

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ALABAMA, EASTERN DIVISION**

---

In Re:

PIZZA PALZ, INC.,

Debtor.

---

:  
:  
:  
:  
:  
:  
:

Chapter 11

Case No. 17-40556-JJR11

Re: Doc. Id. No. 4

**FINAL ORDER AUTHORIZING THE DEBTOR  
TO OBTAIN POST-PETITION FINANCING**

Upon the motion [Doc. No. 4] (the “DIP Financing Motion”)<sup>1</sup> of the above-captioned debtor and debtor-in-possession (the “Debtor”) for entry of an interim order (this “Interim Financing Order”) and a final order (the “Final Financing Order”; together with the Interim Financing Order, the “Financing Orders”): (a) authorizing the Debtor to obtain post-petition financing and other financial accommodations from Domino’s Pizza Franchising LLC (collectively, with its affiliates and subsidiaries, “Domino’s Pizza” or “DIP Lender”), in its capacity as post-petition lender hereunder; (b) granting security interests and liens and according superpriority claim status in favor of the DIP Lender, pursuant to section 364 of title 11 of the United States Code (the “Bankruptcy Code”); (c) authorizing Debtor to use cash collateral securing obligations owing to the DIP Lender, pursuant to section 363 of the Bankruptcy Code, subject to the terms and conditions set forth herein; and (d) granting related relief, including, without limitation, modification of the automatic stay pursuant to section 362 of the Bankruptcy Code.

This Court having reviewed the DIP Financing Motion and all matters brought to the Court’s attention at the preliminary hearing, which was held on March 24, 2017 pursuant to

---

<sup>1</sup> Any capitalized terms not defined herein shall have the meaning set forth in the DIP Financing Motion.

Bankruptcy Rule 4001 (the “Interim Hearing”) and a hearing for approval of a Final Financing Order on April 20, 2017 (the “Final Hearing”), and after due deliberation and consideration, the Court makes the following findings of fact and conclusions of law (to the extent any findings of fact constitute conclusions of law, they are adopted as such, and *vice versa*):

**THE COURT HEREBY FINDS AND DETERMINES:**

A. On March 23, 2017 (the “Petition Date”), Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (these “Chapter 11 Case”).

B. Debtor has retained possession of their property and continue to operate and manage its business as debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

C. No trustee, examiner or any other committee has been appointed in these Chapter 11 Cases.

D. The Court has jurisdiction over this Chapter 11 Case, the parties and Debtor’s property pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

E. As of the Petition Date:

- i. the Debtor was indebted to the Internal Revenue Service (“IRS”) for unpaid federal taxes and the IRS has filed numerous Notices of Federal Tax Liens with the Alabama Secretary of State (“IRS Debt”);
- ii. similarly, the Alabama Department of Labor (“DOL”) has also filed numerous Certificates of Lien for Unemployment Compensation with the Alabama Secretary of State (“DOL Debt”);
- iii. the Debtor has pre-Petition Date loans with The Business Backer, LLC / MCA Recovery, LLC (“TBB”) and Merchant Capital Solutions (“Merchant Capital”). Upon information and belief, the loan from TBB purports to be secured and perfected in the Debtor’s pre-Petition Date accounts receivable pursuant to those certain UCC Financing Statements identified as B15-0386652FS, B15-7118743FS and B16-7529728, all of which indicate the secured party as “Corporation Service Company, as Representative” (“TBB”).

Debt”). Merchant Capital likewise purports to be secured and perfected in the Debtor’s pre-Petition Date accounts receivable pursuant to those certain UCC Financing Statements identified as B17-7106099FS, which was filed on March 15, 2017 (“Merchant Capital Debt”).

Collectively, the IRS Debt, DOL Debt, TBB Debt, and Merchant Capital Debt shall be referred to herein as the “Prepetition Secured Debt) and the IRS, DOL, TBB, and Merchant Capital shall be referred to herein as the “Prepetition Secured Creditors”).

F. The Debtor has an immediate need to obtain the DIP Financing and use cash collateral to, among other things, pay the operating expenses associates with the Stores as well as restructuring related expenses. The access of the Debtor to sufficient working capital and liquidity through the use of cash collateral and the incurrence of new indebtedness for borrowed money is vital to the preservation and maintenance of the going concern values of the Debtor and to a successful reorganization of the Debtor.

G. Moreover, the ability to obtain food and supplies from Domino’s Pizza on credit terms is essential to the operation of the Stores post-petition. Since prior to the Petition Date, Domino’s Pizza will only sell food and supplies to the Debtor on a cash-on-delivery basis. However, the Debtor requires additional working cash flow in the opening weeks of this case to allow for the continued orderly payment of its operating expenses. Accordingly, Domino’s Pizza has agreed to sell the Debtor food and sales on credit terms as part of the DIP Financing.

H. Despite diligent efforts, Debtor has been unable to obtain financing in the form of unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense or solely in exchange for the grant of a special administrative expense priority pursuant to section 364(c)(1) of the Bankruptcy Code. Debtor also has been unable to obtain financing that would be secured by liens junior to the existing liens on property of their estates pursuant to sections 364(c)(2) and (c)(3) of the Bankruptcy Code. Within the timeframe required by their

need to avoid immediate and irreparable harm, Debtor can obtain financing only by the grant of liens, including priming liens pursuant to section 364(d) of the Bankruptcy Code as set forth herein.

I. Pursuant to the Interim Financing Order, Domino's Pizza provided and established a secured line of credit (the "DIP Facility") in favor of the Debtor, pursuant to which Debtor obtained a line of credit in the amount of \$50,000. In addition, Domino's has sold food and supplies on credit terms ("Food Credit") and together with the DIP Facility, the "DIP Loans"). Domino's Pizza is willing to provide the DIP Loans, upon the terms and conditions set forth herein and in that certain Debtor In Possession Credit and Security Agreement and Secured Promissory Note, a copy of both are attached hereto as **Exhibit 1** (together with all schedules, exhibits and annexes thereto, and as at any time amended or restated, the "DIP Loan Agreement") and, together with other agreements, instruments and other documents executed or delivered in connection with the DIP Loan Agreement and as at any time amended, modified or supplemented, the "DIP Loan Documents"). The proceeds of the DIP Facility shall be used by the Debtor in accordance with the Financing Orders and the DIP Loan Documents, and for the purposes and amounts set forth in the Budget (as defined in the DIP Loan Agreement and as attached as Exhibit A to the DIP Loan Agreement, which is hereinafter the "Budget").

J. A condition precedent to the willingness of Domino's Pizza to establish the DIP Loans is that, as security for the prompt payment of all DIP Loans, all interest, fees, costs, expenses (including attorneys' fees), and other charges at any time payable under the DIP Loan Documents, the Debtor grants to Domino's Pizza a first priority, priming security interests in and liens upon all of the Debtor's assets (real and personal property), including, without limitation, the Debtor's real property, cash, accounts, accounts receivable, inventory, equipment, fixtures,

general intangibles, documents, instruments, chattel paper, deposit accounts, letter-of-credit rights, commercial tort claims, investment property, and books and records relating to any assets and all proceeds (including insurance proceeds) of the foregoing, whether in existence on the Petition Date or thereafter created, acquired or arising and wherever located, all as more fully described in the DIP Loan Agreement (all such real and personal property, and the proceeds thereof, being collectively hereinafter referred to as, the “DIP Loan Collateral”).

K. The DIP Loan Documents have been negotiated in good faith and at arm’s length. Therefore, all extensions of credit to Debtor pursuant to the DIP Loan Documents shall be deemed to have been made by Domino’s Pizza in good faith within the meaning of section 364(e) of the Bankruptcy Code.

L. Notice of the Final Hearing on this DIP Financing Motion was proper and sufficient as set forth in Bankruptcy Rule 4001 and no other notice need be given.

**NOW THEREFORE, IT IS HEREBY ORDERED THAT:**

1. **Disposition.** The DIP Financing Motion is hereby granted to the extent and subject to the terms set forth herein with the foregoing findings incorporated herein by reference. Any objections to the DIP Financing Motion that have not previously been withdrawn or resolved are hereby expressly overruled. This Final Financing Order shall be valid, binding on all parties-in-interest and fully effective immediately upon entry, pursuant to Bankruptcy Rules 6004(h) and 7062. The terms of the Interim Financing Order shall remain affirmed and ratified by this Final Financing Order and to the extent not contradicted hereby, shall be deemed incorporated herein by reference. The term of this Final Financing Order and the DIP Loan Documents authorized hereunder shall expire, and the extension of credit under the DIP Loan Documents and this Final Financing Order shall mature and, together with all interest thereon

and the other Post-Petition Debt (as hereinafter defined), become due and payable (unless such credit extensions and other Post-Petition Debt become due and payable earlier pursuant to the terms of the DIP Loan Documents and this Interim Financing Order by way of acceleration or otherwise) upon the earlier of: i) May 23, 2017; or ii) entry of an order approving the sale of virtually all of the Debtor's assets.

2. **Authority to Execute and Deliver Necessary Documents.** Upon execution and delivery thereof, the DIP Loan Documents shall constitute valid and binding obligations of the Debtor. In furtherance of the provisions of this paragraph 2, the Debtor is authorized and directed to do and perform all acts, to make, execute, and deliver all instruments and documents (including, without limitation, the execution of security agreements, pledge agreements, mortgages, deeds of trust, deeds to secure debt, financing statements, and intellectual property filings), and to pay all filing and recording fees, in each case as may be necessary or, in the opinion of DIP Lender, desirable to give effect to any of the terms and conditions of the DIP Loan Documents, to validate the perfection of the DIP Liens (as hereinafter defined) or as otherwise required or contemplated by the DIP Loan Documents.

3. **Authorization of Interim Borrowing.** As provided in the Interim Financing Order, Debtor is authorized to (a) obtain the DIP Loans pursuant to the DIP Loan Documents and to incur any and all liabilities and obligations thereunder and to pay all interest, fees, costs, expenses (including attorneys' fees), and other obligations provided for under the DIP Loan Documents; and (b) satisfy all conditions precedent and perform all obligations hereunder and thereunder in accordance with the terms hereof and thereof. Domino's Pizza shall have no obligation or responsibility to but may monitor Debtor's use of the DIP Loans and may rely upon Debtor's representation that the amount of credit requested at any time, and the use thereof, are

in accordance with the requirements of this Interim Financing Order, the DIP Loan Documents, and the Budget. All credit extensions and other Post-Petition Debt shall be due and payable, and shall be paid, by the Debtor in accordance with the requirements of this Final Financing Order and the DIP Loan Documents.

4. **DIP Liens.** All credit extensions under the DIP Loans and DIP Loan Documents, together with all interest, fees and other charges, at any time or times payable by the Debtor (all such credit extensions, interest, fees, and other charges, including any “Obligations,” as such term is defined in the DIP Loan Agreement, are collectively referred to herein as, the “Post-Petition Debt”) shall be, and hereby are, secured by security interests and liens in favor of Domino’s Pizza, pursuant to section 364(c)(1) and (c)(2), as well as 364 (d)(1) of the Bankruptcy Code, perfected, priming, first-priority, senior security interests in and liens upon all DIP Loan Collateral of the Debtor (with a priority that relates back to a date prior to the Petition Date) as permitted by section 546(b) of the Bankruptcy Code (the “DIP Liens”). In respect of the DIP Liens, Debtor shall concurrently herewith or hereafter, as requested by Domino’s Pizza execute and deliver to Domino’s Pizza all such documents as it may request to effectuate, evidence, confirm, validate or perfect all liens on and security interests in the DIP Loan Collateral as provided for herein or granted pursuant to the DIP Loan Documents, including, without limitation, UCC-1 financing statements, mortgages, continuation statements, amendments and lock box and blocked account agreements. Domino’s Pizza shall not be required to file any UCC-1 financing statements or any other document, or take any other action (including possession of any of the DIP Loan Collateral) in order to validate or perfect the liens and security interests granted hereunder or under the DIP Loan Documents, as all such liens and security interests shall be deemed automatically perfected by and upon entry of this Interim Financing

Order. If Domino's Pizza shall, in its discretion, choose to file such UCC-1 financing statements, mortgage, lien document or otherwise confirm perfection of such liens and security interests, all such financing statements, mortgages or similar instruments shall be deemed to have been filed or recorded at the time and on the date of entry of any of the Financing Orders. Domino's Pizza may, in its discretion, file a certified copy of any of the Financing Orders in any filing or recording office in any jurisdiction in which Debtor has or maintains any DIP Loan Collateral or an office.

5. **Superpriority Claim.**

a. Upon entry of the Financing Orders, Domino's Pizza shall be deemed to have an allowed superpriority administrative expense claim (the "Superpriority Claim"), pursuant to section 364(c)(1) of the Bankruptcy Code, for all of the Post-Petition Debt, having supreme priority over all other administrative expenses in these Chapter 11 Cases of the kind specified in or arising or ordered pursuant to sections 105(a), 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 726, or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, attachment, or otherwise.

b. No lien or security interest granted Domino's Pizza hereunder including the DIP Liens, shall (i) be subject to any prepetition or post-petition lien or security interest that is avoided and preserved for the benefit of Debtor's estates under section 551 of the Bankruptcy Code, or (ii) hereafter be subordinated to or made *pari passu* with any other lien or security interest under section 364(d) of the Bankruptcy Code.

c. The DIP Liens, the Superpriority Claim, the Adequate Protection Liens, and other rights and remedies granted to the DIP Lender or Prepetition Lenders under the Financing Orders



shall continue in this Chapter 11 Case and such liens and security interests shall maintain their respective priorities until all of the Post-Petition Debt has been indefeasibly satisfied, in full, in cash and the DIP Loan Documents are terminated in accordance therewith.

6. **No Surcharge.** In consideration of the DIP Facility, no costs or administrative expenses, pursuant to sections 506(c) and/or 105(a) of the Bankruptcy Code or otherwise, that have been or may be incurred in this Chapter 11 Case, in any proceedings related hereto or in any superseding chapter 7 cases, and no priority claims are or will be prior to or on parity with the Superpriority Claim of Domino's Pizza for the Post-Petition Debt. In no event shall any such costs or expenses of administration be imposed upon any of the DIP Loan Collateral without the prior written consent of Domino's Pizza, and no such consent shall be implied from any action, inaction or acquiescence. Domino's Pizza shall not be subject in any way whatsoever to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Loan Collateral.

7. **Repayment.** The Post-Petition Debt shall be due and payable, and shall be paid, as and when provided in the DIP Loan Documents, without any right of rescission, setoff, recoupment, counterclaim, or defense for any reason, unless and to the extent expressly otherwise agreed to in writing by Domino's Pizza.

8. **Permitted Uses of DIP Loan Proceeds and Cash Collateral.** So long as no Termination Event (as hereinafter defined) has occurred and is continuing, Debtor is authorized to use the proceeds (including, without limitation, cash, accounts, negotiable instruments and any other property comprising "cash collateral" within the meaning of 11 U.S.C. § 363(a)) of any portion of the DIP Loan Collateral (all such proceeds, whether arising or collected prior to or

after the Petition Date, including all cash on hand, being collectively referred to herein as, “Cash Collateral”) only in accordance with the Budget.

9. **Termination Event.** The term “Termination Event” shall mean the earlier to occur of: (i) May 23, 2017, or (ii) entry of an order approving the sale of virtually all Debtor’s assets, resulting in cessation of Debtor’s business operations; or the later of: (a) the Termination Date (as defined in the DIP Loan Agreement); (b) an Event of Default under (and as defined in) the DIP Loan Agreement unless such Event of Default is waived in writing in accordance with the DIP Loan Agreement, (c) the filing of an adversary proceeding or contested matter by the Debtor (other than a proceeding to challenge the existence of a Termination Event as provided under Paragraph 13), any committee appointed in this case, or any other party-in-interest against Domino’s Pizza, and (d) any violation of the Financing Orders.

10. **Preservation of Rights Granted Under Financing Orders.**

a. There shall not be entered in this Chapter 11 Case any order that authorizes the obtaining of credit or the incurrence of indebtedness by Debtor (or any trustee or examiner) that is (i) secured by a security, mortgage, collateral interest, or lien on all or any part of the DIP Loan Collateral that is equal or senior to the DIP Liens or (ii) entitled to priority administrative status that is equal or senior to the Superpriority Claim granted herein; provided, however, that nothing herein shall prevent the entry of an order that specifically provides that, as a condition to the granting of the benefits of clauses (i) or (ii) above, all of the Post-Petition Debt must be indefeasibly paid in full, in cash from the proceeds of such credit or indebtedness

b. If this Chapter 11 Case is dismissed or converted, then neither the entry of this Interim Financing Order nor the dismissal or conversion of any such Chapter 11 Case shall affect the rights of Domino’s Pizza under the Financing Orders, and all of its rights and remedies

thereunder shall remain in full force and effect as if this Chapter 11 Case had not been dismissed or converted. Debtor shall not seek, and it shall constitute an Event of Default if any Debtor seeks, or if there is entered, any order dismissing this Chapter 11 Case.

c. The provisions of the Financing Orders, and any actions taken pursuant hereto, shall survive the entry of and shall govern with respect to any conflict with any order that may be entered confirming any plan of reorganization or converting this Chapter 11 Case from chapter 11 to chapter 7. In no event shall any plan of reorganization be allowed to alter the terms of repayment of any of the Post-Petition Debt from those set forth in the DIP Loan Documents.

d. The Post-Petition Debt shall not be discharged by the entry of any order confirming a plan of reorganization in this Chapter 11 Case and, pursuant to section 1141(d)(4) of the Bankruptcy Code, Debtor have waived such discharge.

11. **Adequate Protection.** To the extent that any holder of Prepetition Secured Debt has not specifically consented to the DIP Financing Motion, such Prepetition Secured Creditor is deemed to be adequately protected by virtue of the preservation of the Debtor's going-concern value, which is provided by the DIP Facility.

12. **The Automatic Stay.** The automatic stay provisions of section 362 of the Bankruptcy Code, to the extent applicable, are hereby lifted, vacated, modified, and/or terminated as to Domino's Pizza to the extent necessary to implement the provisions of this Interim Financing Order and the DIP Loan Documents, thereby permitting Domino's Pizza, among other things, to file or record any UCC-1 financing statements, mortgages or other instruments and documents evidencing the liens and security interests granted herein, and to take any and all actions authorized by the Court in the Financing Orders.

13. **Termination; Remedies.**

a. Upon or after a Termination Event, Domino's Pizza shall have no further obligation to provide financing under the DIP Loan Documents or any Financing Order, Debtor is strictly prohibited from using Cash Collateral, and Domino's Pizza shall be fully authorized to accelerate the Post-Petition Debt under the DIP Loan Documents; and, upon three (3) business days written notice ("Notice Period") to counsel for Debtor, counsel for any committee that has been formed, and the United States Bankruptcy Administrator for the Northern District of Alabama, along with filing a copy of such notice on the Court docket, enforce all liens in the collateral given to secure the DIP Loans, and to take all other actions and exercise all other remedies under the applicable loan documents and applicable law that may be necessary or deemed appropriate to proceed against or realize upon all or any portion of the collateral as if this Chapter 11 Case or any superseding chapter 7 case was not pending.

b. In the event that any party-in-interest has not obtained an order from this Court to the contrary before the end of such Notice Period, the automatic stay provisions of section 362 of the Bankruptcy Code, to the extent applicable, shall be deemed lifted, vacated, modified and/or terminated without the necessity of any further action by the Court.

c. If any hearing is held before the end of the Notice Period regarding the exercise of any rights or remedies by Domino's Pizza, the only issue at such hearing that may be raised by any party in opposition to the exercise of any such rights or remedies (the "Moving Party") (and to the extent necessary, the Financing Orders shall constitute an order that prohibits any such Moving Party from asserting, claims, initiating or filing a pleading inconsistent with the terms of this section 14 (c)) shall be whether, in fact, a Termination Event has occurred and is continuing, and the Moving Party shall have the burden of proof with respect thereto.

d. The rights, remedies, powers and privileges conferred upon Domino's Pizza pursuant to the Financing Orders shall be in addition to and cumulative with those contained in the respective loan documents.

14. **Certain Reporting Requirements.** Debtor shall observe and comply with all of the financial reporting and performance covenants and conditions set forth in the DIP Loan Documents.

15. **Access to Debtor.** Without limiting the rights of access and information afforded Domino's Pizza under the DIP Loan Agreement, the Debtor shall permit representatives, agents, and/or employees of Domino's Pizza to have reasonable access to their premises and records during normal business hours (without unreasonable interference) and shall cooperate, consult with, and provide to such persons all such non-privileged information as they may reasonably request.

16. **No Subrogation.** In no event shall any person or entity who pays (or, through the extension of credit to the Debtor, causes to be paid) any of the Post-Petition Debt be subrogated, in whole or in part, to any rights, remedies, claims, privileges, liens or security interests granted to or in favor of, or conferred upon, Domino's Pizza by the terms of the DIP Loan Documents or this Interim Financing Order, until such time as all of the Post-Petition Debt is indefeasibly paid and satisfied in full (in the manner specified in the DIP Loan Documents) and the DIP Loan Documents are terminated in accordance with their terms.

17. **Successors.** The Financing Orders shall be binding upon all parties-in-interest, including, without limitation, Debtor and their respective successors and assigns (including, without limitation, any trustee, estate administrator, responsible person or representatives or other fiduciary or similar person hereafter appointed as a legal representative of Debtor, or with

respect to the property of Debtor's estates), any committee appointed in this Chapter 11 Case or the Debtor's creditors. In no event shall Domino's Pizza have any obligation to make any loan or advance to any chapter 7 or chapter 11 trustee appointed or elected for any estate of any Debtor.

18. **No Deemed Control.** In advancing credit under the DIP Facility or other loans or advances to the Debtor, in administering any credit extensions under the DIP Loan Documents or other loans or advances, or in taking any other actions reasonably related to the Financing Orders or the DIP Loan Documents (including, without limitation, the exercise of its approval rights with respect to any budget), Domino's Pizza shall have no liability to any third party and shall not be deemed to be in control of the operations of Debtor or to be acting as a "controlling person," "responsible person," or "owner or operator" with respect to the operation or management of Debtor (as such term, or any similar terms, are used in the Internal Revenue Code, the United States Comprehensive Environmental Response, Compensation and Liability Act as amended, or any similar federal or state statute), or Domino's Pizza's relationship with Debtor shall not constitute or be deemed to constitute a joint venture or partnership of any kind.

19. **Subsequent Reversal or Modifications.** The DIP Loan Documents have been negotiated in good faith and at arm's-length between Debtor and Domino's Pizza. Any credit extensions and/or other financial accommodations made to Debtor by Domino's Pizza pursuant to the Financing Orders and the DIP Loan Documents have been extended in good faith, as that term is used in section 364(e) of the Bankruptcy Code. Consistent with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of the Financing Orders are hereafter modified, amended, stayed or vacated by a subsequent order of this or any other Court, no such modification, amendment, stay or vacation shall effect the validity and enforceability of any lien

or priority authorized or created hereby. Further, notwithstanding any such modification, amendment, stay or vacation, any indebtedness, obligation or liability incurred by Debtor under the DIP Loan Documents prior to the effective date of such amendment, stay, modification or vacation shall be governed in all respect by the original provisions of the Financing Orders and the DIP Loan Documents, Domino's Pizza shall be entitled to all rights, remedies, privileges and benefits, including the liens, security interests and priorities granted herein and pursuant to the DIP Loan Documents, with respect to any such indebtedness, obligation or liability. All credit extensions made pursuant to the DIP Loan Documents are made in reliance upon this Interim Financing Order, and, therefore, the indebtedness resulting from such credit extensions and any other loans or advances prior to the effective date of any modification, amendment, stay or vacation of this Interim Financing Order cannot (i) be subordinated, (ii) lose its lien priority or superpriority, administrative expense claim status, or (iii) be deprived of the benefit of the status of the liens and claims granted to Domino's Pizza under the Financing Orders and/or the DIP Loan Documents, as a result of any subsequent order in this Chapter 11 Case, or in any superseding case. Finally, notwithstanding any such modification, amendment, stay or vacation, any claim or lien granted to Domino's Pizza hereunder arising prior to the effective date of such modification, amendment, stay or vacation shall be governed in all respects by the original provisions of this Final Financing Order, and Domino's Pizza shall be entitled to all of the rights, remedies, privileges, and benefits, including the liens and priorities granted herein, with respect to any such claim.

20. **No Waiver of Rights.** Notwithstanding anything to the contrary herein, this Final Financing Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair any of the rights of Domino's Pizza under the Bankruptcy Code

or under non-bankruptcy law. The rights and obligations of Debtor and the rights, claims, security interests, liens, and priorities of Domino's Pizza arising under this Interim Financing Order are in addition to, and not in lieu or substitution of, the rights, obligations, claims, security interests, liens, and priorities under their respective loan documents.

21. **Adequate Notice; Notice of Final Hearing.** The notice given of the Final Hearing was given in accordance with Bankruptcy Rules 2002 and 4001, and the local rules of the Court.

22. **Conflict.** To the extent that the terms and conditions of the DIP Loan Documents conflict with the terms and conditions of the Financing Orders, the terms and conditions of the Financing Orders shall control.

23. **Requirement for Allocation for Tax Withholdings.** Any extension of credit under the DIP Loans is preconditioned on the Debtor providing to the DIP Lender a sworn statement under penalty of perjury from Debtor's principal that the Debtor has withheld all funds necessary on a post-petition basis to satisfy post-petition employment taxes and unemployment taxes (the "Withholding") together with documentation sufficient for DIP Lender, in its reasonable discretion, to verify this statement, and that the Withholding has been either remitted timely to the relevant taxing authorities, or otherwise segregated to be remitted to the taxing authorities when due and will be used for no other purpose.

DATED this the 24th day of May 2017.

/s/ James J. Robinson  
JAMES J. ROBINSON  
CHIEF U.S. BANKRUPTCY JUDGE

Order prepared by:

**Brian Walding**

[bwalding@waldinglaw.com](mailto:bwalding@waldinglaw.com)

2227 First Avenue South; Suite 100; Birmingham, Alabama 35233; 205.307.5047 (direct)



## **EXHIBIT 1**

**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
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

- (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**").

#### **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 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.
- (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.
- (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 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
- (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.

## **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 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 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.


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

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: Judy O'Dell  
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
- 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 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

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

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

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

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>	

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

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



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>	

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	SOUTHEAST 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>	

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	LENOVO 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>	

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 F**

**Inventory**

To be assessed on Closing Date.

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

**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. 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.

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 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**

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_____

<b>TOTAL DUE:</b>	\$ _____
-------------------	----------

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.

**PIZZA PALZ, INC.  
SECURED PROMISSORY NOTE**

**\$50,000.00**

**March 28, 2017**

1. Principal and Interest.

Pizza Palz, Inc. ("**Company**"), for value received, hereby promises to pay to Domino's Pizza Franchising LLC ("**Payee**"), in lawful money of the United States at the address of Payee, the principal amount of \$50,000.00, or as such lesser principal amount shall be then due and owing, together with interest from the date of this Note on the outstanding amount hereof at the rate of seven percent (7%) *per annum*, compounded annually, computed on the actual number of days elapsed until all of the amounts under this Note have been paid in full.

Subject to the terms hereof, the outstanding principal of, and all accrued but unpaid interest on, this Note are due and payable ON DEMAND at the request of the Payee at any time on or after the earlier of May 19, 2017 or the Sale Date as defined in that certain Debtor-In-Possession Superpriority Credit and Security Agreement of even date herewith (the "Credit Agreement"). Principal and interest under this Note may be prepaid, in part or in full, without premium or penalty.

Upon payment in full of all amounts payable hereunder, this Note shall be surrendered to the Company for cancellation.

2. Enforcement Costs. The Company shall pay, in addition to the principal and interest payable hereunder, all of the reasonable fees, costs and expenses incurred by the Payee in connection with the exercise, enforcement or protection of any of the rights of the Payee hereunder or the failure of the Company to perform or observe any of the provisions hereof.

3. Event of Default. The outstanding principal of, and all accrued but unpaid interest on, this Note shall become immediately due and payable at the election of the Payee upon an Event of Default under the Credit Agreement. Upon the occurrence of such Event of Default, the outstanding principal of, and all accrued but unpaid interest on, this Note shall become immediately due and payable without any further action on the part of Payee and the Company shall immediately pay to Payee all amounts due and payable with respect to this Note. In addition to all other rights and remedies available to Payee under this Note, applicable law or otherwise, after an Event of Default the rate of interest under this Note shall increase to a rate this is five percent (5.0%) per annum in excess of the rate prior to the Event of Default, until this Note is paid in full or such Event of Default is cured.

4. Waivers. The Company hereby waives presentment, demand for performance, notice of non-performance, protest, notice of protest and notice of dishonor. No waiver of any provision or consent to any action shall constitute a waiver of any other provision or consent to any other action, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit a party to provide a waiver in the future except to the extent specifically set forth in writing.

5. Governing Law. This Note shall be governed by, and construed and interpreted in accordance with, the laws of the State of Alabama.

6. Amendment. Except as otherwise set forth in the Agreement, any term of this Note may be amended (either retroactively or prospectively) with the written consent of the Company and Payee.

7. Remedies Cumulative. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

8. Severability. If any term or provision of this Note is determined to be illegal, unenforceable or invalid in whole or in part for any reason, such illegal, unenforceable or invalid provisions or part thereof shall be stricken from this Note, and such provision shall not affect the legality, enforceability or validity of the remainder of this Note. If any provision or part thereof of this Note is stricken in accordance with the provisions of this Section 8, then such stricken provision shall be replaced, to extent possible, with a legal, enforceable and valid provision that is as similar in tenor to the stricken provision as is legally possible. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to this Note, together with all fees, charges and other amounts which are treated as interest with respect to this Note under applicable law, shall exceed the maximum lawful rate which may be contracted for, charged, taken, received or reserved by the holder thereof in accordance with applicable law, the rate of interest payable in respect of this Note, together with all fees, charges and other amounts payable in respect thereof, shall be limited to the maximum lawful rate.

9. Secured Note. This Note is secured in accordance with, and is entitled to the benefits of the Credit Agreement.

10. Payments on Non-Business Days. If any payment hereunder shall be due on a day that is not a business day, the date for payment shall be extended to the next succeeding business day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension.

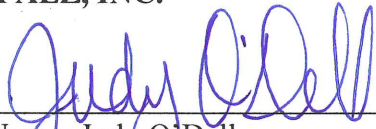
11. Jury Trial Waiver. To the fullest extent permitted by law, and as separately bargained-for-consideration, the Company hereby waives any right to trial by jury in any action, suit, proceeding or counterclaim of any kind arising out of or relating to this Note.

*[Signature on following page]*

IN WITNESS WHEREOF, Pizza Palz, Inc. has caused this Promissory Note to be duly executed and delivered by its proper and duly authorized officer as of the date first written above.

**PIZZA PALZ, INC.**

By:

  
Name: Judy O'Dell  
Title: President & Sole Shareholder

