Bidder participating in the Auction with a copy of the counter APA associated with all Qualified Bids and an indication as to which Qualified Bid is the highest or otherwise best Qualified Bid with respect to any Lot or group of Lots, as determined by the Debtor after consulting with the Consultation Parties, received before the Bid Deadline (such highest or otherwise best Qualified Bid with respect to any Lot or group of Lots, each "**Auction Baseline Bid**").

In addition, at the start of the Auction, the Debtor shall describe the terms of each Auction Baseline Bid. Each Qualified Bidder participating in the Auction must confirm that it (a) has not engaged in any collusion with respect to the bidding or sale of any of the assets described herein, (b) has reviewed, understands, and accepts the Bidding Procedures, and (c) has consented to the core jurisdiction of the Bankruptcy Court.

## EXHIBIT A

### *(Proposed Bidding Procedures Order)*

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#### ***Terms of Overbids.***

An “**Overbid**” is any bid made at the Auction subsequent to the Debtor’s announcement of the respective Auction Baseline Bid. To submit an Overbid for purposes of this Auction, a Bidder must comply with the following conditions:

- (a) **Minimum Overbid Increments**: Any Overbid for all or substantially all of the Core Acquired Assets, after and above its respective Auction Baseline Bid shall be made in increments valued at not less than \$5,000 (or such other amount as shall be announced at the Auction by the Debtor after consulting with the Consultation Parties) in cash or in cash equivalents, or other forms of consideration acceptable to the Debtor.
- (b) **Remaining Terms Are the Same as for Qualified Bids**: Except as modified herein, an Overbid at the Auction must comply with the conditions for a Qualified Bid set forth above, provided, however, that the Bid Deadline shall not apply. Any Overbid must include, in addition to the amount and the form of consideration of the Overbid, a description of all changes requested by the Bidder to the APA, in connection therewith. Any Overbid must remain open and binding on the Bidder as provided herein.

At the Debtor’s discretion, to the extent not previously provided (which shall be determined by the Debtor after consulting with the Consultation Parties), a Bidder submitting an Overbid at the Auction must submit, as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtor, after consulting with the Consultation Parties) reasonably demonstrating such Bidder’s ability to close the Alternate Transaction, proposed by such Overbid.

#### ***Announcement and Consideration of Overbids.***

- (a) **Announcement of Overbids**: The Debtor shall announce at the Auction the material terms of each Overbid, the total amount of consideration offered in each such Overbid, and the basis for calculating such total consideration.
- (b) **Consideration of Overbids**: The Debtor reserves the right, in its reasonable business judgment, after consulting with the Consultation Parties, to make one or more continuances of the Auction to, among other things: facilitate discussions between the Debtor and individual Qualified Bidders; allow individual Qualified Bidders to consider how they wish to proceed; or give Qualified Bidders the opportunity to provide the Debtor with such additional evidence as the Debtor in their reasonable business judgment (after consulting with the Consultation Parties) may require, that the Qualified Bidder has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed Alternate Transaction, at the prevailing Overbid amount.

## EXHIBIT A

### *(Proposed Bidding Procedures Order)*

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#### *Other Procedures.*

- (a) **Jurisdiction of Bankruptcy Court:** All Qualified Bidders (including the Buyer) at the Auction shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waive any right to a jury trial in connection with any disputes relating to the marketing process, the Auction, and the construction and enforcement of the Qualified Bidder's fully executed sale and transaction documents, as applicable.
- (c) **Additional Bids; Modifications:** All Qualified Bidders, including the Buyer, shall have the right to submit additional bids and make additional modifications to the APA at the Auction, as applicable, provided that any such modifications to the APA on an aggregate basis and viewed in whole, shall not, in the Debtor's business judgment, be less favorable to the Debtor with respect to the particular Lots than the terms of the APA and shall otherwise comply with the Bidding Procedures.

#### *Additional Procedures.*

The Debtor (after consulting with the Consultation Parties) may announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction so long as such rules are not inconsistent in any material respect with the Bidding Procedures or the APA. Any Auction rules adopted by the Debtor will not modify any of the terms of the APA or the rights of the Buyer under the Bid Procedures (as may be consensually modified at the Auction) without the consent of the Buyer.

#### *Sale Is As Is/Where Is.*

Except as otherwise provided in the APA, or any order by the Bankruptcy Court approving any Sale(s) of the Assets as contemplated hereunder, the applicable Assets sold pursuant to the Bidding Procedures shall be conveyed at the closing of the purchase and sale of the applicable subject Assets in their then-present condition, **"AS IS, WITH ALL FAULTS, AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED."**

#### *Closing the Auction.*

The Auction shall continue in additional rounds of bidding until the Debtor selects, after consulting with the Consultation Parties, the Bid that is the highest or otherwise best offer for all or substantially all of the Core Acquired Assets (each, a **Successful Bid**, and the Bidder submitting such Successful Bid with respect to any Lot, a **Successful Bidder**). The Successful Bidder(s) shall have the rights and responsibilities of the purchaser(s) as set forth in the applicable APA. There may be more than one Successful Bid and Successful Bidder if bids for one or more Lots are determined to be Successful Bids. In selecting each Successful Bid, the Debtor shall consider the Bid Assessment Criteria.

The Auction for the applicable Asset shall close when each Successful Bidder submits fully executed sale and transaction documents memorializing the terms of its Successful Bid.

## **EXHIBIT A**

*(Proposed Bidding Procedures Order)*

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Promptly following the Debtor's selection, after consulting with the Consultation Parties, of each Successful Bid and the conclusion of the Auction, the Debtor shall announce each Successful Bid and Successful Bidder and shall file with the Bankruptcy Court notice of each Successful Bid and Successful Bidder.

The Debtor shall not consider any Bids submitted after the conclusion of the Auction.

### ***Backup Bidder.***

Notwithstanding anything in the Bidding Procedures to the contrary, if an Auction is conducted, the Qualified Bidder with the next highest or otherwise best Bid at the Auction with respect to all or substantially all of the Core Acquired Assets will be designated as the backup bidder (the "**Backup Bidder**") for such Lot(s), as applicable. Each Backup Bidder shall be required to keep its initial Bid (or if such Backup Bidder submitted one or more Overbids at the Auction, the Backup Bidder's final Overbid) (the "**Backup Bid**") open and irrevocable until after the closing of the relevant transaction with the Successful Bidder with respect to such Lot(s).

Following the Sale Hearing, if the Successful Bidder fails to consummate the purchase of any relevant Lot(s), the Debtor may, after consultation with the Consultation Parties, deem the Backup Bidder with respect to such Lot(s) to have the new Successful Bid, and the Debtor will be authorized, without further order of the Bankruptcy Court, to consummate the transaction with such Backup Bidder at the price of its last bid with respect to such Lot(s). Such Backup Bidder will be deemed to be the Successful Bidder with respect to such Lot(s) and the Debtor will be authorized, but not directed, to effectuate a sale of such Lot(s) to such Backup Bidder subject to the terms of the Backup Bid without further order of the Bankruptcy Court. All Qualified Bids (other than each Successful Bid and Backup Bid) shall be deemed rejected by the Debtor on and as of the date of approval of each Successful Bid and Backup Bid by the Bankruptcy Court. The Debtor, on its behalf and on behalf of its estate, specifically reserves the right to seek all available damages, including specific performance, from any defaulting Successful Bidder (including any Backup Bidder designated as a Successful Bidder) in accordance with the terms of the Bidding Procedures.

For the avoidance of doubt, in the event that there is a Successful Bidder (other than the Buyer) with respect to all or substantially all of the Core Acquired Assets, and the Buyer is the Backup Bidder, the Buyer will be deemed to be the Back-Up Bidder at the price of its last Overbid with respect to such Core Acquired Assets and will be subject to the terms contained in the immediately preceding paragraph.

### **Bid Protections**

Pursuant to the Bidding Procedures Order, the Buyer is entitled to the Bid Protections in the amounts set forth in, and in accordance with the terms of, the APA and the Bidding Procedures Order.

Pursuant to the Bidding Procedures Order, except for the Buyer, no other party submitting an offer or Bid or a Qualified Bid shall be entitled to any expense reimbursement, break-up fee, termination fee, or similar fee or payment.



## **EXHIBIT A**

*(Proposed Bidding Procedures Order)*

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### **Sale Hearing**

Each Successful Bid and Backup Bid (or, if no Qualified Bid other than that of the Buyer is received, then the APA) will be subject to approval by the Bankruptcy Court. The sale hearing to approve each Successful Bid and any Backup Bid (or, the APA for the Acquired Assets, if no Qualified Bid other than that of the Buyer is received) shall take place on **[May 18, 2017 at \_\_\_ a.m.]** (prevailing Central time) before the Bankruptcy Court (the “**Sale Hearing**”). The Sale Hearing may be adjourned by the Debtor, after consulting with the Consultation Parties, from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing, or by filing a notice on the docket of the Debtor’s Chapter 11 Case.

### **Return of Good Faith Deposits**

The Good Faith Deposits of all Qualified Bidders shall be held in one or more interest-bearing escrow accounts by the Debtor, but shall not become property of the Debtor’s estate absent further order of the Bankruptcy Court or as expressly provided below. The Good Faith Deposit of any Qualified Bidder that is neither a Successful Bidder nor a Backup Bidder shall be returned to such Qualified Bidder not later than five (5) business days after the Sale Hearing. The Good Faith Deposit of each Backup Bidder, if any, shall be returned to such Backup Bidder no later than seventy-two (72) hours after the closing of the transaction with the relevant Successful Bidder for the assets bid upon by such Backup Bidder. Upon the return of the Good Faith Deposits, their respective owners shall receive any and all interest that will have accrued thereon. If a Successful Bidder timely closes on its winning transaction, its Good Faith Deposit shall be credited towards the applicable purchase price(s). If a Successful Bidder (or Backup Bidder, if applicable) fails to consummate an Alternate Transaction, because of a breach or failure to perform on the part of such Successful Bidder (or Backup Bidder, if applicable), the Debtor will not have any obligation to return the Good Faith Deposit deposited by such Successful Bidder (or Backup Bidder, if applicable), and such Good Faith Deposit shall irrevocably become property of the Debtor.

### **The Consultation Parties**

The Debtor shall consult with Domino’s Pizza and the United States Bankruptcy for the Northern District of Alabama, and any of their respective counsel and advisors (each, a “**Consultation Party**” and collectively, the “**Consultation Parties**”) as provided for in the Bidding Procedures; provided, however, that the Debtor shall not be required to consult with any Consultation Party during the Auction process to the extent such Consultation Party has submitted a Bid or has had a Bid submitted on its behalf for so long as such Bid remains open, if the Debtor determine, in their reasonable business judgment, that consulting with such Consultation Party regarding any issue, selection, or determination would be likely to have a chilling effect on potential bidding or otherwise be contrary to goal of maximizing value for the Debtor’s estates from the sale process. Subject to the terms of any orders entered in these Chapter 11 Case, after consultation with the Consultation Parties, the Debtor shall have the right and obligation to make all decisions regarding Bids and the Auction as provided herein as it determines

## **EXHIBIT A**

*(Proposed Bidding Procedures Order)*

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to be in the best interest of their estates, whether or not Consultation Parties agree with such decisions.

### **Reservation of Rights of the Debtor**

Except as otherwise provided in the APA, the Bidding Procedures, or the Bidding Procedures Order, the Debtor further reserves the right as they may reasonably determine to be in the best interest of their estates, after consulting with the Consultation Parties to: (a) determine which Bidder(s) is a Qualified Bidder(s); (b) determine which Bid(s) is a Qualified Bid(s); (c) determine which Qualified Bid is the highest or otherwise best proposal for the Lot(s) and which is the next highest or otherwise best proposal for the Lot(s); (d) reject any Bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code, or (iii) contrary to the best interests of the Debtor and their estates; (e) waive terms and conditions set forth herein with respect to all potential Bidders; (f) impose additional terms and conditions with respect to all potential Bidders; (g) extend the deadlines set forth herein; (h) continue or cancel the Auction and/or Sale Hearing in open court, or by filing a notice on the docket of the Debtor's Chapter 11 Case, without further notice to creditors or other parties in interest; and (i) modify the Bidding Procedures and implement additional procedural rules that the Debtor determine, in their business judgment, after consulting with the Consultation Parties, will better promote the goals of the bidding process and discharge the Debtor's fiduciary duties; provided however that any modification or additions to the Bidding Procedures shall not be inconsistent with the APA, the Bidding Procedures Order or any other Order of the Bankruptcy Court, unless otherwise ordered by the Bankruptcy Court.

**EXHIBIT A**  
*(Proposed Bidding Procedures Order)*

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**SCHEDULE 1 TO BIDDING PROCEDURES**

**SCHEDULE 1**

Lots

<b>Lot Number</b>	<b>Assets</b>	<b>General</b>
1.	Core Acquired Assets <sup>10</sup>	the “Acquired Assets” as defined in the APA, including but not limited to all tangible personal property located at all eight (8) of the Debtor’s Stores, as defined in the APA and set forth in Exhibit C thereto; Debtor’s rights as a franchisee under various Franchise Agreements with Domino’s Pizza; Debtor’s rights to occupy the premises of the Stores; all business records; all goodwill & other intangible property; and all contracts assumed as set forth in Exhibit D of the APA

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<sup>10</sup> Lot 1 is a non-exhaustive description of the Core Acquired Assets, which is defined as the “Acquired Assets” (as defined in the APA). Bidders may Bid on the Core Acquired Assets only as a complete package (with certain immaterial or *de minimis* exceptions).

[EXHIBIT 2 TO BIDDING PROCEDURES ORDER]

**EXHIBIT 2**  
**BIDDING PROCEDURES**

**UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
EASTERN DIVISION**

**In re:** )  
 )  
 **PIZZA PALZ, INC.** ) **Case No: 17-40556**  
 )  
 **Debtor.** )

**NOTICE OF BIDDING PROCEDURES, AUCTION DATE, AND SALE HEARING**

**PLEASE TAKE NOTICE THAT:**

1. On April 13, 2017, Pizza Palz, Inc. (the “**Company**”), debtor and debtor in possession in the above-captioned bankruptcy cases (the “**Debtor**” or “**Seller**”) filed its Motion (the “**Motion**”) for (A) an Order (I) Establishing Bidding Procedures for the Sale(s) of Substantially All of the Debtor’s Assets; (II) Approving Bid Protections; (III) Establishing Procedures Relating to the Assumption and Assignment of Executory Contracts and Unexpired Leases; (IV) Approving Form and Manner of the Sale, Cure and Other Notices; and (V) Scheduling an Auction and a Hearing to Consider the Approval of the Sale(s); (B) Order(s) (I) Approving the Sale(s) of the Debtor’s Assets Free and Clear of Liens, Claims, and Encumbrances; and (II) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (C) Certain Related Relief.<sup>11</sup> [Doc No. \_\_.] By the Motion, the Debtor seek, *inter alia*, to sell (the “**Sale(s)**”) substantially all of their assets (the “**Assets**”) and to assume and assign certain executory contracts and unexpired leases (the “**Contracts**”) to Mountain Valley Pizza, LLC (the “**Buyer**”) pursuant to an asset purchase agreement by and among the Sellers and the Buyer (the “**APA**”), subject to higher or otherwise better offers, and/or one or more Successful Bidder(s) at the Auction, as applicable.

2. On April [DATE], 2017 pursuant to the Motion, the Court entered an Order (the “**Bidding Procedures Order**”) approving auction and bidding procedures (the “**Bidding Procedures**”) in connection with the proposed Sale(s). A copy of the Motion, the Bidding Procedures Order and the Bidding Procedures can be obtained from the CM/ECF system for the United States Bankruptcy Court for the Northern District of Alabama at (<https://ecf.alnb.uscourts.gov>) at case number 17-40556.

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<sup>11</sup> Capitalized terms used herein but not otherwise defined in this Notice (the “**Notice**”) shall have the meanings ascribed to them in the Motion.

## EXHIBIT A

### *(Proposed Bidding Procedures Order)*

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3. The Auction shall take place on **[May 16, 2017 at 9 a.m.]** (**prevailing Central Time**) at the offices of Walding, LLC 2227 First Avenue South, Suite 100, Birmingham, Alabama 35233, or such other place and time as the Debtor shall notify all Qualified Bidders, the Consultation Parties and each of their respective counsel and advisors.

4. A hearing to approve the Sale(s) (the “**Sale Hearing**”), including the assumption and assignment of certain Contracts, will be held on **[May 18, 2017 at \_\_ a.m.]** (**prevailing Central Time**), at the United States Bankruptcy Court for the Northern District of Alabama, Eastern Division, 1129 Noble Street, Anniston, Alabama 36201, before the Honorable James R. Robinson. The Sale Hearing may be adjourned by the Debtor, after consulting with the Consultation Parties, from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing, or by filing a notice on the docket of the Debtor’s Chapter 11 Case.

5. Pursuant to the Bidding Procedures Order, any objections to the Sale(s) (“**Sale Objections**”) must be set forth in writing and must state with particularity the grounds for such objections or other statements of position. Sale Objections must be filed with the Clerk via the Court’s CM/ECF service and served on (a) counsel to the Debtor, Brian Walding (bwalding@waldinglaw.com) and Donna Byrd (dbyrd@waldinglaw.com), Walding, LLC, 2227 First Avenue South, Suite 100, Birmingham, Alabama 35233; (b) counsel to Domino’s Pizza, Eric Goldstein (EGoldstein@goodwin.com), Shipman & Goodwin, LLP, One Constitution Plaza, Hartford, Connecticut 06103; (c) counsel to the Buyer, Justin Little (JLittle@RRLLaw.com), Reynolds, Reynolds & Little, LLC, 2115 11th Street, Tuscaloosa, Alabama 35401 and William Poole (poole@poolelawoffices.com), The Poole Law Offices, LLC, 2918 7th Street, Tuscaloosa, Alabama 35401; and (d) the United States Bankruptcy for the Northern District of Alabama, Robert Landry (Robert\_Landry@alnb.uscourts.gov), 1129 Noble Street, Anniston, Alabama 36201 (collectively, the “**Notice Parties**”) by **[4:00 p.m. (prevailing Central Time) on [May 15, 2017]**; provided that objections to the conduct of the Auction or selection of the Successful Bid(s) or Back-Up Bid(s) shall be in writing, filed with the Clerk, together with proof of service, and served so as to be received by the Notice Parties on or before **[noon]** (**prevailing Central Time**) **[one (1)] day prior to the Sale Hearing**. UNLESS AN OBJECTION IS TIMELY FILED AND SERVED IN ACCORDANCE WITH THIS NOTICE, IT MAY NOT BE CONSIDERED BY THE COURT AND THE COURT MAY GRANT THE RELIEF REQUESTED WITHOUT FURTHER HEARING AND NOTICE.

6. This Notice is subject to the fuller terms and conditions of the Motion and the Bidding Procedures Order, which shall control in the event of any conflict, and the Debtor encourage parties-in-interest to review such documents in their entirety.

7. Please take notice that copies of the Motion, the Bidding Procedures Order, the Bidding Procedures, and the form APA, are available: (a) upon request to the Debtor’s counsel, Walding, LLC at Brian Walding (bwalding@waldinglaw.com) or Donna Byrd (dbyrd@waldinglaw.com); or (b) for a fee via PACER by visiting [<https://ecf.alnb.uscourts.gov>].

[EXHIBIT 2 TO BIDDING PROCEDURES ORDER]

**EXHIBIT 3**  
Cure Notice

**UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
EASTERN DIVISION**

**In re:** )  
 )  
**PIZZA PALZ, INC.** ) **Case No: 17-40556**  
 )  
**Debtor.** )

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

**PLEASE BE ADVISED** that on April [12], 2017, Pizza Palz, Inc. (the “**Company**”), debtor and debtor in possession in the above-captioned bankruptcy cases (the “**Debtor**” or “**Seller**”) filed their Motion (the “**Motion**”) for (A) an Order (I) Establishing Bidding Procedures for the Sale(s) of Substantially All of the Debtor’s Assets; (II) Approving Bid Protections; (III) Establishing Procedures Relating to the Assumption and Assignment of Executory Contracts and Unexpired Leases; (IV) Approving Form and Manner of the Sale, Cure and Other Notices; and (V) Scheduling an Auction and a Hearing to Consider the Approval of the Sale(s); (B) Order(s) (I) Approving the Sale(s) of the Debtor’s Assets Free and Clear of Liens, Claims, and Encumbrances; and (II) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (C) Certain Related Relief.<sup>12</sup> By the Motion, the Debtor seek, among other things, to sell (the “**Sale(s)**”) substantially all of their assets (the “**Assets**”) and to assume and assign certain executory contracts and unexpired leases (the “**Contracts**”) to Mountain Valley Pizza, LLC (the “**Buyer**”) pursuant to an asset purchase agreement by and among the Seller and the Buyer (the “**APA**”), subject to higher or otherwise better offers, and/or one or more Successful Bidder(s) at the Auction, as applicable.

**PLEASE BE FURTHER ADVISED** that, on April [DATE], 2017, pursuant to the Motion, the Court entered an Order (the “**Bidding Procedures Order**”) approving auction and bidding procedures (the “**Bidding Procedures**”) in connection with the proposed Sale(s). A copy of the Motion, the Bidding Procedures Order and the Bidding Procedures can be obtained from the U.S. Bankruptcy Court for the Northern District of Alabama’s website at <https://ecf.alnb.uscourts.gov> under case number 17-40556.

**PLEASE BE FURTHER ADVISED** that a hearing to approve the Sale(s) (the “**Sale Hearing**”), including the assumption and assignment of certain Contracts, will be held [May 18, 2017 at \_\_\_ a.m.] (prevailing Central Time), at the United States Bankruptcy Court for the

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<sup>12</sup> Capitalized terms used herein but not otherwise defined in this notice (the “**Notice**”) shall have the meanings ascribed to them in the Motion.

## EXHIBIT A

*(Proposed Bidding Procedures Order)*

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Northern District of Alabama, Eastern Division, 1129 Noble Street, Anniston, Alabama 36201, before the Honorable James R. Robinson. The Sale Hearing may be adjourned by the Debtor, after consulting with the Consultation Parties, from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing, or by filing a notice on the docket of the Debtor's Chapter 11 Case.

**PLEASE BE FURTHER ADVISED** that pursuant to the Motion, the Debtor may assume and assign the Contract(s) identified on Exhibit A (the "**Subject Contract(s)**") to the Successful Bidder(s) at the Auction.<sup>13</sup> The cure amount (the "**Cure Amount**"), if any, the Debtor believe is required to satisfy all amounts and obligations due and owing under each Subject Contract by the Debtor, including any monetary defaults and compensation for pecuniary losses, is listed on Exhibit A (the "**Cure Schedule**").

**PLEASE BE FURTHER ADVISED** that the deadline to file an objection to the assumption and assignment of the Subject Contract(s) and the Cure Amount(s) for such Subject Contract(s) (together, "**Cure Objections**") is [May 15, 2017 at 4 p.m.] (prevailing Central Time) (the "**Cure Objection Deadline**"). Cure Objections, if any, must be filed with the Court and served upon (a) counsel to the Debtor, Brian Walding (bwalding@waldinglaw.com) and Donna Byrd (dbyrd@waldinglaw.com), Walding, LLC, 2227 First Avenue South, Suite 100, Birmingham, Alabama 35233; (b) counsel to Domino's Pizza, Eric Goldstein (EGoldstein@goodwin.com), Shipman & Goodwin, LLP, One Constitution Plaza, Hartford, Connecticut 06103; (c) counsel to the Buyer, Justin Little (JLittle@RRLLaw.com), Reynolds, Reynolds & Little, LLC, 2115 11th Street, Tuscaloosa, Alabama 35401 and William Poole (poole@poolelawoffices.com), The Poole Law Offices, LLC, 2918 7th Street, Tuscaloosa, Alabama 35401; and (d) the United States Bankruptcy for the Northern District of Alabama, Robert Landry (Robert\_Landry@alnb.uscourts.gov), 1129 Noble Street, Anniston, Alabama 36201 (collectively, the "**Notice Parties**").

**PLEASE BE FURTHER ADVISED** that the Cure Objection must state (i) the basis for the objection and (ii) with specificity, what Cure Amount(s) the party to the Subject Contract(s) believes is required (in all cases with appropriate documentation in support thereof).

**PLEASE BE FURTHER ADVISED** that any objection solely to the Cure Amount(s) may not prevent or delay the Debtor's assumption and assignment of the Subject Contract(s). If a non-Debtor counterparty (a "**Non-Debtor Counterparty**") objects solely to Cure Amount(s), the Debtor may, with the consent of the Successful Bidder(s), hold the claimed Cure Amount(s) in reserve pending further order of the Court or mutual agreement of the parties. So long as Cure Amount(s) are held in reserve, and there are no other unresolved objections to assumption and assignment of the applicable Subject Contract(s), the Debtor can, without further delay, assume and assign such Subject Contract(s) to the applicable Successful Bidder(s). Under such circumstances, the objecting Non-Debtor Counterparty's recourse is limited to the funds held in reserve.

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<sup>13</sup> The Debtor may modify the list of Contracts that will be assumed and assigned in connection with the Sale(s). In addition, the inclusion of any contract or agreement on Exhibit A shall not constitute an admission by the Debtor that any such Subject Contract is an executory contract or unexpired lease within the meaning of Section 365 of the Bankruptcy Code and the Debtor reserve all rights with respect thereto.

**EXHIBIT A**

*(Proposed Bidding Procedures Order)*

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**PLEASE BE FURTHER ADVISED** that any objections to the adequate assurance of future performance by the Buyer and/or another Successful Bidder(s) under the applicable Subject Contract(s) must be filed with the Court and served on the Notice Parties and the applicable Successful Bidder(s) so that such objection is received on or before **[noon]** (prevailing Central Time) the day before the Sale Hearing (the “**Adequate Assurance Objection Deadline**”).

**PLEASE BE FURTHER ADVISED** that unless a Cure Objection or an objection to adequate assurance of future performance, as applicable, is filed and served by a Non-Debtor Counterparty to any Subject Contract by the Cure Objection Deadline or the Adequate Assurance Objection Deadline, as applicable, such Non-Debtor Counterparty shall be (i) deemed to have waived and released any right to assert a Cure Objection and to have otherwise consented to the assignment of such Subject Contract, (ii) forever barred from objecting to the assumption and assignment of such Subject Contract or the failure of the Successful Bidder(s) to provide adequate assurance of future performance, and (iii) forever barred and estopped from asserting or claiming any Cure Amount, other than the Cure Amount listed on the Cure Schedule.

**PLEASE BE FURTHER ADVISED** that the hearings with respect to Cure Objection(s) or objection(s) to the adequate assurance of future performance may be held (a) at the Sale Hearing, or (b) at such other date as the Court may designate.

**PLEASE BE FURTHER ADVISED** that all requests for information concerning the Sale(s) should be in writing and directed to counsel to the Debtor at the address referenced below.

**PLEASE BE FURTHER ADVISED** that copies of the Motion, the Bidding Procedures Order, the Bidding Procedures, and the form APA, are available: (a) upon request to the Debtor’s counsel, Walding, LLC at Brian Walding (bwalding@waldinglaw.com) or Donna Byrd (dbyrd@waldinglaw.com); or (b) for a fee via PACER by visiting [<https://ecf.alnb.uscourts.gov>]



**SCHEDULE A TO CURE NOTICE**

**SCHEDULE A**

*Cure Notice*

Description of Subject Contract	Name and Contact Information of Counterparty	Cure Amount

**EXHIBIT B**  
*Asset Purchase Agreement*

**ASSET PURCHASE AGREEMENT**

**THIS AGREEMENT** (the “Agreement”) is made and entered into as of this 13<sup>th</sup> day of April 2017, by and between Mountain Valley Pizza, LLC whose principal address is 1485 Chase Valley Court, Northport, AL 35473, (hereafter referred to as “**Buyer**”) and Pizza Palz, Inc., a corporation organized under the laws of the state of Alabama, whose principal address is 1428 Gunter Avenue, Guntersville, AL 35976 (hereafter referred to as “**Seller**”; and collectively with the Buyer, the “**Parties**”).

**WITNESSETH**

**WHEREAS**, Seller is operating and owns those certain Domino’s Pizza Stores as specified herein;

**WHEREAS**, on March 23, 2017 (the “**Petition Date**”), the Seller has filed for protection under chapter 11 of Title 11 U.S.C. §§ 101, *et. seq.* (the “**Bankruptcy Code**”) identified as case number 17-40556-11 (the “**Bankruptcy**”) filed in the United States Bankruptcy Court for the Northern District of Alabama, Eastern Division (the “**Bankruptcy Court**”);

**WHEREAS**, Seller desires to sell and assign, and Buyer desires to purchase and acquire all of the assets, personal, tangible and intangible, used or useful by Seller in the operation of the Stores except as set out to the contrary herein, subject to the permission of Domino’s Pizza LLC, Domino’s Pizza Master Issuer LLC, and/or Domino’s Pizza Franchising LLC or such other entity as shall be designated by Franchisor (collectively, the “**Franchisor**”), for the transfer to Buyer of the assets to be sold and as specifically set forth in Paragraph 1 below and subject to the Terms and Conditions contained herein;

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, and conditions contained herein, the Parties do hereby agree as follows:

**1. PURCHASE OF ASSETS**

The terms of this Agreement are premised upon the entry of an order issued in the Bankruptcy by the Bankruptcy Court authorizing the sale described herein pursuant to, *inter alia*, § 363 of the Bankruptcy Code (the “**Sale Order**”) on terms acceptable to Buyer, Seller and Franchisor. Subject to the Sale Order and pursuant to the terms and conditions of this Agreement, on the Closing Date (as defined in Paragraph 18), Seller will sell, convey, assign, transfer, and deliver to Buyer and Buyer will purchase from Seller all of Seller’s right, title and interest in and to, all assets tangible or intangible, including all personal property of Seller used in connection with the operation for the following Stores (hereinafter, the stores listed below are collectively the “**Stores**”):

<b>Store</b>	<b>Address</b>	<b>City</b>	<b>State</b>	<b>Zip</b>
5897	13260 US Highway 411, Suite 100	Odenville	AL	35120
5890	993 2 <sup>nd</sup> Avenue	East Oneonta	AL	35121
5866	115 West Grand Avenue	Rainbow City	AL	35906
5858	964 Gilbert Ferry Road	Attalla	AL	35954
5855	276 N. 3 <sup>rd</sup> Street	Gadsden	AL	35901
5838	1437 Gunter Ave.	Guntersville	AL	35976
5837	102 North McCleskey St.	Boaz	AL	35957

## **EXHIBIT B**

(Asset Purchase Agreement)

5836 503 Carlisle Street

Albertville

AL

35951

### **2. SALE OF ASSETS**

Pursuant to the terms and conditions of this Agreement and the Sale Order, on the Closing Date, Seller will sell, convey, assign, transfer, and deliver to Buyer, and Buyer will purchase from Seller all of Seller's right, title and interest in and to all assets tangible or intangible, including all personal property of Seller used in connection with the operation of the Stores, as specified in Paragraph 1 (hereafter known as the "**Acquired Assets**"). Included specifically are the following:

- (1) Any right that the Seller has to continue to operate and occupy the premises of the Stores (the "**Premises**"), provided, however, that Buyer shall not be deemed to incur any liabilities of Seller related to any Lessor accruing prior to the Closing Date, as provided in the Sale Order;
- (2) All tangible personal property of every kind and character used in the operation of the Stores, except as otherwise specifically indicated herein, including without limitation furniture, fixtures, equipment (as listed on **Exhibit C**), pre-paid advertising, supplies, and promotional inventory, and general inventory. Seller will furnish to Buyer and execute a Bill of Sale at closing which shall comprise **Exhibit B** and which is incorporated by reference. Seller will furnish to Buyer at closing a list of all inventories and cash tills which shall be paid for as more particularly set forth herein, and such inventory list shall comprise **Exhibit F** and which is incorporated by reference;
- (3) To the extent in Seller's possession, copies of all assets ledgers, inventory records, budgets, customer and supplier lists, technical data, sales literature, correspondence, computer printouts, books, notes, and files used by Seller in connection with the Stores and all accounting and operating records and other written or electronically stored, operating and financial information relating to the Stores and used by Seller (such assets being hereinafter referred to as the "**Records**");
- (4) As set forth in the Sale Order, all rights, but no liabilities, of Seller arising under any contracts which are currently in effect or which will be in effect on the Closing Date. The parties agree that the Buyer will assume, only existing at the Closing date as defined hereto, those contracts which are listed in **Exhibit D** which is attached hereto and incorporated by reference and agreed to in advance by Buyer. Buyer shall not be liable for any contracts which are not contained in **Exhibit D**; and
- (5) All goodwill, common law property rights, and all other intangible personal property owned by Seller and used in connection with the operation of the Stores except that nothing herein shall include those items excluded by reference in this Agreement;
- (6) Nothing contained herein shall constrain or limit the Buyer's ability to renegotiate or enter into new lease agreements for the Stores and should Buyer elect such negotiation, Buyer shall be solely responsible for any lease negotiations and new lease terms negotiated for the Stores.

### **3. ASSUMED LIABILITIES**

## **EXHIBIT B**

### *(Asset Purchase Agreement)*

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- (a) Buyer shall assume the contracts which are listed in **Exhibit D** which is attached hereto and which is incorporated by reference.
  - (b) Except as expressly and specifically provided for in this Agreement, Seller shall be solely responsible for all liabilities incurred or accrued up to the Closing Date and Buyer shall not assume any of these liabilities of Seller. Buyer shall be solely responsible for those liabilities Buyer incurs or accrues from the date of closing forward. The excluded liabilities which Buyer shall not assume and which Seller shall defend Buyer against and hold Buyer harmless from include, but are not limited to:
    - (1) Any liabilities of Seller to employees, lessors, agents, subcontractors, legal and financial professionals and other suppliers, or any other entity or individual incurred prior to the Closing Date;
    - (2) Any liabilities of Seller that were not incurred in the normal and ordinary course of business other than the financial liabilities referenced above;
    - (3) Any liabilities of Seller for federal, state, and local income taxes including interest or penalties thereon and any liabilities of Seller for any and all other federal, state, and local taxes including interest and penalties thereon;
    - (4) Any contracts which are not referenced in this Agreement or contained or referenced in **Exhibit D**.
    - (5) Any costs or expenses of whatever nature incurred by Seller in connection with or resulting from the negotiation or consummation of this Agreement or the sale or transfer of assets pursuant to this Agreement, except as elsewhere provided herein.
  - (c) Except as otherwise set forth in this Agreement, Buyer shall be solely responsible for all liabilities incurred or accrued from the Closing Date forward.
  - (d) If assignment is possible, subject to the Franchisor's right of first refusal and the Franchisor's right to prior approval, as set forth in Paragraph 8 of this Agreement, and any other necessary approval, Seller shall assign to Buyer and Buyer shall acquire from Seller all licenses, permits, permissions, pending applications (if any) for the same, including without limitation, the right to the use of all of the intangible assets belonging to Seller except those assets identified in Paragraph 30.
  - (e) The provisions of this Section shall survive the Closing Date.

#### **4. PURCHASE PRICE**

The total initial payment due to Seller is SEVENTY-FIVE THOUSAND Dollars and 00/100 Cents (\$75,000.00) (the "**Initial Proceeds**") plus a true up for all cash tills and cash on hand at the close of business on the Closing Date (the "**Cash on Hand**") and on hand inventory as of the Closing Date (the "**Inventory Allowance**"; and collectively with the Initial Price and Cash on Hand, the "**Purchase Price**"). The Purchase Price will be paid as follows:

- (a) On the Closing Date, Buyer shall pay or cause to be paid to Seller, the balance of the Initial Proceeds after application of any Earnest Money provided by Seller toward the Initial Proceeds as set forth in Paragraph 7.
- (b) Additionally, no less than two (2) days after the Closing Date, the Buyer shall provide to Seller an amount equal to the Cash on Hand;
- (c) Also, no less than two (2) days after the Closing Date, the Buyer shall provide the Seller the cash value of Seller's purchase price for any on hand inventory, which inventory shall be conducted on the close of business on the Closing Date (the "**Inventory Allowance**").

**EXHIBIT B**  
*(Asset Purchase Agreement)*

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**5. ADJUSTMENTS**

All items customarily subject to prorating in transactions of this kind (collectively, the “**Proration Adjustments**”), including but not limited to insurance premiums, rent, pre-paid advertising, property taxes, excises, payroll, rebates, deferred compensation, power, telephone and utility charges, all contracts to be assigned to Buyer as identified in **Exhibit D**, prepaid and accrued items and expenses including prepaid advertising, security deposits, cash till/cash on hand, and similar items shall be prorated or purchased between Buyer and Seller as of the Closing Date. The method used for prorating shall be as follows: charges shall be apportioned based upon the number of operating days occurring before and after the Closing Date during the billing period for each such charge. Thus, for the purposes of prorating, Seller will be responsible for all debts incurred or accrued to the date of closing and Buyer will be responsible for all debts incurred or accrued from the Closing Date forward, but no previous liabilities of Seller under said contracts or otherwise, as more particularly set forth in the Sale Order.

**6. ASSUMPTION OF CERTAIN LIABILITIES**

Buyer shall assume the contracts referenced in Paragraph 2, copies of which are attached as **Exhibit D** from the date of closing forward.

**7. EARNEST MONEY.**

The Buyer shall provide the Seller with earnest money of TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) (the “**Earnest Money**”), which shall be applied against the Purchase Price as set forth in Paragraph 4.

**8. APPROVAL OF THE FRANCHISOR**

Consummation of the purchase and sale provided for in this Agreement is contingent upon the Franchisor waiving its right of first refusal, the Franchisor approving the Buyer as a franchisee, and the Franchisor approving this transaction.

**9. SUBMISSION OF THE AGREEMENT**

If not yet submitted, Buyer and Seller agree to proceed as expeditiously as possible in submitting this Agreement to Franchisor. In the event the Franchisor withholds its approval, either party may elect in writing to terminate this Agreement and each party shall be responsible for the expenses it has incurred and Buyer’s escrow deposit, if any, shall be returned to Buyer.

**10. DEFAULT**

If the Buyer defaults prior to the Closing Date, Seller is entitled to the Earnest Money as liquidated damages for its efforts related to the sale contemplated by this Agreement. If Seller defaults prior to the Closing Date, Buyer is entitled to the return of the Earnest Money within three (3) business days of Buyer notifying Seller of said default. Seller and Buyer acknowledge that the Seller may solicit competing offers for the sale of the Acquired Assets contemplated by this Agreement, but solicitation of such offers shall only be allowed by Buyer if the Bankruptcy Court allows for Buyer to be the beneficiary of a break fee or similar consideration for its efforts related to the sale contemplated by this Agreement equal to or greater than the amount of the

## **EXHIBIT B**

### *(Asset Purchase Agreement)*

Earnest Money. Seller and Buyer acknowledge that ultimate approval of the sale contemplated by this Agreement and the terms and conditions thereto are subject to the jurisdiction of the Bankruptcy Court.

Moreover, if the transaction contemplated by this Agreement is subject to bidding or other offers by the Seller in the Bankruptcy, the Buyer shall be entitled to a break fee from Seller of TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) to, in part, reimburse the Seller for its legal expenses and other costs associated with due diligence contemplated by and in this Agreement.

### **11. REPRESENTATIONS AND WARRANTIES**

Seller represents, warrants, and covenants as follows:

- (a) Seller's Stores are and will be through the Closing Date subject to the terms and conditions of a standard franchise agreement(s) with Franchisor whereby a cure or adequate assurance has been defined such that compliance can be achieved as required for assignment of the franchise agreement(s) by Seller to Buyer;
- (b) Subject to approval by the Bankruptcy Court, Seller has the right to execute and deliver this Agreement to Buyer and to enter into the sale contemplated in this Agreement;
- (c) Seller, in the course of the operation of the Store(s) for the one year prior to closing has conducted the business only in the normal and ordinary course and has not with respect to the operation of the Store(s):
  - (1) Since Buyer's inspection of the Stores, Seller has not sold, transferred, or removed any Subject Asset used in the operation of the Stores including any machinery, equipment, or supplies, except for supplies consumed and other property disposed of in the ordinary and normal course of business; or
  - (2) Waived any material right relating to the Stores.
- (d) To the best of the knowledge and belief of the Seller, all of the Premises are in compliance with applicable building codes, safety, zoning and land use laws, ordinances and regulations, and none of the leased space in the buildings encroaches on any real property not included in the Premises;
- (e) All of the contracts were entered into in the ordinary course of business. Seller has fully disclosed to Buyer all contracts to which Seller is a party including those contracts which Buyer is not assuming;
- (f) Since the Petition Date, Seller warrants that it has complied in all material respects with all applicable laws, rules, regulations and orders in their operation of the Stores and their ownership of the Acquired Assets.
- (g) Since the Petition Date, Seller has not been informed in writing or otherwise of any increase in any taxes or assessments with respect to the Stores or Premises for which Seller is liable. Seller has paid or has made arrangements through the Bankruptcy to pay, as of the Petition Date, all federal, state, and local taxes that will be due and payable as of the Closing Date including but not limited to all required withholding taxes, FICA contributions, unemployment contributions, and payments required under the Alabama Sales Tax. All federal, state and local returns due since the Petition Date – with the exception of corporate income tax returns – have been filed by Seller or will be filed within thirty (30) days after the Closing Date.
- (h) Seller has in force appropriate, customary, and adequate policies of fire and extended coverage, and other casualty and liability insurance, insuring all of the Acquired Assets to the extent typically insured by companies in similar businesses as Seller's, and all such insurance shall remain in full force and effect without abatement through the Closing Date.

## **EXHIBIT B**

### *(Asset Purchase Agreement)*

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- (i) Seller has not made any promise to any person that Buyer would hire any employee of Seller or that Buyer would recognize any union or bargaining agent of any employee group. Seller has disclosed to Buyer all contracts with any employee or employees of Seller;
  - (j) Since the Petition Date, the book of accounts has been, and shall continue to be kept in accordance with good accounting practice generally accepted in the restaurant business. In addition, until the Closing Date, Seller shall use its best efforts to continue to conduct the financial operations of the Stores, including its credit and collection policies in accordance with good business practices;
  - (k) During the course of its operation of the Stores, Seller has not started any pension plan or any deferred compensation plan for any employee(s);
  - (l) To the best of Seller's knowledge, Seller is in complete compliance with all laws and regulations of the Environmental Protection Agency and any similar state, county or local authorities;
  - (m) Seller will maintain the existing telephone service for the Stores and with the approval of Franchisor. Buyer will be able to use the present telephone number for the Stores. All charges for telephone service will be allocated on a pro rata basis pursuant to Paragraph 5;
  - (n) Seller will take all those acts necessary so that Buyer will be able to continue the use of the utilities uninterrupted after closing. All charges for utilities will be allocated on a pro rata basis pursuant to Paragraph 5. Buyer will transfer all utilities into Buyer's name as of the Closing Date but not later than five (5) business days thereafter;
  - (o) All post-Petition Date outstanding bills have been disclosed to Buyer, and with exception to the debts disclosed, there are no bills outstanding which have owed for more than thirty (30) days;
  - (p) All post-Petition Date debts, royalty payments, advertising payments, commissary payments, or other claims against Seller have been fully disclosed;
  - (q) To the best of the knowledge and belief of Seller, all of the Acquired Assets shall be in proper working order excepting normal wear and tear as of the date of closing;
  - (r) Seller further represents and warrants that Buyer is not a successor to Seller but is merely a Buyer of certain of Seller's assets;
  - (s) Seller has not prepaid any rent due to any landlord or other party, and has not sought to, or been given notice of, the termination of any lease agreement, although Buyer acknowledges that the term of certain, if not all, of the written leases between Seller and lessors may have expired

## **12. BUYER'S REPRESENTATIONS AND WARRANTIES**

Buyer represents, warrants, and covenants as follows:

- (a) Buyer is a Limited Liability Corporation in good standing in the state of Alabama and has the requisite capacity and right to execute and deliver this Agreement to Seller and to enter in to the sale which this Agreement contemplates. This Agreement is a valid and binding agreement on Buyer, enforceable in accordance with its terms;
- (b) To the best of Buyer's knowledge, no representation or warranty made by Buyer in this Agreement or any statement, information or certificate furnished to or to be furnished by the Buyer to Seller pursuant to this Agreement, or in connection with the transactions contemplated in this Agreement contains or will contain any false or misleading statement of material fact or omits or will omit to state a material fact necessary to make the statement therein not misleading.



## **EXHIBIT B**

### *(Asset Purchase Agreement)*

- (c) Buyer acknowledges the Seller's Bankruptcy, that the Seller has had an opportunity to review the Bankruptcy pleadings and any assumed agreements, and is buying the Acquired Assets pursuant to the Sale Order issued in the Bankruptcy.

### **13. RISK OF LOSS**

Risk of loss, damage or destruction to the tangible assets to be sold and conveyed under this Agreement including any leasehold interest that the Seller has in the Premises shall be upon the Seller until the Closing Date and thereafter upon the Buyer. In the event that the assets are not completely repaired, replaced, or restored on or before the Closing Date, Buyer or Seller may elect to terminate this Agreement or elect to postpone the Closing Date until such time as the assets have been completely repaired, replaced, or restored. Notwithstanding the above, Buyer is purchasing the Acquired Assets on an "AS-IS" basis. The provisions of this paragraph shall survive the Closing Date and any discharge in bankruptcy as may be provided in the Sale Order.

### **14. OPERATIONS PENDING CLOSING**

Seller hereby covenants and agrees as follows:

- (a) Except as contemplated by the transactions hereunder pending the closing, the Stores shall be operated and conducted only in the ordinary course in accordance with prior practices, and Seller will carry on the Stores diligently and substantially in the manner as previously conducted and shall not make or institute any methods of manufacture, purchase, sale, lease, management, accounting, or operation except in the ordinary course of business;
- (1) No contract or commitment of any kind relating to the Stores shall be entered into other than in the normal and ordinary course without advance written approval of Buyer, other than any agreement for purchase of the Acquired Assets to another competing buyer providing a higher or better offer.
  - (2) Seller shall maintain the Acquired Assets, the Stores and Premises in their present state of repair, and will preserve the good will of the Stores and their operation, and relationships with the customers, suppliers, and other individuals having business relations with the Stores. This paragraph shall not be deemed to abrogate the representations and related obligations set forth in Section 11(q) to deliver the Acquired Assets in proper working order.
- (b) Seller will not:
- (1) Dispose of any of the Acquired Assets other than in the ordinary course of business;
  - (2) Mortgage, pledge or subject to liens or other encumbrances any of the Acquired Assets; or
  - (3) Do any act, omit to do an act, or permit any act within Seller's control which will cause a breach of any representation, warranty, or obligation contained in this Agreement or any obligations contained in any contract.

### **15. ACCESS TO INFORMATION**

Prior to Closing, Seller shall, upon reasonable notice, accord Buyer reasonable access to all Seller's Premises, contracts to be assumed by Buyer, files, programming, technical and sales business records, logs, accounting records, all of which pertain exclusively to the Stores during normal business hours to Buyer, its counsel, accountants, engineers, and other representatives, and shall furnish Buyer, during such period upon reasonable request, with all reasonable information concerning operations of the Stores that Buyer may reasonably request. Any and all

## **EXHIBIT B**

### ***(Asset Purchase Agreement)***

information, disclosures, knowledge or facts regarding Seller and their operation and properties derived from or resulting from Buyer's access to Seller's property and records under the provisions of this Paragraph and this Agreement shall be confidential and shall not be divulged, disclosed, or communicated by Buyer or Buyer's agents to any other person, firm, corporation or entity, provided that this provision shall not apply after the Closing Date to information, disclosures, knowledge or facts relating solely to the Stores. Any copies of or extracts from Seller's records made by or under this Agreement shall be returned immediately to Seller if for any reason the sale of the Stores provided for in this Agreement is not consummated on the Closing Date unless the parties postpone the closing by mutual agreement or in accordance with this Agreement. Nothing in this Agreement is to be interpreted as giving Buyer any voice or control over the operation of the Stores, which remains the responsibility of the Seller until closing. Seller will, however, permit Buyer to observe and be present during normal operations pending Closing.

#### **16. INDEMNIFICATION**

The Parties hereto agree that the representations and warranties contained in this Agreement shall survive the closing hereunder subject to any provisions to the contrary contained in any order issued by the Bankruptcy Court. The Parties hereto agree that the Buyer's obligation to fund the balance of the Purchase Price and Proration Adjustments between the Parties shall survive the closing hereunder. Any other continuing obligations between the Parties shall be subject to the Sale Order issued by the Bankruptcy Court. Subject to the provisions of the Sale Order, Seller agrees to indemnify and hold Buyer harmless for any and all claims or liabilities of any nature whatsoever and involving any person or entity arising out of any occurrence prior to the closing date or that otherwise accrued prior to the Closing Date.

#### **17. [INTENTIONALLY OMITTED]**

#### **18. CLOSING: TIME, DATE, AND PLACE**

Closing shall be on May 22, 2017 (the "Closing Date") or at a date earlier if agreed upon by the Parties, through a mail away closing. The parties may mutually agree to an alternate closing date and closing location. Buyer shall take possession of the property and the business on the next day following the Closing Date.

#### **19. CONDITIONS PRECEDENT TO BUYER'S OBLIGATION TO CLOSE**

Buyer shall not be obligated to close this Agreement unless and until the following conditions have been met:

- (a) The Franchisor shall have stated in writing that it will not exercise any right of first refusal;
- (b) The Franchisor shall have stated in writing that Buyer has been approved as a Franchisee to operate the Stores;
- (c) The representations and warranties of Seller set forth in this Agreement shall, to the best of its knowledge, be true and correct in all material respect on and as of the Closing Date with the same effect as if made on and as of the Closing Date;
- (d) Seller shall have performed and complied with all the agreements, obligations, and conditions this Agreement requires to be performed or complied with prior to or at the Closing Date; and

## **EXHIBIT B**

### *(Asset Purchase Agreement)*

- (e) Seller shall have promptly performed and complied with all the requirements of the Franchisor necessary for completion of the transaction including but not limited to those requirements contained in the Franchise Agreement;
- (f) An appropriate Sale Order shall have been entered by the Bankruptcy Court on terms acceptable to Buyer, Seller and Franchisor;
- (g) Notwithstanding the foregoing, buyer shall, at Buyer's sole discretion, have the absolute right to terminate this Purchase Agreement at any time prior to the Closing Date and obtain a full refund of Buyer's Earnest Money.

#### **20. CONDITIONS PRECEDENT TO SELLER'S OBLIGATION TO CLOSE**

Seller shall not be obligated to close this Agreement unless and until the following conditions have been met:

- (a) The Franchisor shall have stated in writing that it will not exercise any right of first refusal;
- (b) The Franchisor shall have stated in writing that Buyer has been approved as a franchisee to operate the Stores;
- (c) The representations and warranties of Buyer as set forth in this Agreement shall be, to the best of Buyer's knowledge, true and correct in all material respects on and as of the Closing Date and with the same effect as if made on and as of the Closing Date;
- (d) Buyer shall have promptly performed and complied with all the agreements, obligations, and conditions which this Agreement requires to be performed or complied with prior to or at the Closing Date; and
- (e) Buyer shall have promptly performed and complied with all the agreements, obligations, and conditions required by Franchisor necessary for the completion of this transaction, including but not limited to those requirements contained in the Franchise Agreement.

#### **21. BUYER'S PERFORMANCE AT CLOSING**

At the closing, Buyer will:

- (a) Pay or cause to be paid the Initial Proceeds and Earnest Money to Seller.
- (b) Make arrangements for payment and calculation of the balance of the Purchase Price to Seller.
- (c) Make arrangement for calculation of the Proration Adjustments with Seller.
- (d) Deliver to Seller a resolution from Buyer's Board of Director's, Manager or Managers authorizing the purchase of the assets in accordance with the terms and conditions of this agreement.

#### **22. SELLER'S PERFORMANCE AT CLOSING**

At the closing, Seller will:

- (a) Deliver to Buyer a complete list of all such tangible personal property;
- (b) Deliver to Buyer a list of all inventory and/or make arrangements for delivery of a list of inventory at the close of business as of the Closing Date;
- (c) Seller shall deliver to Buyer possession of the Acquired Assets and assignments conveying the Acquired Assets in form and substance satisfactory to Buyer.
- (d) Deliver a statement of employee information; and
- (e) Deliver to Buyer a resolution from Seller's Board of Director's, Manager or Managers authorizing the sale of the assets in accordance with the terms and conditions of this agreement.

**EXHIBIT B**  
(Asset Purchase Agreement)

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**23. BROKER**

Both parties expressly warrant and agree that no broker, finder, or consultant is involved in the negotiations leading to the execution of this Agreement and that there are no fees, commissions, and expenses due to any broker.

**24. NOTICES**

Any notice required or permitted to be given by any party to any other party, pursuant to this Agreement or any agreements incorporated to this Agreement shall be deemed sufficient if mailed by certified mail, postage prepaid, return receipt required to the addresses contained above, or to such other addresses as any party may designate from time to time by written notice to the other party.

**25. CAPTIONS**

The paragraph headings and captions in this Agreement are for convenience and reference purposes only, and shall not in any way affect the meaning or interpretation of this Agreement.

**26. [INTENTIONALLY OMITTED]**

**27. PARTIES BOUND**

This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

**28. EXPENSES**

Each party shall pay its own expenses, taxes, and other costs incidental to or relating to this Agreement whether or not this transaction as contemplated in this Agreement is consummated except as otherwise specified in this Agreement. Both Parties have been advised and have had the opportunity to consult with and have this Agreement reviewed by separate and independent counsel prior to the execution hereof.

**29. TIME IS OF THE ESSENCE**

Time is of the essence to this Agreement.

**30. FRANCHISOR'S CONDITIONS**

Notwithstanding any other language in this Agreement, the following Franchisor conditions shall apply.

- (a) *Inconsistency Between Agreements*. In the event of any inconsistency between the terms of this Agreement, any and all other related documents executed in connection with the purchase of said Stores, and the Rider attached hereto as **Exhibit I**, the terms of the Rider shall prevail. If there is any inconsistency between any franchise agreement(s) to which Seller or Buyer is a party (a "**Franchise Agreement(s)**"), and the Purchase Agreement, including the Rider, the terms of the Franchise Agreement(s) shall prevail. Without limiting the generality of the foregoing, sales or transfers of all or a part of a Domino's

## **EXHIBIT B**

### **(Asset Purchase Agreement)**

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- Pizza Store, or its assets, or the entity owning the Stores remain subject to the prior rights of Domino's Pizza LLC as provided in the Franchise Agreement(s).
- (b) Disclaimer of Interest in Telephone Numbers/Intellectual Property. The Acquired Assets to be sold do not include, nor shall any value be assigned to, telephone numbers, the Domino's trademarks/tradenames, the Franchise Agreement(s), or any rights granted under the Franchise Agreement(s).
  - (c) Outstanding Debts. All outstanding debts owed to Franchisor and its subsidiaries or affiliates, accrued as of the date of closing, must be paid in full prior to or at the closing, or Seller shall enter into an agreement with Franchisor to satisfy the same in such manner as Franchisor deems acceptable in its sole discretion. Buyer shall have no liability or obligation whatsoever for any debts owed by Seller to Franchisor or any other person or entity.
  - (d) No Security Interest. Buyer acknowledges and agrees that it shall not grant a security interest in or pledge as collateral any interest in any Franchise Agreement(s), or premise lease, or any franchise rights thereunder and Seller acknowledges that it will not attempt to acquire any such security interest.
  - (e) Delivery Area. Neither Seller nor Buyer has the authority to change the boundaries of any Store's delivery area without the written consent of Franchisor. If there are any discrepancies over the exact boundaries of any Store's delivery area, the boundaries that are set out on the map maintained by Franchisor shall control.
  - (f) Disclosure. Seller agrees to disclose to Buyer prior to Closing any limitations Seller has placed on delivery service offered by the Stores and furnish Buyer with copies of documents supporting Seller's reasons for, and other information about, the limitations.
  - (g) Independent Review. Buyer agrees to make an independent review and evaluation of all Stores' entire delivery area within thirty (30) days after Closing and Buyer shall adopt and implement its delivery service policy in accordance with the Franchisor's Limited Delivery Service Policy and Standard.
  - (h) Sale Information. Seller and Buyer agree that Franchisor does not represent or warrant the accuracy of any information Seller has provided to Buyer in connection with this transaction and Franchisor shall have no liability for the information or failure to provide information. The Acquired Assets to be sold do not include, nor shall any value be assigned to the telephone number, the trademark/trade name of Franchisor, any Franchise Agreement(s) and all rights granted thereunder or related thereto. Any language in any other portion of this Agreement which is contrary to or inconsistent with this Paragraph 30 shall be deemed null and void.

### **31. WHOLE AGREEMENT**

This Agreement embodies the entire agreement and understanding between the Buyer and Seller and there are no other agreements, representations, warranties or understandings, oral or written between Buyer and Seller. No amendment, alteration, modification, or change of this Agreement shall be valid unless there is a written instrument signed and executed in the same manner as this Agreement. All Exhibits referenced herein are hereby incorporated into this Agreement by reference and by signing this Agreement the Parties confirm receipt of such.

### **32. SEVERABILITY AND WAIVER**

If any provision of this Agreement shall be held invalid and unenforceable, it shall not affect any other provision of the Agreement and this Agreement shall be construed as if the invalid or unenforceable provision(s) had never been contained in this Agreement. The failure of any party

**EXHIBIT B**

*(Asset Purchase Agreement)*

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to insist upon strict performance of any obligation or right in this Agreement shall not be a waiver of that party's right to demand strict compliance in the future. All waivers by any party must be reduced to writing and signed.

**33. INTENTIONALLY OMITTED****34. MISCELLANEOUS**

Buyer and Seller agree to prepare timely any documents necessary to effectuate this Agreement. The parties hereby consent to personal jurisdiction and exclusive venue, for any action arising out of a breach or threatened breach of this Agreement in the Bankruptcy Court. This Agreement shall be construed and enforced in accordance with the laws of the State of Alabama.

**35. COUNTERPARTS/ FACSIMILE SIGNATURES**

This contract may be executed in two or more counterparts each having the full effect of an original, and all of which shall constitute together one and the same instrument. Facsimile and electronic copies of signatures on this Agreement shall be deemed valid and original. Each Party has a right to obtain original signatures from the other.

**EXHIBIT B**  
(Asset Purchase Agreement)

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IN WITNESS WHEREOF, the Parties acknowledge receiving all Exhibits and have executed this Agreement to be effective on the date indicated below:

**SELLER:**

**BUYER:**

**PIZZA PALZ, INC.**

BY: \_\_\_\_\_  
Name: Judy O'Dell  
Its: President  
Date: April \_\_\_\_\_, 2017

BY:  \_\_\_\_\_  
Name: Zan Hall  
Its: Manager  
Date: April 13, 2017

**EXHIBIT B**  
(Asset Purchase Agreement)

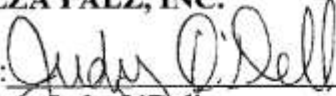
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**IN WITNESS WHEREOF**, the Parties acknowledge receiving all Exhibits and have executed this Agreement to be effective on the date indicated below:

**SELLER:**

**BUYER:**

**PIZZA PALZ, INC.**

BY:   
Name: Judy O'Dell  
Its: President  
Date: April 13, 2017

BY: \_\_\_\_\_  
Name: Zan Hall  
Its: Manager  
Date: April \_\_\_\_\_, 2017



**LIST OF EXHIBITS**

Exhibit A- Intentionally Omitted

Exhibit B- Bill of Sale.

Exhibit C- A list of equipment to be purchased.

Exhibit D- All contracts which Buyer is assuming.

Exhibit E- Intentionally Omitted.

Exhibit F- A list of all inventory which Buyer is purchasing.

Exhibit G- Intentionally Omitted.

Exhibit H- Intentionally Omitted

Exhibit I – Rider to the Purchase Agreement.

**EXHIBIT B**  
**Bill of Sale**

**Bill of Sale and Assignment of Contract Rights**

1. *Sale and Transfer of Assets and Contract Rights.* For good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, and as controlled by an order approving the sale of the Assets contemplated by this Bill of Sale issued by the United States Bankruptcy Court for the Northern District of Alabama in case number 17-40556 (the “**Bankruptcy**”) and as contemplated by Section 2 of that certain Asset Purchase Agreement dated as of April \_\_, 2017 (the “**APA**”), to which Pizza Palz, Inc., an Alabama corporation and debtor and debtor in possession in the Bankruptcy (the “**Seller**”), and Mountain Valley Pizza, LLC, an Alabama limited liability company (the “**Buyer**”), are parties, Seller hereby sells, transfers, assigns, conveys, grants and delivers to Buyer, effective as of \_\_\_\_\_:\_\_\_\_\_ .m. (\_\_\_\_\_ time) on \_\_\_\_\_, 20\_\_\_\_ (the “**Effective Time**”), all of Seller’s right, title and interest in and to all of the assets (the “**Assets**”) and contract rights (“**Rights**”) described on Schedules C & F of the APA (collectively, the Assets and the Rights being referred to as the “**Transferred Items**”).

2. *Terms of Sale.* SUBJECT TO ANY ORDER ISSUED IN THE BANKRUPTCY, THE ASSETS ARE SOLD ON AN “AS IS, WHERE IS” BASIS, AND WITH ALL FAULTS. THE ASSETS ARE SOLD WITH NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS OR RECOURSE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES RELATING TO TITLE, POSSESSION, QUIET ENJOYMENT OR THE LIKE IN THIS DISPOSITION.

3. *Power of Attorney.* Without limiting Section 2 hereof, Seller hereby constitutes and appoints Buyer the true and lawful agent and attorney in fact of Seller, with full power of substitution and resubstitution, in whole or in part, in the name and stead of Seller but on behalf and for the benefit of Buyer and its successors and assigns, from time to time:

- a. to demand, receive and collect any and all of the Transferred Items and to give receipts and releases for and with respect to the same, or any part thereof;
- b. to institute and prosecute, in the name of Seller or otherwise, any and all proceedings at law, in equity or otherwise, that Buyer or its successors and assigns may deem proper in order to collect or reduce to possession any of the Transferred Items and in order to collect or enforce any claim or right of any kind hereby assigned or transferred, or intended so to be; and

**EXHIBIT B**

*(Asset Purchase Agreement)*

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- c. to do all things legally permissible, required or reasonably deemed by Buyer to be required to recover and collect the Transferred Items and to use Seller's name in such manner as Buyer may reasonably deem necessary for the collection and recovery of same,

Seller hereby declaring that the foregoing powers are coupled with an interest and are and shall be irrevocable by Seller.

4. *Terms of the APA.* The terms of the APA and any order controlling the sale issued in the Bankruptcy, including but not limited to Seller's representations, warranties, covenants, agreements and indemnities relating to the Transferred Items, are incorporated herein by this reference. Seller acknowledges and agrees that the representations, warranties, covenants, agreements and indemnities contained in the APA and any order controlling the sale issued in the Bankruptcy shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between the terms of the APA and any order controlling the sale issued in the Bankruptcy and the terms hereof, the terms of any Bankruptcy Order shall control, followed in priority by the APA and finally, this Bill of Sale.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale and Assignment of Contract Rights as of \_\_\_\_\_, 2017

**PIZZA PALZ, INC.**, an Alabama corporation and debtor and debtor in possession

\_\_\_\_\_, an Alabama corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT B**  
*(Asset Purchase Agreement)*

**EXHIBIT C**  
Tangible Personal Property

Any and all tangible personal property located at the Stores, including but not limited to any and all promotional materials, marketing supplies, utensils, cookware, warming bags and equipment. The equipment includes but is not limited to the equipment set forth below:

QUANTITY	DESCRIPTION
<b>DOMINO'S PIZZA ONEONTA, ALABAMA</b>	
15	RED PLASTIC CHAIRS
7	2-TOP TABLES
1	3-CUSHION SETEE
1	TCL HDMI WALL MOUNT TELEVISION
1	DELFIELD 3-DOOR PIZZA PREP/MAKE LINE
1	HAND SINK
1	DOUBLE STACK PIZZA OVEN
1	L-SHAPED STAINLESS STEEL PREP TABLE/STATION
1	MCGUNN SAFE
1	ELO PULSE POS SYSTEM
2	TCL 40" TELEVISION MENUE BOARDS, MODEL LE40FHDE3010TGAA
1	WIRE RACK
1	STAINLESS STEEL SERVICE COUNTER, APPROXIMATELY 8' X 4'
3	ASSORTED FREEZER RACKS
1	WALK-IN COOLER, APPROXIMATELY 12' X 8'
2	DOMINOES LEADER BOARDS/MONITORS
1	COMMUNICATION BOARD/MONITOR
1	STAINLESS STEEL TABLE, 3'X3'
1	STAINLESS STEEL SHELF
4	WIRE RACKS
1	STAINLESS STEEL TABLE, APPROXIMATELY 7'
1	3-COMPARTMENT STAINLESS STEEL SINK
1	STAINLESS STEEL TABLE, APPOXIMATELY 8'
1	PLASTIC SHELF
1	PAN RACK
1	OVER-SINK WIRE RACK
1	HEWLETT PACKARD LASERJET PRO 400
2	LENOVO SERVERS
1	LOT NETGEAR, ROUTERS, SWITCH GEAR, ETC.
1	FOLDING TABLE
1	SMALL STEP LADDER
1	EXHAUST FUME HOOD, APPROXIMATELY 10'
4	MISSION IP2061 PHONES
1	LOT APPROXIMATELY 90 PLASTIC DOUGH TRAYS
12	CAR TOP SIGNS
12	SIDES HEATWAVE BAGS

**EXHIBIT B**  
*(Asset Purchase Agreement)*

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QUANTITY	DESCRIPTION
4	HOT BOXES
1	LOT SIGNAGE AND MISCELLANEOUS MINOR ACCESSORIES
	<b>DOMINO'S PIZZA</b> <b>ONEONTA, ALABAMA</b>

**EXHIBIT B**  
*(Asset Purchase Agreement)*

QUANTITY	DESCRIPTION
<b>DOMINO'S PIZZA GUNTERSVILLE, ALABAMA</b>	
1	BOFI DOUBLE STACK PIZZA OVEN WITH LARKIN VENT HOOD
1	RANDELL PIZZA MAKELINE, MODEL DPM102R
1	STAINLESS STEEL PREP TABLE, APPROXIMATELY 6'
1	TRUE 2-DOOR REACH-IN MERCHANDIZER, MODEL GDM49
1	WALK-IN COOLER, APPROXIMATELY 8' X 10'
1	STAINLESS STEEL HAND SINK
1	3-HOLE STAINLESS STEEL SINK
2	OVER-SINK RACKS
2	WIRE RACKS
1	STAINLESS STEEL PREP TABLE, APPROXIMATELY 6'
1	GENERAL ELECTRIC SPACEMASTER WASHER & DRYER
1	SMALL GREEN RACK
1	STAINLESS STEEL SERVICE COUNTER, APPROXIMATELY 6' X 4'
4	ELO POS STATIONS
1	EPSON RECEIPT WRITER
1	HEWLETT PACKARD 22072A MONITOR
1	STAINLESS STEEL RACK/SHELF
1	METAL RACK
1	STAINLESS STEEL PREP TABLE, APPROXIMATELY 10'
2	ASSORTED WALL MOUNT RACKS
1	ADVANTAGE LABELER PRINTER LX
1	STAINLESS STEEL TABLE, SMALL
1	HEWLETT PACKARD LASERJET PRO400 PRINTER
1	LENOVO THINK SERVER
5	MISSION IP PHONES, MODEL IP2061
1	SMALL ROLLING PAN RACK
1	LOT PLASTIC PIZZA DOUGH TRAYS
12	CAR TOP SIGNS
12	HEAT WAVE BAGS
4	SIDES HEAT WAVE BAGS

**EXHIBIT B**  
*(Asset Purchase Agreement)*

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QUANTITY	DESCRIPTION
4	HOT BOXES
	DOMINO'S PIZZA
	GUNTERSVILLE, ALABAMA

**EXHIBIT B**  
*(Asset Purchase Agreement)*

QUANTITY	DESCRIPTION
<b>DOMINO'S PIZZA ALBERTVILLE, ALABAMA</b>	
1	STAINLESS STEEL PREP TABLE, APPROXIMATELY 10'
1	RANDELL PIZZA PREP STATION/MAKE LINE
1	BOFI PIZZA OVEN, MODEL XLT-3255-TS-D WITH VENT HOOD
1	TRUE GDM 37 MERCHANDISER
1	STAINLESS STEEL SINK
1	STAINLESS STEEL PREP TABLE, APPROXIMATELY 4'
1	3-HOLE POT SINK
2	PLASTIC WIRE RACKS OVER SINK
1	WIRE RACK
1	FRIGIDAIRE WASHER & DRYER
1	WIRE RACK
1	TRAY RACK, ROLLING
1	MASTER BILT WALK-IN COOLER, APPROXIMATELY 8' X 8'
1	WIRE RACK
1	SERVICE COUNTER, 6' X 4'
3	ELO POS STATIONS
1	LENOVO THINK SERVER
1	MONEY SAFE
1	STAINLESS STEEL TABLE, SMALL
5	MISSION MACHINES IP 2061 TELEPHONES
1	2-DRAWER METAL FILE CABINET
1	LENOVO THINK SERVER
1	OFFICE CHAIR
1	HEWLETT PACKARD LASERJET PRO PRINTER, MODEL M402N
4	HOT BOXES
12	HEAT WAVE BAGS
4	SIDES HEAT WAVE BAGS
1	LOT PLASTIC DOUGH TRAYS
12	CAR TOP SIGNS
<b>DOMINO'S PIZZA ALBERTVILLE, ALABAMA</b>	



**EXHIBIT B**  
*(Asset Purchase Agreement)*

QUANTITY	DESCRIPTION
<b>DOMINO'S PIZZA BOAZ, ALABAMA</b>	
5	TABLES
18	CHAIRS
1	STAINLESS STEEL PREP TABLE, APPROXIMATELY 10'
2	ELO POS STATIONS
1	BOFI DOUBLE STACK OVEN, MODEL XLT-3255-TS (07/08) WITH VENT SYSTEM
1	HAND SINK
1	SMALL PREP TABLE, 3' X 3'
1	LEXMARK PRINTER, MODEL MS312DN
1	RED CHAIR
3	PHONES
1	SECURITY SYSTEM WITH 8 CAMERAS
1	WIRE RACK
1	HEWLETT PACKARD MINI COMPUTER
1	MISSION IP PHONE
1	ELO POS STATION
1	LENOVA THINK SERVER
1	LOT NETWORK EQUIPMENT
1	MCGUNN MONEY SAFE
1	LENOVA THINK SERVER
1	RANDELL PIZZA PREP STATION/MAKE LINE, MODEL DPM120L
1	KOLPAK WALK-IN COOLER, APPROXIMATELY 12' X 8'
2	FREEZER RACKS
1	3-HOLE STAINLESS STEEL SINK
2	WIRE RACKS
1	METAL SHELF
1	FRIGIDAIRE SPACE SAVER WASHER & DRYER
12	CAR TOP SIGNS
1	SERVICE COUNTER & SHELVES, 6' X 4'
12	HEAT WAVE BAGS
4	SIDES HEAT WAVE BAGS

**EXHIBIT B**  
*(Asset Purchase Agreement)*

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QUANTITY	DESCRIPTION
4	HOT BOXES
	DOMINO'S PIZZA
	BOAZ, ALABAMA

**EXHIBIT B**  
*(Asset Purchase Agreement)*

QUANTITY	DESCRIPTION
<b>DOMINO'S PIZZA ATTALLA, ALABAMA</b>	
1	BOFI DOUBLE STACK OVEN, MODEL XLT-3255-TS-D WITH VENT HOOD
1	STAINLESS STEEL SERVICE COUNTER, 6' X 4'
1	WIRE RACK
1	STAINLESS STEEL TABLE, 4', ROLLING
3	ELO POS STATIONS
3	MISSION IP PHONES
1	ADVANTAGE LX LABEL PRINTER
1	STAINLESS STEEL PREP TABLE, 10'
1	RANDELL PIZZA MAKELINE, MODEL DPM102R
1	KOLPAK WALK-IN COOLER, APPROXIMATELY 8' X 12'
1	STAINLESS STEEL PREP TABLE, 4'
1	3-HOLE STAINLESS STEEL SINK
1	FRIGIDAIRE SPACE SAVER WASHER & DRYER
1	STAINLESS STEEL TABLE, 3'
1	HEWLETT PACKARD LASERJET PRO 400 PRINTER
1	LENOVA THINK SERVER
1	DESK, CHAIR
1	ROLLING WIRE RACK
2	FREEZER RACKS
12	CAR TOP SIGNS
12	HEAT WAVE BAGS
4	SIDES HEAT WAVE BAGS
4	HOT BOXES
1	LOT PLASTIC PIZZA DOUGH TRAYS
<b>DOMINO'S PIZZA ATTALLA, ALABAMA</b>	

**EXHIBIT B**  
*(Asset Purchase Agreement)*

QUANTITY	DESCRIPTION
<b>DOMINO'S PIZZA GADSDEN, ALABAMA</b>	
1	STAINLESS STEEL SERVICE COUNTER, 8' X 4'
1	MIDDLEBY MARSHALL DOUBLE STACK PIZZA OVEN WITH LARKIN VENT HOOD
1	RANDELL PIZZA MAKELINE, MODEL DPM-102R
1	STAINLESS STEEL PREP TABLE, APPROXIMATELY 7'
1	STAINLESS STEEL TABLE, APPROXIMATELY 4'
1	WIRE RACK
1	SOUTHENST COOLER WALK-IN COOLER, APPROXIMATELY 8' X 10'
1	3-HOLE STAINLESS STEEL POT SINK
1	STAINLESS STEEL TABLE, 6'
2	ASSORTED FREEZER RACKS
1	L-SHAPED DESK
2	LENOVA THINK SERVERS
1	FOLDING TABLE
1	DESK CHAIR
1	LEXMARK E120 PRINTER
4	MISSION IP PHONES
1	STAINLESS STEEL HAND SINK
1	SMALL TRAY RACK
2	HEWLETT PACKARD COMPUTERS, MINI
3	ELO POS STATIONS
1	ADVANTAGE LX PRINTER/LABELER
1	WYOTT APW HEAT RACK
1	STAINLESS STEEL TABLE, 4'
12	CAR TOP SIGNS
12	HEAT WAVE BAGS
4	SIDES HEAT WAVE BAGS
4	HOT BAGS
1	LOT PLASTIC PIZZA DOUGH TRAYS
<b>DOMINO'S PIZZA GADSDEN, ALABAMA</b>	

**EXHIBIT B**  
*(Asset Purchase Agreement)*

QUANTITY	DESCRIPTION
<b>DOMINO'S PIZZA RAINBOW CITY, ALABAMA</b>	
1	AMS ENTERPRISES PS360Q DOUBLE STACK PIZZA OVEN
1	VENTILATION HOOD, 8'
1	STAINLESS STEEL PREP TABLE, 42"
1	WIRE RACK
1	STAINLESS STEEL SERVICE COUNTER, APPROXIMATELY 7' X 4'
1	LENOVA THINK SERVER
5	MISSION IP PHONES
1	RANDELL PIZZA MAKELINE, MODEL DPM102
3	ELO POS STATIONS
1	MUTAL SAFE
1	LENOVO PERSONAL COMPUTER
1	HEWLETT PACKARD PERSONAL COMPUTER, MINI
1	ROLLING STAINLESS STEEL TABLE, 4'
1	HEAT RACK
1	STAINLESS STEEL PREP TABLE, 4'
1	HEWLETT PACKARD S1931A MONITOR
1	DELL MONITOR
1	STAINLESS STEEL PREP STATION, APPROXIMATELY 10'
1	WIRE RACK
1	3-HOLE STAINLESS STEEL POT SINK
1	VOLLRATH WALK-IN COOLER, APPROXIMATELY 8' X 12'
2	ASSORTED FREEZER RACKS
1	MOP SINK
1	LEXMARK E250D PRINTER
1	LENOVO THINK SERVER
2	DESKS & (2) CHAIRS
1	LOT PLASTIC PIZZA DOUGH TRAYS
12	CAR TOP SIGNS
12	HEAT WAVE BAGS
4	SIDES HEAT WAVE BAGS
4	HOT BOXES
<b>DOMINO'S PIZZA RAINBOW CITY, ALABAMA</b>	

**EXHIBIT B**  
*(Asset Purchase Agreement)*

QUANTITY	DESCRIPTION
<b>DOMINO'S PIZZA ODENVILLE, ALABAMA</b>	
1	BOFI DOUBLE DECK PIZZA OVEN, MODEL T-3255-TS-D
1	STAINLESS STEEL SERVICE COUNTER, APPROXIMATELY 4' X 5'
1	L-SHAPED STAINLESS STEEL PREP STATION/TABLE
1	PIZZA MAKELINE, MODEL DPL102
1	LENOVO THINK SERVER
4	ELO POS STATIONS
1	MONEY SAFE
2	WIRE RACKS
2	VIZIO HDMI MONITORS
2	TCL HDMI MENU BOARDS
3	ASSORTED SMALL STAINLESS STEEL TABLES
1	WIRE RACK
1	KOLPAK WALK-IN COOLER, APPROXIMATELY 9' X 12'
1	3-HOLE STAINLESS STEEL SINK
2	WIRE RACKS
1	MOP SINK
2	FREEZER RACKS
1	HEWLETT PACKARD LASERJET PRO 400 PRINTER
1	2-DRAWER FILE CABINET
1	LENOVA THINK SERVER
1	TCL HDMI TELEVISION
1	APW HEAT RACK
3	BOOTHS WITH TABLES
6	4-PLACE TABLES
24	ASSORTED RED CHAIRS
2	SETEES
1	TCL TELEVISION, WALL MOUNTED
12	CHAIR TOP SIGNS
12	HEAT WAVE BAGS
4	SIDES HEAT WAVE BAGS
4	HOT BOXES
1	LOT PLASTIC PIZZA DOUGH TRAYS
1	LOT SIGNAGE AND MISCELLANEOUS MINOR ACCESSORIES
<b>DOMINO'S PIZZA ODENVILLE, ALABAMA</b>	

**EXHIBIT D**  
**Assumed Contracts**

1. That certain Standard Franchise Agreement between Domino's Pizza Franchising, LLC and Pizza Palz, Inc. for Store # 5897.
2. That certain Standard Franchise Agreement between Domino's Pizza Franchising, LLC and Pizza Palz, Inc. for Store # 5890.
3. That certain Standard Franchise Agreement between Domino's Pizza Franchising, LLC and Pizza Palz, Inc. for Store # 5866.
4. That certain Standard Franchise Agreement between Domino's Pizza Franchising, LLC and Pizza Palz, Inc. for Store # 5858.
5. That certain Standard Franchise Agreement between Domino's Pizza Franchising, LLC and Pizza Palz, Inc. for Store # 5855.
6. That certain Standard Franchise Agreement between Domino's Pizza Franchising, LLC and Pizza Palz, Inc. for Store # 5838.
7. That certain Standard Franchise Agreement between Domino's Pizza Franchising, LLC and Pizza Palz, Inc. for Store # 5837.
8. That certain Standard Franchise Agreement between Domino's Pizza Franchising, LLC and Pizza Palz, Inc. for Store # 5836.

**EXHIBIT B**  
*(Asset Purchase Agreement)*

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**EXHIBIT F**  
Inventory

To be assessed on Closing Date.



**EXHIBIT I**  
**Rider to Purchase Agreement**

THIS RIDER TO PURCHASE AGREEMENT (the “Rider”) is made this \_\_\_ day of April 2017, by and between Pizza Palz, Inc. (the “Seller”) and Mountain Valley Pizza, LLC (the “Purchaser”).

**WHEREAS**, concurrently with the execution of this Rider, Seller, franchisee of Domino’s Pizza Franchising LLC (“DPF”), and Purchaser, have entered into a Purchase Agreement (as defined below) for the sale of Seller’s assets used in the operation of the Domino’s Pizza® Stores described in the store list annexed hereto as **Exhibit A** (the “Stores”) to Purchaser.

**WHEREAS**, Purchaser has applied to Domino’s Pizza LLC (“DPL”, and together with DPF, Domino’s Pizza Distribution LLC, and their affiliates and subsidiaries, “Domino’s”), as Master Servicer, for approval to operate the Stores as a Domino’s Pizza franchisee and approval of Purchaser’s application is conditioned, among other things, upon certain provisions being contained in the Purchase Agreement for the Stores.

**WHEREAS**, on March 23, 2017, the Seller filed a bankruptcy petition under Chapter 11 of Title 11 of the United States Code in the U.S. Bankruptcy Court for the Northern District of Alabama (“Bankruptcy Court”) in Case No. 17-40556 (“Bankruptcy Case”).

**WHEREAS**, on \_\_\_\_\_, 2017, the Bankruptcy Court entered an order in the Bankruptcy Case authorizing Seller to sell the Stores to Purchaser, and to assume and assign the Franchise Agreements (defined below) to Purchaser (the “Sale Order”).

**WHEREAS**, to evidence Seller’s and Purchaser’s agreement to include these terms in the Purchase Agreement, the parties hereby enter into this Rider to Purchase Agreement.

**NOW, THEREFORE**, the parties agree as follows:

1. **Purchase Agreement.** For the purposes of this Rider, the term “Purchase Agreement” shall mean the documents executed or delivered by and between Seller and Purchaser for the transfer of the assets of the Stores from Seller to Purchaser, regardless of the name or title on the documents.

2. **Inconsistency Between Agreements.** In the event of any inconsistency between the terms of the Purchase Agreement, any and all other related documents executed in connection with the purchase of the assets of the Stores, and this Rider, the terms of this Rider shall prevail. If there is any inconsistency between any franchise agreement(s) to which Seller or Purchaser is a party, and the Purchase Agreement, including this Rider, the terms of such franchise agreement(s) shall prevail.

## **EXHIBIT B**

*(Asset Purchase Agreement)*

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Without limiting the generality of the foregoing, sales or transfers of all or a part of any of the Store, or the entity owning the Stores remain subject to the prior rights of DPF as provided in the Seller's Standard Franchise Agreements for the Stores (the "Franchise Agreements").

3. **Disclaimer of Interest in Telephone Numbers/Intellectual Property.**

The assets to be transferred pursuant to the Purchase Agreement do not include, nor shall any value be assigned to, telephone numbers, geographic areas, or any of Domino's trademarks/tradenames, trade dress, trade secrets, or other intellectual property; provided, however, that Domino's consents to the assignment of the Franchise Agreements to the Purchaser in accordance with Section 21.4 of such Franchise Agreements upon Domino's issuance of an approval of Purchaser's application to acquire the Stores.

4. **Outstanding Debts.**

In connection with the assumption and assignment of Seller's Franchise Agreements to Purchaser, all outstanding debts owed to Domino's accrued as of the date of Closing (as defined in the Purchase Agreement), will be the sole responsibility of the Seller and satisfied by Seller in accordance with the Sale Order.

5. **Clearance Letter/Purchaser's Joint Liability.**

At Closing, Seller shall obtain a statement from Domino's of the amounts owed to it as of such date in the form as set forth as **Exhibit B** hereto, which amounts shall be satisfied by Seller as set forth in the Sale Order. To avoid any doubt, Purchaser agrees that it shall be liable for all amounts owed to Domino's accruing on or after the date of Closing.

6. **No Security Interest.**

Purchaser acknowledges and agrees that it shall not grant a security interest in, or pledge as collateral of, any interest in any premise lease, franchisee, Franchise Agreements, or any franchise rights thereunder, and Seller acknowledges that it will not attempt to acquire any such security interest.

7. **Delivery Area.**

Neither Seller nor Purchaser has the authority to change the boundaries of the delivery area of any Stores without the written consent of Domino's. If there are any discrepancies over the exact boundaries of the delivery area of any Stores, the boundaries that are set out on the map maintained by Domino's shall control.

Seller agrees to disclose to Purchaser prior to Closing any limitations Seller has placed on delivery service offered by the Stores and furnish Purchaser with copies of documents supporting Seller's reasons for, and other information about, the limitations.

Purchaser acknowledges that it is familiar with the boundaries of all delivery areas and further agrees to make an independent review and evaluation of the entire delivery area(s) of the Stores within thirty (30) days after Closing and Purchaser shall adopt and implement its delivery service policy in accordance with the Domino's Pizza Limited Delivery Service Policy and Standard.

**EXHIBIT B**

*(Asset Purchase Agreement)*

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8. **Sale Information.** Seller and Purchaser agree that Domino's does not represent or warrant the accuracy of any information Seller has provided to Purchaser in connection with this transaction and Domino's shall have no liability for the information or failure to provide information.

**IN WITNESS WHEREOF**, the parties have executed this Rider on or as of the date first above written.

SELLER: Pizza Palz, Inc.

By: \_\_\_\_\_

Judy O'Dell

Its: President

PURCHASER: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

(Print Title Above)

**EXHIBIT B***(Asset Purchase Agreement)*

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**EXHIBIT A**  
**Store List**

STORE #	ADDRESS	CITY	STATE	ZIP
5897	13260 US Highway 411, Suite 100	Odenville	AL	35120
5890	993 2 <sup>nd</sup> Ave.	East Oneonta	AL	35121
5866	115 West Grand Ave.	Rainbow City	AL	35906
5858	964 Gilbert Ferry Road	Attalla	AL	35954
5855	276 N. 3 <sup>rd</sup> Street	Gadsden	AL	35901
5838	1437 Gunter Ave.	Guntersville	AL	35976
5837	102 North McCleskey St.	Boaz	AL	35957
5836	503 Carlisle Street	Albertville	AL	35951

**EXHIBIT B**

(Asset Purchase Agreement)

**EXHIBIT B**

Domino’s Pizza Clearance Letter

Pizza Palz, Inc. (the “Seller”) franchisee of Domino’s Pizza Store Nos. 5897, 5890, 5866, 5858, 5855, 5838, 5837, and 5836 (collectively, the “Stores”), whose assets are being sold pursuant to the terms of a certain “Purchase Agreement,” must pay \$\_\_\_\_\_ to Domino’s, pursuant to an order entered by the U.S. Bankruptcy Court for the Northern District of Alabama in Case No. 17-40556 authorizing the sale of the Stores to \_\_\_\_\_, at closing of the sale of the Stores, plus any other amounts that may have been incurred post-petition but not yet paid on the date of the closing of the sale as set forth below:

- Royalties & Advertising \$ 0 \_\_\_\_\_
- St. Jude \$ 0 \_\_\_\_\_
- Supply Chain Center \$ 0 \_\_\_\_\_
- Technology (i.e. OLO, Pulse, etc.) \$ 0 \_\_\_\_\_
- OER \$ 0 \_\_\_\_\_

**TOTAL DUE:** \$ \_\_\_\_\_

This Clearance Letter has been prepared by Domino’s Pizza LLC, as Master Servicer, according to the best information available to it at the time it is prepared. **In the event it is later determined that any amount above had been incorrectly calculated, either (1) the appropriate Domino’s Pizza entity shall refund any amount overpaid, or (2) the Seller shall remain liable for any additional amount due. Nothing herein is or should be deemed a release of any other liabilities that may be owed by Seller to Domino’s, and Domino’s expressly reserves its rights with regard to such other amounts owed to it by the Seller in accordance with the Letter Agreement and the claim it has filed in Seller’s bankruptcy case.**

Domino’s Pizza LLC, as Manager

Acknowledged By:

By: \_\_\_\_\_

Seller: \_\_\_\_\_

Name: Joseph P. Devereaux

Name: Judy O’Dell

Title: Director of Franchise Services, CFE Title: President, Pizza Palz, Inc.