

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	Chapter 11
)	
NPC INTERNATIONAL, INC., <i>et al.</i> , ¹)	Case No. 20-33353 (DRJ)
)	
)	(Jointly Administered)
)	
Debtors.)	Re: Docket No. 994

**PIZZA HUT, LLC’S RESERVATION OF RIGHTS WITH RESPECT TO THE
DEBTORS’ STALKING HORSE MOTION AND ASSET PURCHASE AGREEMENT**

Pizza Hut, LLC (“Pizza Hut”), by its undersigned attorneys, hereby files this reservation of rights (this “Reservation of Rights”) regarding the *Debtors’ Emergency Motion for Entry of an Order (I) Approving the Debtors’ Selection of a Stalking Horse Bidder, (II) Approving Bid Protections in Connection Therewith, and (III) Granting Related Relief* [Docket No. 994] (the “Debtors’ Stalking Horse Motion”) and the related asset purchase agreement, attached as Exhibit B to the Debtors’ Stalking Horse Motion (the “Stalking Horse APA”).² In support of this Reservation of Rights, Pizza Hut respectfully states as follows:

INTRODUCTION

1. As a general matter, Pizza Hut is pleased with the strong interest that multiple individual bidders have exhibited in the Debtors’ Pizza Hut portfolio. This competitive marketing

¹ The debtors in the above-referenced chapter 11 cases (the “Debtors”), along with the last four digits of each Debtor’s federal tax identification number, are NPC International, Inc. (7298); NPC Restaurant Holdings I LLC (0595); NPC Restaurant Holdings II LLC (0595); NPC Holdings, Inc. (6451); NPC International Holdings, LLC (8234); NPC Restaurant Holdings, LLC (9045); NPC Operating Company B, Inc. (6498); and NPC Quality Burgers, Inc. (6457). The Debtors’ corporate headquarters and service address is 4200 W. 115th Street, Suite 200, Leawood, KS 66211.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Debtors’ Stalking Horse Motion or the Stalking Horse APA, as applicable.

process has validated Pizza Hut’s broader U.S. transformation strategy and presents an exciting opportunity for the Debtors’ Pizza Hut assets to improve in the hands of a qualified, committed operator. To that end, Pizza Hut has been working closely and quickly with all potential bidders to evaluate, negotiate, and finalize the relevant conditions of consent required prior to the sale of the Debtors’ Pizza Hut assets.

2. Pizza Hut is currently engaged in productive discussions with the proposed Stalking Horse Bidder regarding a consent agreement, a necessary step for its bid to move forward. If Pizza Hut and the proposed Stalking Horse Bidder reach an agreement, and if the proposed Stalking Horse Bidder is the winning bidder for the Debtors’ Pizza Hut assets, Pizza Hut looks forward to welcoming the proposed Stalking Horse Bidder as a new Pizza Hut franchisee.

RESERVATION OF RIGHTS

3. The current franchisor-franchisee relationship between Pizza Hut and the Debtors is dictated and informed by certain governing documents (the “Governing Documents”).³ The Governing Documents each contain provisions providing Pizza Hut with certain broad rights regarding transfers of interests in the Debtors and their affiliates, transfers of the Debtors’ assets, or transfers of the Governing Documents (collectively, “Pizza Hut’s Rights”).⁴ The Debtors’

³ The Governing Documents include that certain Consent and Amendment Agreement (the “CAA”), the 2003 Territory Franchise Agreement (the “TFA”), the 2003 Location Franchise Agreement (the “2003 LFA”), the 2016 Location Franchise Agreement (the “2016 LFA,” and together with the TFA and the 2003 LFA, the “NPC Franchise Agreements”), the transformation amendment (the “Transformation Amendment”), and any other applicable agreements that govern the entirety of the relationship between Pizza Hut and the Debtors.

⁴ For example, the CAA requires the prior written consent of Pizza Hut for “(A) any change in [the Debtors’] ownership of (or any proposed transfer of) the NPC Franchise Agreements or (B) *any proposed transfer of all or substantially all of the assets* reasonably necessary to conduct the business and other activities contemplated by the NPC Franchise Agreements in respect of the Pizza Hut system.” CAA, at § 3(j) (emphasis added). Moreover, the CAA defines “change of control” as, among other things, “the occurrence of *any direct or indirect sale, lease, exchange or other transfer*, in one transaction or a series of related transactions. . . of *all or substantially all of the assets* of [the Debtors]” to anyone other than the Debtors’ subsidiaries. CAA, at 3–4 (emphasis added).⁴ Any such change of control transaction is subject to “any right of first refusal, right of first offer or other similar restriction on transfer in favor of [Pizza Hut] or its Affiliates contained in any NPC Franchise Agreement or any other NPC/[Pizza Hut] Agreement . . .” *Id.* at § 3(b)(i)(A); *see also* CAA, Ex. D (enumerating Pizza Hut’s right

Stalking Horse Motion and Stalking Horse APA contemplate both a change in control and the transfer of substantially all of the Debtors' assets, thereby triggering Pizza Hut's Rights under the Governing Documents.

4. As such, the terms and provisions of any agreement to purchase the Pizza Hut assets is of paramount importance to Pizza Hut, especially with regard to the existence and preservation of Pizza Hut's Rights. At Pizza Hut's request, the Debtors have included the following paragraph in the proposed order attached as Exhibit A to the Debtors' Stalking Horse Motion (the "Order"), to preserve certain of Pizza Hut's Rights:

Notwithstanding anything contained in the Stalking Horse APA to the contrary, the franchisor-franchisee relationship between Pizza Hut LLC and its affiliates (collectively, "Pizza Hut"), on the one hand, and the Stalking Horse Bidder, on the other hand, shall be governed by the operative documents entered into between Pizza Hut and the Stalking Horse Bidder governing such relationship (the "PH Governing Documents"). In the event of any conflict between this Stalking Horse APA and the PH Governing Documents as it relates to the relationship between Pizza Hut and the Stalking Horse Bidder, the terms of the PH Governing Documents shall control.

Order, at ¶ 5 (the "Pizza Hut Carve Out"). To the extent the Pizza Hut Carve Out is included in the final version of the Order, this language resolves Pizza Hut's preliminary concerns regarding the preservation of its rights. However, the Pizza Hut Carve Out does not address all of Pizza Hut's existing concerns about the Stalking Horse APA.⁵ Additionally, there are certain provisions in the Stalking Horse APA that should be modified to specifically reflect Pizza Hut's Rights.⁶

of first offer); 2016 LFA, § 14.6 (enumerating Pizza Hut's right of first refusal); 2003 LFA, § 14.6 (same); TFA Articles XVI.G, XVIII.B (enumerating Pizza Hut's rights of first offer and first refusal).

⁵ One example of these concerns is Pizza Hut's request for an allocation of the proposed Stalking Horse Bidder's bid between the Pizza Hut and Wendy's assets. On several occasions, Pizza Hut has requested this information, and, as of the filing of this Reservation of Rights, Pizza Hut has not received the data requested.

⁶ A non-exclusive list of sections that should specifically reference Pizza Hut's Rights for clarification purposes are sections 2.02, 4.03, 4.07, 6.05, 7.02, and 10.04 of the Stalking Horse APA. Pizza Hut raises these issues in this Reservation of Rights to make clear to the proposed Stalking Horse Bidder, as well as any other bidders for the Debtors' Pizza Hut assets, that Pizza Hut's Rights exist and that certain provisions of the Stalking Horse APA

5. For the sake of clarity, Pizza Hut also reserves its consent rights related to a change of control, its rights of first refusal and first offer for changes of control or other transfers, and specifically reserves *all* of its rights provided by the Governing Documents. Additionally, Pizza Hut reserves its consent rights as well as its rights relating to assumption or assignment of the Governing Documents under section 365 of the Bankruptcy Code. Therefore, notwithstanding the Pizza Hut Carve Out, Pizza Hut expressly reserves and declines to waive its rights related to the Stalking Horse Motion, the Stalking Horse APA, a sale to another buyer or buyers, or other plan-related transactions.

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do not adequately reference Pizza Hut's Rights with sufficient specificity. Pizza Hut has previously apprised the Debtors of these issues, among others, in writing. Pizza Hut is willing to continue discussions with the Debtors and propose language to resolve these and any other clarification issues in the Stalking Horse APA.

WHEREFORE, in support of continuing productive discussions with the proposed Stalking Horse Bidder and other participants in this competitive auction process, Pizza Hut respectfully requests that the Court: (i) approve the inclusion of the Pizza Hut Carve Out in the final order approving the Debtors' Stalking Horse Motion; and (ii) grant Pizza Hut any such other and further relief as is just and proper.

Dated: November 12, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2020, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Charles R. Gibbs

Charles R. Gibbs