

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

**CBC RESTAURANT CORP., et al.,<sup>1</sup>**

Debtors.

Chapter 11

Case No. 23-10245 (KBO)

(Jointly Administered)

Related D.I. 289

**ORDER AUTHORIZING CBC RESTAURANT CORP. AND ITS AFFILIATED DEBTORS TO (I) SELL SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, AND INTERESTS, (II) AUTHORIZING AND APPROVING THE DEBTORS' PERFORMANCE UNDER THE APA, (III) AUTHORIZING AND APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN OF THE DEBTORS' EXECUTORY CONTRACTS, UNEXPIRED LEASES, AND PERMITS RELATED THERETO, AND (IV) GRANTING RELATED RELIEF**

Upon the motion dated April 7, 2023, [Docket No. 289] (the "**Motion**")<sup>2</sup> of the above-captioned debtor affiliates, as debtors and debtors-in-possession (collectively, the "**Debtors**") for, among other things, the entry of an order pursuant to sections 105(a), 363, and 365 of title 11 of the United States Code (the "**Bankruptcy Code**"), rules 2002, 6004, 6006, 9007, 9008, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and the Bankruptcy Local Rules for the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Local Rules**"), (i) authorizing the Sale of the Purchased Assets free and clear of liens, claims, encumbrances, and other interests, except as provided in this Order and by that certain Asset Purchase Agreement attached hereto as Exhibit A, as the same may be further amended,

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include CBC Restaurant Corp. (0801), Corner Bakery Holding Company (3981), and CBC Cardco, Inc. (1938). The Debtors' service address is 121 Friends Lane, Suite 301, Newtown PA 18940.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in either the Motion, the Bid Procedures Order (as defined herein), or the APA (as defined herein), as applicable.



supplemented or otherwise modified in accordance with its terms, together with all exhibits and schedules thereto, the “**APA**”), by and between the Debtors and SSCP Restaurant Investors, LLC, a Delaware limited liability company (the “**Buyer**”), (ii) authorizing the Debtors’ performance under the APA, (iii) approving the assumption and assignment to the Buyer of certain of the Debtors’ executory contracts and unexpired leases, including (but not limited to) certain Contracts, Leases, Insurance Policies, and Permits (each a “**Transferred Contract**,” and collectively, the “**Transferred Contracts**”), (iv) approving the Contract Review Period procedures set forth herein (the “**Designation Rights**”) with respect to the assumption and assignment to Buyer or to an Affiliate of Buyer designated by Buyer of post-Closing Contracts and Leases (the “**Potential Contracts**”) in accordance with this Order;<sup>3</sup> and (v) granting related relief, all as more fully set forth in the Motion; the Court having entered an order approving the Bid Procedures and granting certain related relief on April 20, 2023 [Docket No. 361] (the “**Bid Procedures Order**”) after a hearing on the same (the “**Bid Procedures Hearing**”); an auction (the “**Auction**”) having been held in accordance with the Bid Procedures Order from May 30, 2023 through May 31, 2023; the Buyer having been chosen as the Successful Bidder for the Purchased Assets; the Debtors having filed a *Notice of Sale, Bidding Procedures, Auction, and Sale Hearing* [Docket No. 375] (the “**Auction and Sale Notice**”), and a *Notice of Possible Assumption and Assignment with Respect to Executory Contracts and Unexpired Leases of the Debtors* [Docket No. 418] (the “**Cure Notice**”); the Court having conducted hearings on the Motion on June 1, 6, and 7, 2023 (together, the “**Sale Hearings**”) at which Sale Hearings the Court considered all objections thereto (other

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<sup>3</sup> For the avoidance of doubt, the effective date of any such Assumption and Assignment of the Transferred Contracts identified as of the Closing Date pursuant to Section 2.6 of the APA, shall be as of the Closing Date, and for Potential Contracts identified as of the Closing Date pursuant to Section 2.12 of the APA and subject to the Designation Rights herein, shall be as of the the applicable Assignment Date (defined below, each the applicable “**Assumption Effective Date**”).

than the objections raised by certain of the Debtors' landlord counterparties (the "**Potential Contract Counterparties**") and each a "**Potential Contract Counterparty**") as filed or raised informally either before or on the record at the Sale Hearings as to the assumption and assignment of certain Leases to the Buyer, including as to the adequate assurance of future performance of the Buyer and to the Cure Notice, collectively, the "**Adequate Assurance and Cure Objections**" and each an "**Adequate Assurance and Cure Objection**," which Adequate Assurance and Cure Objections are being adjourned as more fully set forth in this Order), all arguments of counsel and other evidence adduced, and all parties in interest having been heard, and after due deliberations, the Court finds that: all parties in interest, including creditors and equity holders, have had a reasonable opportunity to (a) object or be heard regarding the relief requested in the Motion, including the transaction contemplated therein and in the APA substantially in the form attached hereto and (b) bid on the Purchased Assets, and that good cause and sound business purpose and justification exists and has been shown to grant the Motion on the terms set forth herein, which is in the best interest of the Debtors, their estates, their creditors, their stakeholders, and other parties in interest; due notice of the Motion, the APA, the Bid Procedures Hearing, Bid Procedures Order, the Sale Hearing, the Sale, the Cure Notice, the Cure Amounts (as defined below), and the Auction having been provided; that the Sale was negotiated and proposed in good faith and the Purchase Price is fair and reasonable and in the best interest of the Debtors' estates; the Court having jurisdiction over this matter; the legal and factual bases set forth in the Motion and at the Sale Hearing establishing just cause for the relief granted herein; and after due deliberation thereon,

**THE COURT HEREBY FURTHER FINDS AND DETERMINES THAT:<sup>4</sup>**

**I. Jurisdiction, Final Order, and Statutory Predicates**

A. This Court has jurisdiction to consider this Motion under 28 U.S.C. §1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. This order (this “**Order**”) constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding the provisions of Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Order, expressly waives any stay, and expressly directs immediate entry of judgment as set forth herein.

C. The statutory predicates for the relief requested in the Motion are sections 105(a), 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014. The consummation of the Sale and other transactions contemplated by the APA and this Order are legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Bankruptcy Local Rules, and the Debtors and the Buyer have complied with all the applicable requirements of such sections and rules in respect of such transactions.

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

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<sup>4</sup> All findings of fact and conclusions of law announced by the Court at the Sale Hearings in relation to the Motion are hereby incorporated herein to the extent not inconsistent herewith.

## II. Notice of the Sale, Auction, and the Cure Amounts

E. As evidenced by the affidavits and/or certificates of service and publication notice filed with the Court, proper, timely, good, complete, adequate, and sufficient notice of the Bid Procedures, the Auction, the Sale (and all transactions contemplated in connection therewith), the assumption and assignment of the Transferred Contracts specified as of the Closing Date to the Buyer pursuant to the APA, the amounts necessary under sections 365(b)(1)(A) and (B) and 365(f)(2)(A) of the Bankruptcy Code to cure all defaults and pay all actual pecuniary losses under each such Contract or Lease to be potentially assumed to the Buyer as reflected in the Cure Notice (the “**Cure Amounts**”), the Sale Hearing, and all deadlines related thereto, and a reasonably calculated, fair and reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein, have been timely and properly provided, as relevant, in accordance with sections 102(1), 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9007, 9008, and 9014, and Bankruptcy Local Rules 2002-1, and in compliance with the Motion and the Bid Procedures Order, to parties in interest who have formally appeared and requested notice, including, without limitation, the Notice Parties. The Auction and Sale Notice was served on all parties required to receive such notice under the Bid Procedures Order and applicable rules and in accordance with the Bid Procedures Order and was sufficient and proper notice to any other interested parties, including those parties whose identities are unknown to the Debtors. With respect to any parties that may have Claims (as defined below) against the Debtors, but whose identities are not reasonably ascertainable by the Debtors, the publication of the Auction and Sale Notice was sufficient and reasonably calculated under the circumstances to reach such parties.

F. The Debtors served the Cure Notice on each of the non-Debtor counterparties (each, a “**Contract Counterparty**” and, collectively, the “**Contract Counterparties**”) to the Contracts and Leases providing notice to such parties: (i) that the Debtors may seek to assume and assign

the Contracts and Leases on the Closing Date or such later date as contemplated by the terms of the APA and (ii) of the relevant Cure Amounts. The service of the Cure Notice was good, sufficient, and appropriate under the circumstances, in full compliance with the Bid Procedures Order, provided each Contract Counterparty with timely and proper notice of, and a reasonable opportunity to object and be heard with respect to the Debtors' assumption and assignment to the Buyer of the applicable Transferred Contracts on the Closing Date or the Cure Amounts and no other or further notice is required except as set forth below and subject to the right of Contract Counterparties to Potential Contracts to supplement a previously filed Adequate Assurance and Cure Objection in accordance with the terms of this Order. Subject to the right of Contract Counterparties to Potential Contracts to supplement an Adequate Assurance and Cure Objection or Assignment Objection as set forth below, all Contract Counterparties to the Contracts and Leases have had an adequate opportunity to object to the assumption and assignment of the Contracts and Leases and the Cure Amounts.

G. The Debtors' Auction and Sale Notice provided all interested persons and entities with timely and proper notice of, and a reasonable opportunity to object and be heard with respect to, the Sale, the Sale Hearing, and the Auction. As evidenced by the affidavits of service previously filed with the Court, proper, timely, adequate, and sufficient notice of the Motion, the Bid Procedures, the Auction, the Sale Hearing, and the Sale has been provided in accordance with sections 102(1), 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, and 9014. The Debtors also have complied with all obligations to provide notice of the Auction, the Sale Hearing, and the Sale required by the Bid Procedures Order. The notices described in this paragraph were good, sufficient, and appropriate under the circumstances, and no other or further

notice of the Bid Procedures, the Motion, the Auction, the Sale Hearing, Sale, and all deadlines related thereto, is required.

H. After the Auction, the Debtors served the *Notice of Successful Bidder and Back-Up Bidder* [Docket No. 551] (the “**Post-Auction Notice**”) to interested persons and entities, including, without limitation, the Sale Notice Parties, and all parties required to receive such notice under the Bid Procedures Order and applicable rules. Service of the Post-Auction Notice was appropriate and reasonably calculated to provide interested parties with timely and proper notice of the conclusion of the Auction and the identities of the Successful Bidders and Backup Bidders, as it applies to the Purchased Assets.

I. The Sale of the Purchased Assets, except with respect to the Potential Contracts and the Designation Rights established by this Order, to the Buyer pursuant to the Bid Procedures is duly authorized under sections 363(b)(1) and 363(f) of the Bankruptcy Code, Bankruptcy Rule 6004(f), and Bankruptcy Local Rule 2002-1. As demonstrated by (i) the testimony and other evidence proffered or adduced at the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, the Debtors and their professionals, agents, and other representatives engaged in a robust and extensive marketing and sale process and have marketed the Purchased Assets and conducted all aspects of the sale process in good faith and in compliance with the Bid Procedures and the Bid Procedures Order, including in consultation with the Consultation Parties (as defined in the Bid Procedures). The marketing process undertaken by the Debtors and their professionals, agents, and other representatives with respect to the Purchased Assets has been adequate and appropriate and reasonably calculated to maximize value for the benefit of all stakeholders. The Bid Procedures and the Auction were duly noticed, were substantively and procedurally fair to all parties, and were conducted in a diligent, non-collusive,

fair, and good-faith manner. The total consideration provided by the Buyer in the transaction contemplated by the APA was the highest and best bid for the Purchased Assets and, therefore, the Buyer was designated as the Successful Bidder.

### **III. Compliance with the Bid Procedures Order**

J. As demonstrated by the evidence proffered or adduced at the Sale Hearings and the representations of counsel at the Sale Hearings, the Debtors have complied in all material respects with the Bid Procedures Order. The Debtors and their professionals have adequately and appropriately marketed the Purchased Assets in compliance with the Bid Procedures and the Bid Procedures Order, and in accordance with the Debtors' fiduciary duties. Based upon therecord of these proceedings, creditors, other parties in interest, and prospective purchasers were afforded a reasonable and fair opportunity to bid for the Purchased Assets.

K. The Bid Procedures were substantively and procedurally fair to all parties and all potential bidders and afforded notice and a full, fair, and reasonable opportunity for any person to make a higher or otherwise better offer to purchase the Purchased Assets. The Debtors conducted the sale process without collusion and in accordance with the Bid Procedures.

L. The Buyer is the Successful Bidder, and the APA is the Successful Bid, for the Purchased Assets in accordance with the Bid Procedures Order. The Buyer has complied in all respects with the Bid Procedures Order and all other applicable orders of this Court in negotiating and entering into the APA and the Sale Transaction, and the APA likewise complies with the Bid Procedures Order and all other applicable orders of this Court.

### **IV. Good Faith of the Buyer and Debtors**

M. The Buyer is purchasing the Purchased Assets, including all the properties, rights, interests and other tangible and intangible assets of the Debtors acquired by the Debtors before the Closing as set forth in the APA, including, to the extent provided in the APA, certain claims, causes



of action and other legal rights and remedies of the Debtors, and any proceeds of, or property and interests recovered in respect of, and the right to control, all claims and causes of action of any Debtor, whether or not known as of the Closing Date, related to (i) the Purchased Assets, (ii) the Assumed Liabilities, and (iii) the Purchased Avoidance Actions.

N. The APA was negotiated, proposed, and entered into by the Debtors and the Buyer without collusion, in good faith, and from arm's length bargaining positions. Neither the Debtors, nor the Buyer, nor any affiliate of the Buyer has engaged in any conduct that would cause or permit the APA or the Sale to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code or under any other law of the United States, any state, territory, possession thereof, or the District of Columbia, or any other applicable law. The Buyer is making such purchase in good faith and is a good-faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby. Neither the Buyer nor any of its affiliates, members, officers, directors, shareholders or any of its or their respective successors or assigns is an "insider" or "affiliate" of any of the Debtors, as those terms are defined in sections 101(31) and 101(2) of the Bankruptcy Code, and the Buyer's professionals, agents, and other representatives have complied in all respects with the Bid Procedures Order and all other applicable orders of this Court in negotiating and entering into the APA and conducting substantial marketing efforts and a competitive sale process. The APA complies with the Bid Procedures Order and all other applicable orders of this Court.

**V. Highest and Best Offer**

O. The offer of the Buyer on the terms and conditions set forth in the APA, including the total consideration to be realized by the Debtors thereunder, is: (i) the highest and best offer received by the Debtors after extensive marketing, including through the Bid Procedures, including by providing the highest economic value available to the Debtors' estates and will provide a greater

recovery for the Debtors' estates than would be provided by any other available alternative, and (ii) in the best interests of the Debtors, their creditors, their stakeholders, their estates and other parties in interest. Taking into consideration all relevant factors and circumstances, no other entity has offered to purchase the Purchased Assets for greater economic value to the Debtors or their estates. The Debtors have demonstrated sufficient basis to enter the APA, sell the Purchased Assets on the terms outlined therein, and assume and assign the Transferred Contracts to the Buyer under sections 363 and 365 of the Bankruptcy Code. All such actions are appropriate, valid, reasonable, and sound exercises of the Debtors' business judgment consistent with their fiduciary duties and in the best interests of the Debtors, their creditors, their estates, and other parties in interest. Approval of the Motion and the APA and the consummation of the Sale pursuant to the APA is in the best interests of the Debtors, their creditors, their estates, and all other parties in interest.

P. Good and sufficient reasons for approval of the APA and the transactions to be consummated in connection therewith have been articulated by the Debtors. The Debtors have demonstrated compelling circumstances for the Sale outside the ordinary course of business, pursuant to section 363(b) of the Bankruptcy Code in that, among other things, the immediate consummation of the Sale to the Buyer is necessary and appropriate to preserve and to maximize the value of the Debtors' estates. To maximize the value of the Purchased Assets, it is essential that the consummation of the Sale occur promptly.

#### **VI. No Sub Rosa or De Facto Plan**

Q. The Sale of the Purchased Assets outside of a chapter 11 plan pursuant to the APA does not constitute a *sub rosa* or *de facto* plan of reorganization or liquidation as it does not propose to (i) impair or restructure existing debt of, or equity interests in, the Debtors, (ii) impair or circumvent voting rights with respect to any plan that may be proposed by the Debtors, (iii) circumvent chapter 11 safeguards, such as those set forth in sections 1125 and 1129 of the

Bankruptcy Code, or (iv) classify claims or equity interests or extend debt maturities. Accordingly, the Sale neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a chapter 11 plan for the Debtors.

## **VII. Successor Liability**

R. By virtue of the consummation of the Sale, (i) the Buyer is not a continuation of the Debtors or their respective estates, there is no continuity between the Buyer and the Debtors, there is no common identity of ownership between the Buyer and the Debtors, and there is no continuity of enterprise between the Buyer and the Debtors, (ii) the Buyer is not holding itself out to the public as a continuation of the Debtors or their respective estates, including, but not limited to, as to any warranty or similar obligations, and (iii) the Sale does not amount to a consolidation, merger, or *de facto* consolidation or merger of the Buyer and any of the Debtors or the Debtors' respective estates. By virtue of the consummation of this Sale, the Buyer is not, and shall not be considered, a successor to the Debtors or their respective estates by reason of any theory of law or equity, including, but not limited to, under any federal, state or local statute or common law, or revenue, pension, ERISA, tax, labor, employment, environmental, escheat or unclaimed property laws, or other law, rule or regulation (including, without limitation, filing requirements under any such laws, rules, or regulations), or under any products liability law or doctrine with respect to the Debtors' liability under such law, rule or regulation or doctrine or common law, or under any product warranty liability law or doctrine with respect to the Debtors' liability under such law, rule or regulation or doctrine, and the Buyer and its affiliates shall have no liability or obligation under the Workers Adjustment and Retraining Act, 929 U.S.C. §§ 210 et seq. and shall not be deemed to be a "successor employer" for purposes of the Internal Revenue Code of 1986, Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, the Americans with Disability Act, the Family Medical Leave Act, the National Labor Relations Act, the Labor

Management Relations Act, the Older Workers Benefit Protection Act, the Equal Pay Act, the Civil Rights Act of 1866 (42 U.S.C. 1981), the Employee Retirement Income Security Act, the Multiemployer Pension Protection Act, the Pension Protection Act, and/or the Fair Labor Standards Act. By virtue of this Sale, the Buyer is not a continuation or substantial continuation of any of the Debtors or their respective estates, business or operations or any enterprise of the Debtors; and the Buyer does not have a common identity of incorporators, directors or equity holders with the Debtors. Accordingly, the Buyer is not and shall not be deemed a successor to the Debtors or their respective estates as a result of the consummation of the Sale pursuant to the APA and this Order.

**VIII. No Fraudulent Transfer; Validity of Transfer**

S. The APA was not entered into by the Buyer and the Debtors for the purpose of hindering, delaying, or defrauding creditors under either the Bankruptcy Code or the other laws of the United States, or the laws of any state, territory, possession, or the District of Columbia (including, without limitation, the Uniform Fraudulent Conveyance Act, the Uniform Voidable Transactions Act, and the Uniform Fraudulent Transfer Act). Neither the Debtors nor the Buyer entered into the APA fraudulently, nor are they entering into or consummating the transactions contemplated by the APA fraudulently, including under applicable federal and state fraudulent conveyance and fraudulent transfer laws. No other person or entity or group of entities has offered to purchase the Purchased Assets for greater economic value to the Debtors' estates than the Buyer and the offer of the Buyer, upon the terms and conditions set forth in the APA, including the total consideration to be realized by the Debtors thereunder constitutes full and adequate consideration, is fair and reasonable and constitutes reasonably equivalent value, fair consideration, and fair value for the Purchased Assets under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Voidable Transactions Act, the Uniform Fraudulent Conveyance Act, the laws of the

United States, any state, territory, possession, or the District of Columbia, and any other applicable laws. For the purposes of statutory and common law fraudulent conveyance and fraudulent transfer claims, neither the Debtors nor the Buyer are entering into or consummating the transactions contemplated by the APA fraudulently. Approval of the Motion, the APA, the Sale, assumption and assignment of the Transferred Contracts, and the consummation of the transactions contemplated thereby is in the best interests of the Debtors, their estates, their creditors, and all other parties in interest.

T. The Debtors (i) have full corporate power and authority to execute the APA, and the Sale to the Buyer has been duly and validly authorized by all necessary corporate action, (ii) have all of the corporate power and authority necessary to consummate the Sale and all transactions contemplated by the APA, (iii) have taken all corporate action necessary to authorize and approve the APA and the consummation by the Debtors of the Sale and all transactions contemplated thereby, and (iv) require no consents or approvals, other than those expressly provided for in the APA, to consummate such transactions.

U. Subject to section 363(f) of the Bankruptcy Code, the transfer of each of the Purchased Assets to the Buyer or its designee will be, as of the Closing Date, a legal, valid, and effective transfer of the Purchased Assets, which transfer vests or will vest in the Buyer or such designee with all right, title, and interest of the Debtors in, to, and under the Purchased Assets free and clear of (i) all liens (including any liens as that term is defined in section 101(37) of the Bankruptcy Code) relating to, accruing, or arising at any time prior to the Closing Date (collectively, as defined in this clause (i) and as set forth in clauses (i)–(ix) of Paragraph T below, the “**Liens**”), other than Permitted Liens, and (ii) all debts arising under, relating to, or in connection with any act of the Debtors, claims (as that term is defined in section 101(5) of the

Bankruptcy Code) or causes of action, liabilities, obligations, demands, guaranties, options in favor of third parties, rights, easements, servitudes, restrictive covenants, encroachments, contractual commitments, restrictions, rights of first refusal or interests, interests, mortgages, hypothecations, charges, indentures, loan agreements, instruments, collective bargaining agreements, leases, subleases, licenses, deeds of trust, floating trusts, statutory trusts, including ownership, property or equitable interests, floating equitable interests, equitable title, equitable title, security interests, conditional sale or other title retention agreements, pledges, judgments, claims for reimbursement, contribution, indemnity, exoneration, infringement, products liability, alter-ego, and matters of any kind and nature, whether arising prior to or subsequent to the commencement of the Chapter 11 Cases, and whether imposed by agreement, understanding, law, equity, or otherwise, known or unknown, contingent or matured, liquidated or unliquidated, and all rights and remedies with respect thereto (a) that purport to give to any party a right or option to effect any forfeiture, modification, profit sharing interest, right of first refusal, interest, including ownership, property or equitable interest, equitable title, purchase or repurchase right or option, or termination of, any of the Debtors' or the Buyer's interests in the Purchased Assets, or any similar rights, or (b) in respect of taxes (including federal, state, and local taxes), restrictions, rights of first refusal, charges of interests of any kind or nature, if any, including without limitation, any restriction of use, voting, transfer, receipt of income or other exercise of any attributes of ownership (collectively, as defined in this clause (ii) and as set forth in clauses (i)–(ix) of Paragraph T below, the “**Claims**”), relating to, accruing or arising at any time prior to entry of this Order, other than Assumed Liabilities as set forth in the APA or this Order.

**IX. Section 363(f) Is Satisfied**

V. The conditions of section 363(f) of the Bankruptcy Code have been satisfied in full; therefore, the Debtors may sell the Purchased Assets free and clear of any interests in the Purchased

Assets, including any Claims and Liens. The Buyer would not have entered into the APA and would not consummate the transactions contemplated thereby if the sale of the Purchased Assets to the Buyer and the assumption, assignment, and sale of the Transferred Contracts to the Buyer (or to Buyer and/or one or more designees) were not, except as otherwise provided in the APA and this Order with respect to the Assumed Liabilities and Permitted Liens, free and clear of all Claims and Liens of any kind or nature whatsoever of the Debtors, or if the Buyer would, or in the future could (except and only to the extent expressly provided in the APA or this Order and with respect to the Assumed Liabilities and Permitted Liens), be liable for any of such Claims and Liens, including, but not limited to, Claims and Liens in respect of the following: (i) all mortgages, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens, judgments, demands, encumbrances, floating trusts, statutory trusts, interests, including ownership, property or equitable interests, floating equitable interests, equitable title, rights of first refusal or charges of any kind or nature, if any, including without limitation any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership; (ii) any pension, welfare, compensation, or other employee benefit plans, agreements, practices, and programs, including, without limitation, any pension plan of the Debtors; (iii) any other employee, worker's compensation, occupational disease, unemployment, or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to (a) the Employee Retirement Income Security Act of 1974, as amended, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Worker Adjustment and Retraining Notification Act of 1988, (g) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (h) the Americans with Disabilities Act of 1990, (i) the Consolidated Omnibus

Budget Reconciliation Act of 1985, (j) state discrimination laws, (k) state unemployment compensation laws or any other similar state laws, or (l) any other state or federal benefits or claims relating to any employment with the Debtors or any of its predecessors; (iv) interests, including ownership, property or equitable interests, equitable title, claims, liens or other encumbrances that might otherwise arise under or pursuant to the Perishable Agricultural Commodities Act, 7 U.S.C. § 499a, et seq. (“PACA”); (v) any bulk sales or similar law; (vi) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, and state and local tax statutes or ordinances; (vii) any environmental laws, including any Environmental, Health and Safety Requirement(s); (viii) any agreements, acts, or failures to act of the Debtors; and (ix) any theories of successor or transferee liability.

W. The Debtors may sell the Purchased Assets free and clear of all Claims and Liens against the Debtors, their respective estates, or any of the Purchased Assets, including, but not limited to, any Claims and Liens arising under or pursuant to PACA (except for any Assumed Liabilities, including Buyer’s assumption of Liabilities related to PACA Claims (as defined below) and Permitted Liens, in each case as and to the extent set forth in the APA and this Order) because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Holders of such Claims or Liens fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately protected, and adequate provision has been made for the payment of such Claims and Liens, including as set forth herein, by having their Claims or Liens paid in accordance with the APA or attach to the net cash proceeds of the Sale, if any, ultimately attributable to the Purchased Assets in which such creditor or interest holder alleges an interest, in the same order of priority, with the same validity, force and effect that such creditor or interest holder had prior to the Sale, subject to any claims and defenses the Debtors and



their estates may possess with respect thereto. Those holders of Claims or Liens against or in the Debtors, their estates or any of the Purchased Assets who did not object, who withdrew their objection, or whose objection was overruled, to the Sale or the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code.

X. A reasonable opportunity to object or be heard with respect to the Bid Procedures, the Auction, the Sale (and all transactions contemplated in connection therewith), the assumption and assignment of the Transferred Contracts specified as of the Closing Date to the Buyer pursuant to the APA, the Cure Amounts, the Sale Hearing, and all deadlines related thereto has been afforded to interested persons and entities as described above (except as to the Potential Contracts and any adjourned Adequate Assurance and Cure Objection), including, without limitation: (i) counsel to the Official Committee of Unsecured Creditors (“**Committee**”); (ii) the U.S. Trustee; (iii) counsel to SSCP; (iv) all known creditors of the Debtors (for whom identifying information and addresses are available to the Debtors); (v) the Internal Revenue Service; (vi) all applicable federal, state, and local taxing authorities; (vii) all persons and entities known by the Debtors to have expressed an interest to the Debtors in the Purchased Assets during the 6 months prior to entry of the Bid Procedures Order; (viii) all persons and entities known by the Debtors to have asserted any lien, claim, interest or encumbrance in the Purchased Assets (for whom identifying information and addresses are available to the Debtors); (ix) Counterparties to Potential Assumed Contracts, and their counsel, if known; (x) any governmental authority known to have a claim against the Debtors in the chapter 11 cases; (xi) the United States Securities and Exchange Commission; (xii) the United States Attorney’s Office for the District of Delaware; (xiii) United States Attorney General’s Office for the District of Delaware; (xiv) the Office of the Attorney General and the Secretary of State in each state in which the Debtors operate; (xv) all of the parties

entitled to notice pursuant to Bankruptcy Rule 2002; and (xv) all other parties as directed by the Court; and (xvi) entities whose identities were not reasonably ascertainable by the Debtors and received publication notice that was made in the *New York Times National Edition* and through publication of notice on the website maintained by the Debtors' notice and claims agent at <https://kccllc.net/cornerbakery>.

**X. Assumption and Assignment of the Transferred Contracts**

Y. For the avoidance of doubt, and notwithstanding anything to the contrary in this Order or the APA, no Contracts or Leases subject to Adequate Assurance and Cure Objections are being assumed or assigned under this Order and do not constitute Transferred Contracts under this Order or the APA, and all rights of all Potential Contract Counterparties to Potential Contracts subject to an Adequate Assurance and Cure Objection under Section 365 of the Bankruptcy Code as they relate to the assumption and assignment of any such Potential Contracts (including pursuant to the Designation Rights) are reserved and any dispute with respect thereto (including but not limited to any objections to the assumption and assignment of a Potential Contract, including as set forth in any Adequate Assurance and Cure Objection, to (a) the terms and conditions of the proposed assumption and assignment, (b) adequate assurance of future performance and (c) the proposed Cure Amount and/or payment of all amounts due and owing and performance of all other obligations under such Potential Contracts, any such objection or dispute, an “**Assignment Objection**”) shall be resolved pursuant to further order of this Court. No finding of fact or conclusion of law set forth in this Order concerning the assumption and assignment of any Transferred Contracts shall apply, be binding upon, be law of the case, or operate to collaterally estop any argument in connection with the resolution of an Assignment Objection.

Z. The Debtors have demonstrated (i) that it is an exercise of their sound business judgment to assume and assign the Transferred Contracts to the Buyer in each case in connection

with the consummation of the Sale and (ii) that the assumption and assignment of the Transferred Contracts to the Buyer is in the best interests of the Debtors, their estates, creditors, interest holders, and other parties in interest. The Transferred Contracts being assigned to the Buyer are an integral part of the Purchased Assets being purchased by the Buyer and, accordingly, such assumption, assignment, and cure of any defaults under the Transferred Contracts are reasonable and enhance the value of the Debtors' estates. Any Contract Counterparty that has not raised an Adequate Assurance and Cure Objection in accordance with the terms of the Bid Procedures Order and this Order is deemed to have consented to such assumption and assignment.

AA. Subject to the resolution of any adjourned Adequate Assurance and Cure Objection, pursuant to the terms of the APA and this Order, the Buyer (solely to the extent of an Assumed Liability, including Cure Amounts as and to the extent set forth in the APA and this Order) or the Debtors shall have: (i) either or both cured and provided adequate assurance of cure of any defaults under any of the Transferred Contracts within the meaning of section 365(b)(1)(A) of the Bankruptcy Code existing before the Assumption Effective Date and (ii) provided compensation or adequate assurance of compensation to any party for actual pecuniary loss to such party resulting from a default prior to the Assumption Effective Date under any of the Transferred Contracts, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code. After the payment of the relevant Cure Amounts as required by the APA and this Order, the Debtors shall not have any further liabilities to the Contract Counterparties to the Transferred Contracts for the period on or prior to the Assumption Effective Date. The Buyer provided adequate assurance of its future performance under the relevant Transferred Contracts within the meaning of sections 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B) of the Bankruptcy Code. Any Contract Counterparty who did not timely file an objection to the assumption of its Contract or

Lease shall be deemed to have consented to its assumption and assignment to the Buyer pursuant to section 365 of the Bankruptcy Code in accordance with the APA.

BB. Upon payment of the Cure Amounts, no default shall exist in the Debtors' performance under the Transferred Contracts as of the Assumption Effective Date other than defaults that are not required to be cured as contemplated in section 365(b)(1)(A) of the Bankruptcy Code.

**XI. Compelling Circumstances for an Immediate Sale**

CC. Good and sufficient reasons for approval of the APA and the Sale have been articulated. The relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest. To maximize the value of the Debtors' assets and preserve the viability of the business as a going concern to which the Purchased Assets relate, it is essential that the Sale be approved and occur promptly within the time constraints set forth in the APA. Time is of the essence in effectuating the APA and consummating the Sale, both to preserve and maximize the value of the Debtors' assets for the benefit of the Debtors, their estates, their creditors, interest holders, and all other parties in interest in the Chapter 11 Cases and to provide the means for the Debtors to maximize recoveries. As such, the Debtors and the Buyer intend to close the Sale of the Assets as soon as reasonably practicable. The Debtors have demonstrated both compelling circumstances and a good, sufficient, and sound business purpose and justification for immediate approval and consummation of the APA. Accordingly, there is cause to waive the stays contemplated by Bankruptcy Rules 6004 and 6006.

**THE COURT FURTHER HEREBY FINDS AND DETERMINES, ORDERS, ADJUDGES, AND DECREES THAT:**

**General Provisions**

1. The findings and conclusions set forth in this Order constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this matter by Bankruptcy Rule 9014. All findings of fact and conclusions of law announced by the Court at the Sale Hearing shall be deemed additional findings of fact and conclusions of law in this matter and are incorporated herein. When appropriate, all findings of fact shall be construed as conclusions of law, and all conclusions of law shall be construed as findings of fact.

2. Pursuant to all applicable statutory and procedural predicates, including, without limitation, sections 105(a), 363(b), 363(f) and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, and 9014, the relief requested in the Motion is granted to the extent set forth herein and the transactions contemplated thereby and by the APA are approved for the reasons set forth in this Order and on the record of the Sale Hearing, which is incorporated fully herein as if fully set forth in this Order, and the Sale contemplated by the APA is approved.

3. Other than the Adequate Assurance and Cure Objections or any Assignment Objection for a Potential Contract subject to Section 2.12 of the APA, as applicable, all objections, statements, and reservations of rights to the Motion and the relief requested therein and to the entry of this Order or the relief granted herein that have not been expressly withdrawn, waived, adjourned, settled as announced to the Court at any prior hearing, at the Sale Hearing, or by stipulation filed with the Court, or previously overruled, including, without limitation, all reservations of rights included therein or otherwise, are hereby overruled and denied in their entirety on the merits and with prejudice, except as expressly set forth herein. Those parties who did not object, or withdrew their objections to the Motion, are deemed to have consented to the Sale pursuant to section 363(f)(2) of the Bankruptcy Code; provided, however, subject to a right to supplement a Cure Amount pursuant to the Designation Rights set forth herein, Adequate

Assurance and Cure Objections, or Assignment Objections, as applicable shall be set for hearing on **July 6, 2023, at 9:30 a.m. prevailing Eastern Time** or such later hearing set at such time a Potential Contract is designated for assumption and assignment to the Buyer pursuant to the Designation Rights set forth in this Order (the “**Assignment Objection Hearing**”), and all parties reserve their rights as to the Adequate Assurance and Cure Objections or Assignment Objections, as applicable, and final determination of the applicable Cure Amount owed with respect thereto.

4. In the event any Adequate Assurance and Cure Objections, or Assignment Objections, as applicable, are resolved by agreement of the parties prior to the Cure Objection Hearing, the parties shall be authorized to file an agreed order under certification of counsel reflecting the resolution of such objections. Upon the entry of such agreed order resolving such Adequate Assurance and Cure Objection, or Assignment Objection, as applicable, the Contract or Lease at issue shall be deemed to be a Transferred Contract under this Order.

5. This Court’s findings of fact and conclusions of law set forth in the Bid Procedures Order are incorporated herein by reference. In the event of any inconsistency between this Order and any other Order previously entered by this Court, this Order governs.

#### **Approval of the APA and Transition Services Agreement**

6. The APA and all other ancillary documents related thereto or contemplated thereby, including the Transition Services Agreement (the “TSA”) attached hereto as **Exhibit B** (collectively, the “**Sale Documents**”), and all of the respective terms and conditions thereof, including the Sale contemplated hereby and thereby, and the Purchase Price therefor are hereby approved. The Debtors are authorized and directed to enter into the APA and the other Sale Documents to be executed in connection with the APA as may be necessary to consummate the Sale and to perform their obligations thereunder.

7. Pursuant to sections 363 and 365 of the Bankruptcy Code, entry by the Debtors into the APA is hereby authorized and approved. The Debtors and the Buyer acting by and through their existing agents, representatives, and officers are authorized, empowered and directed, without further order of this Court, to use their reasonable best efforts to take any and all actions necessary or appropriate to (a) consummate and close the Sale in accordance with the terms and conditions of the APA and this Order, (b) transfer and assign all rights, title, and interest to all assets, property, licenses, and rights of the Debtors to be conveyed in accordance with the terms and conditions of the APA and this Order, and (c) execute and deliver, perform under, consummate, implement, and close fully the APA, including the assumption and assignment to the Buyer of the Transferred Contracts, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the APA and the Sale, including any other Sale Documents, or as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by the APA, this Order, and such other Sale Documents, including any actions that otherwise would require further approval by shareholders, members, or their boards of directors, as the case may be, without the need to obtain such approvals. The Debtors are hereby authorized to perform their covenants and undertakings as provided in the APA and any Sale Documents before or after the Closing Date without further order of the Court. Neither the Buyer nor the Debtors shall have any obligation to proceed with the Closing under the APA until all conditions precedent to their obligations to do so have been met, satisfied, or waived, except as otherwise contemplated and provided for in the APA and this Order.

8. Notwithstanding anything to the contrary herein or in the APA, during the Contract Review Period, it is hereby acknowledged that the TSA grants counterparties to each Potential Contract the right to enforce certain claims and obligations directly against Buyer, and

such counterparties shall be granted standing to enforce such rights under the TSA upon motion on no less than five (5) days' notice filed with the Bankruptcy Court, and the Buyer shall have consented to the jurisdiction of the Bankruptcy Court to enforce the terms of the TSA, the APA and this Order, and render a final determination of such liability thereunder.

9. This Order, including, without limitation, the provisions approving the APA and the transactions contemplated therein, shall be binding in all respects upon the Debtors, the Debtors' estates, all holders of equity interests in any Debtor, all holders of Claims or Liens (whether known or unknown) against any Debtor, any holders of Claims against or Liens on all or any portion of the Purchased Assets, all Contract Counterparties (except as such forth herein with respect to Adequate Assurance and Cure Objections or Assignment Objections, as applicable), the Buyer and all successors and assigns of the Buyer, the Purchased Assets, all successors and assigns of the Debtors, and any subsequent trustees appointed in any of the Chapter 11 Cases or upon a conversion to chapter 7 under the Bankruptcy Code of any of the Chapter 11 Cases, and shall not be subject to rejection or unwinding. This Order and the APA shall inure to the benefit of the Debtors, their estates, their stakeholders, their creditors, the Buyer and their respective successors and assigns. Nothing in any chapter 11 plan confirmed in the Chapter 11 Cases, the confirmation order confirming any such chapter 11 plan, any order approving the wind down or dismissal of the Chapter 11 Cases, or any order entered upon the conversion of the Chapter 11 Cases to one or more cases under chapter 7 of the Bankruptcy Code or otherwise shall alter, conflict with, or derogate from, the provisions of the APA or this Order.

#### **Transfer of the Purchased Assets**

10. Pursuant to sections 105(a), 363(b), 363(f), 365(b) and 365(f) of the Bankruptcy Code, the Debtors are authorized and directed to transfer the Purchased Assets to the Buyer (and/or one or more designees of Buyer) on the Closing Date. The transfer of the Purchased Assets to the



Buyer or any such designee under the APA does not require any consents other than as specifically provided for in the APA. The transfer of the Debtors' rights, title, and interest in the Purchased Assets to the Buyer and/or any designee of Buyer pursuant to the APA and this Order shall be deemed transferred to the Buyer and/or such designee, if any, upon and as of the Closing Date, and such transfer of the Purchased Assets and the consummation of the Sale and any related actions contemplated thereby constitute a legal, valid, binding, and effective transfer of the Debtors' right, title, and interest in the Purchased Assets and shall vest the Buyer and/or one or more of its designees with all the rights, title and interest of the Debtors in and to the Purchased Assets free and clear of all Claims and Liens (except Assumed Liabilities and Permitted Liens). Upon the Closing, the Buyer or its designee or designees, if any, shall take title to and possession of the Purchased Assets subject only to the Assumed Liabilities and Permitted Liens and the terms of this Order. Pursuant to section 363(f) of the Bankruptcy Code, the transfer of title to the Purchased Assets and the assumption and assignment of the Transferred Contracts shall be free and clear of all Claims and Liens including, without limitation, all Claims pursuant to any successor or successor-in-interest liability theory and any valid Claims and Liens arising under or pursuant to PACA (the "**PACA Claims**"), except for Assumed Liabilities and Permitted Liens and the terms of this Order. For the avoidance of doubt, and notwithstanding anything to the contrary in this Order or the APA, no Potential Contracts shall be part of the Purchased Assets under this Order or the APA until such time as they have been designated for assumption and assignment to the Buyer pursuant to the Designation Rights and become Transferred Contracts

11. The sale of the causes of action pursuant to the APA is hereby approved. Standing to file, prosecute, settle any and all claims or causes of action that are Purchased Assets shall be

irrevocably vested in the Buyer to the fullest extent permitted by applicable law and as set forth in the APA.

12. On the Closing Date, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of all of the Debtors' rights, title, and interest in the Purchased Assets or a bill of sale transferring good and marketable title in such Purchased Assets to the Buyer and/or, at Buyer's request, one or more designees of Buyer on the Closing Date pursuant to the terms of the APA and this Order, free and clear of all Claims and Liens (other than Assumed Liabilities and Permitted Liens). Notwithstanding the foregoing, if the Buyer requests, then the Debtors shall deliver, or cause to be delivered, to the Buyer: (a) executed bills of sale and such other instruments of transfer conveying the Purchased Assets, in form and content reasonably satisfactory to the Buyer; (b) an executed assignment assigning all of the Debtors' rights and obligations under the Transferred Contracts or any Potential Contracts, in form and content reasonably satisfactory to the Buyer; and (iii) such other documents and certificates as the Buyer may reasonably request to transfer the Purchased Assets. For the avoidance of doubt, the Excluded Assets set forth in the APA are not included in the Purchased Assets, and the Excluded Liabilities set forth in the APA and herein are not Assumed Liabilities.

13. As of the Closing Date, to the fullest extent permitted by law, the Buyer is authorized to operate under any license, permit, insurance policy, registration, and governmental authorization or approval of the Debtors constituting Purchased Assets, and all such licenses, permits, registrations, and governmental authorizations and approvals are deemed to have been, and hereby are, directed to be transferred to the Buyer as of the Closing Date as provided by the APA to the fullest extent permitted by law. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any grant, permit, or license

relating to the operation of the Purchased Assets sold, transferred, assigned, or conveyed to the Buyer on account of the filing or pendency of the Chapter 11 Cases or the consummation of the Sale.

14. Except with respect to Assumed Liabilities and Permitted Liens, all persons and entities holding Claims against the Debtors or Claims against or Liens on any portion of the Purchased Assets, are hereby forever barred and estopped from asserting against the Buyer or its successors or assigns (including without limitation its designees), their property, or the Purchased Assets such persons' or entities' Claims against the Debtors or Claims or Liens in and to the Purchased Assets. On and after the Closing Date, each creditor is authorized and directed to execute such documents and take all other actions as may reasonably be deemed by the Buyer to be necessary or desirable to evidence the release of Claims or Liens, if any, as provided for herein and in the APA, as such Claim or Lien may have been recorded or may otherwise exist; provided, however, any failure to do so shall not in any way effect the validity of any free and clear transfer pursuant to this Order.

15. All persons and entities that are presently, or as of the Closing Date may be, in possession of some or all of the Purchased Assets (wherever located) to be sold, transferred, or conveyed to the Buyer or its designee pursuant to the APA are hereby directed to surrender possession of such Purchased Assets to the Buyer or such designee on or as soon as practicable after the Closing Date. To the extent that any such person or entity fails or refuses to surrender possession of such Purchased Assets on or after the Closing Date, the Buyer has the right to commence a turnover action and request that it be considered by this Court on an expedited basis.

16. This Order is and shall be effective as a determination that, as of the Closing Date, all Claims and Liens of any kind or nature whatsoever on or against the Purchased Assets before

the Closing, including, but not limited to, any Claims and Liens arising under or pursuant to PACA, other than Assumed Liabilities (including Buyer's assumption of Liabilities related to PACA Claims and Permitted Liens, in each case as and to the extent set forth in the APA), or as otherwise provided in this Order or the APA, shall attach to any net proceeds received by the Debtors ultimately attributable to the Purchased Assets against, or in, which such Claims or Liens are asserted, subject to the terms thereof, with the same validity, force, and effect, and in the same order of priority, which such Claims or Liens now have against such Purchased Assets, subject to any rights, claims, and defenses that the Debtors or their estates and creditors, as applicable, may possess with respect thereto.

17. This Order is and shall be binding upon and govern the acts of all persons and entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease, and each of the foregoing persons and entities is hereby authorized to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA.

18. Each and every federal, state, and local governmental agency or department is hereby authorized to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA. A copy of this Order may be: (a) filed with the appropriate clerk; (b) recorded with the recorder; or (c) filed or recorded with any other governmental agency to act to cancel any of the Claims, Liens, and other Encumbrances of record.

19. If any person or entity that has filed statements or other documents or agreements evidencing Claims or Liens in all or any portion of the Purchased Assets has not delivered to the Debtors prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of Liens and Claims and any other documents necessary or desirable to the Buyer for the purpose of documenting the release of all Claims and Liens (other than Assumed Liabilities or Permitted Liens), which the person or entity has or may assert with respect to all or any portion of the Purchased Assets, then the Buyer and the Debtors are hereby authorized to execute and file such statements, instruments, releases and other documents in the name and on behalf of such person or entity with respect to the Purchased Assets; provided that, notwithstanding anything in this Order or the APA to the contrary, the provisions of this Order shall be self-executing, and neither the Debtors nor the Buyer shall be required to execute or file releases of termination statements, assignments, consents, or other instruments in order to effectuate, consummate, and implement the provisions of this Order.

**Buyer is a Good Faith Purchaser**

20. The transactions contemplated by the APA are undertaken by the Debtors and the Buyer at arms' length, without collusion and in good faith within the meaning of section 363(m) of the Bankruptcy Code. The Buyer is a good-faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby and otherwise has proceeded in good faith in all respects in connection with this proceeding in that: (a) the Buyer recognized that the Debtors were free to deal with any other party interested in acquiring the Purchased Assets and did not attempt to limit the Debtors' freedom; (b) the Buyer did not in any way induce or cause the chapter 11 filing of the Debtor; (c) the Buyer made the highest or otherwise best bid for the Purchased Assets, which was subsequently open to higher and better bids; (d) the

negotiation and execution of the APA and any other agreements or instruments related thereto were in good faith and at arms' length between the Buyer and the Debtors and there was no evidence of insider influence or improper conduct by the Buyer in connection with the negotiation of the APA with the Debtors, no evidence of fraud, collusion, or bad faith on the part of the Buyer, no evidence of the Buyer doing anything to control or otherwise influence the marketing or sale process, including anything to control or otherwise influence the purchase price paid for the Purchased Assets, and no evidence that the Buyer violated section 363(n) of the Bankruptcy Code; (e) the Buyer's Qualified Bid was subject to a marketing process in a time frame approved by the Court through the Bid Procedures Order; and (f) the Debtors conducted the marketing process in consultation with the Consultation Parties and contacted all potential bidders suggested by such parties. Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale (including the assumption and assignment of the Transferred Contracts), unless such authorization and such Sale are duly stayed pending such appeal.

21. The Debtors and the Buyer have not engaged in any conduct that would permit the APA or the Sale to be avoided under section 363(n) of the Bankruptcy Code.

**Satisfaction of Section 363(f)**

22. The conditions of section 363(f) have been satisfied in full, including, specifically, that the Debtors' principal secured lenders and other known creditors having or asserting Liens on the Purchased Assets have reviewed the Debtors' alternatives and have consented to the Sale or can be compelled to accept a money satisfaction of such interest pursuant to section 363 of the Bankruptcy Code. To the extent the Buyer has not expressly assumed such obligations pursuant to the APA, all Claims and Liens, including, but not limited to, Claims and Liens arising under or

pursuant to PACA, and secured Claims of creditors and/or taxing authorities will attach to the proceeds of the sale, if any, in the same validity, priority, and extent that such interests existed on the Petition Date but after giving effect to the Final Senior DIP Order.

23. All parties with Liens against the Purchased Assets who did not object to the Motion and the relief requested therein, who did not request adequate protection of any possessory right, or who withdrew their objections to the Motion, are deemed to have consented to the Motion pursuant to section 362(f)(2) of the Bankruptcy Code. All parties with Liens against the Purchased Assets who objected to the Motion, but who did not withdraw any objection, can be compelled to accept a monetary satisfaction of their Liens within the meaning of section 363(f)(5) of the Bankruptcy Code and, in each case, are estopped and barred from taking any action against the Buyer, its affiliates or any agent of the foregoing to recover any claim that such person or entity has solely against the Debtors or any of its affiliates. Therefore, the transfer of the Purchased Assets to the Buyer under the APA as of the Closing shall be a legal, valid, and effective transfer of the Purchased Assets, and, except as expressly permitted under the express terms of the APA, shall vest the Buyer with all right, title, and interest of the Debtors to the Purchased Assets free and clear of all Claims and Liens (other than Assumed Liabilities and Permitted Liens). For the further avoidance of doubt, and without limiting the effect of any of the foregoing, the transfer, assumption and assignment, of any of the Transferred Contracts shall be free and clear of all Liens, other than the contractual commitments being assumed by the Buyer following assignment thereof.

#### **No Successor Liability**

24. Effective upon the Closing Date or such Potential Contract Assignment Effective Date (defined below), as applicable, all persons and entities, including persons and entities asserting rights under PACA, are forever prohibited from commencing or continuing in any

manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral, or other proceeding against the Buyer or its affiliates, successors or assigns (including without limitation any designees) or their respective properties, or the Purchased Assets, with respect to (a) any Claims and Liens (other than Assumed Liabilities and Permitted Liens) against the Debtors or the Purchased Assets, or the operation of the Purchased Assets by the Debtors prior to the Closing or (b) any theory of successor liability arising by virtue of the consummation of the Sale, including, without limitation, the following actions: (i) commencing or continuing in any manner any action or other proceeding against the Buyer, or its affiliates, successors or assigns or their respective assets or properties; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree, or order against the Buyer, or its affiliates, successors or assigns or their respective assets or properties; (iii) creating, perfecting, or enforcing any Claims or Liens against the Buyer, or its affiliates, successors or assigns or their respective assets or properties; (iv) asserting any right of subrogation against any obligation due to the Buyer, or its affiliates, successors or assigns or their respective assets or properties; (v) commencing an enforcement action under PACA with respect to PACA Claims against the Debtors to obtain an injunction to freeze any assets of the Buyer; (vi) commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the provisions of this Order or other orders of the Court, or the agreements or actions contemplated or taken in respect thereof; or (vii) revoking, terminating, or failing or refusing to renew any license, permit or authorization to operate any of the Purchased Assets or conduct any of the businesses operated with the Purchased Assets, in each case under the prior clauses (i) through (vii), solely with respect to events or conditions occurring prior to the Closing Date, and excluding Assumed Liabilities, liabilities assumed under Transferred Contracts and Permitted Liens.



**Assumption and Assignment of Contracts**

25. Except as to a Potential Contract to be designated for assumption and assignment to the Buyer pursuant to Section 2.12 of the APA and the Designation Rights set forth in this Order, the Debtors are hereby authorized and directed in accordance with sections 105(a), 363, and 365 of the Bankruptcy Code to (a) assume and assign the Transferred Contracts to the Buyer or its designee free and clear of all Claims, Liens, and other interests of any kind or nature whatsoever (other than the Assumed Liabilities), subject to the terms of the APA and this Order, as of the applicable Assumption Effective Date and (b) execute and deliver to the Buyer such documents or other instruments as the Buyer deems necessary to assign and transfer the Transferred Contracts to the Buyer or its designee in accordance with the APA and this Order. The payment of the applicable Cure Amounts (if any) as required by the APA and this Order shall (i) effect a cure of all monetary defaults existing thereunder as of the applicable Assumption Effective Date, (ii) compensate for any actual pecuniary loss to the applicable Contract Counterparty resulting from such default, and (iii) together with the assignment by the Debtors to and the assumption of the Transferred Contracts by the Buyer or its designee, constitute adequate assurance of future performance thereof; provided, however, all Adequate Assurance and Cure Objections shall be heard at the Assignment Objection Hearing and all parties reserve their rights as to the final determination of the Cure Amounts owed with respect thereto.

26. On the Closing Date, the Debtors shall assume and assign to the Buyer or its designee each Transferred Contract designated by Buyer for assumption and assignment on the Closing Date in accordance with the APA and this Order.

**Contract Review Period Procedures**

27. The following Designation Rights procedures shall apply and are approved in connection with Section 2.12 of the APA, to accomplish the assumption and assignment of any Potential Contract to the Buyer during the Contract Review Period.

28. In accordance with the terms of the APA and this Order, through the earlier of (a) the ninety (90) days following the Closing Date, (b) the effective date of a confirmed plan of reorganization or liquidation for the Debtors, (c) such time that the Chapter 11 Cases are closed or converted to a case under chapter 7, or (d) dismissal of the Chapter 11 Cases (the “**Contract Review Period**”), *provided, however*, with respect to Leases, in no event shall the Contract Review Period extend beyond the earlier of September 20, 2023, and the date of the entry of an order confirming a plan of reorganization or liquidation for the Debtors, absent the consent of a landlord Contract Counterparty, the Buyer may deliver written notice (each, a “**Designation Notice**”) to the Debtors designating any executory contract or unexpired lease, including any Contract, Lease, Insurance Policy, or Permit (each a “**Potential Contract**”) not previously assumed and assigned to the Buyer or rejected for either: (a) assumption and assignment to the Buyer or its designee, or (b) rejection. Within two (2) Business Days following the Debtors’ receipt of any such Designation Notice, the Debtors shall file a notice on the docket in the above-captioned case (each an “**Assumption Notice**” or “**Rejection Notice**,” as applicable) and serve such notice via email and/or by overnight delivery upon the counterparty to such Potential Contract (each a “**Designation Counterparty**”), and its counsel, if known, of the Debtors’ intent to assume and assign or reject such Potential Contract. The deadline to object to the assumption and assignment or rejection of such Potential Contract pursuant to such Assumption Notice or Rejection Notice,

as applicable, (the “**Objection Deadline**”) shall be at least fourteen (14) calendar days from the date of service.

29. If such Potential Contract is to be rejected, the following procedures are approved in connection with the rejection of such Potential Contract:

- A. The Debtors shall file and serve a Rejection Notice to reject a Potential Contract pursuant to section 365 of the Bankruptcy Code, which Rejection Notice shall set forth, among other things:
  - i. The Potential Contracts to be rejected;
  - ii. the Debtor or Debtors party to such Potential Contract;
  - iii. the names and addresses of Designation Counterparty(ies) to such Potential Contracts;
  - iv. the proposed effective date of rejection for such Potential Contracts, which, for a Lease of leased real estate shall be no earlier than the later of (a) the date the Debtors file and serve such Rejection Notice (b) the proposed effective date of the rejection for such Lease set forth in the Rejection Notice, or (c)(1) if applicable, the date upon which the Debtors in writing (email sufficient) notify the landlord and surrender the premises to the landlord and return or provide access to the keys, key codes, lockbox codes, or security codes, or (2) the date the Debtors in writing (email sufficient) notify the affected landlord that the keys, key codes, lockbox codes, or security codes, if any, are not available but the landlord may rekey the leased premises, as applicable (the “**Proposed Rejection Date**”);
  - v. if any such Potential Contract is a Lease of leased real estate, a general description of the personal property to be abandoned (the “**Abandoned Property**”), if any, which Rejection Notice shall also be served upon any third-party with an interest in such Abandoned Property providing notice that if such Abandoned Property is not removed or an objection is not raised prior in time to the Rejection Effective Date (defined below), landlords will have the ability, in their sole discretion and without further notice to any party or order of the Court, to utilize and/or dispose of such Abandoned Property without further notice or liability to the Debtors or any consenting third parties and, to the extent applicable, the automatic stay will be modified to allow such disposition;

- vi. the deadlines and procedures for filing objections to the Rejection Notice; and
  - vii. be accompanied by a form of order authorizing the rejection of the Potential Contract or Contracts (a “**Rejection Order**”).
- B. ***No Objection Timely Filed.*** If no objection to the rejection of one or more Potential Contracts listed in a Rejection Notice is timely filed (including to the proposed abandonment of any Abandoned Property at leased premises, if applicable), the Debtors shall submit the Rejection Order to the Court in the form attached to the Rejection Notice rejecting all Potential Contracts with respect to which no objection was timely filed, and each such Potential Contract shall be rejected as of the applicable Proposed Rejection Date set forth in the Rejection Notice or such other date to which the Debtors and the applicable Designation Counterparty agree; *provided* that the effective date for rejection of a lease of non-residential real property shall not occur until the later of (i) the Proposed Rejection Date set forth in the Rejection Notice and (ii) the date the Debtors relinquish control of the premises by notifying the affected landlord in writing of the Debtors’ surrender of the premises and (A) turning over or providing access to the keys, key codes, lockbox codes, or security codes, if any, to the affected landlord or (B) notifying the affected landlord in writing that the keys, key codes, lockbox codes, or security codes, if any, are not available but the landlord may rekey the leased premises (the “**Surrender Date**”).
- C. ***Unresolved Timely Objection.*** If an objection to the rejection of a Potential Contract listed in a Rejection Notice (including to the proposed abandonment of any Abandoned Property at the leased premises, if applicable) is timely filed and properly served as specified above and not withdrawn or resolved, the Debtors shall request the Court schedule a hearing on such objection and shall provide at least five (5) days’ notice, and no later than thirty (30) days after delivery of the Rejection Notice, of such hearing to the applicable Designation Counterparty, any other party objecting to the proposed rejection (if applicable), and any other affected parties, as applicable.
- D. ***Abandoned Property.*** Following consultation with the Buyer, the Debtors will seek authorization to, but not be directed to, at any time on or before the applicable Proposed Rejection Date, to remove or abandon any of the Debtors’ personal property that may be located on or in the Debtors’ leased premises under a rejected Potential Contract. The Debtors shall generally describe the property in the Rejection Notice and their intent to abandon such property. Absent a timely objection, any and all property located on or in the Debtors’ underlying leased premises on the later of: 1) the Proposed Objection Date or 2) the Objection Deadline to a Rejection Notice (such later date being the “**Rejection Effective Date**”), will be sought to be

deemed abandoned pursuant to sections 363 and 554 of the Bankruptcy Code effective as of the Rejection Effective Date. As of the Rejection Effective Date, landlords may have the right to, in their sole discretion and without further notice to any party or order of the Court, utilize and/or dispose of such Abandoned Property without further notice or liability to the Debtors or any consenting third parties and, to the extent applicable, the automatic stay may be modified to allow such disposition. The rights of the counterparty to each Potential Contract to assert claims for the disposition of the Abandoned Property are reserved, as are all parties' rights to object to such claims.

- E. ***Proofs of Claim.*** Claims arising out of the rejection of a Contract, if any, must be filed on or before the later of (i) the general bar date established in these bankruptcy cases for the filing of general unsecured claims, and (ii) thirty (30) days after the later of (A) the entry of an order approving the rejection of such Potential Contract, and (B) the Rejection Date applicable to such Potential Contract.

30. If such Potential Contract is to be assumed and assigned, the following procedures are approved in connection with the assumption and assignment of such Potential Contract:

- A. The Debtors shall file and serve an Assumption Notice indicating the Debtors' intent to assume or assume and assign a Potential Contract or Contracts pursuant to section 365 of the Bankruptcy Code, which shall set forth, among other things:
- i. the Potential Contract or Contracts to be assumed or assumed and assigned;
  - ii. the Debtor or Debtors party to such Potential Contract;
  - iii. the names and addresses of the Designation Counterparty(ies) to such Potential Contracts;
  - iv. if such Potential Contract is a Lease of leased real estate, the address of the leased premises;
  - v. the identity of the proposed assignee of such Potential Contracts (the "**Assignee**"), if applicable;
  - vi. the proposed effective date of the assumption and assignment for each such Potential Contract (the "**Assignment Date**");
  - vii. the proposed Cure Amount, *provided, however*, to the extent a Designation Counterparty failed to timely object to the Cure

Amount set forth in the Cure Notice, such Designation Counterparty is deemed to have consented to such Cure Amount and waived any other defaults under the Potential Contract(s) arising on or before the Closing Date; *provided, further*, with respect to any Designation Counterparty that filed a timely Adequate Assurance and Cure Objection, such Designation Counterparty may supplement its objection solely to the extent that additional Cure Amounts arose and became due after the date of the Adequate Assurance and Cure Objection, and remain unpaid; provided that all of the Debtors' rights to object to such supplemental Cure Amount are expressly reserved;<sup>5</sup>

- viii. if such Potential Contract is a Lease of leased real estate to be assumed and assigned, be accompanied by evidence of the Assignee's adequate assurance of future performance;
- ix. the deadlines and procedures for filing objections to the Assumption Notice; and
- x. be accompanied by a form of order authorizing the assumption and assignment of the Potential Contract (an "**Assumption Order**").

B. **No Objection.** If: 1) no Adequate Assurance and Cure Objection was previously filed with respect to the Potential Contract, or 2) no objection to the proposed assumption or assumption and assignment of one or more Potential Contracts listed in an Assumption Notice (including a Subsequent Cure Objection as defined below) is timely filed, the Debtors shall submit the Assumption Order to the Court in the form attached to the Assumption Notice assuming and assigning the Potential Contract or Contracts with respect to which no objection was timely filed to the Buyer, and each such Potential Contract shall be assumed or assumed and assigned as of the applicable Assignment Date set forth in the Assumption Notice or such other date as the Debtors, any Assignee, and the applicable Designation Counterparty may agree, and the proposed Cure Amount listed in the Assumption Notice shall be binding on all Designation Counterparties to such Potential Contract, and no amount in excess thereof shall be paid for cure purposes; *provided* that the Assignment Date for a Lease of leased real estate shall not occur earlier than the date the Debtors filed and served an applicable Assumption Notice.

C. **Unresolved Timely Objection.** If an objection to the assumption or assumption and assignment of a Potential Contract listed in an Assumption

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<sup>5</sup> Except as set forth above with respect to Cure Amounts, the rights of all Designation Counterparties as they relate to the assumption and assignment of any Potential Contracts are reserved and any disputes with respect thereto shall be resolved pursuant to the Designation Rights set forth in this Order. All rights of Debtors to dispute objections to the assumption and assignment of any Potential Contract are expressly reserved.

Notice is timely filed and properly served as specified herein, including with respect to an objection that relates to adequate assurance of future performance or a cure issue that could not have been raised in an objection to the Cure Notice or with respect to adequate assurance at or prior to the Assignment Objection Hearing and pertains to matters arising after the Closing (a “**Subsequent Cure Objection**”), for which the Designation Counterparty, the Debtors, and the Buyer are unable to settle or resolve and not withdrawn, the Debtors shall request the Court schedule a hearing on such objection and shall provide at least five (5) days’ notice and no later than thirty (30) days after delivery of the Assumption Notice, of such hearing to the applicable Designation Counterparty and any other affected parties. Notwithstanding the foregoing, the Buyer, as applicable, shall be authorized to settle or resolve such objection with the objecting Designation Counterparty pursuant to the terms of the APA and this Order without further order from this Court.

31. Notwithstanding the foregoing, and without the need for the filing of an Assumption Notice, during the Contract Review Period the Buyer and the Designation Counterparty to a Potential Contract shall be authorized to file an agreed order under certification of counsel reflecting the entry into an agreement as between such parties pursuant to which such Designation Counterparty consents to the assumption and assignment to Buyer or its designee of such Potential Contract on the terms set forth in such agreement (each, a “**Resolved Potential Contract**”), including the payment of any Cure Amounts. The assumption and assignment of such Resolved Potential Contract shall be effective on the date set forth in the Resolved Potential Contract without further order of the Court, unless (a) the Designation Counterparty and the Buyer agree otherwise or (b) the Court adjudicates otherwise.

32. Once a Potential Contract or a Resolved Potential Contract is assumed and assigned to the Buyer or its designee in accordance with the APA, this Order, or any subsequent Assumption Order, such Potential Contract or Resolved Potential Contract shall be deemed a Transferred Contract as of the applicable Assignment Date.

33. Except as provided herein, the Transferred Contracts shall be transferred to and remain in full force and effect for the Buyer's benefit in accordance with their respective terms, notwithstanding any provision in any such Transferred Contract (including, without limitation, those of the type described in section 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer. Pursuant to section 365(k) of the Bankruptcy Code, following the Assumption Effective Date, and upon payment of the Cure Amount, the Debtors shall be relieved from any further liability with respect to such Transferred Contracts after their assumption and assignment to the Buyer.

34. All monetary defaults of the Debtors under the Transferred Contracts arising or accruing prior to Closing shall be deemed cured and all other requirements of section 365(b) shall be deemed satisfied upon payment of the Cure Amounts, if any.

35. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, other than the right to payment of any Cure Amount, all Contract Counterparties of Transferred Contracts are forever barred from raising or asserting against either the Debtors or the Buyer any assignment fee, default, breach, Claim, pecuniary loss, or condition to assignment arising under or related to the Transferred Contracts (other than those subject to an Adequate Assurance and Cure Objection) existing as of the Closing Date or arising by reason of the Closing.

36. Pursuant to section 365(f) of the Bankruptcy Code, the assignment by the Debtors of the Transferred Contracts shall not be a default thereunder. After the payment of the relevant Cure Amounts as required by the APA and this Order, the Debtors shall not have any further liabilities to the Contract Counterparties for periods on or prior to the applicable Assumption Effective Date, and the Contract Counterparties shall be estopped from asserting any and all such



Claims or Liens, whether known or unknown, against the Debtors on account of the Transferred Contract.

37. Any provision in any Transferred Contract that prohibits or conditions the assignment of such Transferred Contract to the Buyer or its designee or allows the party to such Transferred Contract to terminate, recapture, impose any penalty, condition on renewal or extension, or modify any term or condition upon the assignment of such Transferred Contract to the Buyer or its designee, shall constitute anti-assignment provisions that are unenforceable and will have no force and effect solely with respect to assumption and assignment pursuant to this Order or any subsequent assumption and assignment order, as applicable. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to the Buyer of the Transferred Contracts have been satisfied.

38. Upon the applicable Assumption Effective Date and the payment of the relevant Cure Amount, if any, the Buyer or applicable designee shall be deemed to be substituted for the Debtors as a party to the applicable Transferred Contract and the Debtors shall be relieved, pursuant to section 365(k) of the Bankruptcy Code, from any further liability under such Transferred Contract; *provided, however*, that any landlord may seek to recover from the Debtors (but not the Buyer) indemnification obligations, if any, arising from third-party claims asserted with respect to or arising from the Debtors' use and occupancy of the Premises prior to the Closing for which the Debtors had a duty to indemnify such Landlord pursuant to any Transferred Contract, solely with respect to available insurance coverage that survives the Closing, if any; *provided, further*, that the Buyer shall not have any obligations to reimburse or indemnify the Debtors or the Debtors' insurer for any such recovery.

39. Upon the applicable Assumption Effective Date and the payment of the relevant Cure Amount, if any, the Transferred Contracts will remain in full force and effect (subject to any amendments agreed to between the counterparty to such Transferred Contract and the Buyer), and no default shall exist under the Transferred Contracts and no counterparty to any Transferred Contract shall be permitted (a) to declare a default by the Buyer or its designee under such Transferred Contract as a result thereof, or (b) to otherwise take action against the Buyer or its designee as a result of any Debtors' financial condition, bankruptcy, or failure to perform any of its obligations under the relevant Transferred Contract. Each non-Debtor party to any Transferred Contract hereby is also forever barred and estopped from (i) asserting against the Debtors or the Buyer, or the property of any of them, any default or Claim arising out of any indemnity obligation or warranties for acts or occurrences arising prior to or existing as of the applicable Assumption Effective Date, or, against the Buyer, any counterclaim, defense, setoff, or any other Claim asserted or assertable against the Debtors, except as otherwise provided in this Order, and (ii) imposing or charging against the Buyer or its affiliates any rent accelerations, assignment fees, increases (including advertising rates), or any other fees as a result of the Debtors' assumption and assignments to the Buyer of the Transferred Contracts; *provided, however*, notwithstanding anything to the contrary in the APA or this Order, Buyer or its designee shall be responsible for liabilities for any breach of or default under such Transferred Contract arising or occurring after the Closing Date, and for payment or performance of any and all obligations under the Transferred Contracts when due in accordance with the terms of such Transferred Contracts, including with respect to any year-end adjustments or reconciliations (including for royalties, rents, utilities, taxes, insurance, fees, common area or other maintenance charges, promotional funds, and percentage rent) that become due and owing after the Closing Date (irrespective of whether such

obligations accrued or relate to the period before, on or after the Closing Date, and were not due and unpaid as of the date of the Cure Notice so as to be required to be raised by a timely objection to the Cure Notice); *provided, further*, without relieving Buyer of its obligations under this Order or the APA, nothing in this Order or the APA shall relieve the Debtors of their obligations to lease counterparties of unexpired leases under Section 365(d)(3) of the Bankruptcy Code prior to and through the effective date of any assumption and assignment or rejection of any Transferred Contract or Potential Contract, as applicable.

40. Other than the Adequate Assurance and Cure Objections, all objections to the assumption and assignment of the Transferred Contracts that have not been withdrawn, waived, settled, or adjourned, as announced to the Court at the Sale Hearings or by stipulation filed with the Court, and all reservations of rights included in such objections or otherwise, are hereby denied and overruled on the merits with prejudice.

41. All Contract Counterparties shall cooperate and expeditiously execute and deliver, upon the reasonable request of the Buyer, any instruments, applications, consents, or other documents that may be required or requested by any public authority or other party or entity to effectuate the assumption and assignment of the applicable Transferred Contract in connection with the sale of the Purchased Assets.

### **Taxing Authorities**

42. For the avoidance of doubt and notwithstanding anything to the contrary in this Order or the APA, the secured ad valorem tax liens (the “**Tax Liens**”) of the Texas Taxing Authorities<sup>6</sup> pertaining to the Purchased Assets, are Permitted Liens as defined in the APA. The

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<sup>6</sup> Bexar County, Dallas County, City of El Paso, City of Frisco, Gregg County, Harris County, Hidalgo County, Irving Independent School District, Lewisville Independent School District, City of McAllen, Montgomery County, Nueces County, Smith County, Tarrant County, City of University Park, Highland Park Independent School District, Richardson Independent School

Buyer assumes full responsibility for the Texas Taxing Authorities' ad valorem tax claims (the "**Tax Claims**") for tax years 2023 and prior pertaining to the Purchased Assets and shall be responsible for paying the Tax Claims, including any accrued post-petition interest, in full, in the ordinary course of businesses, when due. If not timely paid, the Texas Taxing Authorities may proceed with non-bankruptcy collections against the Buyer, without leave or approval of the Court. The Texas Taxing Authorities shall retain their Tax Liens against the Purchased Assets, as applicable, until paid in full, including any applicable penalties or interest. All parties' rights to object to the priority, validity, amount and extent of the Tax Claims and Tax Liens are fully preserved.

### **Back-Up Bidder**

43. The Designated Back-Up Bidder is Corbak Acquisition, LLC ("**Corbak**"). Corbak is hereby approved as the Back-Up Bidder, and its bid is hereby designated as the Designated Back-Up Bid and approved and authorized as the Back-Up Bid. The Designated Back-Up Bid shall remain open as per the terms of the Designated Back-Up Bid and the Bid Procedures. In the event the APA is terminated pursuant to its terms and the sale of the Purchased Assets to the Buyer is not consummated, then the Designated Back-Up Bidder will be deemed the Successful Bidder in accordance with the Bid Procedures and all references herein to the Buyer and the APA shall be to the Designated Back-Up Bidder and the Designated Back-Up Bid, respectively, without further order of this Court. In such case the findings and other provisions of the Order shall apply to the Designated Back-Up Bidder and the Designated Back-Up Bid to the same extent that they apply

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District, City of Highland Village, Carrollton-Farmers Branch Independent School District, Frisco Independent School District, Plano Independent School District, Tyler Independent School District, Spring Branch Independent School District, Harris County Municipal Utility District #345, Memorial Villages Water Authority, Denton County and Williamson County.

to the Buyer and the APA. Notwithstanding the foregoing, with respect to any Transferred Contracts or Potential Contracts, pursuant to the Bid Procedures Order, the Debtors shall (1) file and serve a Notice of Intent to Proceed with Back-up Bid, and (2) schedule a telephonic status conference, which may be expedited, upon reasonable notice under the circumstances (which shall be no less than five (5) days), at which time a briefing and hearing schedule will be established for those landlords and counterparties to executory contracts and unexpired leases to object to any proposed assumption and assignment of their leases or contracts to the Back-up Bidder.

#### **Closing Escrow**

44. Pursuant to that certain *Sua Sponte Order Requiring SSCP Restaurant Investors, LLC to Escrow Purchase Price as Condition Precedent to Closing Sale Transaction Under Sale Order* entered contemporaneously herewith, or such further order as may be entered by this Court or a court of competent jurisdiction in connection with the subject matter thereof, as a condition precedent to closing the Sale under the Sale Order and APA, SSCP shall deposit the sum of \$11,499,065 (the “**Cash Escrow**”) in escrow with Wilmington Trust and provide evidence of such deposit to the Committee, the Debtors, and the Office of the United States Trustee.

#### **Self-Funded Healthcare Escrow**

45. In addition to the Wind Down Fund provided for pursuant to the APA, the Buyer shall contribute the sum of fifty thousand dollars (\$50,000) to the Debtors *solely* for the payment of pre-Closing expenses incurred by the Debtors’ current employees in connection with the Debtors’ self-funded healthcare plans that come due post-Closing (such amount being the “**Self-Funded Healthcare Escrow**”). Upon conversion of these Chapter 11 Cases to cases under chapter 7, if any, any unpaid portion of the Self-Funded Healthcare Escrow shall remain with the Seller’s estates for use by the chapter 7 trustee to pay such expenses, if any. Upon the closure or dismissal

of these bankruptcy cases post-conversion to chapter 7, any amounts remaining from the Self-Funded Healthcare Escrow shall be returned to the Buyer.

### **Miscellaneous Provisions**

46. Notwithstanding anything to the contrary herein, the Debtors and Buyer shall comply with the Corner Bakery Privacy Policy dated December 27, 2029 and the Special Privacy Notice for California Residents dated December 27, 2019 (the “**Privacy Policies**”) and: (a) with respect to information subject to the Privacy Rights of California (“**CCPA**”), Debtors shall not and hereby do not transfer, sell, or convey any “personal information” of California residents to Buyer for any Person; and (b) Debtors shall not and hereby do not transfer, sell, or convey any “personal information” of Nevada residents to Buyer for any Person.

47. Notwithstanding any term or provision in any pleadings, orders, or other documents related to the sale of Debtors’ assets, taxes that are collected and held in trust for the State of Texas shall not be subject to the sale. Specifically, Texas sales taxes are such trust fund taxes. Whether collected pre- or post-petition, and whether on deposit at a financial institution or being held in cash, Texas sales tax trust funds are not property of the bankruptcy estates and cannot be included in the sale of Debtors’ assets. For the avoidance of doubt, all Texas sales tax trust funds collected following the Petition Date and prior to closing of the sale of Debtors’ assets, but not yet remitted to the Texas Comptroller of Public Accounts, shall be paid by the Debtors in accordance with state law, 28 U.S.C. § 960 and all relevant sections of the Bankruptcy Code.

48. Notwithstanding anything to the contrary in the Motion, the Bid Procedures Order, the Bid Procedures, the Assumption and Assignment Procedures, the APA, any Potential Assumption and Assignment Notice, Supplemental Assumption and Assignment Notice, Contracts Schedule or other list of Potential Assumed Contracts and/or Cure Amounts, this Sale Order or

any documents relating to any of the foregoing, (a) nothing shall permit or otherwise effectuate a sale, an assignment or any other transfer of (i) any insurance policies that have been issued by ACE American Insurance Company, Westchester Fire Insurance Company and/or any of their U.S.-based affiliates and/or any predecessors and successors of any of the foregoing to, or that provide coverage to, any of the Debtors (or their predecessors) at any time and/or any agreements, documents or instruments relating thereto (collectively, the “**Chubb Insurance Contracts**”), and/or (ii) any rights, proceeds, benefits, claims, rights to payments and/or recoveries under such Chubb Insurance Contracts; (b) nothing shall alter, modify or otherwise amend the terms or conditions of the Chubb Insurance Contracts; and (c) for the avoidance of doubt, the Successful Bidder is not, and shall not be deemed to be, an insured under any of the Chubb Insurance Contracts.

49. Upon the Closing, and unless otherwise specifically provided for herein or in the APA, those parties holding Encumbrances related to the Purchased Assets, following a commercially reasonable request of Buyer, are authorized and instructed to execute or authenticate such documents and instruments and take all other action as may be necessary to release such Liens or mortgages on or security interests in the Purchased Assets, as may have been recorded or may otherwise exist. The Debtors are further authorized to execute such documents and instruments and take all other actions as may be necessary to effectuate the terms of the APA and this Order including such actions as may be necessary to comply with all regulatory and licensing requirements.

50. The APA and any related or ancillary agreements, documents or other instruments may be further modified, amended, or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court; provided, that any such modification,

amendment or supplement does not have a material adverse effect on the Debtors' estates or any third party. The APA shall not be altered, amended, rejected, discharged, or otherwise affected without the prior written consent of the Debtors and the Buyer. Material modifications, amendments, or supplements adverse to the Debtors or third parties may only be made in a signed writing by the Debtors and Buyer and upon further Order of this Court.

51. Except as expressly provided in the APA, this Order, or any order of this Court, the Debtors and their estates shall have no further liability or obligations with respect to any Assumed Liability after Closing, except as to Potential Contracts, and all holders of such claims are forever barred and estopped from asserting such claims against the Debtors or their estates.

52. Absent the express written consent of the Buyer, the Debtors shall not settle or otherwise resolve any causes of action with any third party or any Governmental Authority other than any settlement pursuant to which (a) any Liability thereunder will be an Excluded Liability, (b) no payment from the Buyer is sought or required, and (c) no restrictions are placed on or affecting the Business or Purchased Assets.

53. If any person or entity that has filed a mechanic's and/or materialmen's lien, deed of trust, mortgage, judgment lien, financing statement, or other document or agreement evidencing a lien, claim, encumbrance, or interest in, on, or against the Purchased Assets shall not have delivered to the Buyer at or prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Liens, Claims, encumbrances, or interests that the person or entity has against any of the Purchased Assets, the Debtors and the Buyer are hereby authorized to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity after the occurrence of the Closing Date.



54. Unless related to an Assumed Liability or Permitted Lien pursuant to sections 105(a) and 363 of the Bankruptcy Code, effective as of the Closing Date, all persons are hereby forever barred and estopped from taking any action against the Buyer or the Buyer's affiliates (as they exist immediately prior to the Closing) to recover or enforce any lien, claim, interest, or encumbrance, including any PACA Claims, that such Person has against the Purchased Assets as of the Closing Date.

55. Except in connection with the Debtors' performance under the terms of any Transition Services Agreement or to effectuate the wind-down, neither the Debtors nor any of their affiliates shall use, license, or permit any third party to use any name, slogan, logo, or trademark which is similar to any of the names, trademarks, or service marks included in the Intellectual Property in the Purchased Assets, and each Debtor is directed to change its corporate name to a name which (a) does not use the name "Corner Bakery" or any other name that references or reflects any of the foregoing in any manner whatsoever, (b) is otherwise substantially dissimilar to its present name, and (c) is approved in writing by the Buyer. Within a reasonable time after the Closing Date, the Debtors shall file a separate motion seeking to modify the case caption to reflect the Debtors' new corporate name.

56. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby modified, lifted, and annulled with respect to the Debtors and the Buyer to the extent necessary, without further order of this Court, to (a) allow the Buyer to deliver any notice provided for in the APA, and (b) allow the Buyer to take any and all actions permitted under the APA or any other Sale-related document in accordance with the terms and conditions thereof. The Buyer shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code to enforce any of its remedies under the APA or any other Sale-related document. The

automatic stay imposed by section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the preceding sentence.

57. In the event of any inconsistency between this Order and the APA, this Order governs. The failure to include any particular provision of the APA or the related agreements in this Order will not diminish the effectiveness of such provision, it being the intent of the Court that the APA be authorized and approved in its entirety.

58. Nothing contained in any subsequent plan of reorganization or liquidation that may be confirmed in the Bankruptcy Case or any order of this Court confirming such plan shall conflict with the terms of this Order.

59. The provisions of this Order are non-severable and mutually dependent.

60. The entry of this Order is in the best interests of the Debtors, their estates, the creditors and other stakeholders thereof and other parties in interest.

61. This Order shall become null and void if the Closing does not occur as provided for in the APA.

62. For the avoidance of doubt, nothing in this Order shall impact the effectiveness of any previously entered orders regarding the Debtors' use of cash collateral and incurrence of debtor-in-possession financing.

63. This Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Sale Order and the APA, all amendments thereto as well as any waivers and consents thereunder and each of the agreements executed in connection therewith to which the Debtors are a party and adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale.

64. For cause shown, this Order is effective and enforceable immediately and its provisions are self-executing upon entry notwithstanding any provision in the Bankruptcy Code, the Bankruptcy Rules, including, without limitation, Bankruptcy Rules 6004(h), 6006(d), or any other applicable provision under the law.

Dated: June 9th, 2023  
Wilmington, Delaware

  
KAREN B. OWENS  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit A**

**ASSET PURCHASE AGREEMENT**

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**ASSET PURCHASE AGREEMENT**

**by and among**

**CBC RESTAURANT CORP, CORNER BAKERY HOLDING COMPANY, and CBC  
CARDCO, INC.,**

**and**

**SSCP RESTAURANT INVESTORS, LLC**

**MAY \_\_\_\_, 2023**

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## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this “Agreement”) is entered into as of May \_\_\_\_\_, 2023, by and among CBC Restaurant Corp., a Delaware corporation (“CBC”), Corner Bakery Holding Company, a Delaware corporation (“Holdco”), and CBC Cardco, Inc., a Florida corporation (“Cardco,” and with CBC and Holdco, the “Sellers”), and SSCP Restaurant Investors, LLC, a Delaware limited liability company (together with its permitted successors, designees and assigns, “Buyer”). Sellers and Buyer are referred to collectively herein as the “Parties.” Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in Article I.

WHEREAS, Sellers own, operate, and franchise fast-casual restaurants serving breakfast, lunch, and dinner under the Corner Baker brand (collectively, the “Business”);

WHEREAS, on February 23, 2023 (the “Petition Date”), Sellers each filed a voluntary petition for relief (the “Chapter 11 Cases”) pursuant to Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as amended (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”);

WHEREAS, Sellers desire to sell, transfer, and assign to Buyer, and Buyer desires to acquire and assume from Sellers, pursuant to Section 363(f) of the Bankruptcy Code, the Purchased Assets upon the terms and subject to the conditions set forth herein;

WHEREAS, subject to the Committee’s challenge rights, the Buyer holds a pre-petition secured claim against the Sellers in the aggregate amount of not less than \$42,326,283.97 in principal and accrued and unpaid interest, plus additional interest, fees, expenses and costs (the “Prepetition Obligations”);

WHEREAS, on May 5, 2023, the Bankruptcy Court entered the Final Senior DIP Order (defined below), authorizing the Sellers to borrow, on a secured, post-petition basis, a superpriority priming line of credit and term loan facility with an aggregate principal amount of \$10,500,000 from the Buyer pursuant to the terms of the Final Senior DIP Order;

WHEREAS, pursuant to the Final Senior DIP Order, Buyer received Adequate Protection Liens as security for the payment of the Adequate Protection Obligations that Buyer asserts are in an amount, as of May 16, 2023, of approximately \$2,000,000.

WHEREAS, the independent director or other applicable governing body of each Seller has determined that it is advisable and in the best interests of their respective estates and the beneficiaries of such estates to consummate the Contemplated Transactions pursuant to the Sale Order and has approved this Agreement; and

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

NOW, THEREFORE, in consideration of the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, and other good

and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties, intending to be legally bound, hereby agree as follows:

## **ARTICLE I DEFINITIONS**

“Accounts Receivable” means (a) all accounts, accounts receivable, trade receivables, contractual rights to payment, notes, notes receivable, negotiable instruments, chattel paper, Credit Card Receivables, Financing Company Receivables, vendor and supplier rebates or refunds of Sellers in connection with the Business as conducted by the Sellers and other miscellaneous receivables, and (b) any security interest, claim, remedy or other right related to any of the foregoing.

“Adequate Protection Liens” mean as security for the payment of the Adequate Protection Obligations, the valid, perfected security interest in and liens upon all tangible and intangible prepetition and postpetition property in which any or each of the Sellers or their respective Estates have an interest of any kind or nature, whether existing on or as of the Petition Date or thereafter acquired or created, wherever located, including, without limitation, the proceeds, products, and offspring of any of the foregoing, including proceeds of the Purchased Avoidance Actions, which will be subject and subordinate only to (i) the Senior DIP Liens, (ii) the Carve Out, and (iii) the Permitted Liens (if any).

“Adequate Protection Obligations” means an amount equal to the aggregate diminution in value of its interests in the Prepetition Collateral resulting from the sale, lease, encumbrance, or use by the Sellers of the Cash Collateral and any other Prepetition Collateral, the priming of the Prepetition Liens on the Prepetition Collateral by the Senior DIP Liens, and the imposition of the automatic stay pursuant to Bankruptcy Code section 362.

“Administrative Expenses” means, collectively, the allowed administrative expenses incurred by Sellers in the Chapter 11 Cases including expenses of the kind specified in Sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 546(c), 546(d), or 726 (to the extent permitted by law) of the Bankruptcy Code, and any other provision of the Bankruptcy Code; provided, that Administrative Expenses shall not include the Insider Administrative Expenses.

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by Contract or otherwise.

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

“Alternate Transaction” means a transaction or series of related transactions pursuant to which Sellers sell, transfer, lease or otherwise dispose of, directly or indirectly, including through an asset sale, stock sale, merger, reorganization or other similar transaction (by Sellers or otherwise), including pursuant to a plan or refinancing, all or substantially all of the Purchased Assets (or agrees to do any of the foregoing) in a transaction or series of transactions to a Person

or Persons other than Buyer, but does not mean the sale of assets to customers conducted in the Ordinary Course of Business.

“Allowed” means, with respect to any Claim: (i) a Claim as to which (a) a Proof of Claim has been timely Filed by the applicable Bar Date, if any, or that is not required to be evidenced by a Filed Proof of Claim, (b) no objection has been Filed, and (c) the relevant objection deadline has expired; (ii) a Claim that is allowed pursuant to a stipulation that is approved by a Final Order of the Bankruptcy Court; or (iii) any Administrative Claim, including Professional Fees and Expenses, a request for payment of which is/was timely asserted and that either is undisputed or has been allowed by a Final Order or which is for fees payable pursuant to section 1930(a) of the Judicial Code. For the avoidance of doubt, no Claim of any Entity subject to section 502(d) of the Bankruptcy Code shall be deemed Allowed unless and until such Entity pays in full the amount that it owes each Seller, as applicable.

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

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

“Assumed Permits” means all Permits relating to the Business that are transferable in accordance with their terms and under applicable Law, but excluding all Permits to the extent related to any Excluded Asset (including any Lease that is not a Transferred Contract).

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

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

“Bankruptcy-Related Default” means any default or breach of a Contract that is not entitled to cure under Section 365(b)(2) of the Bankruptcy Code, including a default or breach relating to the filing of the Chapter 11 Cases or the financial condition of Sellers.

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

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

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

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

“Cash Collateral” means (i) all non-restricted cash of the Sellers as of the Petition Date, including the cash in deposit accounts, wherever located, (ii) any proceeds of Prepetition Collateral, and (iii) all other cash subject to Senior DIP Liens or Adequate Protection Liens (as defined below) pursuant to this Final Senior DIP Order.

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

“CARES Act” means the Coronavirus Aid, Relief, and Economic Security Act (H.R. 748) and any similar or successor legislation, together with any memoranda or executive orders relating to SARS-CoV-2 or COVID-19, and any strains, variants or evolutions thereof.

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

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

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

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

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

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

“Code” means the United States Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, as the same may be in effect from time to time.

“Commercially Available Software” means commercially available software that has not been materially modified or customized by a third party for a Seller and that is licensed pursuant to an agreement.

“Committee” means any official committee of unsecured creditors appointed in the Chapter 11 Cases.

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

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

“Contract” means any written or oral agreement, executory contract, unexpired leases (other than Leases of Leased Real Estate), sublease, indenture, mortgage, instrument, guaranty, loan or credit agreement, note, bond, customer order, purchase order, sales order, sales agent agreement, supply agreement, development agreement, joint venture agreement, promotion agreement, license agreement, contribution agreement, partnership agreement or other arrangement, understanding, permission or commitment that, in each case, is legally-binding.

“Credit Bid” has the meaning set forth in Section 2.5.

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

with credit cards or any other related amounts owing (including deposits or holdbacks to secure chargebacks, offsets or otherwise) from credit card processors to Sellers.

“Cure Claims” means amounts that must be paid and obligations that otherwise must be satisfied, pursuant to Section 365(b)(1)(A) and (B) of the Bankruptcy Code, in connection with the assumption and assignment of the Transferred Contracts (including allowed Administrative Claims for “stub rent” pursuant to Section 363 of the Bankruptcy Code) to be assumed and assigned to the Buyer.

“Current Employees” means all individuals employed by Sellers as of the Closing Date, whether active or not (including those on short-term disability, leave of absence, paid or unpaid, or long-term disability with, in each case, the legal right to return to employment).

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

“Customer Loyalty Programs” means the customer loyalty program that incentivizes customers to return to the Sellers’ restaurants by providing coupons and/or discounts.

“Customer Programs” means the Customer Loyalty Programs and the Gift Card Program.

“Decree” means any judgment, decree, ruling, decision, opinion, injunction, assessment, attachment, undertaking, award, charge, writ, stipulation, executive order, judicial order, administrative order or any other order of any Governmental Entity.

“DIP Budget” means the “Approved Budget” as defined in the Final Senior DIP Order.

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

“E-Commerce Platform” means the series of software and hardware applications integrated into, and through which Sellers sell inventory to consumers who place orders for such inventory through the Sellers’ websites, including the Contracts pursuant to which such software and hardware applications are owned or licensed by Sellers.

“Employee Benefit Plan” means each “employee benefit plan” (as such term is defined in Section 3(3) of ERISA, whether or not subject to ERISA) and each other benefit, retirement, employment, consulting, compensation, incentive, bonus, stock option, restricted stock, stock appreciation right, phantom equity, change in control, severance, medical and hospitalization, insurance, life, disability, salary continuation, sick pay, vacation, paid time off, welfare and fringe-benefit or other compensation plan, program, policy, agreement or arrangement of any kind, in each case, (i) that are for the benefit of or relating to any current or former directors, officers, managers, employees, consultants or other service providers of any Seller or any ERISA Affiliate, or any spouse, dependent or beneficiary thereof, or (ii) that are maintained, sponsored or contributed to or required to be contributed to, by any Seller or any ERISA Affiliate or in which any Seller or ERISA Affiliate participates or participated or (ii) under which Seller or any ERISA Affiliate has or may have any liability, contingent or otherwise, including as a result of any previously-terminated plan, program, policy, agreement or arrangement.

“Employees” means all individuals employed by Sellers as of the Petition Date, whether active or not (including those on short-term disability, leave of absence, paid or unpaid, or long-term disability with, in each case, the legal right to return to employment).

“Environmental Laws” means all applicable Laws, Decrees or other legal requirements and judicial interpretations thereof of any Governmental Entity concerning or relating to pollution (or the cleanup thereof) or protection of the environment, human health (with respect to exposure to any Hazardous Substance), threatened or endangered species and natural resources, including in connection with the presence of Hazardous Substances in products and product packaging.

“Environmental Liabilities” means any Liability, including costs and liabilities for investigation, removal, remediation, restoration, abatement, monitoring, personal injury, property damage, natural resource damages, indemnification, reimbursement, contribution, court costs (including costs of enforcement proceedings or government responses) and reasonable attorneys’ fees in connection with each of the foregoing, arising under or relating to any Environmental Law, Environmental Permit or Hazardous Substance, including in connection with any actual or alleged (a) violation of any Environmental Law, (b) generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Substances, (c) exposure to any Hazardous Substances, (d) Environmental Release or (e) Contract pursuant to which Liability is assumed or imposed with respect to any of the foregoing.

“Environmental Permit” means any Permit, letter, clearance, consent, waiver, closure, exemption or decision issued, granted, given, authorized by or made by any Governmental Entity pursuant to Environmental Law.

“Environmental Release” means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing, or allowing to escape or migrate of any Hazardous Substance into or through the environment (including ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any Structure, facility, or fixture).

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

“ERISA Affiliate” means any trade or business or other entity (whether or not incorporated) that, together with any Seller, would be deemed at any relevant time to be a “single employer” within the meaning of Section 414 of the Code or Section 4001 of ERISA.

“Excess Cash” has the meaning set forth in Section 6.12(b).

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

“Excluded Claims” means all rights (including rights of set-off and rights of recoupment), refunds, claims, counterclaims, demands, causes of action and rights to collect damages of Sellers against third parties to the extent, and only to the extent, related to any Excluded Asset or Excluded Liability.

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

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

“Excluded Records” has the meaning set forth in Section 2.2(e).

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

“Final Order” means an order entered by the Bankruptcy Court, the implementation, operation, or effect of which has not been stayed or reversed.

“Final Junior DIP Order” means the *Final Order (I) Authorizing the Debtors to (A) Obtain Junior Postpetition Financing (II) Granting Liens, (III) Scheduling a Final Hearing, (IV) Granting Related Relief* [D.I. 428].

“Final Senior DIP Order” means the *Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* [D.I. 427].

“Financing Company Receivables” means all accounts receivable and other amounts owed to any Seller (whether current or non-current) in connection with any customer purchases that are affected through customer’s applications for and payment of any amounts owed to any Seller through a finance company.

“Former Employees” means all individuals who have been employed previously by the Sellers (or any of their predecessors) who are not Current Employees.

“Fundamental Documents” means the documents of a Person (other than a natural person) by which such Person establishes its legal existence or which govern its internal affairs. For example, the Fundamental Documents of a corporation would be its certificate of incorporation and bylaws, and the Fundamental Documents of a limited liability company would be its certificate of formation and limited liability company agreement or operating agreement.

“GAAP” means generally accepted accounting principles in the United States.

“Gift Cards” means those gift cards issued for the use of the Sellers’ customers for dining at the Sellers’ restaurant locations.

“Gift Card Program” means the program maintained by the Sellers to administer and track the Gift Cards.

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

“Hazardous Substance” means any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or man-made, that is defined or regulated as hazardous, acutely hazardous, toxic or words of similar import under Environmental Laws, as well as any per- or polyfluoroalkyl

substance, petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos and lead or lead-containing materials.

“Hilco” means Hilco Corporate Finance.

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

“Indebtedness” means, with respect to any Person, without duplication:

(a) obligations of such Person for borrowed money, or otherwise evidenced by bonds, debentures, notes or similar instruments;

(b) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person, other than any such obligation made in the ordinary course of such Person’s business;

(c) all obligations of such Person issued or assumed as the deferred purchase price of property or services (excluding obligations of such Person to creditors for raw materials, inventory, services and supplies incurred in the ordinary course of such Person’s business);

(d) all obligations of such Person under leases that have been or should be treated, in accordance with GAAP, as capitalized lease obligations of such Person;

(e) all obligations of others secured by any Lien on property or assets owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, other than any such obligation made in the ordinary course of business;

(f) all obligations of such Person under interest rate or currency swap transactions (valued at the termination value thereof);

(g) all letters of credit issued for the account of such Person (excluding letters of credit issued for the benefit of suppliers to support accounts payable to suppliers incurred in the ordinary course of business); and

(h) all guarantees and arrangements having the economic effect of a guarantee of such Person of any Indebtedness of any other Person.

“Indemnification Claims” means claims for indemnification of any present or former officer, director, employee, partner or member of any Seller whether arising under a Seller’s Fundamental Documents or any Contract arising prior to the Closing Date.

“Insider Administrative Expenses” means, collectively, the administrative expenses incurred by Sellers in the Chapter 11 Cases including expenses of the kind specified in Sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 546(c), 546(d), or 726 (to the extent permitted by law) of the Bankruptcy Code, and any other provision of the Bankruptcy Code, in each case that may be owed to an “insider” as defined under the Bankruptcy Code or any other applicable law or owed in connection with the Junior DIP Facility.



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

“Intellectual Property” means any and all right, title and interest in or relating to intellectual property of any type, which may exist or be created under the Laws of any jurisdiction throughout the world, including: (a) patents and patent applications, together with all reissues, continuations, continuations-in-part, divisionals, extensions and reexaminations in connection therewith; (b) trademarks, service marks, trade dress, logos, slogans, trade names, service names, brand names, Internet domain names and all other source or business identifiers and general intangibles of a like nature, along with all applications, registrations and renewals in connection therewith, and all goodwill associated with any of the foregoing; (c) rights associated with works of authorship, including exclusive exploitation rights, mask work rights, copyrights, database and design rights, whether or not registered or published, all registrations and recordings thereof and applications in connection therewith, along with all extensions and renewals thereof; (d) trade secrets, know-how, business information and technical information (including formulas, techniques and processes) and rights to limit the use or disclosure thereof by any Person; (e) computer software and firmware, including data files, source code, object code and software-related specifications and documentation; (f) all other intellectual property rights related to the Business; and (g) all rights of action arising from any of the foregoing, including all claims for damages or equitable remedies by reason of present, past and future infringement or violation of the foregoing, all defenses relating to or arising from any of the foregoing, and all income, royalties and any other payments now and hereafter due or payable to a Seller in respect of the foregoing.

“Intellectual Property Agreements” means any and all agreements, permits, consents, orders and franchises relating to the license, development or use of any Intellectual Property included in the Purchased Assets, including agreements pursuant to which (a) a Seller uses or has been granted any license rights (including rights granted on a service basis) under any Intellectual Property owned by any other Person (other than Commercially Available Software); (b) a Seller has granted to any other Person any license rights under any Intellectual Property included in the Purchased Assets (other than non-exclusive licenses granted by a Seller in the ordinary course of business in connection with the sale, lease or transfer of finished products or services); or (c) any Intellectual Property is or has been developed by or for a Seller, assigned to a Seller by any other Person, or assigned by a Seller to any other Person.

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

“Inventory” means all “inventory,” as such term is defined in the Uniform Commercial Code, now owned or hereafter acquired by any Seller, wherever located, and, without limiting the foregoing, all (i) inventory, (ii) merchandise, (iii) goods and other personal property, (iv) raw materials, work or construction in process, (v) finished goods, returned goods, or materials or supplies of any kind, nature or description, and (vi) products, equipment, and appliances, whether owned or on order, including all embedded software.

“IRS” means the United States Internal Revenue Service.

“Junior DIP Facility” means the junior new-money term loan in an aggregate principal amount of \$1,500,000, which is subordinated in all respects to the Senior DIP Facility, as amended, modified or otherwise in effect from time to time, provided to Sellers by the Junior DIP Lender, as approved by the Junior DIP Order.

“Junior DIP Lender” means all Persons who are lenders under the Junior DIP Facility, each in its capacity as such.

“Law” means any federal, state, provincial, local, municipal, foreign or international, multinational or other law, statute, legislation, constitution, principle of common law, resolution, ordinance, code, edict, decree, proclamation, treaty, convention, rule, regulation, ruling, directive, pronouncement, determination, decision, opinion or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Entity.

“Leased Real Estate” has the meaning set forth in Section 3.8(c).

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

“Liability” means, as to any Person, any debt, adverse claim, liability (including any liability that results from, relates to or arises out of tort or any other product liability claim), duty, responsibility, obligation, commitment, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, contribution, or premium of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute or contingent, direct or indirect, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and regardless of when sustained, incurred, or asserted or when the relevant events occurred or circumstances existed.

“Lien” means any lien (as defined in Section 101(37) of the Bankruptcy Code), encumbrance, Claim, charge, mortgage, deed of trust, option, pledge, security interest or similar interests, title defects, hypothecations, easements, rights of way, rights of use, encroachments, judgments, rights of setoff, conditional sale or other title retention agreements and other similar impositions, imperfections or defects of title or restrictions on transfer or use.

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

“Material Adverse Effect” means any change, event, effect, development, condition, circumstance or occurrence (when taken together with all other changes, events, effects, developments, conditions, circumstances or occurrences), that has had, or would reasonably be expected to have, a material adverse effect on (a) the business, operations, Liabilities, properties, assets or condition (financial or otherwise) or results of operations of the Business, including the Purchased Assets and Assumed Liabilities, taken as a whole (b) the ability of any Seller to perform its obligations hereunder and consummate the transactions contemplated by this Agreement or the Related Agreements on the terms set forth herein and therein.

“Ordinary Course of Business” means the ordinary course of business of Sellers taken as a whole consistent with past custom and practice and taking into account the commencement of the Chapter 11 Cases.

“Outside Date” has the meaning set forth in Section 8.1(c).

“PACA” means the Perishable Agricultural Commodities Act, 7 U.S.C. Section 499a et seq.

“PACA Lien” means any Lien (including any trust or other arrangement in the nature of a Lien) for the benefit of producers, suppliers, or sellers of livestock, poultry, fruits, vegetables, or other farm products that operates to create a first priority Lien in favor of such producers, suppliers, or sellers (or agents or assignees thereof) covering farm products (and the products and proceeds thereof) to secure the unpaid purchase price of such farm products, including any trust established by PACA Section 499e PACA, PSA Section 196b or Section 197b, or any equivalent applicable state Laws.

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

“Permit” means any franchise, approval, authorization, permit, license, order, registration, certificate, variance, Consent, exemption or similar right issued, granted, given or otherwise obtained from or by any Governmental Entity, under the authority thereof or pursuant to any applicable Law (including all applications, renewal applications, or documents filed, or fees paid, in connection therewith).

“Permitted Liens” means (a) those valid, perfected and unavoidable liens, if any, senior to the Liens on the Prepetition Collateral under (i) that certain Pledge and Security Agreement dated November 10, 2017, (ii) that certain Pledge Supplement dated September 30, 2019, (iii) that certain Trademark Security Agreement, also dated as of November 10, 2017, and (iv) any related agreements (all documents listed in subparagraphs (i) through (iv) as may have been amended or otherwise modified from time to time); (b) with respect to leased or licensed personal property, the terms and conditions of the lease or license applicable thereto to the extent constituting a Transferred Contract; (c) with respect to real property, zoning, building codes and other land use Laws regulating the use or occupancy of such real property or the activities conducted thereon which are imposed by any Governmental Entity having jurisdiction over such real property which are not violated by the current use or occupancy of such real property or the operation of the Business; or (e) easements, covenants, conditions, restrictions and other similar matters affecting title to real property and other encroachments and title and survey defects that do not or would not materially impair value or the use or occupancy of such real property or materially interfere with the operation of the Business at such real property.

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

“Petition Date” has the meaning set forth in the recitals.

“Prepetition Collateral” means the security interest in and continuing lien on substantially all of Sellers’ personal property assets, including, but not limited to, (i) a pledge of all accounts, accounts receivable, chattel paper, documents, general intangibles and payment intangibles, (ii) inventory, (iii) equipment and fixtures, (iv) deposit accounts, (v) money, (vi) investment property, (vii) pledged equity, (viii) intellectual property including, but not limited to trademarks, copyrights and copyright licenses, patents and patent licenses, (ix) proceeds, product and offspring of the aforementioned.

“Post-Closing Tax Period” means any taxable period beginning after the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period beginning after the Closing Date.

“Pre-Closing Tax Period” means any taxable period ending on or before the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period ending on and including the Closing Date.

“Prepetition Obligations” has the meaning set forth in the recitals.

“Professional Fees and Expenses” means the reasonable and documented fees and expenses of professionals of Sellers and any committee appointed in the Chapter 11 Cases pursuant to Section 1102 of the Bankruptcy Code that are accrued and unpaid as of the Closing Date, whether or not included in a fee statement or fee application at such time and whether or not allowed by the Bankruptcy Court at such time.

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

“PSA” means the Packers and Stockyards Act, 7 U.S.C. Section 181 *et seq.*

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

“Purchased Assets” has the meaning set forth in Section 2.1.

“Purchased Avoidance Actions” means all causes of action, lawsuits, claims, rights of recovery and other similar rights of any Seller, including avoidance claims or causes of action, under Chapter 5 of the Bankruptcy Code or state-law equivalents belonging to the Seller or their bankruptcy estates, any related claims and actions arising under such Chapter of the Bankruptcy Code or state-law equivalent arising by operation of law or necessary to effect, pursue or maintain any such claim and action, and all proceeds of any of the foregoing.

“Records” means the books of account, general, financial, accounting and personal records, books, records, information, ledgers, files, invoices, documents, work papers, correspondence, lists (including customer lists, supplier lists and mailing lists), plans (whether written, electronic or in any other medium), drawings, technical documentation, invention disclosures, software code, designs, specifications, correspondence, creative materials, advertising and promotional materials, marketing plans, studies, reports, data and similar materials related to the Business or the Purchased Assets.

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

“Rejection Damages Claims” means all claims under Section 502 of the Bankruptcy Code arising from, or related to, the rejection of a Contract under Section 365 of the Bankruptcy Code.

“Related Agreements” means the Bills of Sale, the Assignment and Assumption Agreements, the Intellectual Property Assignment and any other instruments of transfer and conveyance as may be required under applicable Law to convey valid title of the Purchased Assets to Buyer.

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

“Sale Hearing” means the hearing conducted in the Bankruptcy Court to seek approval of the Sale Motion and the Contemplated Transactions.

“Sale Motion” means a combined motion filed by the Sellers with the Bankruptcy Court in connection with the Chapter 11 Cases requesting the entry of the Sale Order.

“Sale Order” has the meaning set forth in Section 5.3(b).

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

“Seller Subsidiaries” has the meaning set forth in the preamble.

“Sellers’ Knowledge” means the actual knowledge of the Sellers’ Chief Restructuring Officer and independent director after reasonable inquiry.

“Senior DIP Facility” means senior-secured, priming debtor-in-possession financing in an aggregate principal amount of \$10,500,000, as amended, modified or otherwise in effect from time to time, provided to Sellers by the Senior DIP Lender, as approved by the Senior DIP Order.

“Senior DIP Lender” means all Persons who are lenders under the Senior DIP Facility, each in its capacity as such.

“Senior DIP Liens” means all liens and security interests granted to Buyer pursuant to the Final Senior DIP Order.

“Senior DIP Order” means the Final Senior DIP Order, as then applicable, authorizing the Sellers to incur post-petition financing under the Senior DIP Facility and the use of cash collateral as entered by the Bankruptcy Court.

“Services” has the meaning set forth in Section 6.10.

“Straddle Period” means a taxable period that begins before and ends after the Closing Date.

“Structures” means, collectively, buildings, structures, and fixtures on, and other improvements to, the Leased Real Estate.

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

“Tangible Personal Property” has the meaning set forth in Section 2.1(i).

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

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

“Trade Payables” means Liabilities, of the type required to be recorded on a balance sheet under GAAP, to a vendor of the Sellers incurred or arising after the petition date.

“Transaction Fee” means the fee, up to \$850,000, that will be earned by Hilco upon the Closing of the transaction contemplated herein.

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

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

“Transferred Contract List” has the meaning set forth in Section 2.6(a).

“Transferred Contracts” means those Leases and Contracts that have been assumed by Sellers and assigned to Buyer pursuant to Section 2.56(d) and Section 365 of the Bankruptcy Code.

For the avoidance of doubt, “Transferred Contracts” shall not include any Contract or Lease that is excluded and rejected pursuant to Section 2.5.

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

“Transition Services Agreement” has the meaning set forth in Section 6.10.

“Willful Breach” means a breach of this Agreement that is a consequence of an act or failure to act made recklessly or with the actual knowledge that the taking of the act or failure to act would result (or could be reasonably likely to result in) in a breach of this Agreement.

“Wind Down Budget” means a budget agreed to between Sellers and Buyer to cover the use of Sellers cash on hand, including the Wind Down Fund, to pay outstanding and estimated Allowed Administrative Expenses that Sellers have incurred and are expected to incur during the Bankruptcy Cases (whether before, on, or after Closing) in connection with winding down their respective bankruptcy estates (including payment of all Allowed Administrative Expenses), including, without limitation: (i) Allowed Professional Fees and Expenses; and (ii) the Allowed Administrative Expenses incurred in connection with the winding down the Sellers’ bankruptcy estates from and after the Closing Date (the “Wind Down Expenses”)

“Wind Down Fund” means an amount not to exceed \$1,159,000, which shall be deposited into an escrow account and disbursed pursuant to the Wind Down Budget.

## ARTICLE II PURCHASE AND SALE

**Section 2.1 Purchase and Sale of Purchased Assets.** Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, on the terms and subject to the conditions set forth in this Agreement, and in reliance upon the representations, warranties, covenants and agreements of the Parties set forth in this Agreement, at the Closing, Buyer shall purchase, acquire and accept from Sellers, and Sellers shall sell, transfer, assign, convey and deliver to Buyer, all of the Purchased Assets for the consideration specified in Section 2.5 and the assumption of the Assumed Liabilities. “Purchased Assets” means all direct or indirect right, title and interest of Sellers in and to each and all properties and assets of every kind and description (excluding any Excluded Assets), wherever located, whether real, personal or mixed, tangible or intangible, including all right, title and interest of Sellers in, to or under:

(a) all Accounts Receivable of Sellers, including all Credit Card Receivables and Financing Company Receivables, as of the Closing;

(b) all Inventory of Sellers as of the Closing, including all rights of Sellers to receive such Inventory, supplies and materials which are on order as of the Closing;

(c) all deposits (including deposits in transit, customer deposits (the “Customer Deposits”) and security deposits for rent) and other prepaid charges and expenses, credits, advance payments, charges and fees of Sellers other than deposits for electricity, water, telephone charges, and other utilities;

(d) all Transferred Contracts, but only to the extent designated as Transferred Contracts pursuant to Section 2.6 or Section 2.12;

(e) all Intellectual Property owned, or purported to be owned, in whole or in part, by Sellers;

(f) subject to Section 3.11, all customer data and information derived from customer purchase files and other similar information related to customer purchases, including personal information and customer purchase history, including relating to customers of the E-Commerce Platform or any similar e-commerce platform owned, operated or controlled by Sellers;

(g) all rights of publicity and similar rights, including all marketing assets, including upcoming campaign material, current point-of-purchase material and historical digital assets;

(h) all industrial and motor vehicles owned by Sellers;

(i) all items of machinery, equipment, supplies, furniture, fixtures, other personal property and leasehold improvements (to the extent of Sellers' rights to any leasehold improvements under the Leases that are Transferred Contracts) owned by Sellers as of the Closing (the "Tangible Personal Property");

(j) all information technology assets, including licenses, software and hardware related to the Business or the ownership or operation of the Purchased Assets or the Business, including the E-Commerce Platform;

(k) all five-digit UPC codes and customer service phone numbers related to the Business;

(l) all Records (including Tax records, Tax Returns and personnel files and related information for all Transferred Employees) except for Excluded Records;

(m) all goodwill associated with the Business or the Purchased Assets, including all goodwill associated with the Intellectual Property owned by Sellers, the right to represent to third parties that Buyer is the successor to the Business, all rights under any non-disclosure and confidentiality, noncompete, or nonsolicitation agreements with current or former employees, directors, independent contractors and agents of any Seller or with third parties for the benefit of any Seller, in each case to the extent relating to the Business, the Purchased Assets or the Assumed Liabilities (or any portion thereof);

(n) all of the Assumed Permits or all of the rights and benefits accruing under any Permits relating to the Business to the extent transferrable and held by Sellers;

(o) subject to Section 2.2(g), all current Insurance Policies relating or allocable to the Purchased Assets or Assumed Liabilities and all rights of any nature with respect thereto, including all prepaid premiums with respect thereto and insurance recoveries thereunder and rights to assert claims with respect to any such insurance recoveries;



(p) all Excess Cash, store-level cash, cash equivalents, and similar cash items on the Closing Date in cash registers, safes, strongboxes, and lock boxes consistent with past practice;

(q) all bank deposits, prepayments (including all prepayments made to third party vendors), deferred assets, refunds, credits or overpayments, and similar cash items of Sellers (including all rights arising from any refunds due from federal, state or local Governmental Entities with respect to Taxes paid by Sellers or otherwise in respect of the Purchased Assets for periods ending on or prior to the Closing Date);

(r) all other rights, demands, claims, credits, allowances, rebates or other refunds and rights in respect of promotional allowances or rights of setoff and rights of recoupment of every kind and nature (whether or not known or unknown or contingent or non-contingent), other than against Sellers, arising out of or relating to the Business as of the Closing, including all deposits (including Customer Deposits and security deposits (whether maintained in escrow or otherwise) for rent), advances, prepayments and deferred assets;

(s) except for the Excluded Claims, all causes of action, lawsuits, judgments, claims, refunds, rights of recovery, rights of set-off, recoupment, counterclaims, defenses, demands, warranty claims, rights to indemnification, contribution, advancement of expenses or reimbursement, or similar rights of any Seller (at any time or in any manner arising or existing, whether choate or inchoate, known or unknown, now existing or hereafter acquired, contingent or noncontingent), including the Purchased Avoidance Actions, and all rights with respect to proofs of claim filed by or on behalf of any of the Sellers in any bankruptcy case other than the Chapter 11 Cases;

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

(u) all assets, rights and claims arising from, or with respect to, Taxes of any Seller, including all rights arising from any refunds due from federal, state or local Governmental Entities with respect to Taxes paid by Sellers, all deferred tax assets, Tax deposits, Tax prepayments and estimated Tax payments, in each case for Taxes owed the Sellers for periods ending on or prior to the Closing Date;

(v) to the extent not covered above in this Section 2.1, all of the Sellers' telephone numbers, fax numbers, e-mail addresses, websites, URLs and internet domain names related to the Business; and

(w) all other assets that are related to, used in or which could be used in connection with the Purchased Assets or the Business.

At any time at least one Business Day prior to the Closing, Buyer may, in its discretion by written notice to Sellers, designate any assets that would otherwise be Purchased Assets as Excluded Assets; provided, that there shall be no reduction in the Purchase Price if any assets are so designated. Notwithstanding any other provision hereof, the Liabilities arising under or related to

any asset excluded from the Purchased Assets under this paragraph will constitute Excluded Liabilities.

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

(a) Sellers’ Fundamental Documents, qualifications to conduct business as a foreign entity, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock transfer books, unit certificates and other documents relating to the organization, maintenance and existence of any Seller as a limited liability company, corporation or other entity;

(b) equity securities of any Seller or any other Person or securities convertible into, exchangeable, or exercisable for any such equity securities and all net operating losses of any Seller or any other Person;

(c) Leases (and related Leased Real Estate) and Contracts, in each case, other than the Transferred Contracts;

(d) Excluded Claims;

(e) any (i) personnel files for Current Employees and Former Employees of Sellers who are not Transferred Employees, (ii) Records containing confidential personal private information including confidential personnel and medical Records pertaining to any Current Employees or Former Employees to the extent the disclosure of such information is prohibited by applicable Law, (ii) personal information that cannot be transferred pursuant to the Sellers’ Privacy Policies or applicable state law as set forth in Section 3.11, (iii) other Records that Sellers are required by Law to retain, and (iv) any Records or other documents of Sellers relating to the Chapter 11 Cases that are protected by the attorney-client, work product, or similar privileges held by Sellers (collectively, the “Excluded Records”); provided that Buyer shall have the right to make copies of any portions of such Excluded Records (other than the Records referenced in subsection (iv)) to the extent that such portions relate to the Business or any Purchased Asset, to the extent permitted under applicable law;

(f) all Permits other than the Assumed Permits;

(g) all directors’ and officers’ liability Insurance Policies, including any tail Insurance Policies, and all rights of any nature with respect to any such Insurance Policies, including any recoveries thereunder and any rights to assess claims seeking any such recoveries (for the avoidance of doubt any and all Liabilities arising out of, or relating to, such insurance, including with respect to any underlying claims that give rise to claims seeking recovery in connection therewith constitute Excluded Liabilities);

(h) any assets expressly excluded from Purchased Assets pursuant to Section 2.1;

- (i) all Employee Benefit Plans and trusts, Insurance Policies, rights and other assets set aside and specifically reserved solely to fund benefits payable under the applicable Employee Benefit Plan;
- (j) the assets listed on Schedule 2.2(j);
- (k) subject to Section 6.12, all cash (including all cash drawn under the Senior DIP Facility or any other postpetition borrowing as of the Closing Date) and cash equivalents; and
- (l) the rights of Sellers under this Agreement and the Related Agreements.

**Section 2.3 Assumption of Assumed Liabilities.** On the terms and subject to the conditions of this Agreement, at the Closing (or, with respect to Assumed Liabilities under Transferred Contracts or Assumed Permits that are assumed by Buyer after the Closing, such later date of assumption as provided in Section 2.5), Buyer shall assume from Sellers (and from and after the Closing pay, perform, discharge, or otherwise satisfy in accordance with their respective terms), and Sellers shall irrevocably convey, transfer, and assign to Buyer, the following Liabilities, without duplication and only to the extent not paid prior to the Closing and no other Liabilities (collectively, the “Assumed Liabilities”):

- (a) Liabilities under the Transferred Contracts (including the Cure Claims, which are payable by Buyer pursuant to Section 2.6 or Section 2.12) and the Assumed Permits as well as any Liabilities arising out of the conduct of the Business or the ownership of the Purchased Assets, in each case, by Buyer or any Seller from and after the Closing Date;
- (b) all obligations to garnish wages or pay worker’s compensation for Employees, to the extent arising under, or related to, the period following the Closing Date; provided, however, that the Assumed Liabilities shall not include any garnishments or worker’s compensation amounts owed by Sellers which are in default or in arrears as of the Closing Date;
- (c) all Liabilities for Customer Deposits as of the Closing Date to the extent that the Customer Deposit is related to a Purchased Asset;
- (d) all Liabilities with respect to allowed Claims that are secured by PACA Liens and that are outstanding as of the Closing, in an amount of up to \$376,000;
- (e) up to \$3,000,000 with respect to allowed Claims arising under Section 503(b)(9) of the Bankruptcy Code (in addition to any Cure Claims assumed under Section 2.3(a) (above));
- (f) payroll taxes attributable to pre-petition periods in an amount not to exceed \$520,000; provided, that the liability for such taxes shall be assumed (i) to the extent, and only to the extent, claimed by an applicable taxing authority to be owed by an employee or former employee of a Seller, which employee or former employee is not an “insider” of any Seller as defined under the Bankruptcy Code and (ii) subject to all defenses, counterclaims, challenges, objections and mitigations as may exist under any applicable Law;

(g) post-petition accounts payable outstanding as of the Closing up to \$723,000;

(h) obligations to pay sales taxes with respect to the Purchased Assets, up to \$680,000, but (i) only to the extent that such obligations are “trust fund” obligations under applicable state Law and *either* expressly senior to first priority, perfected liens under applicable state Law *or* do not constitute property of the Sellers’ estate, and (ii) subject to all defenses, counterclaims, challenges, objections and mitigations as may exist under any applicable Law;

(i) accrued payroll from June 12, 2023 through Closing up to \$400,000;

(j) all Transfer Taxes and Property Taxes in accordance with Section 6.6; and

(k) all refund obligations, gift certificate obligations, and membership program obligations of Sellers under the Customer Programs as of the Closing Date (excluding any escheatment claims); and

(l) the Transaction Fee up to \$850,000.

**Section 2.4 Excluded Liabilities.** Notwithstanding anything herein to the contrary, the Parties expressly acknowledge and agree that Buyer shall not assume, be obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for any Liabilities of Sellers or the Business, whether existing on the Closing Date or arising thereafter, other than the Assumed Liabilities (all such Liabilities that Buyer is not assuming being referred to collectively as the “Excluded Liabilities”), including:

(a) any liabilities or obligations under the Employee Benefit Plans, arising prior to the Closing Date, subject to the limitation in clause (b) below;

(b) all Employment Obligations, Liabilities under any Employee Benefit Plan, and any liabilities and obligations relating to any current or former directors, officers, managers, employees, consultants or other service providers of any Seller or any ERISA Affiliate, with respect to their employment, engagement or termination of employment or engagement with any Seller or any ERISA Affiliate, or any spouse, dependent or beneficiary thereof, including any liability or obligation under any Employee Benefit Plan or any other employee benefit plans, programs or arrangements with respect to which any Seller or ERISA Affiliate has or may have any liability, contingent or otherwise (including any liabilities arising prior to the Closing Date for vacation pay, sick pay, holiday pay, paid time off, wages, wage premiums, salary, bonuses, severance, expense reimbursements or other payments or liabilities of any kind to any current or former directors, officers, managers, employees, consultants or other service providers of any Seller or any ERISA Affiliate or any contributions, remittances, premiums, or other amounts to be made to any Employee Benefit Plan) and any liability under any employment agreement, offer letter, consulting agreement or similar agreement between any Seller or any ERISA Affiliate and any current or former directors, officers, managers, employees, consultants or other service providers of any Seller or ERISA Affiliate, excluding for purposes of clauses (a) and (b) the liabilities and obligations for accrued payroll, accrued and unused vacation, and accrued payroll Taxes related to such amounts, in each case, as of the Closing Date (and not paid by Sellers prior thereto) for all Employees, to the extent arising and related solely to the period following the

Closing Date (and, for the avoidance of doubt, excluding payroll, accrued and unused vacation, and accrued payroll Taxes related to such amounts, in each case, arising or related to any period prior to the Closing Date);

(c) all Liabilities relating to continuation of health care coverage, to the extent required by COBRA, to Current Employees and Former Employees of the Sellers (and their qualified beneficiaries) who left employment or otherwise experienced a COBRA qualifying event on or prior to the Closing Date;

(d) any Liability of any Seller relating to, or arising out of, any Excluded Asset;

(e) all Liabilities of Sellers under the WARN Act;

(f) any and all Liabilities of any Seller resulting from the failure to comply with any applicable “bulk sales,” “bulk transfer” or similar law;

(g) all Liabilities under Indebtedness of the Sellers (including any Indebtedness or accounts payable owing from any Seller to any Affiliate of such Seller);

(h) (i) all Tax Liabilities of Sellers or their Affiliates for any taxable period, other than Assumed Liabilities, and (ii) all Tax Liabilities relating to the Purchased Assets or the Business, other than the Transfer Taxes allocated to Buyer pursuant to Section 6.6;

(i) all Rejection Damages Claims;

(j) any tort Liabilities of any Seller arising on or before the Closing Date;

(k) all Liabilities relating to the CARES Act, including any obligation with respect to deferred payroll Taxes;

(l) all Environmental Liabilities relating to, resulting from, caused by or arising out of the ownership, operation or control of the Business as currently or formerly conducted (including any real property currently or formerly owned, leased, occupied or operated in connection with the Business) or the Purchased Assets, to the extent accruing from, arising out of or relating to events, occurrences, acts or omissions first occurring or existing prior to the Closing Date;

(m) all Litigation against any Seller, any of their respective assets, the Business and any of their past or present operations or activities arising before the Closing Date;

(n) all Indemnification Claims arising before the Closing Date;

(o) all Professional Fees and Expenses except as provided in the Transition Services Agreement;

(p) any Liability of any Seller, any of their Affiliates or any of their respective directors, officers, stockholders or agents (acting in such capacities), arising out of, or relating to, this Agreement or the other Related Agreements, whether incurred prior to, at, or subsequent to,

the Closing, including all finder's or broker's fees and expenses and any and all fees and expenses of any representatives of any of them other than as provided in Section 2.3(k);

(q) other than as specifically set forth herein and expressly included as an Assumed Liability, any Liability relating to, occurring or existing in connection with, or arising out of, (A) the ownership of Sellers, (B) the ownership or operation of the Business prior to the Closing (including any Litigation outstanding as of the Closing where any of the Purchased Assets are subject or where a Seller is a defendant), or (C) the ownership, possession, use, operation or sale or other disposition of any Purchased Assets (or any other assets, properties, rights or interests associated, at any time prior to the Closing, with the Business) prior to the Closing;

(r) to the extent any type of Liability is assumed pursuant to Section 2.3(d)-(g) subject to a cap, any Liabilities of such type in excess of the cap specified in Section 2.3(d)-(g); and

(s) any other Liability or obligation of any Seller or any of their Affiliates, whether relating to or arising from the Business, the Purchased Assets or otherwise, arising from facts, circumstances, occurrences, conditions, acts or omissions occurring prior to the Closing Date, of whatever nature, whether known or unknown, accrued, contingent, absolute, determined, determinable, presently in existence or arising hereafter.

**Section 2.5 Consideration.** On the terms and subject to the conditions hereof, at the Closing, the aggregate consideration for the Purchased Assets shall consist of: (i) a credit bid under and in accordance with Section 363(k) of the Bankruptcy Code (the "Credit Bid") of \$14,999,065 and (ii) the Wind Down Fund of up to \$1,159,000; and (iii) the amount of the assumption of the Assumed Liabilities and (iv) a cash payment in an amount, not to exceed \$870,000 equal to the portion of the prepaid monthly rent paid under each applicable Real Property Lease that the Sellers have prepaid at each of the Purchased Locations attributable to the period between the Closing Date and the last day of the Month in which the Closing occurs (so that, if such month has 30 days and the Closing Date is the 20<sup>th</sup>, then the amount would be equal to one-third of the applicable prepaid rent amount) (the "Prepaid Rent Adjustment") (the sum of clauses (i)-(iii), the "Purchase Price"). The Credit Bid consists of a single, indivisible bid to be credited first against the secured indebtedness of Sellers payable to Buyer under the Senior DIP Facility, second against the Adequate Protection Obligations and then, thereafter, against all other secured indebtedness of Sellers payable to Buyer and with (x) the amount of \$2,490,821 allocated to the Purchased Assets consisting of Purchased Avoidance Actions against Persons who are or were "insiders" of any Seller as defined in the Bankruptcy Code and (y) the remaining amount of \$12,508,244 allocated to the remaining Purchased Assets (including all Purchased Avoidance Actions not included in the foregoing clause (x)).

**Section 2.6 Assumption and Assignment of Contracts and Leases.**

(a) Sellers have delivered to Buyer a true, correct and complete list (as amended from time to time, the "Executory Contract and Lease List") of all Contracts and Leases related to the Purchased Assets or otherwise used, or held for use, in connection with the Business as it is conducted by Sellers (each, an "Executory Contract<sup>22</sup> or Lease"). The Executory Contract and Lease List describes, to Sellers' Knowledge, the monetary amounts that must be paid and nonmonetary

obligations that otherwise must be satisfied, including pursuant to Section 365(b)(1)(A) and (B) of the Bankruptcy Code, in order for Buyer to assume the Transferred Contracts pursuant to this Agreement (“Undisputed Cure Claims”). At the request of Buyer, Sellers will use commercially reasonable efforts to provide Buyer with copies of each such Contract or Lease so as to permit Buyer to review such Contracts and Leases to determine such other commercial information related to the Contracts and Leases listed thereon as Buyer desires.

(b) The ~~Executory~~ Contract and Lease List identified the Undisputed Cure Claim, if any, associated with each Contract and Lease listed therein and indicated that Buyer will, if necessary, provide evidence of adequate assurance of future performance at the Sale Hearing. Any counterparty to a ~~n Executory~~ Contract or Lease included on the ~~Executory~~ Contract or Lease List shall have the time period prescribed by the Sale Procedures Order to object to the Cure Claims listed on the ~~Executory~~ Contract or Lease List and to adequate assurance of future performance.

(c) To the extent a counterparty to an ~~Executory~~ Contract or Lease objects or otherwise challenges the Undisputed Cure Claims determined by Sellers and asserts a different monetary amount that must be paid and/or nonmonetary obligations that otherwise must be satisfied, including pursuant to Section 365(b)(1)(A) and (B) of the Bankruptcy Code, in order for Buyer to assume such ~~Executory~~ Contract or Lease pursuant to this Agreement, the difference between the Undisputed Cure Claims determined by Sellers and such amounts and/or nonmonetary obligations determined by such counterparty shall be referred to as the “Disputed Cure Claims.”

(d) Schedule 2.6(d) (the “Transferred Contract List”) lists all ~~Executory~~ Contracts and Leases to be assumed by Buyer on the Closing Date as Transferred Contracts; provided, that Buyer may designate in writing any additional ~~Executory~~ Contract or Lease to be added to the Transferred Contract List and accordingly designated as a Transferred Contract to be assumed by Buyer pursuant to this Agreement. Buyer shall be obligated to pay at Closing any Undisputed Cure Claims associated with the assumption of a Transferred Contract that is an ~~Executory~~ Contract or Lease or such other amount as agreed to between the applicable Buyer and the counterparty. The Disputed Cure Claims shall only be paid pursuant to an Order of the Bankruptcy Court or mutual agreement between the Buyer and the counterparty to the applicable Transferred Contract. To the extent any Transferred Contract is subject to a Cure Claim, the Buyer shall pay such Cure Claim directly to the applicable counterparty. In no event shall the Sellers be responsible for curing any defaults under the Transferred Contracts or otherwise satisfying the Cure Claims relating to the Transferred Contracts. Notwithstanding anything contained herein to the contrary, Buyer shall only assume, and shall only be responsible for, Contracts and Leases designated by it as Transferred Contracts, and which Transferred Contracts are in fact assumed and assigned to Buyer at Closing, pursuant to this Section 2.6 or post-Closing pursuant to Section 2.12.

(e) Sellers shall use commercially reasonable efforts to reduce, and shall use commercially reasonable efforts to cooperate with Buyer in its efforts to reduce, the Disputed Cure Claims and negotiate rent reductions with respect to Leases that are Transferred Contracts. Such efforts shall include providing Buyer with access to relevant business records and the Sellers’ professionals, and Buyer’s other reasonable requests in order to allow Buyer to assist with evaluating the Disputed Cure Claims, in each case, at Sellers’ sole cost and expense prior to the

Closing and at Buyer's sole cost and expense if such assistance, access and cooperation occurs during the post-Closing period.

(f) In the event Sellers are unable to assign any such Transferred Contract to Buyer without the Consent of another Person, which Consent has not been obtained prior to Closing or pursuant to an Order of the Bankruptcy Court, then the Parties shall use their commercially reasonable efforts to obtain, and to cooperate in obtaining, all Consents from Governmental Entities and third parties necessary to assume and assign such Transferred Contracts to Buyer.

(g) Notwithstanding the foregoing, a Contract or Lease shall not be a Transferred Contract hereunder and shall not be assigned to, or assumed by, Buyer to the extent that such Contract or Lease (i) is rejected by a Seller or terminated by a Seller in accordance with the terms hereof or by the other party thereto, or terminates or expires by its terms, on or prior to the Closing and is not continued or otherwise extended upon assumption, (ii) requires a Consent of any Governmental Entity or other third party (except as permitted without such Consent by the Bankruptcy Code) in order to permit the sale or transfer to Buyer of Sellers' rights under such Contract, and no such Consent has been obtained prior to the Closing, or (iii) constitutes an Employee Benefit Plan. In addition, a Permit shall not be assigned to, or assumed by, Buyer to the extent that such Permit requires a Consent of any Governmental Entity or other third party (other than, and in addition to, that of the Bankruptcy Court) in order to permit the sale or transfer to Buyer of Sellers' rights under such Permit, and no such Consent has been obtained prior to the Closing. If any such Consent shall not be obtained, or if any attempted assignment of such Contract or Permit would be ineffective or would impair Buyer's rights under such Contract or Permit in question so that Buyer would not in effect acquire the benefit of such rights, such Seller, to the maximum extent permitted by Law and the applicable Contract or Permit (and subject to any approval of the Bankruptcy Court that may be required) and at Buyer's sole cost and expense, shall act after the Closing as Buyer's agent in order to obtain for it the benefits thereunder and shall cooperate, to the maximum extent permitted by Law and the applicable Contract or Permit, with Buyer in any other reasonable arrangement designed to provide such benefits to Buyer, as set forth in the Transition Services Agreement. Buyer shall reasonably cooperate with Sellers in order to enable Sellers to provide to Buyer the benefits contemplated by this Section 2.6(g).

**Section 2.7 Closing.** The closing of the Contemplated Transactions (the "Closing") shall take place remotely by electronic exchange of counterpart signature pages commencing at 10:00 a.m. Eastern Standard Time on June 14, 2023 (the "Closing Date"), or at such other time or on such other date as shall be mutually agreed upon by Sellers and Buyer prior thereto.

**Section 2.8 Deliveries at Closing.**

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

(i) one or more Bills of Sale substantially in the form of Exhibit A attached hereto ("Bill of Sale");



(ii) one or more Assignment and Assumption Agreements substantially in the form of Exhibit B attached hereto (“Assignment and Assumption Agreement”);

(iii) instrument of assignment substantially in the form of Exhibit C attached hereto for each registered patent, registered copyright, registered trademark and domain name, respectively, transferred or assigned hereby and for each pending application for any patent or trademark (the “Intellectual Property Assignment”);

(iv) any other Related Agreements required to be executed by Sellers;

(v) a copy of the Sale Order;

(vi) a valid, complete and accurate IRS Form W-9 in respect of each Seller, or, in the case of a Seller that is disregarded as separate from its owner for U.S. federal income tax purposes, in respect of such Seller’s regarded owner;

(vii) the Transition Services Agreement; and

(viii) such other bills of sale, assignments and other instruments of transfer or conveyance as Buyer may reasonably request or as may otherwise be necessary to evidence and effect the sale, assignment, transfer, conveyance and delivery of the Purchased Assets to Buyer and assumption of Assumed Liabilities by Buyer.

(b) At the Closing, Buyer shall deliver to Sellers the following documents, cash amounts and other items, duly executed by Buyer, as applicable:

(i) the Prepaid Rent Adjustment and Wind Down Fund;

(ii) the Bill(s) of Sale;

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

(iv) the Intellectual Property Assignment;

(v) any other Related Agreements required to be executed by Buyer;

(vi) the Transition Services Agreement; and

(vii) such other bills of sale, assignments and other instruments of transfer or conveyance as Sellers may reasonably request or as may otherwise be necessary to evidence and effect the sale, assignment, transfer, conveyance and delivery of the Purchased Assets to Buyer and assumption of Assumed Liabilities by Buyer.

**Section 2.9 Allocation.** For U.S. federal and applicable state and local income Tax purposes, Buyer shall allocate the Purchase Price (and any Assumed Liabilities treated as part of the Purchase Price for applicable income Tax purposes) among the Purchased Assets in accordance with the requirements of Section 1060 of the Code and the regulations promulgated thereunder and any similar provision of applicable Law and Section 2.5 hereof. (the “Allocation”

Methodology”). No later than sixty (60) days after Closing or within a reasonable time thereafter as agreed by Sellers and Buyer in writing, Buyer shall prepare and deliver to Sellers the allocation of the Purchase Price and any other items that are treated as additional consideration for U.S. federal (and applicable state and local) income Tax purposes among the Purchased Assets which shall be prepared in a manner consistent with the Allocation Methodology (the “Proposed Allocation Schedule”) and binding on Sellers. Buyer and Sellers shall each report the federal, state and local income and other Tax consequences of the transactions contemplated by this Agreement in a manner consistent with the Final Allocation Schedule.

**Section 2.10 Withholding Rights.** Buyer and any other applicable withholding agent shall be entitled to deduct and withhold with respect to any payments made pursuant to this Agreement such amounts that are required to be deducted and withheld with respect to any such payments under the Code or any other provision of applicable Law. Before making any such deduction or withholding, Buyer shall provide Sellers with five (5) Business Days’ prior written notice of any such deduction or withholding that Buyer proposes to make, which notice shall include the authority, basis and method of calculation for the proposed deduction or withholding, and Buyer shall cooperate with any reasonable request from Sellers to obtain reduction of, or relief from, such deduction or withholding. Any such withheld amounts shall be treated for all purposes of this Agreement as having been paid to such Persons in respect of which such deduction and withholding was made to the extent that amounts so withheld or deducted are timely paid to the appropriate Tax authority.

**Section 2.11 Conflict.** With respect to any asset of any Seller, in the event of any conflict between the terms of Section 2.1 and Section 2.2, such asset shall be deemed a Purchased Asset unless otherwise consented to in writing by Buyer. With respect to any Liability of any Seller, in the event of any conflict between the terms of Section 2.3 and Section 2.4, such Liability shall be deemed an Excluded Liability unless otherwise consented to in writing by Buyer.

**Section 2.12 Post-Closing Transferred Contracts.**

(a) For a period of 90 days after the Closing Date (the “Contract Review Period”), the Sellers shall not reject or otherwise terminate any Contracts that are set forth on Schedule 2.12 (each, a “Potential Contract,” and such schedule, the “Potential Contracts Schedule”), without the prior written consent of Buyer. The Potential Contracts Schedule may be updated by Buyer, in its sole and absolute discretion, at any time after delivery of such schedule until the expiration of the Contract Review Period, to remove any Potential Contracts (each such removed Contract, a “Removed Contract”).

(b) Until the expiration of the Contract Review Period, (i) Buyer shall have the right, upon notice to the Sellers, to designate as a Transferred Contract any Potential Contract that is not a Removed Contract (each such designated contract, a “Post-Closing Transferred Contract”) and (ii) Buyer shall be obligated to pay any and all amounts arising or otherwise due under any Potential Contract, and to perform any obligations of the Sellers under any Potential Contract, in each case that relate to the period between the Closing Date and the date such Potential Contract is either assumed as a Post-Closing Transferred Contract or is rejected by the Sellers after becoming a Removed Contract (as a result of designation by the Sellers or as a result of Section 2.12(c) below), except to the extent such post-Closing amounts due are arising out of an intentional

breach, willful misconduct or gross negligence by Sellers of or with respect to such Contract prior to such assumption or rejection (“Potential Contract Administrative Claims”). In connection with the assignment of a Post-Closing Transferred Contract to the Buyer, Buyer shall be obligated to pay any Cure Claims, and to provide adequate assurance of future performance, in respect of such Post-Closing Transferred Contract. The procedures for the timely payment and performance of obligations arising under the Potential Contracts as provided herein shall be set forth in the Transition Services Agreement.

(c) Notwithstanding any other provision of this Section 2.12, (i) Sellers shall not be in breach of this Agreement if a motion to require the assumption or rejection of a Potential Contract is granted and such Potential Contract is rejected because it is not designated a Post-Closing Transferred Contract prior to the date set by the court for such assumption or rejection, provided that Sellers used reasonable good faith efforts, at the cost and expense of Buyer, to oppose such motion.

(d) Any Potential Contract that has not been designated as a Transferred Contract shall be deemed a Removed Contract on the expiration of the Contract Review Period.

(e) Notwithstanding that a Post-Closing Transferred Contract is designated as a Transferred Contract pursuant to this Section 2.12, no designation or assignment of a Post-Closing Transferred Contract by Buyer shall result in an adjustment to the Purchase Price; provided that Buyer shall be obligated to pay any amounts required to be paid by Buyer pursuant to Section 2.12(b) above, and any amounts paid by Buyer to Sellers pursuant to Section 2.12 shall be treated as an adjustment to the Purchase Price for Tax purposes unless otherwise required by applicable Law.

(f) From the date hereof through and including the Contract Review Period, absent written consent from Buyer, Sellers shall not reject any Potential Contracts other than Removed Contracts. In furtherance of the same, Sellers shall timely file one or more motions pursuant to Section 365(d)(4)(B) of the Bankruptcy Code to extend the period to assume or reject unexpired leases of non-residential real property through and including the last day of the Contract Review Period. Sellers shall use reasonable good faith efforts to seek approval of such motions, including, to the extent required by Section 365(d)(4)(B)(ii) of the Bankruptcy Code, by seeking consent to such extension from the applicable lessors; provided, however, that Sellers shall not be in breach of this Agreement if, despite reasonable good faith efforts, they fail to obtain approval of any such motions or, if applicable, lessor consent. In addition, Sellers shall use reasonable good faith efforts, including timely filing any necessary motions, to procure entry of an order (i) deeming a Potential Contract rejected on the expiration of 30 calendar days (which period may be extended based on the availability of the Bankruptcy Court) following the date such Potential Contract is designated as a Removed Contract (or becomes a Removed Contract as a result of Section 2.12(c) above) and written notice thereof is delivered personally, via e-mail transmission, by next-day service or courier to the applicable counterparty, or if delivered by registered or certified mail, upon confirmed receipt of such notice by the applicable counterparty, (ii) deeming a Potential Contract assumed and assigned to Buyer on the expiration of five Business Days following the date such Potential Contract is designated as a Post-Closing Transferred Contract and written notice thereof is delivered personally, via e-mail transmission, by next-day service or courier to the applicable counterparty, or if delivered by registered or certified mail, upon confirmed receipt

of such notice by the applicable counterparty, (iii) requiring any Potential Contract Administrative Claim related to a Potential Contract that is deemed to be assumed and assigned as provided herein to be asserted no later than 30 days after the delivery of the notice described in clause (ii) of this Section 2.12(f), and (iv) requiring any Potential Contract Administrative Claims and rejection damages claim related to a Potential Contract that is deemed rejected as provided herein to be asserted no later than 30 days after the delivery of the notice described in clause (i) of this Section 2.12(f). Such order may take the form of additional provisions incorporated into the Sale Order.

### **ARTICLE III SELLERS' REPRESENTATIONS AND WARRANTIES**

Sellers hereby jointly and severally represent and warrant to Buyer that the statements contained in this Article III are true and correct.

#### **Section 3.1 Organization of Sellers; Good Standing.**

(a) Each Seller is duly incorporated or organized, validly existing and in good standing under the Laws of its state of incorporation or formation and has all necessary corporate, limited partnership, limited liability company or similar power and authority to own, lease and operate its properties and its assets and to conduct its business in the manner in which its Business is currently being conducted.

(b) Except as a result of the commencement of the Chapter 11 Cases, each Seller is duly authorized to do business and is in good standing as a foreign corporation, limited partnership or limited liability company, as applicable, in each jurisdiction where the ownership or operation of the Purchased Assets or the conduct of the Business requires such qualification, except for failures to be so authorized or be in such good standing, as would not, individually or in the aggregate, be materially adverse to any Seller.

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

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

(b) this Agreement has been duly and validly executed and delivered by each Seller, and, upon their execution and delivery in accordance with the terms of this Agreement, each of the Related Agreements to which any Seller is a party will have been duly and validly executed and delivered by each such Seller, as applicable. Assuming that this Agreement constitutes a valid and legally-binding obligation of Buyer, this Agreement constitutes the valid and legally-binding obligation of each Seller, enforceable against Sellers in accordance with its terms and conditions.

**Section 3.3 Compliance with Laws.** To Sellers' Knowledge, Sellers are in compliance in all material respects with, and since October 28, 2020 have been in compliance in all material respects with, all Laws applicable to the Business or the Purchased Assets. No Seller has received any written notice that it is, and to Sellers' Knowledge, none of the Sellers are, under investigation with respect to any violation of any applicable Laws. To Seller's Knowledge, since October 28, 2020 Sellers have not, in any franchise disclosure document or applications and/or filings made under any laws requiring disclosure or registration in connection with the offering or selling of any franchises or business opportunities, made any untrue statement of a material fact, omitted to state a material fact required to be stated therein, or omitted to state any fact necessary to make the statements made therein, taken as a whole, not misleading, and no claims alleging any such statement or omission are pending or threatened against the Sellers. To Sellers' Knowledge, the Sellers have not received any notices from any Governmental Entity alleging, indicating, claiming, or requesting to investigate (or indicating an investigation into) any non-compliance under any applicable Law.

**Section 3.4 Title to Purchased Assets.** Sellers, as of immediately prior to the Closing, have good and valid indefeasible title to, and own and possess all material rights and interests in, including the right to use, or, in the case of leased assets, have good and valid leasehold interests in, the Purchased Assets, free and clear of all Liens (except for Permitted Liens), subject to entry of the Sale Order. At the Closing or such time as title is conveyed under Section 2.7, Sellers will convey, subject to the Sale Order having been entered and still being in effect and not subject to any stay pending appeal at the time of Closing, good and valid title to, or valid leasehold interests in, all of the Purchased Assets, free and clear of all Liens (except for Permitted Liens).

**Section 3.5 Contracts.** Each Executory Contract is valid, binding and enforceable against each Seller, as applicable, and, to the Sellers' Knowledge, the other parties thereto, in accordance with its terms (subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity), and is in full force and effect. Except as set forth in Section 3.5 of the Disclosure Schedule and other than as a result of the filing and pendency of the Chapter 11 Cases, no Seller is in material breach of, or material default under, any Executory Contract to which it is a party, and, to Sellers' Knowledge, no other Person is in material breach of, or material default under, any Executory Contract. There are no contracts material to the Business not set out of the Executory Contract List (whether such contract is executory or not).

**Section 3.6 Intellectual Property.**

(a) To Sellers' Knowledge, the Intellectual Property Assignment contains a true and complete list of all Registered Intellectual Property owned by, or purported to be owned by, in whole or in part, any Seller and used in or related to the Business. Sellers own all right, title, and interest in and to the Intellectual Property included in the Purchased Assets free and clear of all Liens (except for Permitted Liens and subject to entry of the Sale Order). All Registered Intellectual Property owned by a Seller is valid, subsisting and, to Sellers' Knowledge, enforceable.

(b) To Sellers' Knowledge, none of the use of the Intellectual Property included in the Purchased Assets, the conduct of the Business as currently conducted, and as conducted on

or after October 28, 2020, nor any of the products sold or services provided by Sellers or any of their Affiliates currently or on or after October 28, 2020, in connection therewith, infringes upon, misappropriates, dilutes or otherwise violates the Intellectual Property of any other Person. No action has been asserted or, to Seller's Knowledge, is pending or threatened against any Seller with respect to any Intellectual Property included in the Purchased Assets.

(c) Sellers have provided to Buyer a true and complete list of all telephone numbers, fax numbers, e-mail addresses, websites, URLs and internet domain names, to Sellers' Knowledge, related to the Business and used by Sellers.

**Section 3.7 Litigation.** Schedule 3.7 sets forth all unresolved material Litigation, other than the Chapter 11 Cases, brought by or against any Seller with respect to the Business or any of the Purchased Assets, and to Sellers' Knowledge, there is no other material Litigation threatened in writing, before any Governmental Entity against any Seller which is reasonably likely to have a Material Adverse Effect or which in any manner challenges or seeks to prevent, enjoin, alter or materially delay the Contemplated Transactions.

**Section 3.8 Real Property.**

(a) Sellers (i) do not own and, to Sellers' Knowledge, have never owned any real property, (ii) have good and valid leasehold interests in and to all Leased Real Estate and (iii) have good and valid title to all other Purchased Assets constituting Structures or otherwise have the right to use such other Purchased Assets pursuant to a valid and enforceable lease, license or similar contractual arrangement, in each case free and clear of any Liens, other than Permitted Liens.

(b) The Leased Real Estate constitutes all of the real property assets used by Sellers for the conduct of the Business in substantially the same manner as such Business is being operated as of the date hereof.

(c) Schedule 3.8(c) sets forth a complete and correct list of all of the real property leased, licensed or otherwise granted to Sellers and each Lease with respect thereto (and all interests leased pursuant to such Leases, the "Leased Real Estate"), including the addresses thereof and all written amendments or modifications to the Leases. All such Leases have been included on the Executory Contract List.

**Section 3.9 Permits.** Schedule 3.9 contains a list of all material Permits that Sellers hold as of the date hereof in connection with the operations of the Business. There is no Litigation pending, or to Sellers' Knowledge, threatened in writing, that seeks the revocation, cancellation, suspension, failure to renew or adverse modification of any Assumed Permits, except where a failure of this representation and warranty to be so true and correct would not reasonably be expected to have a Material Adverse Effect. To the Sellers' Knowledge, all required filings with respect to the Assumed Permits have been made and all required applications for renewal thereof have been filed, except where a failure of this representation and warranty to be so true would not reasonably be expected to have a Material Adverse Effect.

**Section 3.10 Brokers' Fees.** Except for amounts due to Hilco, no Seller has entered into any Contract to pay any fees or commissions to any broker, finder or agent with respect to the Contemplated Transactions for which Buyer could become liable or obligated to pay.

**Section 3.11 Privacy Policy.** Seller shall comply with the Corner Bakery Privacy Policy dated December 27, 2029 and the Special Privacy Notice for California Residents dated December 27, 2019 (the "Privacy Policies") and represents and warrants that: (a) with respect to information subject to the Privacy Rights of California ("CCPA") Seller shall not and hereby does not transfer, sell, or convey any "personal information" of California residents to Buyer for any Person; and (b) Seller shall not and hereby does not transfer, sell, or convey any "personal information" of Nevada residents to Buyer for any Person.

#### **ARTICLE IV BUYER'S REPRESENTATIONS AND WARRANTIES**

Buyer hereby represents and warrants to Sellers that the statements contained in this Article IV are true and correct.

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

**Section 4.2 Authorization of Transaction.**

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

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

(c) This Agreement has been duly and validly executed and delivered by Buyer, and, upon their execution and delivery in accordance with the terms of this Agreement, each of the Related Agreements to which Buyer is a party will have been duly and validly executed and delivered by Buyer. Assuming that this Agreement constitutes a valid and legally-binding obligation of Sellers, this Agreement constitutes a valid and legally-binding obligation of Buyer, enforceable against Buyer in accordance with its terms and conditions.

**Section 4.3 Noncontravention.** Subject to the Sale Order having been entered and still being in effect (and not subject to any stay pending appeal at the time of Closing), neither the execution and delivery of this Agreement, nor the consummation of the Contemplated Transactions (including the assignments and assumptions referred to in Section 2.5) will (i) conflict with or result in a breach of the Fundamental Documents of Buyer, (ii) subject to any consents required to be obtained from any Governmental Entity, violate any Decree or Law to which Buyer is, or its assets or properties are subject, or (iii) conflict with, result in a breach of,

constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice under any Contract to which Buyer is a party or by which it is bound, except, in the case of either clause (ii) or (iii), for such conflicts, breaches, defaults, accelerations, rights or failures to give notice as would not, individually or in the aggregate, reasonably be expected to prevent, delay or impair the ability of Buyer to consummate the transactions contemplated by this Agreement or by the Related Agreements.

**Section 4.4 Adequate Assurances Regarding Executory Contracts.** Buyer is and shall be capable of satisfying as of the Sale Hearing the conditions contained in Sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Transferred Contracts.

**Section 4.5 Good Faith Purchaser.** Buyer is a “good faith” purchaser, as such term is used in the Bankruptcy Code and the court decisions thereunder. Buyer is entitled to the protections of Section 363(m) of the Bankruptcy Code with respect to all of the Purchased Assets. Buyer has negotiated and entered into this Agreement in good faith and without any improper conduct, including collusion or fraud of any kind.

**Section 4.6 Brokers’ Fees.** Neither Buyer nor any of its Affiliates has entered into any Contract to pay any fees or commissions to any broker, finder or agent with respect to the Contemplated Transactions for which any Seller could become liable or obligated to pay.

## ARTICLE V PRE CLOSING COVENANTS

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

### **Section 5.1 Certain Efforts; Cooperation.**

(a) Subject to the terms and conditions of this Agreement, each of the Parties shall use its commercially reasonable efforts, subject to the orders of the Bankruptcy Court, to make effective the Contemplated Transactions (including satisfaction, but not waiver, of the conditions to the obligations of the Parties to consummate the Contemplated Transactions set forth in Article VII), except as otherwise provided in Section 5.2; provided, however, Sellers shall be entitled to take such actions as are required in connection with the discharge of their fiduciary duties during the Chapter 11 Cases.

(b) On and after the Closing, Sellers and Buyer shall use their commercially reasonable efforts to take, or cause to be taken, all appropriate action, to do or cause to be done by Sellers and Buyer all things necessary under applicable Law, and to execute and deliver such documents, ancillary agreements and other papers as may be required to carry out the provisions of this Agreement and consummate and make effective the Contemplated Transactions, including in order to more effectively vest in Buyer all of Sellers’ right, title and interest to the Purchased Assets, free and clear of all Liens (other than Permitted Liens expressly contemplated by the Sale Order or this Agreement), Claims, encumbrances, and interests.

### **Section 5.2 Notices and Consents.**



(a) To the extent expressly required by the Bankruptcy Code or the Bankruptcy Court, Sellers shall give any notices to third parties, and each Seller shall use its commercially reasonable efforts to obtain any third-party Consents or sublicenses requested in accordance with this Agreement.

(b) Sellers and Buyer shall cooperate with one another (i) in promptly determining whether any filings are required to be or should be made or consents, approvals, permits or authorizations are required to be or should be obtained under any applicable Law in connection with this Agreement and the Contemplated Transactions and (ii) in promptly making any such filings, furnishing information required in connection therewith and seeking to obtain timely any such consents, permits, authorizations, approvals or waivers.

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

(d) Notwithstanding anything herein to the contrary and subject to clause (B) of the following sentence, the Parties understand and agree that commercially reasonable efforts of Buyer hereto shall not be deemed to include: (i) entering into any settlement, undertaking, consent decree, stipulation or agreement with any Governmental Entity in connection with the

Contemplated Transactions or defending against or initiating any lawsuit, action or proceeding, judicial or administrative, challenging this Agreement or the Contemplated Transactions, or (ii) proposing, negotiating, agreeing to or offering to commit to any sale, divestiture, license, disposition or separation (including by establishing a trust or otherwise) of, or any limitation on any operation or business of, any of its or its Affiliate's businesses, assets or properties. In furtherance, and not in limitation, of the foregoing in this Section 5.2(d), (A) other than in connection with dispositions of Inventory in the Ordinary Course of Business (which, in each case, shall not require any consent of Buyer), Sellers shall not, and shall cause their Affiliates not to, propose, negotiate, agree to or offer to commit to any sale, divestiture, license, disposition or separation of any Purchased Asset, without the prior written consent of Buyer, and (B) Buyer shall not be required to agree to any divestiture, sale or other disposition of any of the Purchased Assets or any assets of Buyer or any of Buyer's Affiliates or agree to any limitation on any operation or business of the Buyer or any of its Affiliates.

### **Section 5.3 Bankruptcy Actions.**

(a) Sellers shall adhere to and satisfy the milestones set forth in the Final Senior DIP Order.

(b) Sellers and Buyer shall each promptly take such actions as the other may reasonably request to assist in obtaining entry of an order, in form and substance satisfactory to Buyer in its reasonable discretion, as amended, modified or supplemented with the prior written consent of Buyer, authorizing and approving, inter alia, (A) the sale of the Purchased Assets to Buyer on the terms and conditions set forth herein, free and clear of all Liens, Claims, encumbrances, and interests (to the extent set forth therein), and (B) the assignment to and assumption by Buyer of each Transferred Contract (the "Sale Order") and to cause the Sale Order to become a Final Order. The Sale Order shall, among other things: (I) approve the sale of the Purchased Assets to the Buyer free and clear of all Liens, Claims, encumbrances, and interests, pursuant to (among other provisions) Sections 105, 363, and 365 of the Bankruptcy Code, in each case to the extent set forth in this Agreement; (II) approve the assumption and assignment to the Buyer of the Transferred Contracts pursuant to Section 365 of the Bankruptcy Code; (III) contain findings of fact and conclusions of law that the Buyer is a good faith purchaser entitled to the protections of Section 363(m) of the Bankruptcy Code and is not a successor to Seller; and (IV) contain such other terms that are otherwise acceptable to Buyer, in its reasonable discretion.

(c) After entry of the Sale Order, neither Buyer nor any Seller will take any action which is intended to, or fail to take any action the intent of which failure to act is to, result in the reversal, voiding, modification or staying of the Sale Order. Each of Buyer and Sellers shall continue to act in good faith and without any improper conduct, including collusion or fraud of any kind.

(d) If the Sale Order or any other orders of the Bankruptcy Court directly relating to this Agreement or the Contemplated Transactions shall be appealed by any Person (or if any petition for certiorari or motion for reconsideration, amendment, clarification, modification, vacatur, stay, rehearing or reargument shall be filed with respect to the Sale Order or other such order), and this Agreement has not otherwise been terminated pursuant to Article VIII, the Sellers shall use their best efforts to diligently defend such appeal, petition or motion and shall use its

commercially reasonable efforts to obtain an expedited resolution of any such appeal, petition or motion.

(e) Each of Buyer and Sellers will promptly take such actions as are reasonably requested by the other party to assist in obtaining entry of the Sale Order including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for purposes, among others, of providing necessary assurances of performance by Sellers of their obligations under this Agreement and the Related Agreements and demonstrating that Buyer is a good faith buyer under Section 363(m) of the Bankruptcy Code.

(f) Buyer shall provide information to the Sellers to be disseminated to counterparties to Transferred Contracts, sufficient to satisfy a finding of adequate assurance of future performance as required in Sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Transferred Contracts.

(g) Sellers shall use commercially reasonable efforts to provide appropriate notice of the hearings on the Sale Motion to all Persons entitled to notice, including, for the Sale Motion, all Persons that have asserted Liens on the Purchased Assets, all parties to the Transferred Contracts and all Tax authorities in jurisdictions applicable to Sellers and as otherwise required by the Bankruptcy Code and bankruptcy rules.

(h) Sellers shall file with the Bankruptcy Court and serve a cure notice by first class mail, overnight mail, facsimile, or electronic mail, pursuant to any applicable Bankruptcy Rules or Court Orders, on all non-debtor counterparties to all Contracts and Leases and provide a copy of the same to Buyer.

**Section 5.4 Conduct of Business.** Until the earlier of the termination of this Agreement (in accordance with its terms) and the Closing, subject to the terms and conditions of the Sales Procedures Order and any other orders of the Bankruptcy Court, and except as expressly contemplated by this Agreement, as required under the Bankruptcy Code or other applicable Law, or to the extent waived by Buyer or with the prior written consent of Buyer, Sellers shall (i) conduct the Business in the Ordinary Course of Business, (ii) use reasonable efforts to preserve the existing business organization and keep management of the Business intact, (iii) use reasonable efforts to keep available the services of the Current Employees, (iv) take all such actions as are reasonably likely to preserve and advance all Purchased Avoidance Actions, and (v) use reasonable efforts to maintain the existing relations with customers, carriers, suppliers, creditors, business partners, Current Employees and others having business dealings with the Business.

**Section 5.5 Access.** Upon reasonable advance written request by Buyer, Sellers shall permit Buyer and its Representatives to have reasonable access to, and the opportunity to make reasonable investigation of, during normal business hours, subject to the terms of Leases and in a manner so as not to interfere unreasonably with the normal operations of the Business, to all premises, properties, personnel, Records, Contracts and Leases related to the Business, in each case, for the sole purpose of evaluating the Business; provided, however, that, for avoidance of doubt, the foregoing shall not require any Party to waive, or take any action with the effect of waiving, its attorney-client privilege or any confidentiality obligation to which it is bound with respect thereto or take any action in violation of applicable Law.

**Section 5.6 Press Releases and Public Announcements.** After notice to and consultation with Buyer, Sellers shall be entitled to disclose this Agreement and all information provided by Buyer in connection herewith to the Bankruptcy Court, the Committee, parties in interest in the Chapter 11 Cases and other Persons bidding on assets of Sellers. Other than statements made in the Bankruptcy Court (or in pleadings filed therein), no Party shall issue (prior to, on or after the Closing) any press release or make any public statement or public communication without the prior written consent of the other Parties, which shall not be unreasonably withheld, conditioned, or delayed; provided, however, (i) Sellers, without the prior consent of Buyer, may (A) issue such press release or make such public statement, filing or disclosure as may, upon the advice of counsel, be required by applicable Law or any Governmental Entity with competent jurisdiction or as otherwise appropriate in light of the commencement of the Chapter 11 Cases, and (B) communicate with its and its Affiliates' equity holders, investors and potential investors relating to the Contemplated Transactions and (ii) Buyer, without the prior consent of Sellers, may issue such press release or make such public statement, filing or disclosure as may, upon the advice of counsel, be required by applicable Law or any Governmental Entity with competent jurisdiction.

**Section 5.7 Bulk Transfer Laws.** Buyer acknowledges that Sellers will not comply with the provisions of any bulk transfer Laws of any jurisdiction in connection with the Contemplated Transactions, and hereby waives all claims related to the noncompliance therewith. The Parties intend that pursuant to Section 363(f) of the Bankruptcy Code, the transfer of the Purchased Assets shall be free and clear of any Liens, Claims, encumbrances, and interests on the Purchased Assets (other than Permitted Liens), including any Liens arising out of the bulk transfer Laws, and the Parties shall take such steps as may be necessary or appropriate to so provide in the Sale Order.

## ARTICLE VI OTHER COVENANTS

The Parties agree as follows with respect to the period from and after the Closing, provided that Sellers' obligations hereunder shall only continue until the Chapter 11 Cases are closed or dismissed:

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

**Section 6.2 Further Assurances.**

(a) In case at any time from and after the Closing any further action is necessary or reasonably required to carry out the purposes of this Agreement, subject to the terms and conditions of this Agreement and the terms and conditions of the Sale Order, at any Party's request, each Party shall use commercially reasonable efforts to take such further action (including the execution and delivery to any other Party of such other reasonable instruments of sale, transfer, conveyance, assignment, assumption and confirmation and providing materials and information) as another Party may reasonably request as shall be necessary to transfer, convey and assign to

Buyer all of the Purchased Assets, to confirm Buyer's assumption of the Assumed Liabilities and to confirm Sellers' retention of the Excluded Assets and Excluded Liabilities. Without limiting the generality of this Section 6.2, to the extent that either Buyer or Sellers discovers any additional assets or properties which the Parties mutually agree should have been transferred or assigned to Buyer as Purchased Assets but were not so transferred or assigned, Buyer and Sellers shall cooperate and execute and deliver any instruments of transfer or assignment necessary to transfer and assign such asset or property to Buyer. Without limiting the generality of this Section 6.2, to the extent that either Buyer or Sellers discover any assets or properties which the Parties mutually agree should have been retained by Sellers as Excluded Assets, Buyer and Sellers shall cooperate and execute and deliver any instruments of transfer or assignment necessary to transfer and assign such asset or property to Sellers. If any Seller, Buyer or any of their respective Subsidiaries, from time to time, identifies any Assumed Liability that was not transferred to Buyer, or any Excluded Liability that was transferred to Buyer, Sellers and Buyer shall use their commercially reasonable efforts to transfer those Liabilities to the correct Party as promptly as reasonably practicable after Closing.

(b) From and after the Closing Date Sellers shall, at Buyer's expense, provide such support to the Purchased Avoidance Actions as Buyer may reasonably request.

(c) Sellers agree that all credit card and other electronic customer payments received by the Sellers in the course of their business on or after the Closing Date shall be held for the benefit of Buyer. Sellers shall direct the processors of credit card and other electronic customer payments to make all such payments to a single bank account approved by and identified to Buyer. All cash and other amounts in such account at the close of each Business Day shall be paid to Buyer by electronic transfer, to an account identified in writing, on the start of the following Business Day. Sellers shall not, prior to July 1, 2023, without the written consent of Buyer, change the account into which such payments are made, cancel such account, or encumber such account in any way. Buyer shall be entitled to all account statements of such account, and such other information concerning such accounts as is possessed by any Seller.

**Section 6.3 Availability of Business Records.** From and after the Closing, Buyer shall (i) reasonably promptly provide to Sellers and their respective Representatives (after reasonable notice and during normal business hours) access to Records included in the Purchased Assets for periods prior to the Closing and access to Transferred Employees, in each case, to the extent such access is necessary in order for Sellers (as applicable) to comply with this Agreement, the Related Agreements, and the transactions contemplated hereby and thereby, applicable Law or any Contract to which it is a party, for liquidation, winding up, administration of these Chapter 11 Cases, Tax reporting or other proper purposes (as determined by the applicable Seller in good faith) and so long as such access is subject to an obligation of confidentiality, and (ii) shall preserve such Records until the latest of (A) seven years after the Closing Date, (B) the required retention period for all government contact information, records or documents or (C) the conclusion of all bankruptcy proceedings relating to the Chapter 11 Cases. Such reasonable access shall include reasonable access to information in electronic form to the extent reasonably available. Buyer acknowledges that Sellers have the right to retain originals or copies of all Records included in the Purchased Assets for periods prior to the Closing. Prior to destroying any Records included in the Purchased Assets for periods prior to the Closing, Buyer shall notify Sellers thirty (30) days in advance of any such proposed destruction of its intent to destroy such Records, and Buyer shall

permit Sellers to retain such Records. With respect to any Litigation and claims that are Excluded Liabilities, Buyer shall use commercially reasonable efforts to render assistance that Sellers may request, at Sellers' expense, and shall make reasonably available to Sellers such personnel as are most knowledgeable about the matter in question.

#### **Section 6.4 Employee Matters.**

(a) Prior to the Closing, Buyer shall offer (or cause a designee of Buyer to offer), by written offer letter or other enrollment materials outlining the terms and conditions of the offer of employment for employment in a position that is comparable to such Current Employee's position immediately prior to the Closing, to employ on an at will basis the Current Employees listed on Schedule 6.4. For purposes of this Agreement, each Current Employee who receives and accepts such offer of employment prior to the Closing and commences work with Buyer after the Closing Date shall be referred to herein as a "Transferred Employee"; provided, however, any Current Employee who is on short-term disability, leave of absence, paid or unpaid, or long-term disability as of the Closing Date shall not be considered a Transferred Employee, unless and until such Current Employee commences active employment with Buyer or its designee. Except to the extent Sellers fail to comply in any material respects with Section 6.4(c)(i) or Section 6.4(c)(iii), Buyer hereby agrees that Buyer shall provide or cause to be provided (and the written offer to a Current Employee shall include) for a period of one (1) year from and after the Closing Date (or, if shorter, the applicable Transferred Employee's period of employment) to each Current Employee a level of base salary or wages, as applicable, that are comparable to the base salary or wages provided to such Current Employee by Sellers as of the Closing Date. Buyer further agrees that, from and after the Closing Date, Buyer shall, and shall cause its Affiliates to, provide such benefits to the Transferred Employees (excluding equity-based incentives, non-qualified deferred compensation benefits, retiree benefits, benefits under a defined benefit pension plan, change in control or retention bonuses or benefits under any severance plan) as are provided to similarly situated employees of Buyer. Buyer shall have no obligation to grant any Transferred Employees credit for any service with Sellers earned prior to the Closing Date under the benefit and compensation plans, programs, agreements or arrangements in which the Transferred Employees commence to participate on or after the Closing Date (the "New Plans").

(b) Each Current Employee of Sellers who is not or does not become a Transferred Employee shall be referred to herein as an "Excluded Employee."

(c) Following the date of this Agreement:

(i) Sellers will allow Buyer or any of its Representatives reasonable access upon reasonable advance notice to meet with and interview the Current Employees who are members of executive management and other employees reasonably requested during normal business hours, provided that Sellers shall be afforded an opportunity to have a Representative of Sellers present in such meetings;

(ii) Sellers shall not, nor shall any Seller direct any Affiliate, officer, director or employee of any Seller or any Affiliate to, (A) interfere with Buyer's or its Representatives' rights under Section 6.4(a) to make offers of employment to any Current

Employee, or (B) solicit or encourage any Current Employee not to accept, or to reject, any such offer of employment;

(iii) Sellers shall provide reasonable cooperation and information to Buyer or the relevant Representative as reasonably requested by Buyer or such Representative with respect to its determination of terms and conditions of employment for any Current Employee and with respect to making offers of employment to any Current Employees;

(iv) Sellers shall process the payroll for and pay, or cause to be paid, the base wages, base salary and benefits that are due and payable with respect to all Current Employees (prior to becoming Transferred Employees) and Former Employees of Sellers. Sellers shall withhold and remit all applicable payroll taxes as required by Law with respect to all Current Employees (prior to becoming Transferred Employees) and Former Employees of Sellers; and

(v) None of the foregoing shall be construed as requiring, and neither Sellers nor any of their Affiliates shall take any affirmative action with the primary purpose, and that would have the effect, of requiring Buyer to continue any specific employee benefit plan or to continue the employment of any specific Employee. Nothing in this Agreement is intended to establish, create or amend, nor shall anything in this Agreement be construed as establishing, creating or amending, any employee benefit plan, practice or program of Buyer, any of its Affiliates or any of Sellers' Employee Benefit Plans, nor shall anything in this Agreement create or be construed as creating any Contract of employment or as conferring upon any Transferred Employee or upon any other person, other than the parties to this Agreement in accordance with its terms, any rights to enforce any provisions of this Agreement under ERISA or otherwise. This Section shall be binding upon and inure solely to the benefit of each of the Parties to this Agreement, and nothing in this Section, express or implied, shall confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Section.

(d) Sellers shall be exclusively responsible for all Liabilities and obligations arising from each Seller's employment or termination of employment of any employee of any Seller who does not become a Transferred Employee (including any severance and other similar costs), and all such Liabilities will constitute Excluded Liabilities under this Agreement. Buyer shall assume all only the obligations, Liabilities, and commitments in respect of Claims made by any Transferred Employee for severance or other termination benefits (including claims for wrongful dismissal, notice of termination of employment, pay in lieu of notice or breach of Contract) arising from and after the Closing Date (collectively, the "Employment Obligations").

**Section 6.5 Recording of Intellectual Property Assignment.** Buyer shall be responsible, at its sole cost and expense, for recording and filing the Intellectual Property Assignment with the appropriate Governmental Entities; *provided, however*, Sellers will provide commercially reasonable efforts to assist Buyer in finalizing and executing necessary documents for recording and filing the Intellectual Property Assignment.

**Section 6.6 Transfer Taxes; Straddle Period.**

(a) Buyer shall pay any and all sales, use, stamp, documentary, registration, transfer (including real estate transfer tax), stock transfer, registration, gross receipts, duty,

securities transactions, stamp, documentary, registration, transfer, value added or similar Tax (each, a “Transfer Tax”) imposed under any applicable Law in connection with the Contemplated Transactions, regardless of the Person liable for such Transfer Taxes under applicable Law. Sellers and Buyer shall cooperate to prepare any Tax Returns required to be filed in connection with Transfer Taxes described in the immediately preceding sentence. The Party that is responsible under applicable law to file such Tax returns shall timely file such returns.

(b) Except as otherwise provided by Section 6.6(a), Sellers shall prepare and timely file (i) all Tax Returns with respect to the Purchased Assets for any Tax period ending on or before the Closing Date and (ii) all Tax Returns of Sellers. Except to the extent any Tax reflected on a return required to be prepared and filed by Sellers pursuant to this Section 6.6(b) is otherwise reflected as an adjustment to Purchase Price or constitutes an Assumed Liability, Sellers shall be liable and responsible for any Taxes relating to periods covered by such Tax Returns.

(c) Buyer shall prepare and timely file all other Tax Returns with respect to the Purchased Assets for any Pre-Closing Tax Period or Straddle Period that are not addressed by Section 6.6(b). With respect to any Straddle Period, Buyer shall prepare such Tax Returns consistent with past practice, except as otherwise required by applicable Law. Buyer shall provide Sellers with a draft of such Tax Returns with respect to the Purchased Assets for any Pre-Closing Tax Period or Straddle Period, along with a calculation of the amount of the Taxes consistent with Section 6.6(d) that relate to the portion of the period ending on the Closing Date and are the responsibility of Sellers at least thirty (30) days prior to the filing of any such Tax Return; provided that if such Tax Return is due less than forty five (45) days after Closing, then Buyer shall deliver a draft of such Tax Return as soon as practicable after the Closing. Buyer shall incorporate any changes reasonably requested by Sellers with respect to such Tax Returns.

(d) All real property taxes, personal property taxes, ad valorem and similar periodic Taxes and obligations levied on or with respect to the Purchased Assets for any Straddle Period but excluding any such taxes or obligations that are included in a Cure Claim with respect to a Transferred Contract (collectively, the “Apportioned Obligations”) shall be apportioned between Sellers, on the one hand, and Buyer, on the other hand, based on the number of days of such taxable period included in the Pre-Closing Tax Period and the number of days included in the Post-Closing Tax Period. Sellers shall be liable for the proportionate amount of such Taxes that is attributable to the Pre-Closing Tax Period, and Buyer shall be liable for the proportionate amount of such Taxes that is attributable to the Post-Closing Tax Period. The Apportioned Obligations shall be prorated (based on the most recent available Tax statement, latest Tax valuation and latest bills) as of the Closing. If the Closing occurs before the Tax rate is fixed for the then current fiscal or calendar year, whichever is applicable, the proration of the corresponding Taxes shall be on the basis of the Tax rate for the last preceding year applied to the latest assessed valuation.

(e) Buyer shall not file any Tax Return, file an amendment to any previously-filed Tax Return, or otherwise take any Tax position that has the effect of increasing any Tax due for a Pre-Closing Tax Period or portion of a Straddle Period ending on the Closing Date, unless required to do so by applicable Law, and shall provide no less than five (5) days’ notice of its position to the Sellers before filing any such Tax Return.



**Section 6.7 Wage Reporting.** Buyer and Sellers agree to utilize, or cause their respective Affiliates to utilize, the alternative procedure set forth in IRS Revenue Procedure 2004-53 with respect to wage reporting.

**Section 6.8 Collection of Accounts Receivable.**

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

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

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

**Section 6.9 Alternate Transactions.** Except as otherwise provided in an order of the Bankruptcy Court governing bidding procedures for the sale of the Purchased Assets, Seller shall not pursue any Alternate Transactions or communicate with or provide any information to any Person seeking, or who a reasonable person would believe is seeking, to consummate an Alternative Transaction with Seller.

**Section 6.10 Transition Services.** Following the Closing, in order to address the process and mechanism for accomplishing an orderly transfer of the Purchased Assets and Assumed Liabilities to Buyer while allowing for Sellers' continued access to resources necessary for the administration of the Chapter 11 Cases, pursuit of confirmation of a Chapter 11 plan, and ultimate wind down of Sellers' estate, Buyer and Sellers shall use their reasonable best efforts to provide, or cause to be provided, such services as mutually agreed upon between Buyer and Sellers (collectively, the "Services"), on the terms and conditions to be set forth in a transition services agreement (the "Transition Services Agreement") in form and substance reasonably acceptable to Buyer and Seller; provided that the foregoing obligation shall not require any Party to use extraordinary efforts, engage any third parties, or incur material out-of-pocket expenditures. The

Transition Services Agreement shall provide that the Services are to be rendered during the normal business hours of Buyer and Sellers and in a manner so as to not materially disrupt or impair the operations of Buyer and Sellers.

**Section 6.11 Name Change.** The Sellers shall, as promptly as practicable (but in no event later than 16 days after the Closing), cease using and displaying any trademarks that are included in the Purchased Assets, and in accordance with such requirement, the Sellers shall use commercially reasonable efforts to, no later than 16 days after the Closing, legally change their corporate and business names (to the extent such names include such trademarks or a confusingly similar trademark) to names that are not confusingly similar to such trademarks, and file notices of such name changes with the Bankruptcy Court. Subject to the approval of the Bankruptcy Court to change Sellers' names for purposes of the Bankruptcy Case (which approval Sellers shall seek and use commercially reasonable efforts to obtain promptly following the Closing), under no circumstance shall the Sellers, after the Closing, use or otherwise exploit the trademarks included in the Purchased Assets or any other indicia confusingly similar to the trademarks included in the Purchased Assets, copyrights included in the Purchased Assets, or any work substantially similar to the copyrights included in the Purchased Assets, as a source identifier in connection with any Seller product, service or corporate, business or domain name. Sellers shall, as promptly as practicable (but in no event later than 16 days after the Closing), cause any locations not acquired in the Purchased Assets to cease using any Intellectual Property conveyed to Buyer hereby, and will take all such steps necessary to "de-identify" such restaurants, including ceasing to use all trade dress, logos, trade names, menus, banners, and uniforms and will otherwise ensure that such restaurants do not appear in any way to be related to the "Corner Bakery" brand being acquired by Buyer.

**Section 6.12 Wind-Down**

(a) On and after the Closing Date, the Sellers shall, subject to and in accordance with the Wind Down Budget, use their cash on hand (including the Wind Down Fund) to pay all Allowed Administrative Expenses of the Sellers. Seller shall provide all Monthly Operating Reports filed in the Chapter 11 Cases to Buyer. Buyer shall, from time to time when requested by Sellers, provide Sellers with its good faith estimate of when Buyer anticipates terminating the Transition Services Agreement. Buyer shall have no obligations with respect to any post-Closing Expenses of Sellers except as expressly set forth in this Agreement as an Assumed Liability.

(b) All cash and cash equivalents remaining after the payment of the all Wind Down Expenses (the "Excess Cash") shall be deemed a Purchased Asset and conveyed to Buyer or its designee within 30 calendar days after Buyer notifies Seller of the termination of the Transition Services Agreement.

**ARTICLE VII  
CONDITIONS TO CLOSING**

**Section 7.1 Conditions to Buyer's and Sellers' Obligations.** Subject to Section 7.2, the obligation of each of Buyer and Sellers to consummate the Contemplated Transactions in connection with the Closing is subject to satisfaction or waiver (to the extent waivable) of the following conditions:

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

(b) (i) the Bankruptcy Court shall have entered the Sale Order which shall be a Final Order on the Closing Date; and (ii) the Sale Order, as entered by the Bankruptcy Court, shall be in form and substance approved by Buyer, which approval will not be unreasonably withheld;

(c) The representations and warranties contained herein of Sellers, with respect to Buyer, and of Buyer, with respect to Seller, shall be true and correct in all material respects, and the Parties shall have complied with their covenants herein in all material respects; and

(d) the Bankruptcy Court shall not have entered any order dismissing the Chapter 11 Cases. For the avoidance of doubt, this Agreement shall be binding on any trustee appointed with respect to these Chapter 11 Cases or an appointee appointed upon the conversion of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code.

**Section 7.2 No Frustration of Closing Conditions.** Neither Buyer nor Sellers may rely on the failure of any condition to its obligation to consummate the Contemplated Transactions set forth in Section 7.1 to be satisfied if such failure was primarily caused by such Party's failure to use its commercially reasonable efforts with respect to those matters contemplated by the applicable Sections of this Agreement to satisfy the conditions to the consummation of the Contemplated Transactions or other breach of a representation, warranty or covenant hereunder.

**Section 7.3 Waiver of Conditions.** Upon the occurrence of the Closing, any condition set forth in this Article VII that was not satisfied as of the Closing will be deemed to have been waived for all purposes by the Party having the benefit of such condition as of and after the Closing.

## **ARTICLE VIII TERMINATION**

**Section 8.1 Termination of Agreement.** This Agreement may be terminated in accordance with this Article VIII and the Contemplated Transactions abandoned at any time prior to the Closing:

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

(b) by written notice of either Buyer or Sellers, upon the issuance by any Governmental Entity of a Decree restraining, enjoining, or otherwise prohibiting the consummation of, or declaring unlawful, the Contemplated Transactions, and such Decree having become final, binding and non-appealable; provided that no termination may be made by a Party under this Section 8.1(b) if the issuance of such Decree was caused by the breach or action or inaction of such Party;

(c) by written notice of either Buyer or Sellers, if the Closing shall not have occurred on or before June 14, 2023 (the "Outside Date"); provided, that Buyer may extend such

date in its sole discretion by giving written notice to Sellers provided there is sufficient liquidity under the DIP Budget for Sellers to operate in the Ordinary Course of Business and to fund the administrative costs of the Chapter 11 Cases; provided, further, that a Party shall not be permitted to terminate this Agreement pursuant to this Section 8.1(c) if the failure of the Closing to have occurred by the Outside Date was caused by the breach or action or inaction of such Party; or

(d) by written notice of Buyer, if the Chapter 11 Cases are dismissed or converted to a case or cases under Chapter 7 of the Bankruptcy Code.

**Section 8.2 Procedure upon Termination.** In the event of termination and abandonment by Buyer, on the one hand, or Sellers, on the other hand, or both, pursuant to Section 8.1, written notice thereof shall forthwith be given to the other Party or Parties, and, other than as expressly set forth herein, this Agreement shall terminate and the Contemplated Transactions shall be abandoned, without further action by Buyer or Sellers. Nothing in this Agreement shall be deemed to release or relieve any Party from any Liability for any fraud or Willful Breach by such Party of the terms and provisions of this Agreement.

**Section 8.3 Effect of Termination.**

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

(b) No termination of this Agreement pursuant to Section 8.1 shall be effective until written notice thereof is given to the non-terminating Party specifying the provision hereof pursuant to which such termination is made. If the Contemplated Transactions are not consummated as a result of this Agreement being terminated in accordance with its terms, this Agreement shall become null and void and of no further force and effect (except (x) as otherwise expressly set forth herein and (y) that Article I (Definitions), Article IX (Miscellaneous), this Article VIII (Termination) and the other provisions of this Agreement that by their terms survive termination shall survive any such termination).

(c) Nothing herein shall preclude either of the Parties from exercising their remedies under Section 9.1.

## ARTICLE IX MISCELLANEOUS

**Section 9.1 Remedies.** Each Party recognizes that if such Party breaches or refuses to perform any covenant hereunder, monetary damages alone would not be adequate to compensate the non-breaching Party or Parties for their injuries. The non-breaching Party or Parties shall therefore be entitled, in addition to any other remedies that may be available, to seek specific performance of, or to enjoin the violation of, the terms of such covenants. If any action, claim or proceeding is brought by the non-breaching Party to enforce such covenants, the Party in breach shall waive the defense that there is an adequate remedy at law, and each Party agrees to waive any requirement for the security or posting of any bond in connection with any action, claim or proceeding seeking specific performance of, or to enjoin the violation of, such covenants.

**Section 9.2 Expenses.** Except as otherwise provided in this Agreement or a Related Agreement, Sellers and Buyer shall bear their own expenses, including attorneys' fees, incurred in connection with the negotiation and execution of this Agreement, the Related Agreements and each other agreement, document and instrument contemplated by this Agreement and the consummation of the Contemplated Transactions.

**Section 9.3 Entire Agreement.** This Agreement and the Related Agreements constitute the entire agreement among the Parties and supersede any prior understandings, agreements or representations (whether written or oral) by or among the Parties, written or oral, with respect to the subject matter hereof.

**Section 9.4 Incorporation of Schedules, Exhibits and Disclosure Schedule.** The schedules, appendices and exhibits to this Agreement, and the documents and other information made available in the Disclosure Schedule are incorporated herein by reference and made a part hereof.

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

**Section 9.6 Succession and Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. None of the Parties may assign either this Agreement or any of its rights, interests or obligations hereunder without the prior written approval of all Parties; provided, however, that Buyer shall be permitted to assign any of its rights hereunder to one or more of its Affiliates, as designated by Buyer in writing to Sellers, subject to such Affiliate or Affiliates satisfying any requirement to provide adequate assurance of future performance in accordance with Section 365 of the Bankruptcy Code; provided, further, that Buyer may, by written notice delivered at or prior to Closing, specifically assign its right to acquire any Purchased Asset (including each Transferred Contract) to an Affiliate of Buyer, in which case, at the Closing, Sellers shall take all such action as necessary to cause such Purchased Asset to be assigned directly from the applicable Seller to such designated Affiliate, including through the execution of one or more Bills of Sale, Assignment and Assumption Agreements, and/or Intellectual Property Assignment, as applicable, and that such assignment shall not relieve Buyer of any of its obligations hereunder; provided, still further, that Sellers shall be permitted to assign any of their rights hereunder pursuant to a confirmed chapter 11 plan or

pursuant to an order of the Bankruptcy Court. Notwithstanding the foregoing, after (or concurrently with) the Closing, Buyer may assign this Agreement, in whole or in part, without the consent of any other Party hereto for collateral security purposes to any lender or in connection with the sale of all or substantially all of the business of Buyer, but no such assignment shall relieve Buyer of its obligations hereunder. Any purported assignment in violation of the foregoing shall be void ab initio.

**Section 9.7 Notices.** All notices, requests, demands, claims and other communications hereunder shall be in writing except as expressly provided herein. Any notice, request, demand, claim or other communication hereunder shall be deemed duly given (i) when delivered personally to the recipient; (ii) one (1) Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid); (iii) when sent by email (provided that no “bounce back” or similar message of non-delivery is received with respect thereto); or (iv) three (3) Business Days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

If to any Sellers, then to:

CR3 Partners, LLC  
13355 Noel Road, Suite 2005  
Dallas, TX 75240  
Attn: Greg Baracato  
Winston Mar  
Email: greg.baracato@cr3partners.com  
Winston.mar@cr3partners.com

with a copy (which shall not constitute notice) to:

Culhane Meadows PLLC  
3411 Silverside Road  
Baynard Building, Suite 104-13  
Wilmington, DE 19810  
Attn: Mette H. Kurth  
Lynnette R. Warman  
Email: mkurth@cm.law  
lwarman@cm.law

If to Buyer, then to:

SSCP Restaurant Investors, LLC  
13355 Noel Rd., Suite 1645  
Dallas, TX 75240  
Attn: Ken Schwab  
Email: KSchwab@sscpmanagement.com

with a copy (which shall not constitute notice) to:

Foley & Lardner LLP

2021 McKinney Avenue, Suite 1600  
Dallas, TX 75201  
Attn: Holland N. O'Neil  
Mark C. Moore  
Timothy C. Mohan  
Email: honeil@foley.com  
mmoore@foley.com  
tmohan@foley.com

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

**Section 9.8 Governing Law; Jurisdiction** Except to the extent of the mandatory provisions of the Bankruptcy Code, this Agreement and all matters arising out of, or related to, this Agreement, shall in all aspects be governed by, and construed in accordance with, the internal Laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Texas, and the obligations, rights and remedies of the Parties shall be determined in accordance with such Laws. The Parties agree that any Litigation one Party commences against any other Party pursuant to this Agreement shall be brought exclusively in the Bankruptcy Court, and each of the Parties hereby irrevocably consents to the jurisdiction of the Bankruptcy Court (and of the appropriate appellate courts therefrom) in any such Litigation and irrevocably waives, to the fullest extent permitted by Law, any objection that it may now or hereafter have to the laying of the venue of any such Litigation in the Bankruptcy Court or that any such Litigation which is brought in the Bankruptcy Court has been brought in an inconvenient forum; provided that if the Bankruptcy Court is unwilling or unable to hear any such Litigation, then the courts of the State of Texas, sitting in Dallas County, Texas, and the federal courts of the United States of America sitting in Dallas County, Texas, shall have exclusive jurisdiction over such Litigation.

**Section 9.9 Consent to Service of Process** Each of the Parties hereby consents to process being served by any Party, respectively, in any Litigation in connection with all matters arising out of, or related to, this Agreement by delivery of a copy thereof in accordance with the provisions of Section 9.7.

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

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

**Section 9.12 No Survival of Representations, Warranties and Agreements.** Each of the representations and warranties and the covenants and agreements (to the extent such covenant or agreement contemplates or requires performance by such party prior to the Closing) of the Parties set forth in this Agreement or in any other document contemplated hereby, or in any certificate delivered hereunder or thereunder, will terminate effective immediately as of the Closing such that, other than a claim based on fraud, no claim for breach of any such representation, warranty, covenant or agreement, detrimental reliance or other right or remedy (whether in contract, in tort or at law or in equity) may be brought with respect thereto after the Closing. Each covenant and agreement to the extent such covenant or agreement contemplates or requires performance after the Closing, will, in each case and to such extent, expressly survive the Closing in accordance with its terms, and if no term is specified, until fully performed.

**Section 9.13 Non-Recourse.** Except to the extent based on fraud, this Agreement may only be enforced against, and any Litigation based upon, arising out of, or related to, this Agreement may only be brought against, the Persons that are expressly named as parties to this Agreement. Except to the extent named as a party to this Agreement, and then only to the extent of the specific obligations of such parties set forth in this Agreement, no past, present or future direct or indirect shareholder, member, partner, manager, director, officer, employee, Affiliate, agent or representative of any party to this Agreement will have any Liability (whether in contract, tort, equity or otherwise) for any of the representations, warranties, covenants, agreements or other obligations or Liabilities of any of the parties to this Agreement or for any Litigation based upon, arising out of, or related to, this Agreement; provided that nothing set forth in this Section 9.13 shall limit any claim based on fraud.

**Section 9.14 Construction.** The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of names and pronouns shall include the plural and vice versa. The word “including” and “include” and other words of similar import shall be deemed to be followed by the phrase “without limitation.” The words “herein,” “hereto” and “hereby,” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision of this Agreement. Unless expressly stated in connection therewith or the context otherwise requires, the phrase “relating to the Business” and other words of similar import shall be deemed to mean “relating to the operation of the Business as conducted as of the date hereof.” Except as otherwise provided herein, references to Articles, Sections, clauses, subclauses, subparagraphs, Schedules, Exhibits, Appendices and the Disclosure Schedule herein are references to Articles, Sections, clauses, subclauses, subparagraphs, Schedules, Appendices, Exhibits and the Disclosure Schedule of this Agreement. Any reference herein to any Law (or any provision thereof) shall include such Law (or any provision thereof) and any rule or regulation promulgated thereunder, in each case, including any successor thereto, and as it may be amended, modified or supplemented from time to time. Any reference herein to “dollars” or “\$” means United States dollars.



**Section 9.15 Computation of Time.** In computing any period of time prescribed by or allowed with respect to any provision of this Agreement that relates to Sellers or the Chapter 11 Cases, the provisions of rule 9006(a) of the Federal Rules of Bankruptcy Procedure shall apply.

**Section 9.16 Mutual Drafting.** Each of the Parties has participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

**Section 9.17 Personal Liability.** This Agreement shall not create or be deemed to create or permit any personal liability or obligation on the part of any direct or indirect stockholder of the Sellers or the Buyers or any officer, director, employee, Representative or investor of any Party hereto.

**Section 9.18 Headings; Table of Contents.** The Section headings and the table of contents contained in this Agreement and the Disclosure Schedule are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

**Section 9.19 Counterparts; Facsimile and Email Signatures.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. This Agreement or any counterpart may be executed and delivered by facsimile or email with scan attachment copies, each of which shall be deemed an original.

**Section 9.20 Action by Sellers.** CBC shall be entitled to act on behalf of each Seller for any action required or permitted to be taken by any Seller under this Agreement.

[Signature Pages Follow.]

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

**SELLERS:**

**CBC RESTAURANT CORP.**

By: \_\_\_\_\_  
Name:  
Title:

**CBC CARDCO, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**CORNER BAKERY HOLDING  
COMPANY**

By: \_\_\_\_\_  
Name:  
Title:

**BUYER:**

**SSCP RESTAURANT INVESTORS, LLC**

By

\_\_\_\_\_  
Name: Dan Patel  
Title: Vice President and  
Chief Financial Officer

*[Signature Pages to Asset Purchase Agreement]*

**Schedule 2.6(d)**

**Transferred Contracts List**

**Executory Contracts**

1. Franchise Agreement between CBC Restaurant Corp. and Bakery Ventures.
2. Franchise Agreement between CBC Restaurant Corp. and C&L Café.
3. Franchise Agreement between CBC Restaurant Corp. and Cafe Foods.
4. Franchise Agreement between CBC Restaurant Corp. and CB Rest Boca, LLC.
5. Franchise Agreement between CBC Restaurant Corp. and CB Rest Tampa, LLC.
6. Franchise Agreement between CBC Restaurant Corp. and CBC Oklahoma.
7. Franchise Agreement between CBC Restaurant Corp. and Central VA.
8. Franchise Agreement between CBC Restaurant Corp. and Cornerstone.
9. Franchise Agreement between CBC Restaurant Corp. and Cutter Group.
10. Franchise Agreement between CBC Restaurant Corp. and FEAST California.
11. Franchise Agreement between CBC Restaurant Corp. and Golden State.
12. Franchise Agreement between CBC Restaurant Corp. and MX Restaurants.
13. Franchise Agreement between CBC Restaurant Corp. and Neo Fournio.
14. Franchise Agreement between CBC Restaurant Corp. and Northwest Corner, LLC.
15. Franchise Agreement between CBC Restaurant Corp. and PlentiCo Gemini, LLC.
16. Franchise Agreement between CBC Restaurant Corp. and RKO.
17. Executory Contract between CBC Restaurant Corp. and ROSNET.
18. Franchise Agreement between CBC Restaurant Corp. and Silver State.

**Real Estate**

1. Unexpired Lease for Store known as Preston 544, Store No. 59, leased from West Preston Park Partners Ltd.
2. Unexpired Lease for Store known as Southern Building, Store No. 99, leased from 270, LLC.
3. Unexpired Lease for Store known as Harvard & Main, Store No. 112, leased from The Irvine Company LLC.
4. Unexpired Lease for Store known as Gaithersburg, Store No. 120, leased from Washingtonian Associates, L.C.
5. Unexpired Lease for Store known as Black Stone, Store No. 127, leased from Summit Hospitality 140, LLC.
6. Unexpired Lease for Store known as Irvine Marketplace, Store No. 136, leased from Irvine Market Place II, LLC.
7. Unexpired Lease for Store known as Colt & Campbell, Store No. 178, leased from Pavillion North, Ltd.

8. Unexpired Lease for Store known as Plaza of Americas, Store No. 201, leased from Pota JV, LLC.
9. Unexpired Lease for Store known as Pasadena, Store No. 202, leased from MGP X-A Shops on Lake, LLC.
10. Unexpired Lease for Store known as Thousand Oaks, Store No. 207, leased from Dollinger-Westlake Associates.
11. Unexpired Lease for Store known as Store known as Encino, Store No. 210, leased from Neram LLC.
12. Unexpired Lease for Store known as Rancho Cucamonga, Store No. 214, leased from Rancho Mall, LLC.
13. Unexpired Lease for Store known as Anaheim Hills, Store No. 232, leased from Canyon Plaza, LLC.
14. Unexpired Lease for Store known as Highland Village, Store No. 236, leased from MP Shops at Highland Village LLC.
15. Unexpired Lease for Store known as Arboretum, Store No. 268, leased from GF-ARB C, Ltd.
16. Unexpired Lease for Store known as Northridge, Store No. 284, leased from GLE-III, LLC (Kimco).
17. Unexpired Lease for Store known as Stone Oak, Store No. 306, leased from Mercado Partners II Limited.
18. Unexpired Lease for Store known as The Quarry, Store No. 307, leased from AAT Alamo Quarry, LLC (American Assets Trust Mgmt).

**Schedule 2.12**

**Potential Contracts Schedule**

**Executory Contracts**

1. Franchise Agreement between CBC Restaurant Corp. and Half Baked, LLC.
2. Executory Contract with 8x8 Inc.
3. Equipment Lease with Airgas National Carbonation.
4. Equipment Lease with Airgas, Inc Dba Airgas USA LLC.
5. Equipment Lease with Better Beverages Inc.
6. Executory Contract with Bewleys North America.
7. Executory Contract with Coca-Cola Atlanta.
8. Executory Contract with Constellation New Energy, Inc.
9. Executory Contract with Dinoa.
10. Executory Contract with Door Dash Inc.
11. Executory Contract with Ecolab Food Safety Specialties, Inc.
12. Executory Contract with Exchange Street Technologies, Inc d/b/a The Marketing Exchange.
13. Executory Contract with Favor Inc.
14. Executory Contract with Fishbowl Inc.
15. Equipment Lease with Giant CO2 Inc.
16. Executory Contract with H5 Colo Associates LLC.
17. Executory Contract with Hotschedules, Red Book Solutions.
18. Executory Contract and Equipment Lease with Loomis Armored Us, LLC.
19. Executory Contract with Microsoft.
20. Executory Contract with Microstrategy Services Corp.
21. Executory Contract with Monkey Media Software.
22. Executory Contract with Nuco2 LLC.
23. Executory Contract with OLO.
24. Executory Contract with Property Works.
25. Equipment Lease with Roberts Oxygen Co.
26. Executory Contract with Service Management Group Inc.
27. Executory Contract with Stanley Convergent Security Solutions.
28. Executory Contract with Steritech.
29. Executory Contract with Sysco Central Texas Inc.
30. Executory Contract with Sysco East Wisconsin.
31. Executory Contract with Sysco Eastern Maryland.
32. Executory Contract with Sysco Food Services Dallas.
33. Executory Contract with Sysco Food Services of La.

34. Executory Contract with Sysco Food Services of Atlanta LLC.
35. Executory Contract with Sysco Kansas City Inc.
36. Executory Contract with Sysco South Florida Inc.
37. Executory Contract with Transworld Advertising Inc.
38. Executory Contract with Verifone.
39. Executory Contract with Verizon Wireless.
40. Executory Contract with Xenial Inc.

Real Estate

1. Unexpired Lease for Store known as Oak Brook, Store No. 53, leased from 130 North Bedford Road Mount Kisco Corp. (Brinker).
2. Unexpired Lease for Store known as Buckhead, Store No. 76, leased from Maggiano's Holding Corporation.
3. Unexpired Lease for Store known as Schaumburg, Store No. 78, leased from Maggiano's Inc.
4. Unexpired Lease for Store known as Galleria, Store No. 91, leased from GMV (Mall) Owner LLC.
5. Unexpired Lease for Store known as Paramount, Store No. 94, leased from El Centro College (Dallas County Community College District).
6. Unexpired Lease for Store known as NorthPark, Store No. 108, leased from Maggiano's Texas, Inc.
7. Unexpired Lease for Store known as Southlake Town Square, Store No. 109, leased from Town Square Ventures, LP.
8. Unexpired Lease for Store known as Michigan Wacker, Store No. 160, leased from AG-OCG 360 North Michigan Retail Owner, L.L.C.
9. Unexpired Lease for Store known as Goodman Theater, Store No. 170, leased from Goodman/Friedman LLC.
10. Unexpired Lease for Store known as Macarthur Park, Store No. 173, leased from MacArthur Park, LP.
11. Unexpired Lease for Store known as Frisco, Store No. 174, leased from BRE Retail Residual Owner 1 LLC (Brixmor).
12. Unexpired Lease for Store known as Arlington Heights, Store No. 175, leased from AmCap Northpoint II LLC.
13. Unexpired Lease for Store known as Skokie, Store No. 181, leased from DDRTC Village Crossing, LLC.
14. Unexpired Lease for Store known as Arlington, Store No. 184, leased from SWC Arbrook/157 Ltd.
15. Unexpired Lease for Store known as 8th & Figueroa, Store No. 185, leased from CPF 801 Tower LLC (Transwestern).
16. Unexpired Lease for Store known as La Grange, Store No. 188, leased from SDCO La Grange Crossing, Inc.

17. Unexpired Lease for Store known as Glenview South, Store No. 189, leased from Butera Center Management, Inc.
18. Unexpired Lease for Store known as Westwood, Store No. 198, leased from Duesenberg Investment Company.
19. Unexpired Lease for Store known as Geneva, Store No. 199, leased from LPF Geneva Commons, LLC.
20. Unexpired Lease for Store known as Manhattan Beach, Store No. 206, leased from RREEF America REIT II Corp. BBB.
21. Unexpired Lease for Store known as Valencia, Store No. 208, leased from Regency Centers, L.P.
22. Unexpired Lease for Store known as Huntington Beach, Store No. 209, leased from Bella Terra Associates, LLC.
23. Unexpired Lease for Store known as Brea, Store No. 211, leased from Bella Terra Associates, LLC.
24. Unexpired Lease for Store known as Simi Valley, Store No. 217, leased from Bayside SVTC, LLC (Festival Management).
25. Unexpired Lease for Store known as Laguna Niguel, Store No. 219, leased from Laguna Niguel Investors No. 1.
26. Unexpired Lease for Store known as Lakewood, Store No. 224, leased from Lakewood Galleria Owners, LLC.
27. Unexpired Lease for Store known as Fountain Valley, Store No. 228, leased from DS Fountain Valley LP.
28. Unexpired Lease for Store known as Lake Forest, Store No. 230, leased from Orchard Lake Forest CA LP.
29. Unexpired Lease for Store known as Hastings Ranch, Store No. 233, leased from FR Hastings Ranch, LLC (Federal Realty Investment Trust).
30. Unexpired Lease for Store known as City Place, Store No. 235, leased from Nationwide Theatres West Flagler, LLC.
31. Unexpired Lease for Store known as Glendora, Store No. 238, leased from 1301 East Gladstone Street Investors LLC (Vestar).
32. Unexpired Lease for Store known as Redondo Beach, Store No. 243, leased from Riviera Pacific Center, LLC.
33. Unexpired Lease for Store known as Prestonwood, Store No. 244, leased from Riviera Pacific Center, LLC.
34. Unexpired Lease for Store known as Cantera, Store No. 246, leased from SCN Investments, LLC 1015 Dundee.
35. Unexpired Lease for Store known as La Habra, Store No. 251, leased from LA Retail 1 LLC (Zurich).
36. Unexpired Lease for Store known as Oak Lawn, Store No. 253, leased from Shops at Cicero 13 A, LP, Shops at Cicero 13 B, LLC and Shops at Cicero 13 C, LLC.
37. Unexpired Lease for Store known as Chino Hills, Store No. 254, leased from YAH Investments, LLC.



38. Unexpired Lease for Store known as Las Colinas, Store No. 258, leased from Greenway - Restaurant Complex Partners, L.P. (Vector Realty).
39. Unexpired Lease for Store known as Round Rock, Store No. 270, leased from Regency Centers, L.P.
40. Unexpired Lease for Store known as Redlands, Store No. 274, leased from Orange Street Plaza, LLC.
41. Unexpired Lease for Store known as Fair Oaks, Store No. 283, leased from Pender, L.L.C.
42. Unexpired Lease for Store known as Hacienda Heights, Store No. 292, leased from Pacific Castle Colima, LP and Master K. Investment, LLC.
43. Unexpired Lease for Store known as One California, Store No. 293, leased from CNI One Cal Plaza Owner, LLC (Colony Northstar).
44. Unexpired Lease for Store known as King of Prussia, Store No. 298, leased from Maggiano's Holding Corporation (King of Prussia).
45. Unexpired Lease for Store known as Horsham, Store No. 300, leased from Horsham Realty Partners, L.P. and Garden Fair Realty Associates.
46. Unexpired Lease for Store known as Bala Cynwyd, Store No. 301, leased from Federal Realty Investment Trust.
47. Unexpired Lease for Store known as Marquette, Store No. 74, leased from John D. and Catherine T. MacArthur Foundation.
48. Unexpired Lease for Store known as Westlake Crossing, Store No. 86, leased from Montgomery Mall Owner LLC (Westfield).
49. Unexpired Lease for Store known as National Press (DC), Store No. 96, leased from Wilson NPB LLC529 (Columbia Property Trust).
50. Unexpired Lease for Store known as Hinsdale, Store No. 97, leased from Garfield I, LLC.
51. Unexpired Lease for Store known as South La Salle, Store No. 156, leased from SOT 120 S LaSalle, LLC.
52. Unexpired Lease for Store known as Washington & Wells, Store No. 167, leased from Wells-Washington, L.L.C.
53. Unexpired Lease for Store known as Burbank, Store No. 227, leased from CCDP Grinnell, LLC.
54. Unexpired Lease for Store known as Mission Valley, Store No. 237, leased from Mission Valley Shoppingtown LLC.
55. Unexpired Lease for Store known as S. Coast Plaza Village, Store No. 241, leased from South Coast Plaza.
56. Unexpired Lease for Store known as Beverly Connections, Store No. 249, leased from DK Connections, LLC (Jones Lang LaSalle).
57. Unexpired Lease for Store known as 28th & Market, Store No. 204, leased from Wexford-UCSC 3737, LLC.

**EXHIBIT A**

**Form of Bill of Sale**

[See attached.]

**EXHIBIT B**

**Form of Assignment and Assumption Agreement**

[See attached.]

**EXHIBIT C**

**Form of Intellectual Property Assignment Agreement**

[See attached.]

**Exhibit B**

**TRANSITION SERVICES AGREEMENT**

## TRANSITION SERVICES AGREEMENT

This Transition Services Agreement (this “Agreement”) is made and entered into as of June \_\_\_, 2023, by and among SSCP Restaurant Investors, LLC, a Delaware limited liability company (together with its successors and assigns, “Buyer”), and CBC Restaurant Corp., a Delaware corporation (“CBC”), Corner Bakery Holding Company, a Delaware corporation (“Holdco”), and CBC Cardco, Inc., a Florida corporation (“Cardco,” and with CBC and Holdco, the “Sellers”), in connection with, and as an essential component of, the transactions contemplated by the Asset Purchase Agreement dated as of June \_\_\_, 2023 by and among Buyer and Sellers (the “Asset Purchase Agreement”). The “Effective Date” of this Agreement shall be the Closing Date of the Asset Purchase Agreement. All capitalized terms used herein and not otherwise defined have the meanings set forth in the Asset Purchase Agreement.

**WHEREAS**, prior to the Closing under the Asset Purchase Agreement, Sellers owned, operated, and franchised fast-casual restaurants serving breakfast, lunch, and dinner under the Corner Bakery brand.

**WHEREAS**, the Asset Purchase Agreement and this Agreement were approved by Order of the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) that was entered in the Sellers’ Chapter 11 cases on or about June \_\_\_, 2023 (the “Sale Order”). As a consequence, pursuant to the Sale Order, Sellers have (i) assumed and assigned to Buyer the unexpired leases of nonresidential real property and certain other executory contracts and unexpired leases (the “Transferred Contracts”) set forth on Schedule 2.6(d) to the Asset Purchase Agreement (the “Transferred Contract List”) and (ii) designated the unexpired leases of nonresidential real property and certain other executory contracts and unexpired leases as Potential Contracts that the Sellers may not reject or otherwise terminate during the 90-day Contract Review Period as set forth on Schedule 2.12 to the Asset Purchase Agreement (the “Potential Contracts Schedule”).

**WHEREAS**, pursuant to Section 2.12(a)-(b) of the Asset Purchase Agreement, and in compliance with and subject to the terms of the Designation Rights set forth in the Sale Order, during the Contract Review Period, the Buyer may deliver written notice (each, a “Designation Notice”) to the Debtors designating any Potential Contract not previously assumed and assigned to the Buyer or rejected for either: (a) assumption and assignment to the Buyer or its designee, or (b) rejection, following which the Debtors shall file a notice on the docket in the above-captioned case (each an “Assumption Notice” or “Rejection Notice,” as applicable and serve such notice via email and/or by overnight delivery upon the counterparty to such Potential Contract (each a “Designation Counterparty”), and its counsel, if known, of the Debtors’ intent to assume and assign or reject such Potential Contract, all as set forth more fully in the Designation Rights established pursuant to the Sale Order. Upon the Delivery of any Designation Notice, (a) the Contracts identified thereupon for assumption and assignment to Buyer or its designee shall stay as Potential

Contracts until they become Transferred Contracts pursuant to the Sale Order and (b) the Contracts identified thereupon as not for assignment to Buyer or its designee shall immediately cease to be Potential Contracts under this Agreement.

**WHEREAS**, the facilities, premises, and store locations with respect to unexpired leases of non-residential real property that constitute Potential Contracts (as existing from time to time) are referred to herein as the “Restaurants” and each individually as a “Restaurant”.

**WHEREAS**, each Restaurant is a casual-dining restaurant which operates (including by preparation and sale of food to the public) under the respective permits listed on **Schedule 1** (each a “Permit” and, collectively, the “Permits”) in the name of the applicable Seller, with such Permits broken out by Restaurant.

**WHEREAS**, Buyer and Sellers desire services to continue, without interruption, under the Potential Contracts and Permits as set forth herein.

**NOW, THEREFORE**, for good and valuable consideration as provided herein and in the Asset Purchase Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The “Term” shall commence on the Effective Date and shall terminate on the 90<sup>th</sup> day following the Effective Date; *provided*, that Buyer may terminate this agreement on August 31, 2023 upon written notice to Seller on or before August 10, 2023.

2. During the Term, the Sellers hereby appoint Buyer as their agent to assist with operation of the Restaurants under the Permits and Potential Contracts. Pursuant to its appointment as Sellers’ agent and subject to the following sentence, Buyer shall be entitled to take any and all action on behalf of Sellers hereunder, including opening of bank accounts to collect and to retain all revenues generated by the Restaurants during the Term (the “Revenues”) (which accounts shall be located at institutions designated as authorized depositories by the Office of the United States Trustee for the District of Delaware pursuant to the U.S. Trustee Chapter 11 Guidelines for the District Court of Delaware), and shall be responsible to third parties for and obligated to pay all costs, expenses, liabilities, and obligations of the Restaurants first arising during the Term to such third parties, including the insurance obligations of Sellers as set forth in Section 9, below (individually a “Liability” and collectively the “Liabilities”). For the avoidance of doubt, even if such Revenues are not sufficient to pay the Liabilities in full, Buyer shall pay all amounts equal to the difference of the sum of such costs, expenses, liabilities and obligations less such Revenues.

3. Buyer will timely pay all rent (including but not limited to base rent, taxes, and CAM charges) when due for each real property lease that is a Potential Contract and perform any obligations of Sellers first arising during the Term (and not including obligations to cure any

*[Signature Pages to Transition Services Agreement]*

breach by Sellers, subject to any obligations of Buyer in connection with Cure Claims under the Asset Purchase Agreement) under such real property lease from and after the Effective Date and until the date on which such Potential Contract is assumed and assigned to Buyer or its designee or the date on which such Potential Contract is rejected pursuant to a Rejection Order. Buyer shall make all such payments made directly to the Landlord in satisfaction of the obligations of the applicable Seller under the applicable Potential Contract. A landlord of a lease occupied by a Restaurant may enforce this Section 3 against Buyer as an intended third-party beneficiary hereof. Buyer will provide Seller with a monthly statement of all such rent payments, by Landlord and store location, and will provide supporting details upon request.

4. Buyer shall be obligated to pay any and all amounts arising or otherwise due under any Potential Contract (other than real property leases, which are governed by Section 3 above) and to perform any obligations of the Sellers under any such Potential Contract, in each case that arise during the period from and after Effective Date and continuing until either the date on which such Potential Contract is assumed and assigned to Buyer or its designee or the date on which such Potential Contract is rejected pursuant to a Rejection Order, as applicable, except to the extent such post-Closing amounts due are arising out of an intentional breach (other than the rejection of such Contract), willful misconduct or gross negligence by Sellers of or with respect to such Contract prior to the Rejection or Assignment Date. Any payments owed shall be made under the terms of the applicable Potential Contract as if Buyer were a party to such Potential Contract and shall be paid directly to the non-Seller party to such Potential Contract for the benefit of Sellers. A counterparty to a Potential Contract may enforce this Section 4 against Buyer as an intended third-party beneficiary hereof. Buyer will provide Seller with a monthly statement of all such payments, by counterparty, and will provide supporting details upon request.

5. Buyer may assign its obligations under Section 3 and Section 4 to one or more Affiliates of Buyer; provided, that such assignment shall not relieve Buyer of its obligations hereunder, and further provided that counterparties to Potential Contracts shall be entitled to enforce relevant provisions of this Agreement against the assignee(s).

6. Notwithstanding anything herein to the contrary, the Buyer shall directly pay or reimburse Sellers for any out-of-pocket costs, expenses, claims or liabilities incurred by Sellers in connection with the operation of such Potential Contracts during the Contract Review Period, including all professional fees incurred by Sellers for the support services described on **Schedule 2** and requested by Buyer in writing (including by email) or otherwise incurred at the written direction of Buyer in connection with post-Closing obligations under the Asset Purchase Agreement or in assisting the Buyer with the assumption or rejection of Potential Contracts, the resolution of Cure disputes, or in support of the Contract Review Period under Sections 2.6 or 2.12 of the Asset Purchase Agreement; *provided, however*, that Buyer shall not be responsible for fees and expenses of Sellers associated solely with the administration of the Chapter 11 Cases; *provided, further*, that (a) neither Seller nor Seller's professionals will have any obligation to



provide services to the Buyer under this Agreement for which Buyer has not agreed to reimburse the Sellers, (b) Buyer shall not be responsible for any out-of-pocket costs or expenses (other than professional fees, including fees for claim administration services provided by KCC, LLC) in excess of \$5,000 individually unless the same has been approved by Buyer in writing, and (c) Buyer shall not be responsible for professional fees unless such fees are for services which have been pre-approved in writing by Buyer (with Buyer's approval not to be unreasonably withheld). Before requesting any service, Buyer may request an estimated cost from Seller and any estimate provided shall be made in good faith. Sellers will remit payment of such fees and expenses within five business days following entry of a Certificate of No Objection or an Order allowing such fees and expenses as provided in the *Order (I) Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals and (II) Granting Related Relief* entered on April 17, 2023 [Dkt. No. 322] or other Order of the Bankruptcy Court. Buyer shall pay directly to the United States Trustee an amount equal to the quarterly United States Trustee fees incurred by Sellers in connection with the Chapter 11 Cases for the period from the Closing Date through the date on which Potential Contract has been either assumed and assigned or rejected.

7. Buyer and Sellers covenant and agree as follows, which covenants and agreements shall survive the termination of this Agreement:

- (a) Sellers shall have no duties or responsibilities under this Agreement other than those specified herein and no implied obligations shall be read into this Agreement except for the implied duty of good faith and fair dealing; and further provided that Sellers shall perform their obligations hereunder in a reasonably prudent manner;
- (b) Other than with respect to the gross negligence, fraud or willful misconduct of the Seller Indemnified Parties (as defined below), Buyer agrees to indemnify, defend and hold harmless and discharges Sellers and their independent board member, chief restructuring officer, attorneys, agents and representatives ("Seller Indemnified Parties") from and against any and all claims, actions, demands, judgments, losses, costs, expenses, damages and liabilities (including, without limitation, attorneys' fees and other expenses of litigation) arising out of or resulting from such parties' performance of Sellers' obligations under this Agreement; and
- (c) During the Term, except as provided below, all purchases and services rendered with respect to the operation of the Restaurants shall be in the name of the Buyer, including, without limitation, all utility service and all accounts for the purchase of inventory.

8. Sellers shall, at the sole cost and expense of Buyer, use commercially reasonable efforts to maintain and/or keep all Permits valid. Without limiting any other term of this Agreement, Revenues will be used to pay for Buyer's costs and expenses in operating the Restaurants pursuant to this Agreement; provided, however, if such Revenues are not sufficient to pay for such costs, expenses, and liabilities, Buyer shall pay the difference.

9. During the full Term hereof, Buyer shall keep in full force and effect the insurance policies set forth on **Schedule 3**. Buyer represents that such insurance policies are in full force and effect as of the Effective Date and that, without the prior written consent of Sellers (not to be unreasonably withheld, conditioned or delayed) Buyer will not adversely amend, terminate, or allow to expire any such insurance policy. Buyer will maintain such worker's compensation insurance as required by law. During the full Term hereof, Sellers shall: (i) to the extent that Sellers' obligations under this Agreement are insurable, maintain commercial general liability insurance for the benefit of Buyer insuring Sellers' obligations under this Agreement, in accordance with Sellers' standard corporate insurance policies, processes and procedures (all such costs with respect to such insurance (including any premiums) to be paid for by Buyer, except to the extent that net Revenues for the Restaurants are sufficient to pay for such costs with respect to the Restaurants)

10. Buyer will provide Sellers with cooperation and continued access to personnel and books and records, during normal business hours upon reasonable advance notice and without any obligation for Buyer to disrupt its normal business operations, in order to make pre closing payments, including allocation of expenses between pre- and post-closing periods, and filing of Monthly Operating Reports and other required reports.

11. This Agreement is made and entered into in connection with, and as an essential component of, the transactions contemplated by the Asset Purchase Agreement, and the provisions of the Asset Purchase Agreement are incorporated herein by reference. In the event of any conflict between this Agreement and the Asset Purchase Agreement, the Asset Purchase Agreement will control. This writing otherwise contains the entire agreement between the parties hereto with respect to the subject matter of this Agreement, and all negotiations and prior understandings are merged herein. No modification or amendments to this Agreement shall be effective unless made in writing and signed by each party hereto.

12. Time is of the essence in this Agreement. Buyer agrees, from and after its delivery of a Designation Notice indicating the assumption of the related Potential Contracts, to work diligently to secure all necessary authorizations, consents and approvals to transfer the Permits at the Restaurants in its name, and Sellers agree to cooperate in good faith with Buyer.

13. Nothing contained herein shall be construed as to constitute the relationship hereby created as an employment, an agency, partnership, or a joint venture, Sellers having no authority to make any binding agreement or commitment on behalf of Buyer.

14. The provisions of Section 9.5 (Amendments and Waivers), Section 9.6 (Succession and Assignment), Section 9.7 (Notices), Section 9.8 (Governing Law; Jurisdiction); Section 9.10 (Severability), Section 9.11 (No Third Party Beneficiaries), except as otherwise expressly stated herein, Section 9.16 (Mutual Drafting), and Section 9.19 (Counterparts; Facsimile and Email Signatures) of the Asset Purchase Agreement shall govern the interpretation and enforcement of

this Agreement as if fully set forth herein, *mutatis mutandis*.

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

**SELLERS:**

**CBC RESTAURANT CORP.**

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

Name:

Title:

**CBC CARDCO, INC.**

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

Name:

Title:

**CORNER BAKERY HOLDING  
COMPANY**

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

Name:

Title:

**BUYER:**

**SSCP RESTAURANT INVESTORS, LLC**

By \_\_\_\_\_

Name: Dan Patel

Title: Vice President and  
Chief Financial Officer

**SCHEDULE 1 – PERMITS**

## **SCHEDULE 2 – PROFESSIONAL SERVICES**

### **B120 Asset Analysis and Recovery. Identification and review of potential assets including causes of action and non-litigation recoveries.**

- Sellers will promptly respond to all reasonable requests from Buyer regarding their identification and review of potential causes of action related to the Purchased Assets consisting of causes of action, lawsuits, judgments, claims, refunds, rights of recovery, rights of set-off, recoupment, counterclaims, defenses, demands, warranty claims, rights to indemnification, contribution, advancement of expenses or reimbursement, or similar rights of any Seller (at any time or in any manner arising or existing, whether choate or inchoate, known or unknown, now existing or hereafter acquired, contingent or noncontingent), including the Purchased Avoidance Actions.

### **B130 Asset Disposition. Sales, abandonment and transaction work related to asset disposition.**

- Sellers will promptly respond to all reasonable requests for information from Buyer regarding the Purchased Assets and take any further actions necessary or reasonably required to carry out the purposes of the Asset Purchase Agreement, including pursuant to Sections 6.1 (Cooperation), Section 6.2 thereof (Further Assurances), and Section 6.11 (Name Change)

### **B185 Assumption/Rejection of Leases and Contracts. Analysis of leases and executory contracts and preparation of motions specifically to assume or reject.**

- Sellers will promptly respond to all reasonable requests from Buyer for information regarding Potential Contracts, the amounts due thereunder, or historical negotiations between the Debtors and Contract Counterparties regarding modifications to, or the resolution of disputes regarding, Potential Contracts.
- Sellers will promptly respond to all requests from Buyer for assistance in responding to Assignment Objections or Adequate Assurance and Cure Objections, including reviewing, finalizing, and filing of any responsive pleadings and appearances at any hearings thereon.
- Sellers will process all Designation Notices provided by Buyer by preparing and filing Assumption Notices or Rejection Notices, as applicable, and serving such notices via email and/or by overnight delivery upon the Designation Counterparty and its counsel.
- Sellers, will upon Buyer's request, prepare and file Rejections Orders, as required, under Certificate of No Objection or Certification of Counsel.
- If an objection to a Rejection Notice is timely and properly filed and served, Sellers will

provide any assistance requested by Buyer in writing with respect to any required reply and will review, finalize, and file same and appear at any hearing thereon

- Sellers will prepare and file Assumption Orders, as requested by Buyer, under Certificate or NO Objection or Certification of Counsel
- If an objection to an Assumption Notice is timely and properly filed and served, Sellers will provide any assistance requested by Buyers with respect to any required reply and will review, finalize, and file same and appear at any hearing thereon.
- Sellers will provide to Buyer any other assistance necessary under Section 2.6 or 2.12 of the Asset Purchase Agreement, as requested in writing by Buyer.

**B310 Claims Administration and Objections. Specific claim inquiries; bar date motions; analyses, objections and allowances of claims.**

- Sellers will promptly respond to all requests from Buyers regarding their analysis of claims asserted against the estate and their identification, review, and prosecution of potential claim objections.
- If requested by Buyer, Sellers will prepare, file, and seek approval of an administrative claims bar date.

**SCHEDULE 3 – INSURANCE POLICIES**