

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

<p><b>In re</b></p> <p><b>NPC INTERNATIONAL, INC.,</b> <i>et al.,</i></p> <p style="text-align: right;"><b>Debtors.<sup>1</sup></b></p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p><b>Chapter 11</b></p> <p><b>Case No. 20–33353 (DRJ)</b></p> <p><b>(Jointly Administered)</b></p> <p><b>Re: Docket Nos. 693, 1051, 1105, 1127, 1195</b></p>
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**NOTICE OF DESIGNATION OF SUCCESSFUL BIDS**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

On September 25, 2020, the Bankruptcy Court entered the *Order Establishing Bid Procedures Relating to the Sale of the Debtors’ Assets* [Docket No. 693] (the “**Bid Procedures Order**”).<sup>2</sup>

In accordance with the Bid Procedures Order, the Debtors accepted a stalking horse bid (the “**Stalking Horse Bid**”) submitted by Wend American Group LLC and Hut American Group LLC, which is led by Flynn Restaurant Group LP (collectively, the “**Stalking Horse Purchaser**”), for a WholeCo Sale Transaction (the “**Stalking Horse Transaction**”) as set forth in the asset purchase agreement with the Stalking Horse Bidder annexed as Exhibit B to the Stalking Horse Motion.<sup>3</sup> On November 14, 2020, the Bankruptcy Court entered the *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. 1051] (the “**Stalking Horse Order**”).

On November 23, 2020, the Debtors filed the *Notice of Cancellation of Auctions* [Docket No. 1127] cancelling the Wendy’s, Pizza Hut, and WholeCo Auctions.

On December 9, 2020, the Bankruptcy Court entered the *Agreed Mediation Order Appointing Judge Marvin Isgur as Mediator as to the Stalking Horse Bid and Wendy’s Franchisor Consent* [Docket No. 1195], and the Debtors, the Creditors’ Committee, the Stalking Horse Bidder,

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<sup>1</sup> The Debtors in these chapter 11 cases, 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.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Bid Procedures and the Bid Procedures Order, as applicable.

<sup>3</sup> “**Stalking Horse Motion**” means 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 Ad Hoc Priority/1L Group, and the Wendy's Franchisor (together, the "**Parties**") participated in a successful mediation pursuant to which the Parties consensually resolved certain outstanding issues with respect to the Stalking Horse Transaction and the rights of the Wendy's Franchisor (including contractual rights) with respect thereto (the "**Mediation**").

### **Successful Bids for the WholeCo Assets**

In accordance with the Bid Procedures and as a result of the Mediation, the Debtors hereby designate (i) the Stalking Horse Bidder and (ii) Wendy's International, LLC, together with a group of pre-qualified franchisees<sup>4</sup> (the "**Wendy's Purchaser**"), as Successful Bidders (and each of the Stalking Horse Purchaser and the Wendy's Purchaser, a "**Successful Bidder**") for substantially all of the WholeCo Assets pursuant to (x) that certain *Amended and Restated Asset Purchase Agreement*, dated as of January 7, 2021, by and among the Debtors and the Stalking Horse Purchaser annexed hereto as **Exhibit A** (the "**Amended Stalking Horse Purchase Agreement**"), and (y) that certain *Asset Purchase Agreement*, dated as of January 7, 2021 by and among NPC Quality Burgers, Inc. and the Wendy's Purchaser (the "**Wendy's Purchase Agreement**"), annexed hereto as **Exhibit B** (together with the Amended Stalking Horse Purchase Agreement, the "**Successful Bids**," and each a "**Successful Bid**").

Pursuant to the Amended Stalking Horse Purchase Agreement, the Stalking Horse Purchaser has agreed to purchase the Pizza Hut Assets and the Wendy's Assets in the Salt Lake City, Central Maryland, Baltimore North, and Baltimore South markets for a base purchase price of \$552,550,000, together with additional amounts enumerated at Section 3.01 of the Amended Stalking Horse Purchase Agreement. Pursuant to the Wendy's Purchase Agreement, the Wendy's Purchaser has agreed to purchase the Wendy's Kansas City Business, North Greensboro Business, South Greensboro Business, Raleigh Business and Pennsylvania Business (each as defined in the Wendy's Purchase Agreement) for a base purchase price of \$248,250,000, together with additional amounts enumerated at Section 3.01 of the Wendy's Purchase Agreement.

### **Sale Objection Deadline**

Objections (the "**Objections**") to consummation of the Sale Transactions<sup>5</sup>, if any, shall be filed with the Bankruptcy Court no later than **January 11, 2021 at 5:00 p.m. (CT)**. Objections that are timely filed with the Bankruptcy Court in accordance with the Bid Procedures Order and are not resolved prior to the Sale Hearing shall be argued at the Sale Hearing or such other time as set by the Bankruptcy Court. Parties that file Objections that are not resolved prior to the Sale Hearing must appear at the Sale Hearing, which may be adjourned or rescheduled in accordance with the Bid Procedures Order and in consultation with the Consultation Parties, and failure to appear may result in disallowance of the applicable Objection without further notice.

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<sup>4</sup> Specifically, Schmidt Family Restaurant Group and Superior Restaurant Group will each be assigned half of the 51 Wendy's restaurants in the Greensboro market, Delight Restaurant Group will be assigned 54 Wendy's restaurants in the Raleigh market, Legacy Restaurant Group will be assigned 35 Wendy's restaurants in the Kansas City market, and Yellow Cab Holdings will be assigned 54 restaurants in the Pennsylvania market.

<sup>5</sup> "**Sale Transactions**" means the Stalking Horse Transaction and the Debtors' sale transaction with the Wendy's Purchaser.

### **Sale Hearing**

The Sale Hearing shall be held electronically via video/telephone before the Bankruptcy Court before the Honorable David R. Jones on **January 15, 2021 at 9:00 a.m. (CT)**. If you wish to participate telephonically, you must use the Bankruptcy Court's teleconference system at **1-832-917-1510** and entering conference code **205691**. You may also join by videoconference by use of an internet connection, using the website **www.gotomeeting.com**, or by downloading the free GoToMeeting application. To connect, you should enter the meeting Code "**JudgeJones**" in the GoToMeeting app or click the link Judge Jones' home page on the Southern District of Texas website. Once connected, click the settings icon in the upper right corner and enter your name under the personal information setting. At such hearing, the Debtors will seek the entry of an order of the Bankruptcy Court approving and authorizing the sale to the Successful Bidders on the terms and conditions of the Successful Bids.

The Sale Hearing may be adjourned or rescheduled as ordered by the Bankruptcy Court, or by the Debtors in consultation with the Consultation Parties, but without further notice to creditors and parties in interest other than by announcement by Debtors of the adjourned date at the Sale Hearing.

The Debtors' presentation to the Bankruptcy Court for approval of the Successful Bids does not constitute the Debtors' acceptance of the Successful Bids. The Debtors shall be deemed to have accepted the Successful Bids only when the Successful Bids have been approved by order of the Court.

*[Remainder of page intentionally left blank]*

**Additional Information**

Copies of the Bid Procedures Order, the Bid Procedures, and the Stalking Horse Order may be obtained free of charge at the website dedicated to the Debtors' chapter 11 cases maintained by their claims and noticing agent, Epiq Corporate Restructuring, LLC, located at <https://dm.epiq11.com/case/npc/info>.

Dated: January 7, 2021  
Houston, Texas

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*Attorneys for Debtors and Debtors in  
Possession*

**Certificate of Service**

I hereby certify that on January 7, 2021, 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/ Alfredo R. Pérez  
Alfredo R. Pérez

**Exhibit A**

**Amended Stalking Horse Purchase Agreement**

**AMENDED AND RESTATED ASSET PURCHASE AGREEMENT**

dated as of January 7, 2021

by and between

**NPC International, Inc.,**

**NPC Quality Burgers, Inc.,**

**NPC Holdings, Inc.,**

**NPC International Holdings, LLC,**

**NPC Restaurant Holdings I, LLC,**

**NPC Restaurant Holdings II, LLC, and**

**NPC Restaurant Holdings, LLC, as Seller,**

and

**Hut American Group LLC and Wend American Group LLC, as Buyer**

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SCHEDULES

Schedule A	Debtors
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This AMENDED AND RESTATED ASSET PURCHASE AGREEMENT, dated as of January 7, 2021 (the “**Agreement Date**”), is made by and between NPC Quality Burgers, Inc., a Kansas corporation, NPC International, Inc., a Kansas corporation, NPC Restaurant Holdings, LLC, a Delaware limited liability company, NPC International Holdings, LLC, a Delaware limited liability company, NPC Holdings, Inc., a Delaware corporation, NPC Restaurant Holdings I LLC, a Delaware limited liability company, and NPC Restaurant Holdings II, LLC, a Delaware limited liability company (individually and collectively, “**Seller**”), and Hut American Group LLC and Wend American Group LLC, each a Delaware limited liability company (individually and collectively, “**Buyer**” and, together with Seller, the “**Parties**”).

### PRELIMINARY STATEMENTS

A. Seller and Buyer entered into that certain Asset Purchase Agreement dated as of November 5, 2020 (the “**Original Agreement**”) and the Bankruptcy Court approved the Original Agreement by entry of an order on November 14, 2020. The Parties intend that this Agreement shall supersede and replace in its entirety the Original Agreement.

B. Seller and certain of its Affiliates are debtors-in-possession under title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the “**Bankruptcy Code**”) and, on July 1, 2020 (the “**Petition Date**”), filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas (the “**Bankruptcy Court**” and, such cases, the “**Bankruptcy Cases**”).

C. Seller is engaged in, and hold assets and Liabilities relating to, the Business.

D. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, all of the Transferred Assets, and Buyer desires to assume the Assumed Liabilities, in a sale authorized by the Bankruptcy Court pursuant to, *inter alia*, Sections 105, 363, and 365 of the Bankruptcy Code, in accordance with the other applicable provisions of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure and the local rules for the Bankruptcy Court, all on the terms and subject to the conditions set forth in this Agreement.

E. The board of directors (or similar governing body) of Seller has determined that it is advisable and in the best interests of Seller and its constituencies to enter into this Agreement and to consummate the transactions provided for herein, subject to entry of the Sale Order.

F. Simultaneously with the execution of this Agreement, NPC Quality Burgers, Inc., is entering into an asset purchase agreement with Wendy’s International LLC (the “**Wendy’s APA**”).

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

## ARTICLE I

### DEFINITIONS

Section 1.01. Certain Defined Terms. Capitalized terms used in this Agreement have the meanings specified in Exhibit A.

## ARTICLE II

### PURCHASE AND SALE; CLOSING

Section 2.01. Purchase and Sale of Transferred Assets.

(a) Transferred Assets. On the terms and subject to the conditions set forth in this Agreement and subject to the exclusions set forth in Section 2.01(b) and Section 2.02, at the Closing, Seller shall sell, convey, assign, transfer and deliver to Buyer, and Buyer shall purchase, acquire and accept from Seller, all of Seller's right, title and interest in, to and under the following assets, properties and rights, as the same shall exist immediately prior to the Closing (collectively, the "**Transferred Assets**");

(i) all owned real property listed on Schedule 2.01(a)(i) (the "**Transferred Owned Real Property**") held by Seller, together with (to the extent of Seller's interest therein) all improvements, facilities, fixtures and appurtenances thereto and all rights in respect thereof and all servitudes, easements, privileges, rights-of-way, other surface use agreements and water use and rights agreements related thereto;

(ii) to the maximum extent permitted by the Bankruptcy Code and applicable Law, the leasehold interests under the real property leases, subleases or licenses listed on Schedule 2.01(a)(ii) (which schedule may be modified from time to time after the date hereof in accordance with Section 2.04) held by Seller (the "**Transferred Leased Real Property**") and all rights in respect thereof (including all options and rights of first offer and/or refusal) and all tenements, hereditaments, appurtenances and other property rights appertaining thereto (such leases, subleases or licenses, the "**Transferred Leases**");

(iii) to the maximum extent permitted by the Bankruptcy Code and applicable Law, all Contracts set forth on Schedule 2.01(a)(iii) (which Schedule may be modified from time to time after the date hereof in accordance with Section 2.04) (collectively with the Transferred Leases, and in each case, all rights under any such Transferred Leases and Contracts, the "**Transferred Contracts**");

(iv) to the maximum extent permitted by the Bankruptcy Code and applicable Law, all Permits, including Environmental Permits and Liquor Licenses, set forth on Schedule 2.01(a)(iv) (the "**Transferred Permits**") (for the avoidance of doubt, solely to the extent the applicable Government Authority consents to or otherwise approves the assignment or transfer of the applicable Permit), other than alcohol permits (including Liquor Licenses) in jurisdictions where the Law does not permit Buyer to take title to such Permits until it obtains the requisite approvals from the pertinent Government Authority, in which case Seller shall transfer, assign,

convey and deliver to Buyer such permits in each instance upon issuance of the requisite approvals from the relevant Government Authority at or following the Closing, as applicable;

(v) all Cash deposits and non-Cash deposits (including those comprising customer deposits and security deposits for rent, electricity, telephone or otherwise) and prepaid or deferred charges and expenses (including all lease and rental payments, subject to and in accordance with Section 3.01(c)), in each case, that have been prepaid by Seller relating to the Transferred Contracts or any Transferred Permits (collectively, the “**Prepays**”), other than (x) any adequate assurance deposits posted in accordance with section 366 of the Bankruptcy Code or (y) those paid in connection with or relating to any Excluded Assets;

(vi) all rights granted by The Wendy’s Company to Seller to operate the Business at the locations acquired under this Agreement, including pursuant to Seller’s franchise agreements with The Wendy’s Company regardless of whether such franchise agreements are Transferred Contracts, but excluding Seller’s franchise agreements with The Wendy’s Company related to the Excluded Business;

(vii) to the maximum extent permitted by the Bankruptcy Code and applicable Law, all rights of Seller under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers and contractors to Seller, solely to the extent arising under, or exclusively related to, any Transferred Contract or to the extent relating to a Transferred Asset, other than any warranties, representations and guarantees pertaining to any Excluded Assets or rights and defenses pertaining to any Excluded Liabilities;

(viii) to the maximum extent permitted by the Bankruptcy Code and applicable Law, all Business Intellectual Property (including the right to sue and bring claims or causes of action for infringement, misappropriation or violation of such Business Intellectual Property to the extent such infringement, misappropriation or violation occurs prior to the Closing Date) and Business Systems;

(ix) the Transferred Books and Records to the extent permitted by the Bankruptcy Code, applicable Law, Seller’s contractual obligations and Seller’s privacy policy or notice in effect at the time of collection of such information;

(x) all personal property and interests therein, including furniture, fixtures, equipment, small wares, furnishings, office equipment, communications equipment, vehicles, in-store processors, front-end systems, point-of-sale systems, credit card readers, computers, computer equipment, hardware, software, peripherals, pin pads and direct access storage devices and other tangible personal property, in each case, owned by Seller or any of its Affiliates and Related to the Business, in each case, (A) whether located at the Pizza Huts, Wendy’s, or Seller’s office locations or held by any Covered Employees (other than any assets located on or exclusively pertaining to the Excluded Business) and (B) excluding Personal Information embedded therein;

(xi) all inventory, wherever located, Related to the Business, including goods, merchandise, food, beverages, alcoholic beverages, supplies and other products whether held at any location or facility of Seller being acquired hereunder or in transit to Seller, in each

case, Related to the Business and specifically not including (i) any inventory related to the Excluded Business, and (ii) any alcoholic beverage inventories in jurisdictions where the Law does not permit Buyer to take title to such inventories until Buyer obtains the requisite Liquor License Approvals from the relevant Government Authority; provided, however, Seller shall transfer, assign, convey and deliver to Buyer such alcoholic beverage inventories in each instance, upon the later of Closing and the issuance of the relevant Liquor License Approval;

(xii) all goodwill Related to the Business;

(xiii) Store Cash;

(xiv) all avoidance claims or causes of action arising under sections 544, 547, 548, 549 and 550 of the Bankruptcy Code and any similar state Law (the “**Avoidance Actions**”), and all other claims, causes of action, lawsuits, judgments, privileges, counterclaims, defenses, rights of recovery, rights of set-off, rights of subrogation and all other rights of any kind under any other provision of the Bankruptcy Code or applicable Laws, including all actions relating to vendors and service providers, in each case, Related to the Business; provided that neither Buyer, nor any Person claiming, by, through, or on behalf of Buyer (including by operation of law, sale, assignment, conveyance, or otherwise) shall pursue, prosecute, litigate, institute, or commence an action based on, assert, sell, convey, assign, or file any claim that relates to the Avoidance Actions, or assert or use any such Avoidance Actions for defense purposes; provided further, however, that, notwithstanding the foregoing, Seller shall retain the right to assert setoff rights that arise from Avoidance Actions in relation to any Liability that is not an Assumed Liability; and

(xv) other than any Excluded Assets, all other assets or rights of Seller of every kind and description to the extent Related to the Business, wherever located, whether real, personal or mixed, tangible or intangible.

(b) Excluded Assets. Notwithstanding anything to the contrary herein, the following assets and properties of or in the possession of Seller (the “**Excluded Assets**”) shall be retained by Seller and its Affiliates:

(i) all Contracts to which Seller is a party, other than Transferred Contracts, including those set forth on Schedule 2.01(b)(i) (which Schedule may be modified from time to time after the date hereof in accordance with Section 2.04) and all Contracts previously rejected in the Bankruptcy Cases (“**Excluded Contracts**”);

(ii) any Account Receivable, including all Credit Card Receivables and the receivables set forth on Schedule 2.01(b)(ii);

(iii) all Cash (other than (x) Store Cash and (y) Cash deposits, as set forth in Section 2.01(a)(v)) and all bank accounts;

(iv) other than the Transferred Owned Real Property and Transferred Leased Real Property, all right, title and interest in owned and leased real property together with all improvements, facilities, fixtures and appurtenances thereto and all rights in respect thereof, and all servitudes, easements, rights-of-way, other surface use agreements and water use



agreements related thereto and, with respect to any such leased real property, all rights in respect thereof (including all options and rights of first refusal) and all tenements, hereditaments, appurtenances and other property rights appertaining thereto, including the properties listed on Schedule 2.01(b)(iv);

(v) all causes of action (including counterclaims) and defenses, including those arising in connection with the Bankruptcy Cases (other than the Avoidance Actions pursuant to Section 2.01(a)(xiv)), in each case, to the extent relating to the Excluded Assets or the Excluded Liabilities;

(vi) all claims, rights or interests of or with respect to Seller in or to any refund, rebate, abatement, credit, deposit, prepayment, or other recovery, in each case, for Taxes (other than in respect of any Transfer Taxes borne by Buyer pursuant to this Agreement), and any other Tax assets (including any net operating or other losses, credits, carry forwards and other Tax attributes) of Seller and its Affiliates, together with any refund of interest due thereon or penalty rebate arising therefrom, for any Tax period (or portion thereof);

(vii) all Tax Returns;

(viii) subject to and without limiting Section 3.05, all Insurance Policies and all rights of any nature with respect to any such Insurance Policy, including any recoveries thereunder and any rights to assert claims seeking any such recoveries;

(ix) all nontransferable Permits, including nontransferable Environmental Permits;

(x) all Intellectual Property and Systems, other than the Business Intellectual Property and Business Systems;

(xi) to the extent not transferrable under applicable Law, all customer data, customer lists, and information derived from branded loyalty promotion programs and related to customer purchases at any stores or through any e-commerce platform owned, operated, or controlled by Seller;

(xii) all rights and interests of Seller under the Transaction Agreements;

(xiii) all assets relating to the Employee Plans;

(xiv) (A) all minute books (and other similar corporate records) and stock records, (B) any books and records relating to the Excluded Assets, (C) any books and records or other materials of or in the possession of Seller that (x) Seller is required by Law or by Order of the Bankruptcy Court to retain, (y) Seller reasonably believes is necessary to enable Seller to prepare and/or file Tax Returns or (z) Seller is prohibited by Law or Contract from delivering to Buyer (including confidential and personal medical records) or (D) any copies of any books and records that Seller and its Affiliates retain pursuant to Section 7.03;

(xv) (A) all records and reports prepared or received by Seller or any of its Affiliates in connection with the sale of the Business or the Transactions or any other



Transaction Agreement, including all analyses relating to the Business so prepared or received and (B) all bids and expressions of interest received from third parties with respect to the Business;

(xvi) any warranties, representations and guarantees to the extent pertaining to any Excluded Asset or rights and defenses pertaining to any Excluded Liability;

(xvii) all adequate assurance deposits paid in accordance with section 366 of the Bankruptcy Code, and any deposits or prepaid or deferred charges and expenses to the extent paid in connection with or relating to any Excluded Assets;

(xviii) all right, title and interest in and to all shares, capital stock and other equity interests of any Person owned by Seller;

(xix) all assets of Seller that are not Related to the Business;

(xx) Seller's airplane and corresponding prepaid maintenance deposit;

(xxi) all assets of Seller set forth on Schedule 2.01(b)(xxi); and

(xxii) all assets primarily related to the Excluded Business.

(c) Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement and subject to the exclusions set forth in Section 2.01(d), as partial consideration for the Transferred Assets, Buyer shall, effective at the Effective Time, assume and thereafter timely pay or cause to be paid, discharge and perform in accordance with their terms, all of the following Liabilities of Seller (the "**Assumed Liabilities**"), and, subject to the exclusions set forth in Section 2.01(d), the Assumed Liabilities means only (and shall only include) the following Liabilities of Seller:

(i) all Liabilities arising under any of the Transferred Contracts solely to the extent arising on or after the Closing Date;

(ii) all amounts allocated to Buyer under Section 9.02, and the portion of the Transfer Taxes allocated to Buyer under Section 9.01;

(iii) all Liabilities under Environmental Laws to the extent such Liabilities arise as a matter of law after Closing solely to the extent as a result of the ownership or operation of the Transferred Assets;

(iv) all Cure Costs payable by Buyer pursuant to Section 2.04;

(v) all Liabilities arising out of Buyer's ownership or operation of the Transferred Assets from and after Closing;

(vi) all Liabilities assumed by Buyer pursuant to Section 6.08;

(vii) all Liabilities for payment of deferred rent due on or after Closing evidenced by written amendments to the Transferred Leases;

(viii) the Loyalty Program and Gift Card Liability Amounts; and

(ix) all accounts payable (whether or not invoiced as of the Closing) solely to the extent arising out of the operation of the Business from and after the Closing;

provided, that notwithstanding anything to the contrary set forth in this definition of Assumed Liabilities, (x) the Assumed Liabilities shall not include any rejection damages claims or administrative expenses or priority claims, other than claims or expenses that are included in the Cure Costs, and (y) nothing in this definition shall be construed to limit Buyer's obligations under any Transaction Agreement.

(d) Excluded Liabilities. Buyer is not assuming, agreeing to pay, or agreeing to discharge any, and Seller shall be solely and exclusively liable with respect to all, Liabilities of Seller other than the Assumed Liabilities (such Liabilities, including the following Liabilities, the "**Excluded Liabilities**"):

(i) any Liability of Seller associated with any and all Debt, including any guarantees of third party obligations and reimbursement obligations to guarantors of Seller's obligations, other than the Liabilities set forth in the Assumed Liabilities;

(ii) any Liability to the extent arising out of any Excluded Asset;

(iii) any Liability arising out or related to the Excluded Business and the Excluded Employees;

(iv) any Liability of Seller for Taxes with respect to the Transferred Assets for any taxable period (or portion thereof) ending on or before the Closing Date (including the Deferred Payroll Taxes), including the portion of the Transfer Taxes allocated to Seller under Section 9.01;

(v) any Liability retained by Seller pursuant to Section 6.08;

(vi) any Liability for any intercompany accounts payable to Seller;

(vii) Liabilities relating to amounts to be paid by Seller hereunder, including brokers fees;

(viii) other than the Cure Costs payable by Buyer pursuant to Section 2.04, all other amounts, costs or expenses that must be paid or actions or obligations that must be performed or satisfied pursuant to section 365(b)(1) of the Bankruptcy Code to effectuate the assignment to Buyer of the Transferred Contracts;

(ix) all accounts payable existing on the Closing Date with respect to the period prior to the Closing (including, for the avoidance of doubt, (A) invoiced accounts payable with respect to such period, (B) accrued but uninvoiced accounts payable with respect to such period, and (C) to the extent not included in the Cure Costs, the amount by which any payment to any vendor (including landlords, franchisors, suppliers) with respect to such period, has been

deferred until a period after the Closing Date which has not been contractually documented in writing with such third party prior to the Agreement Date);

(x) any Liabilities in respect of any Contracts that are not Transferred Contracts or Transferred Leases, including any Liabilities arising out of the rejection of any such Contracts pursuant to Section 365 of the Bankruptcy Code; and

(xi) all Liabilities of Seller or any of their predecessors with respect to the termination of employment of Seller's "insiders" (as such term is defined under the Bankruptcy Code), except to the extent such Liabilities are expressly assumed by Buyer pursuant to Section 6.08 (and solely to such extent).

#### Section 2.02. Assignment of Certain Transferred Assets.

(a) Notwithstanding any other provision of this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or transfer any Transferred Asset if an attempted assignment or transfer thereof, without the Consent of a third party thereto (each such Consent, a "**Necessary Consent**"), would constitute a breach, default or violation thereof or a violation of Law or order by the Bankruptcy Court. If, on the Closing Date, any such Consent has not been obtained, or if an attempted transfer or assignment thereof would be ineffective or a violation of Law or an order of the Bankruptcy Court or would in any way adversely affect the rights of Buyer thereunder and the Bankruptcy Court has not entered an Order approving such assignment or transfer, such assignment or transfer will be subject to such Necessary Consent being obtained and Buyer and Seller will comply with their respective obligations in Section 6.05. If such Necessary Consent is not obtained or if an attempted assignment or transfer thereof would be ineffective or would adversely affect the rights of Buyer to such Transferred Asset following the Closing, Seller and Buyer will, subject to Section 6.04 and Section 6.05, cooperate in a mutually agreeable arrangement, to the extent reasonably practicable, under which, for up to six (6) months following the Closing, (x) Buyer would, in compliance with Law or an order of the Bankruptcy Court, obtain the benefits and assume the obligations thereunder in accordance with this Agreement and the Sale Order, including, for example (and without limitation of other similar arrangements being employed instead and in place thereof), by subcontracting, sublicensing or subleasing such Transferred Asset to Buyer or (y) under which Seller would enforce for the benefit (and at the expense) of Buyer any and all of Seller's rights, claims or benefit against a third party associated with such Transferred Asset, and Seller would promptly pay to Buyer when received all monies received by them under any such Transferred Asset, claim, right or benefit (net of Seller's expenses incurred in connection with any assignment or other performance contemplated by this Section 2.02). Seller shall reasonably cooperate with Buyer in connection with Buyer's filings with any Government Authority or third party with respect to any of the Liquor Licenses and obtaining the necessary consents and approvals pertaining to the transfer and/or issuance of the Liquor Licenses to Buyer.

(b) Subject to Section 2.02(a), if after the Closing (i) Buyer holds any Excluded Assets or Excluded Liabilities or (ii) Seller holds any Transferred Assets or Assumed Liabilities, Buyer or Seller will promptly transfer or cause to be transferred such assets or assume (or cause to be assumed) such Liabilities to or from (as the case may be) the other Party. Prior to any such transfer, the Party receiving or possessing such asset will hold it in trust for such other Party.

Notwithstanding anything herein to the contrary, at any time prior to the date that is forty-five (45) days following entry of the Sale Order, and in any event no later than fourteen (14) days prior to Closing, Buyer will be entitled, in its sole discretion, (A) to add any Transferred Leases Related to the Business, or subject to the receipt of prior written consent of the applicable Franchisor, remove any Transferred Leases to or from Schedule 2.01(a)(ii) and make corresponding changes to Schedule 2.01(b)(i) (provided that such removal right shall be limited to the Transferred Leases set forth on Schedule 2.02(b)) or (B) add or remove any Transferred Contracts (other than any Transferred Leases) that are Related to the Business to or from Schedule 2.01(a)(iii) and make corresponding changes to Schedule 2.01(b)(i), in each case, except for any Contracts previously rejected in the Bankruptcy Cases; provided, that Buyer shall be liable for and shall reimburse Seller for any administrative expense claims under sections 503, 507, and 365 of the Bankruptcy Code that (x) are incurred as a result of, arise out of, or in connection with Transferred Leases or Transferred Contracts removed from Schedule 2.01(a)(ii) or Schedule 2.01(a)(iii) following the date of entry of the Sale Order, and (y) solely arise out of or relate to the period (whether or not invoiced during such period) subsequent to the date of entry of the Sale Order to the (1) date of rejection of any Transferred Leases subsequently removed or (2) date of removal of any Transferred Contracts; provided, further, that with respect to any Transferred Lease removed by Buyer after January 27, 2021, such administrative expense claim shall include any claim for rejection damages pursuant to section 503(b)(7) of the Bankruptcy Code to the extent such Transferred Lease was assumed by Seller prior to January 27, 2021 and such removal results in a subsequent rejection of such Transferred Lease by Seller, subject to any applicable defenses to the validity of such asserted claims under relevant bankruptcy law.

Section 2.03. Closing. The closing of the sale and purchase of the Transferred Assets and the assumption of the Assumed Liabilities (the “**Closing**”) shall take place remotely by exchange of documents and signatures (or their electronic counterparts) at 9:00 a.m. (New York City time) on the second (2nd) Business Day following the date upon which all Closing Conditions are satisfied or waived in writing (to the extent permitted by applicable Law) in accordance with Article X (other than those Closing Conditions that by their nature can only be satisfied at the Closing, but subject to the satisfaction or waiver of those Closing Conditions at such time), or on such other date or at such other time or place as the Parties may agree in writing, including subject to Section 6.11; provided that, notwithstanding the foregoing, the Closing shall not occur prior to March 24, 2021 (or April 14, 2021, if substantially all of the Specified Consents have not been obtained by March 24, 2021), unless consented to by Buyer. The date on which the Closing occurs is referred to in this Agreement as the “**Closing Date**.” For all purposes under this Agreement and each other Transaction Agreement, (a) except as otherwise provided in this Agreement or such other Transaction Agreements, all matters at the Closing will be considered to take place simultaneously and (b) the Closing shall be deemed effective as of the Effective Time.

Section 2.04. Transferred Leases and Contracts; Cure Costs. At the Closing and pursuant to Section 365 of the Bankruptcy Code and the Sale Order, Seller shall assume and, subject to the terms herein, assign to Buyer, and Buyer shall take assignment from Seller of, the Transferred Contracts. Except as otherwise provided in Section 2.02, and subject to the terms of the Sale Order, all Cure Costs in an aggregate amount not to exceed \$9,689,000 (the “**Cure Costs Cap**”), shall be paid by Buyer, on or before Closing, unless Seller elects or is otherwise required under the Bankruptcy Code to make such payments prior to the Closing in which case, (i) Seller shall obtain Buyer’s written consent before making such payments, and (ii) Buyer shall reimburse Seller

for such amounts paid by Seller (for the avoidance of doubt, up to the Cure Costs Cap). Seller shall not have any Liability for any Cure Costs except for those in excess of the Cure Costs Cap.

Section 2.05. Withholding. Buyer and its respective Affiliates shall not be entitled to deduct and withhold from any payments made under this Agreement.

### ARTICLE III

#### PURCHASE PRICE

##### Section 3.01. Purchase Price.

(a) The aggregate consideration to be paid by Buyer for the sale of all of the Transferred Assets and the obligations of Seller set forth in this Agreement shall be (A) payment of an amount in cash equal to (x) the sum of (i) \$552,550,000 (the “**Base Value**”), plus (ii) Store Cash, plus (iii) the Inventory Value, plus (iv) the Prepays Value, plus (v) an amount equal to \$8,000,000 (such amount representing the agreed value of the “construction in process”), plus (vi) the Seller Proration Amount, if any, minus (y) the aggregate amount of the credits set forth in Section 3.01(b) (such aggregate amount, the “**Purchase Price**”), and (B) the assumption of the Assumed Liabilities.

(b) At Closing, Buyer shall receive a credit towards the Purchase Price in an amount equal to the value of:

- (i) the Transferred Employee Liabilities;
- (ii) the Beverage Rebate Amount;
- (iii) the amount of the Cure Costs payable by Buyer pursuant to Section 2.04 (including amounts to be reimbursed to Seller thereunder); and
- (iv) any Buyer Proration Amount.

##### (c) Proration.

(i) On the Closing Date, all monthly payments for the month in which the Closing occurs (including base rent, common area maintenance fees, and utility charges) under the Transferred Leases (the “**Prorated Charges**”) shall be apportioned and prorated between Seller on the one hand and Buyer on the other hand as of the Closing Date with (i) Buyer bearing the expense of Buyer’s proportionate share of such Prorated Charges that shall be equal to the product obtained by multiplying (A) a fraction, the numerator being the amount of the Prorated Charges under the applicable Transferred Lease and the denominator being the total number of days in the lease month in which the Closing Date occurs, and (B) the number of days in such lease month following the day that immediately precedes the Closing Date, and paying such amount to Seller to the extent payment for such Prorated Charges has been made by Seller prior to the Closing Date and not already included in the calculation of the Purchase Price, and (ii) Seller bearing the remaining portion of such Prorated Charges (and crediting the amounts thereof to Buyer to the extent payment for such Prorated Charges has not been previously made by Seller and not already



taken into account in the Purchase Price). The net amount of all Prorated Charges owed to Buyer and Seller under this Section 3.01(c) shall be referred to as the “**Buyer Proration Amount**” if owed to Buyer or the “**Seller Proration Amount**” if owed to Seller.

(ii) As to all non-monthly real estate related payments under the Transferred Leases, the same shall be apportioned between Seller and Buyer as of the Effective Time. If any amounts are payable in installments, all installments due through the Effective Time together with the accrued but unpaid portion of any other installments not yet due as of the Effective Time shall be prorated based on the periods of time covered by such installments occurring before and after the Effective Time.

(iii) As to real estate Taxes and assessments related to the Transferred Assets, the apportionment of such Taxes shall be calculated in accordance with Section 9.02.

(d) Seller shall deliver an estimate of the calculation of the Purchase Price and its related components no later than ten (10) Business Days prior to the estimated Closing. Seller shall deliver the funds flow and closing statement calculating the Purchase Price and its related components, along with all supporting documentation regarding same, to Buyer no later than ten (10) Business Days prior to Closing for Buyer’s good faith review, input and approval.

Section 3.02. Purchase Price Deposit. On November 10, 2020, pursuant to the terms of the Escrow Agreement, Buyer deposited with Citibank N.A., in its capacity as escrow agent (the “**Escrow Agent**”), the sum of \$81,600,000 by wire transfer of immediately available funds (the “**Escrowed Funds**”), to be released by the Escrow Agent and delivered to either Buyer or Seller in accordance with this Agreement and the provisions of the Escrow Agreement. On the Agreement Date, the Parties have executed Joint Written Instructions directing the Escrow Agent to release \$26,345,000 of the Escrowed Funds to Buyer. The remainder of the Escrowed Funds shall be distributed upon the earlier of the Closing or the termination of this Agreement in accordance with Sections 3.03(a)(i), 3.03(b)(ii) and 11.03, as applicable.

Section 3.03. Certain Closing Deliverables. At the Closing:

(a) Seller shall deliver or cause to be delivered to Buyer (or Buyer’s wholly-owned Subsidiaries, as applicable) the following:

(i) a counterpart of the Joint Written Instructions, duly executed by Seller, directing the Escrow Agent to deliver to Seller the Escrowed Funds;

(ii) a counterpart of the Bill of Sale, Assignment and Assumption Agreement for Transferred Assets (other than the Transferred Leases), in the form attached hereto as Exhibit B (the “**Bill of Sale, Assignment and Assumption Agreement**”), duly executed by Seller;

(iii) a counterpart of the Assignment and Assumption Agreement for Transferred Leases, in the form attached hereto as Exhibit C (the “**Transferred Leased Property Assignment and Assumption Agreement**”), duly executed by Seller together with duly executed Transfer Tax forms, where applicable;

(iv) a counterpart of the IP Assignment Agreement, in the form attached hereto as Exhibit D (the “**IP Assignment Agreement**”), duly executed by Seller;

(v) a counterpart of a Transition Services Agreement, in a form to be negotiated in good faith to the reasonable satisfaction of Seller and Buyer and reflecting reverse transition services from Buyer to Seller, for which Seller will reimburse Buyer at cost, and for a duration not to exceed 18 months after the Closing Date (the “**Transition Services Agreement**”), duly executed by Seller;

(vi) the officer’s certificate required to be delivered pursuant to Section 10.02(a)(iii);

(vii) duly executed quit claim deeds or comparable instruments of transfer, in customary form, conveying to Buyer good and valid fee simple title to the Transferred Owned Real Property free and clear of all Liens, except for Permitted Liens, together with duly executed Transfer Tax or sales disclosure forms, where applicable, unless under applicable Law such Transfer Tax stamps or duly stamped transfer forms are only available post-Closing;

(viii) a customary owner’s title affidavit, in form and substance reasonably acceptable to Seller and the Title Company;

(ix) an affidavit of non-foreign status of each Seller meeting the requirements of Treasury Regulations Section 1.1445-2(b)(2) or a properly completed and duly executed IRS Form W-9 from each Seller; and

(x) all other instruments of conveyance and transfer in form and as may be necessary to convey the Transferred Assets to Buyer as Buyer may reasonably request.

(b) Buyer shall deliver to Seller the following:

(i) an amount equal to the Purchase Price, less the Escrowed Funds which will be delivered pursuant to the Joint Written Instructions, by wire transfer of immediately available funds to an account or accounts as directed by Seller;

(ii) a counterpart of the Joint Written Instructions, duly executed by Buyer, directing the Escrow Agent to deliver to Seller the Escrowed Funds;

(iii) all required Transfer Tax stamps and transfer forms (if any), unless under applicable Law such Transfer Tax stamps or duly stamped transfer forms are only available post-Closing (in which case such Transfer Tax stamps or duly stamped transfer forms shall be delivered to Seller promptly and in any event no later than five (5) Business Days after receipt thereof by Buyer);

(iv) a counterpart of the Bill of Sale, Assignment and Assumption Agreement, duly executed by Buyer;

(v) a counterpart of the Transferred Leased Property Assignment and Assumption Agreement, duly executed by Buyer;

- (vi) a counterpart of the IP Assignment Agreement, duly executed by Buyer;
- (vii) a counterpart of the Transition Services Agreement, duly executed by Buyer;
- (viii) the officer's certificate required to be delivered to Seller pursuant to Section 10.01(a)(iii); and
- (ix) such other documents, instruments and certificates as Seller may reasonably request.

**Section 3.04. Purchase Price Allocation.** For U.S. federal and applicable state and local income Tax purposes, Buyer and Seller agree to allocate the Purchase Price (as finally determined hereunder), the Assumed Liabilities and other items treated as part of the purchase price for applicable income Tax purposes among the Transferred Assets in accordance with section 1060 of the Code and Treasury Regulations thereunder based on Closing GAAP value or other reasonable method that approximates fair market value (the "**Allocation Methodology**"). No later than thirty (30) days after the Closing Date, Buyer shall deliver to Seller an allocation of the Purchase Price and the Assumed Liabilities (and all other relevant items) as of the Closing Date among the Transferred Assets, determined in a manner consistent with the Allocation Methodology (the "**Purchase Price Allocation**"), for Seller's review, comment and approval (not to be unreasonably withheld, conditioned or delayed). If Seller fails to deliver a written objection in accordance with this Section 3.04 within thirty (30) days after receipt of the draft Purchase Price Allocation, the Purchase Price Allocation shall be conclusive and binding on the Parties. If Seller delivers a written objection, which objection sets forth in reasonable detail their objections within thirty (30) days after receipt of the draft Purchase Price Allocation proposed by Buyer, then Buyer and Seller to negotiate in good faith to resolve any such objection, and, if Sellers and Buyer cannot resolve such dispute within thirty (30) days of Buyer's receipt of Seller's objection, then, provided that each of Buyer and Seller agrees to bear fifty percent (50%) of the related costs and expenses, a nationally recognized accounting firm mutually acceptable to Buyer and Seller shall resolve such dispute and the resolution of such dispute shall be final and binding on the Parties. The Parties agree (and agree to cause their respective Subsidiaries and Affiliates) to prepare, execute, and file IRS Form 8594 and all Tax Returns in accordance with the Purchase Price Allocation (as finally determined under this Section 3.04). None of the Parties shall take any position inconsistent with the Purchase Price Allocation, unless otherwise required by a final determination by a Government Authority. Notwithstanding any other provision of this Agreement, the terms and provisions of this Section 3.04 shall survive the Closing without limitation.

**Section 3.05. Casualty and Condemnation.** If, during the period beginning on the date hereof and ending on the Closing Date, any Transferred Owned Real Property or Transferred Leased Real Property, are damaged or destroyed, by fire or other casualty, or subject to a taking, then Seller shall remit to Buyer any insurance proceeds or condemnation awards ("**Proceeds**") received by Seller in respect of any such damage or destruction on the later of (a) the Closing and (b) the third (3rd) Business Day after Seller's receipt of such Proceeds, and shall, upon the request of Buyer, assign to Buyer, effective upon the Closing Date, Seller's rights to receive any such Proceeds. The foregoing shall represent Buyer's sole and exclusive rights and recourse with



respect to an event described in this Section 3.05. For the avoidance of doubt, the foregoing shall be subject to any rights of the applicable landlord or its lender(s) as to any affected Transferred Owned Real Property or Transferred Leased Real Property. Seller may elect to restore such Transferred Owned Real Property or Transferred Leased Real Property but shall have no obligation to do so. Notwithstanding anything to the contrary in this Section 3.05, any remittance or assignment of Proceeds under this Section 3.05 shall not include any Proceeds to the extent attributable to lost rents or similar costs applicable to any period prior to the Closing, nor any uncollected Proceeds that Seller may be entitled to receive from such damage, destruction or taking, and shall be reduced by (i) the amount of all costs incurred by Seller in connection with any repair of any damage or destruction, (ii) the collection costs of Seller with respect to any Proceeds and (iii) any amounts required to be paid to the applicable landlord under the applicable Transferred Lease or to any lender pursuant to any financing, as applicable, in each case, with respect to such damage, destruction or taking.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer that, except as set forth in the Disclosure Schedules:

Section 4.01. Formation and Authority of Seller; Enforceability. Seller is a corporation duly incorporated, validly existing and in good standing under the Laws of the state of its formation or incorporation. Subject to the Bankruptcy Court's entry of the Sale Order, Seller has the requisite corporate power and authority to execute, deliver and perform its obligations under the Seller Transaction Agreements (including the consummation of the Seller Transactions) to which it is a party. Subject to the Bankruptcy Court's entry of the Sale Order, Seller has the requisite corporate power to operate its business with respect to the Transferred Assets that it owns as now conducted and is duly qualified as a foreign corporation to do business, and to the extent legally applicable, is in good standing, with respect to the Business, in each jurisdiction in which the character of its owned, operated or leased properties or the nature of its activities makes such qualification necessary, except for jurisdictions where the failure to be so qualified or in good standing would not reasonably be expected to have a Material Adverse Effect. The execution, delivery and performance by Seller of the Seller Transaction Agreements (including the consummation of the Seller Transactions) to which it is a party have been duly authorized by all requisite corporate action on the part of Seller. This Agreement has been duly executed and delivered by Seller, and upon execution and delivery thereof, the other Seller Transaction Agreements will be duly executed and delivered by Seller, and (assuming due authorization, execution and delivery thereof by the other parties hereto and thereto) this Agreement constitutes, and upon execution and delivery thereof, the other Seller Transaction Agreements will constitute, legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, subject to the Bankruptcy and Equity Exception and the Bankruptcy Court's entry of the Sale Order.

Section 4.02. No Conflict. Provided that all Consents, waivers or other actions listed on Schedule 4.02 or described in Section 4.03 have been obtained or satisfied, except as otherwise provided in this Agreement, and except as may result from any facts or circumstances relating to Buyer or its Affiliates, the execution, delivery and performance by Seller of the Seller Transaction

Agreements do not and will not (a) violate or conflict with in any material respect the articles of incorporation or bylaws of Seller, (b) violate or conflict with in any material respect any Law or Order applicable to the Business, or (c) violate, conflict with, result in a breach of or constitute a default (or any event that, with notice or lapse of time or both would constitute a default) under or give rise to any right to terminate, cancel or accelerate, or result in a loss of a material benefit under, any Material Contract except in the case of clause (b) or (c), where such violation, conflict, breach, default, termination, cancellation, acceleration or loss of a material benefit would not reasonably be expected to have a Material Adverse Effect.

Section 4.03. Consents and Approvals. Subject to the Bankruptcy Court's entry of the Sale Order, the execution, delivery and performance by Seller of the Seller Transaction Agreements do not and will not require any material Consent, waiver, or other action by, or any material filing with or notification to, any Government Authority by Seller, except (a) in connection with applicable filing, notification, waiting period or approval requirements under applicable Antitrust Laws, (b) where the failure to obtain such Consent or waiver, or to take such action or make such filing or notification would not reasonably be expected to have a Material Adverse Effect, or (c) as may be necessary as a result of any facts or circumstances relating to Buyer or Buyer's Affiliates.

Section 4.04. Financial Information; Absence of Undisclosed Liabilities.

(a) Schedule 4.04(a) sets forth (i) the audited consolidated balance sheet and related statements of income and cash flows of NPC Restaurant Holdings, LLC for the year ended December 31, 2019 and (ii) the unaudited balance sheet and related statements of income and cash flows of NPC Restaurant Holdings, LLC for the nine (9) month period ended September 29, 2020 (such balance sheets and related statements collectively, the "**Financial Statements**"). The Financial Statements (i) have been prepared based on the books and records of Seller, (ii) have been prepared in all material respects in accordance with GAAP, and (iii) present fairly, in all material respects in accordance with GAAP, the financial condition and results of operation of the Business as of the respective dates and for the respective periods presented, subject to normal year-end adjustments and the absence of complete notes (as applicable).

(b) Other than (i) as set forth in the Financial Statements, (ii) Liabilities for Taxes, (iii) Liabilities incurred in the ordinary course of business since July 1, 2020, (iv) Liabilities arising under this Agreement, (v) Excluded Liabilities, and (vi) Liabilities that would not reasonably be expected to have a Material Adverse Effect, there are no Liabilities of the Business that are required to be reflected on, reserved against or otherwise described in a balance sheet prepared in accordance with GAAP. The only gift cards issued for use at the Pizza Hut and Wendy's restaurants are gift cards issued through the applicable Franchisor gift card programs.

Section 4.05. Absence of Litigation. As of the Agreement Date, no Actions (other than the Bankruptcy Cases) are pending, or, to the Knowledge of Seller, threatened in writing against Seller with respect to the Business that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect. Neither Seller nor any of the Transferred Assets are subject to any ongoing or incomplete compliance obligations resulting from or relating to any concluded or settled Action pursuant to settlement agreements, consent decrees or any other

documented resolutions, except as would not reasonably be expected result in a Material Adverse Effect.

Section 4.06. Compliance with Laws; Permits.

(a) Seller is not in violation of any Laws or Orders applicable to the conduct of the Business, except where the failure to be in compliance would not reasonably be expected to have a Material Adverse Effect. Seller has not received any written notice of or been charged with the violation of any Laws applicable to the conduct of the Business, except where such violation would not be reasonably expected to have a Material Adverse Effect.

(b) (i) Seller holds all Permits necessary for the operation of the Business as conducted as of the Agreement Date and (ii) each Transferred Permit is valid, binding and in full force and effect, except, in the case of each of clauses (i) and (ii), as would not reasonably be expected to have a Material Adverse Effect. Schedule 4.06 contains a complete list of all material licenses, franchises and permits issued by any Government Authority to Seller or any of its Affiliates which are necessary or required for the ownership of the Transferred Assets or the conduct of the Business.

Section 4.07. Intellectual Property.

(a) Schedule 4.07(a) sets forth all Business Registrable IP included in the Transferred Assets as of the Agreement Date. To the Knowledge of Seller, as of the Agreement Date, the operation of the Business by Seller as it is conducted on the Agreement Date does not infringe upon or misappropriate the valid and enforceable Intellectual Property of any third party in a manner that would reasonably be expected to have a Material Adverse Effect.

(b) Seller has not received any written claim or notice from any Person during the one (1)-year period ending on the Agreement Date alleging that the operation of the Business by Seller infringes upon or misappropriates any Intellectual Property of any third party which, if proven or established, would reasonably be expected to have a Material Adverse Effect. As of the Agreement Date, there are no infringement Actions pending or, to the Knowledge of Seller, threatened in writing against Seller alleging that the operation of the Business by Seller infringes upon or misappropriates any Intellectual Property of any third party which, if proven or established, would reasonably be expected to have a Material Adverse Effect.

(c) To the Knowledge of Seller, as of the Agreement Date, no Person is engaging in any activity that infringes in any material respect upon any Business Intellectual Property included in the Transferred Assets, except for any such infringements that do not materially impair the ability of Seller to operate the Business as conducted on the Agreement Date or that would not reasonably be expected to have a Material Adverse Effect.

(d) During the one (1)-year period ending on the Agreement Date, there have been no security breaches of the Business Systems included in the Transferred Assets, or to the Knowledge of Seller, any other Systems, that would reasonably be expected to have a Material Adverse Effect.

(e) Seller has taken commercially reasonable steps to maintain the confidentiality of all material trade secrets included in the Business Intellectual Property included in the Transferred Assets and, to the Knowledge of Seller, during the one (1)-year period ending on the Agreement Date, there has been no unauthorized use or disclosure by any Person of any such material trade secrets.

Section 4.08. Privacy. To the Knowledge of Seller, Seller has materially complied with all of Seller's policies and contractual obligations with respect to the collection, use, storage, sharing or transfer of Personal Information for the one (1) year preceding the Agreement Date. To the Knowledge of Seller, Seller has reasonable safeguards in place designed to protect Personal Information in its possession or under its control against loss, theft, or unauthorized disclosure. To the Knowledge of Seller, there have been no material breaches involving Personal Information in Seller's possession or control in the one (1) year preceding the Agreement Date. In the one (1) year preceding the Agreement Date, Seller has not received any written notice of any claims of, or been charged with, the violation of any Laws concerning the collection, use, storage, sharing, and transfer of Personal Information.

Section 4.09. Environmental Matters.

(a) Except as would not reasonably be expected to have a Material Adverse Effect, with respect to the Business, Seller is in compliance with Environmental Laws, which compliance includes obtaining, maintaining and complying with those Environmental Permits necessary to operate the Business.

(b) Except as would not reasonably be expected to have a Material Adverse Effect, with respect to the Business as of the Agreement Date, there are no Actions pending or, to the Knowledge of Seller, threatened in writing, against Seller alleging that Seller is violating, or responsible for any Liability under, any Environmental Law, in each case with respect to the Business; and

(c) To the Knowledge of Seller, there are no Hazardous Materials on, under, about or migrating to or from the Transferred Owned Real Property in concentrations or amounts requiring any material investigation, remediation, cleanup, containment or mitigation by the Seller under any Environmental Law.

(d) As of the Agreement Date, there are no Actions pending, or to the Knowledge of Seller, threatened in writing, against Seller alleging that Seller is not in material non-compliance, or is responsible for any material Liability under, any Environmental Law, in each case with respect to the Transferred Owned Real Property.

(e) Notwithstanding anything in this Agreement to the contrary, the representations and warranties made by Seller in this Section 4.09 are the sole and exclusive representations and warranties made by Seller pertaining or relating to any environmental matters, including those related to Environmental Laws, Environmental Permits or Hazardous Materials.

Section 4.10. Employment and Employee Benefits Matters.

(a) Schedule 4.10(a) lists, as of the Agreement Date, all material Employee Plans. With respect to each material Employee Plan, Seller has previously made available to Buyer a true and complete copy of the following documents, to the extent applicable: (i) any written plan documents and all amendments thereto, (ii) the most recent summary plan description, (iii) the most recent Forms 5500 and all schedules thereto, and (iv) the most recent IRS determination letter.

(b) Each Employee Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter, or is entitled to rely on an opinion letter, from the IRS.

(c) No Employee Plan is (i) subject to Title IV of ERISA, (ii) a multiemployer plan (within the meaning of Section 3(37) or 4001(a)(3) of ERISA), or (iii) a “multiple employer plan” as defined in Section 413(e) of the Code.

(d) Each Employee Plan has been operated in accordance with its terms and the requirements of ERISA and all applicable Laws, except where the failure to be so operated would not reasonably be expected to have a Material Adverse Effect.

(e) No material Actions are pending or, to the Knowledge of Seller, threatened in writing from any Government Authority in connection with any Employee Plan (other than routine benefit claims) that would reasonably be expected to have a Material Adverse Effect.

(f) Seller is not party to or bound by any collective bargaining agreement or other Contract with a union, and no Covered Employee is represented by a union. To the Knowledge of Seller, there is no effort currently being made or threatened by, or on behalf of, any Union to organize any Covered Employees, and there has been no such effort during the past six (6) months. With respect to the Covered Employees, there are no (i) strikes, work stoppages, work slowdowns or lockouts pending, or, to the Knowledge of Seller, threatened against Seller, or any of its Controlled Affiliates, or (ii) unfair labor practice charges, grievances or complaints pending, or, to the Knowledge of Seller, threatened by or on behalf of any employee or group of employees of Seller, or any of its Controlled Affiliates, except as in each case would not reasonably be expected to result in a material disruption to the conduct of the Business or a material portion of the Business, when taken as a whole.

(g) Unless prohibited by applicable Law, Seller has provided a true and complete list, in all material respects, of each person who, as of December 9, 2020, was determined to be a Covered Employee, including the identification number, job location, job title or duty, date of hire, annual salary or hourly wage rate, and year-to-date wages, salary or bonus paid for each such person (the “**Covered Employee List**”). Other than set forth on Schedule 4.10(f), no Covered Employees (i) are employed on any basis other than an at-will basis or (ii) are party to an employment letter, agreement or contract. Schedule 4.10(f) lists all of the independent contractors providing material services to the Business, a description of the services provided, rate of pay and term of service.



Section 4.11. Taxes.

(a) For periods beginning after January 31, 2018, Seller has timely filed (or has had filed on its behalf) all material Tax Returns required to be filed, taking into account any extensions of time to file such Tax Returns granted or to be obtained by or on behalf of Seller. All material amounts of Taxes shown due on such Tax Returns owed by Seller have been fully paid or properly accrued for on Seller's applicable Financial Statements, other than with respect to any Taxes the payment of which was precluded by reason of the Bankruptcy Cases;

(b) There are no Liens for Taxes on the Transferred Assets other than Permitted Liens; and

(c) Seller has complied in all material respects with all applicable withholding obligations for Taxes that are Related to the Business required to have been withheld in connection with amounts paid to any Covered Employee or independent contractor.

(d) Nothing in this Section 4.11 or otherwise in this Agreement shall be construed as a representation or warranty with respect to (i) the amount or availability of any net operating loss, capital loss, or Tax credit carryover or other Tax attribute or asset or (ii) any Tax positions that Buyer or any of its respective Representatives or Affiliates may take in or in respect of a taxable period (or portion thereof) beginning after the Closing Date.

(e) The representations and warranties in this Section 4.11 constitute the sole and exclusive representations and warranties of Seller with respect to Taxes, and no other representation or warranty contained in any other section of this Agreement shall apply to any Tax matters, and no other representation or warranty, express or implied, is being made with respect thereto.

Section 4.12. Real Property.

(a) Schedule 4.12(a) sets forth a list of all Transferred Owned Real Property and all Transferred Leased Real Property as of the Agreement Date and including, as applicable, unit # and address. Seller has good and valid title to all such Transferred Owned Real Property and valid title to the leasehold estate (as lessee or sublessee) in all such Transferred Leased Real Property, in each case free and clear of all Liens, except for Permitted Liens.

(b) All Transferred Leases under which Seller is a lessee or sublessee will be in full force and effect and enforceable as against Seller, and to the Knowledge of Seller, as against any other counterparty thereto, in all material respects, in accordance with their respective terms, subject to the Bankruptcy and Equity Exception, upon entry of the Sale Order by the Bankruptcy Court. To the Knowledge of Seller, solely with respect to any material default that remains uncured as of the Agreement Date, no written notices of material default under any such lease or sublease have been sent or received by Seller within the twelve (12)-month period ending on the Agreement Date.

(c) To the Knowledge of Seller, Seller has not received any written notice from any Government Authority asserting any violation of applicable Laws (except for Environmental Law, which is subject to Section 4.09 hereof) with respect to the Transferred Owned Real Property

or Transferred Leased Real Property that remains uncured as of the Agreement Date and that would reasonably be expected to have a Material Adverse Effect.

(d) To the Knowledge of Seller, all material Transferred Owned Real Property and Transferred Leased Real Property are in reasonably good condition and repair, normal wear and tear excepted, sufficient for the operation of the Business as currently conducted in all material respects, in material compliance with all material obligations under the Transferred Leases.

Section 4.13. Brokers. Except for fees and expenses of Greenhill & Co., LLC and Cypress Advisors, Inc., no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission from Seller or any of its Affiliates in connection with the Transactions.

Section 4.14. Title; Insurance. Except for Permitted Liens, the Transferred Assets (other than (i) the Transferred Owned Real Property and the leasehold estate (as lessee or sublessee) in the Transferred Leased Real Properties, which are the subject of Section 4.12, (ii) any personal property leased pursuant to a Transferred Contract, and (iii) Intellectual Property and Systems included in the Transferred Assets (which are addressed in Section 4.07)) are owned by or otherwise made available to Seller, and at the Closing, Buyer will own each of the Transferred Assets or will be vested with good title to such Transferred Assets, as the case may be, free and clear of all Liens, to the fullest extent permissible under Section 363(f) of the Bankruptcy Code. Other than Intellectual Property and Systems included in the Transferred Assets (which are addressed in Section 4.07) and the Excluded Assets, the Transferred Assets constitute all of the material assets and properties used or held for use, necessary, sufficient and adequate for the conduct and operation of the Business as of the date hereof. All Insurance Policies to which Seller is a party or under which Seller, the Business or the Transferred Assets is covered as an additional named insured or otherwise (or replacement policies therefor) are in full force and effect, and Seller has paid all premiums due and is not in default. No notice of cancellation or nonrenewal with respect to, or disallowance of any claim under, any such policy has been received by Seller.

Section 4.15. Material Contracts.

(a) Schedule 4.15(a) lists the following Transferred Contracts (excluding Transferred Leases, which are listed in Schedule 4.12(a)) that are in effect on the Agreement Date (other than purchase orders) (collectively with the Transferred Leases, the "**Material Contracts**"):

(i) Contracts for the sale of any of the assets of the Business since July 1, 2019 other than in the ordinary course of business, for consideration in excess of \$5,000,000;

(ii) Contracts relating to the acquisition by Seller since July 1, 2019 of any operating business or the capital stock of any other Person, in each case, for consideration in excess of \$5,000,000;

(iii) Contracts relating to incurrence of Debt or the making of any loans, in each case, involving amounts in excess of \$25,000,000;

(iv) Contracts, (A) the performance of which resulted in aggregate payments to or from Seller during the twelve (12)-month period ending on August 31, 2020 in excess of \$5,000,000, (B) that require performance by any party thereto for more than one (1) year

from the Agreement Date and (C) that are not terminable by Seller without penalty on less than ninety (90) days' notice;

(v) Contracts between Seller or any of its Affiliates and a Franchisor (the "**Franchise Agreement**"); and

(vi) material settlements or other arrangements entered into in the twelve months prior to the Agreement Date with respect to any Action Related to the Business.

(b) Other than as set forth on Schedule 4.15(b), Seller has made available to Buyer true and complete copies of each Material Contract, provided, that to the extent such Material Contracts could not be disclosed in whole or part as a result of any confidentiality or other legal restriction, Seller have made available to Buyer such portions of those Material Contracts as they could lawfully disclose.

(c) Each Material Contract is a legal, valid and binding obligation of Seller, and, to the Knowledge of Seller, each other party to such Material Contract, and is enforceable against Seller, and, to the Knowledge of Seller, each other party to such Material Contract, in accordance with its terms, subject, in each case, to the Bankruptcy and Equity Exception.

(d) Since January 1, 2020, Seller has not amended any Material Contract to extend or defer payment to a period after the Closing Date, assuming a Closing Date of March 24, 2021, for payments that otherwise would have been due or will be due prior to such date, except that, since such date, Seller has entered into binding written amendments to the Transferred Leases evidencing rent deferrals (deferring rent to a period after the Closing Date) in the aggregate amount of approximately \$1,200,000. Seller has not received any notice of any default or event that with notice or lapse of time or both would constitute a default by Seller or any of its Affiliates, or to the Knowledge of Seller any third party (other than payment defaults), under any Material Contract, except for defaults that would not reasonably be expected to have a Material Adverse Effect.

(e) Schedule Section 4.15(e) set forth a list of all Contracts that provide for shared services or costs between the Business and the Excluded Business.

Section 4.16. No Other Representations or Warranties. Except for the representations and warranties expressly set forth in this Article IV (as modified by the Disclosure Schedules) or in any other Seller Transaction Agreement, neither of Seller nor any other Person has made, makes or shall be deemed to make any other representation or warranty of any kind whatsoever, express or implied, written or oral, at law or in equity, on behalf of Seller or any of its respective Affiliates, including any representation or warranty regarding Seller or any other Person, any Transferred Assets, any Liabilities of Seller, including any Assumed Liabilities, the Business, any Transaction, any other rights or obligations to be transferred pursuant to the Transaction Agreements or any other matter, and Seller hereby disclaim all other representations and warranties of any kind whatsoever, express or implied, written or oral, at law or in equity, whether made by or on behalf of Seller, or any other Person, including any of their respective Representatives. Except for the representations and warranties expressly set forth in this Article IV (as modified by the Disclosure Schedules) or in any other Seller Transaction Agreement, Seller hereby (a) disclaims and negates any representation or warranty, expressed or implied, at common law, by statute, or otherwise,



relating to the condition of the Transferred Assets or the Business, and (b) disclaims all Liability and responsibility for all projections, forecasts, estimates, financial statements, financial information, appraisals, statements, promises, advice, data or information made, communicated or furnished (orally or in writing, including electronically) to Buyer or any of Buyer's Affiliates or any Representatives of Buyer or any of Buyer's Affiliates (including any opinion, information, projection, or advice that may have been or may be provided to Buyer by any Representative of Seller), including omissions therefrom. Without limiting the foregoing, Seller makes no representation or warranty of any kind whatsoever, express or implied, written or oral, at law or in equity, to Buyer or any of its Affiliates or any Representatives of Buyer of any of its Affiliates regarding the probable success, profitability or value of the Transferred Assets or the Business. The disclosure of any matter or item in any Schedule shall not be deemed to constitute an acknowledgment that any such matter is required to be disclosed or is material or that such matter would be reasonably expected to result in a Material Adverse Effect.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller that:

Section 5.01. Formation and Authority of Buyer; Enforceability. Buyer is a corporation or other entity duly incorporated, formed or organized, validly existing and, to the extent legally applicable, in good standing under the Laws of its jurisdiction of incorporation, formation or organization and has the requisite corporate or other appropriate power and authority to execute, deliver and perform its obligations under the Buyer Transaction Agreements (including the consummation of the Buyer Transactions). The execution, delivery and performance by Buyer of the Buyer Transaction Agreements (including the consummation of the Buyer Transactions) have been duly authorized by all requisite corporate or organizational action on the part of Buyer, and no shareholder or other similar approval is required in connection with Buyer's execution, delivery and performance of the Buyer Transaction Agreements. This Agreement has been, and upon execution and delivery thereof, the other Buyer Transaction Agreements will be, duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by the other parties hereto and thereto) this Agreement constitutes, and upon execution and delivery thereof, the other Buyer Transaction Agreements will constitute, legal, valid and binding obligations of Buyer enforceable against Buyer in accordance with their respective terms.

Section 5.02. Qualification of Buyer. Buyer has the corporate or other appropriate power and authority to operate its businesses as now conducted. Buyer is qualified as a foreign corporation or other organization to do business and, to the extent legally applicable, is in good standing in each jurisdiction where the character of its owned, operated or leased properties or the nature of its activities makes such qualification necessary, except for jurisdictions where the failure to be so qualified or in good standing would not impair or delay the ability of Buyer to consummate the transactions contemplated by, or perform their respective obligations under, the Buyer Transaction Agreements.

Section 5.03. No Conflict. Provided that all Consents, waivers and other actions described in Section 5.04 have been obtained, the execution, delivery and performance by Buyer of the Buyer Transaction Agreements do not and will not:

- (a) violate or conflict with in any material respect the certificate or articles of incorporation or bylaws or similar organizational documents of Buyer;
- (b) conflict with or violate in any material respect any Law or Order applicable to Buyer; or
- (c) violate, conflict with, result in any breach of, or constitute a default (or any event that, with notice or lapse of time, or both would constitute a default) under, or give rise to any right to terminate, cancel or accelerate, or result in a loss of a material benefit under, any Contract to which Buyer or any of their respective Subsidiaries or Affiliates is a party or by which any of such assets or properties is bound, except for any such violations, conflicts, breaches, defaults, terminations, cancellations, accelerations, or losses of a material benefit as would not materially impair or delay the ability of Buyer to consummate the Buyer Transactions or otherwise perform its obligations under the Buyer Transaction Agreements.

Section 5.04. Consents and Approvals. The execution, delivery and performance by each of Buyer of the Buyer Transaction Agreements do not and will not require any Consent, waiver or other action by, or any filing with or notification to, any Government Authority, except (a) in connection with applicable filing, notification, waiting period or approval requirements under applicable Antitrust Laws, (b) where the failure to obtain such Consent or waiver, to take such action, or to make such filing or notification, would not materially impair or delay the ability of Buyer to consummate the Buyer Transactions or otherwise perform its obligations under the Buyer Transaction Agreements or (c) the Franchisor Consents.

Section 5.05. Absence of Restraints; Compliance with Laws.

- (a) To the knowledge of Buyer, no facts or circumstances exist that would reasonably be expected to impair or delay the ability of Buyer to consummate the Buyer Transactions or otherwise perform its obligations under the Buyer Transaction Agreements.
- (b) Buyer is not in violation of any Laws or Orders applicable to the conduct of its business, except for violations the existence of which would not reasonably be expected to impair or delay the ability of Buyer to consummate the Buyer Transactions or otherwise perform its obligations under the Buyer Transaction Agreements.
- (c) There are no Actions pending or, to the knowledge of Buyer, threatened, that would affect in any material respect Buyer's ability to perform its obligations under the Buyer Transaction Agreements or to consummate the Transactions contemplated by the Buyer Transaction Agreements.

Section 5.06. Financial Ability. The representations and warranties contained in this Section 5.06 are true and correct as of the Commitment Letter Effective Time, other than the representations and warranties in Section 5.06(a) and Section 5.06(b), which are true and correct as of the Agreement Date:

(a) Attached hereto as Exhibit E are draft amended and restated commitment letters that are true and correct as of the Agreement Date (the final version of such commitment letters to be reasonably acceptable to Seller with such satisfaction to be confirmed by Seller in writing prior to January 12, 2020 pursuant to the terms hereof) (including all related fee letters and side letters) addressed to Buyer, (as amended, restated, amended and restated, supplemented or otherwise modified only in accordance with Section 7.04, and together with all exhibits, schedules, annexes, supplements and term sheets forming part thereof, (the “**Debt Commitment Letters**” and corresponding fee letter (the “**Fee Letter**”) (provided that the Fee Letter may be customarily redacted (none of which redacted terms affect the amount (other than fees payable), availability, conditionality, enforceability or termination of the Debt Financing (as defined below))), pursuant to which the financial institutions party thereto (such financial institutions that become party to the Debt Commitment Letter via any joinder agreements or other definitive agreements relating thereto or pursuant to any Alternative Financing (as defined below), including, without limitation, any agents, arrangers, book runners, and lenders, collectively, the “**Debt Financing Sources**”), will commit to provide Buyer with debt financing for the Transactions in an aggregate amount of approximately \$247,000,000 (the “**Debt Financing**”), which amount is (assuming that all rights to flex the terms of the Debt Financing are exercised to their maximum extent) greater than or equal to the full amount of the Debt Financing required (together with the Equity Financing and the Escrowed Funds) to pay the Purchase Price, consummate the Transactions on the terms contemplated by the Transaction Agreements and to pay all related fees and expenses.

(b) Attached hereto as Exhibit F are draft commitment letters to Flynn Restaurant Group L.P. from AAG Managers LLC, Ontario Teacher’s Pension Plan Board, and Main Post Growth Capital II, L.P., MPGC II FRG Co-Investment, L.P., MP FRG Splitter, L.P., and MP FRG Co-Investment Splitter, L.P. and from Flynn Restaurant Group L.P. (collectively, the “**Equity Investors**”) that are true and correct as of the Agreement Date (the final version of such commitment letters to be reasonably acceptable to Seller with such satisfaction to be confirmed by Seller in writing prior to January 12, 2020 pursuant to the terms hereof) to Buyer (as amended, restated, supplemented or modified only in accordance with Section 7.04, the “**Equity Commitment Letters**” and, together with the Debt Commitment Letters, the “**Commitment Letters**”), pursuant to which the Equity Investors will on a several basis commit (i) to provide cash equity required for the Transactions in an aggregate amount of approximately \$277,463,507.00 (the “**Equity Financing**” and, together with the Debt Financing, the “**Financing**”), which amount is greater than or equal to the full amount of the cash equity required (together with the Debt Financing and the Escrowed Funds) to pay the Purchase Price to consummate the Transactions on the terms contemplated by the Transaction Agreements and in each case to pay all related fees and expenses and (ii) in the event that the Closing does not occur, to make a sufficient amount of the commitment of the Equity Investors available to satisfy the Liabilities of Buyer to Seller in respect of the cost and expense reimbursement obligations set forth in Sections 7.04(a) and (b) and 11.03(b).

(c) The Equity Commitment Letters, as executed and delivered to Seller, are legal, valid and binding obligations of Buyer and, to the knowledge of Buyer, the other parties thereto, are in full force and effect, and are enforceable against Buyer and, to the knowledge of Buyer, the other parties thereto, in accordance with their terms, subject to the Bankruptcy and Equity Exception. The Debt Commitment Letters, as executed and delivered to Seller, are legal, valid and binding obligations of Buyer and, to the knowledge of Buyer, the other parties thereto,

are in full force and effect, and are enforceable against Buyer and, to the knowledge of Buyer, the other parties thereto, in accordance with their terms, subject to the Bankruptcy and Equity Exception. As of the Commitment Letter Effective Time, no event has occurred which (with or without notice, lapse of time or both) would reasonably be expected to constitute a breach by Buyer of, or constitute a default or failure to perform by Buyer under, any term of or condition under any Commitment Letter, or otherwise result in any portion of the Financing contemplated thereby to be unavailable or delayed.

(d) There are no side letters or other Contracts, agreements or understandings to which Buyer or any of its Affiliates is a party relating to the Financing other than as expressly set forth in the Commitment Letters. There are no conditions precedent related to the funding of the full amount of the Financing contemplated by the Commitment Letters, other than the conditions precedent set forth in the Commitment Letters, or any contingencies that would permit the Debt Financing Sources to reduce the total amount of the Debt Financing, including any condition or other contingency relating to the amount or availability of the Debt Financing pursuant to any “flex” provision.

(e) Buyer (i) is not aware of any fact or occurrence that makes any of the representations or warranties of Buyer in any of the Commitment Letters inaccurate in any material respect, (ii) does not believe that it will be unable to satisfy on a timely basis any term or condition of closing to be satisfied by it or its Affiliates contained in the Commitment Letters and (iii) does not believe that any portion of the Financing required to consummate the Transactions will not be made available to Buyer on the Closing Date, including any reason to believe that any of the Equity Investors or Debt Financing Sources will not perform their respective funding obligations under the Commitment Letters in accordance with their respective terms and conditions. Buyer has fully paid any and all commitment fees and other fees required by the Debt Commitment Letters to be paid as of the Agreement Date, and will pay in full any such amounts that become due on or before the Closing Date. Buyer is not in default or breach under the terms and conditions of any Commitment Letter and no event has occurred that, with or without notice, lapse of time or both, would or would reasonably be expected to constitute a default or breach or a failure to satisfy a condition under the terms and conditions of the Commitment Letters.

(f) Subject to the Financing being funded in full in accordance with the terms of the applicable Commitment Letters at Closing, Buyer will have at the Closing, (i) the resources and capabilities (financial and otherwise) to perform its obligations under the Transaction Agreements (including all payments to be made by it in connection herewith) and (ii) immediately available funds in connection with the Financing in an aggregate amount (after netting out applicable fees, expenses, original issue discount and similar premiums and charges provided under the Debt Commitment Letters, and assuming that all rights to flex the terms of the Debt Financing are exercised to their maximum extent) that will enable Buyer to (x) pay the Purchase Price and consummate the Transactions on the terms contemplated by the Transaction Agreements and (y) pay all related fees and expenses and (iii) undertake its other obligations at Closing upon the terms contemplated by the Transaction Agreements. Buyer has not incurred any obligation, commitment, restriction or other Liability of any kind, and is not contemplating incurring any obligation, commitment, restriction or other Liability of any kind, in either case which would impair or adversely affect the availability or amount of the Financing.

(g) Subject to Section 12.17(c)(ii), the obligations of Buyer under this Agreement are not contingent on the availability of the Financing.

Section 5.07. Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission from Buyer or any of Buyer's Affiliates in connection with the Transactions.

Section 5.08. Investigation. Buyer acknowledges and agrees that it (a) has completed such inquiries and investigations as it has deemed appropriate into, and, based thereon, has formed an independent judgment concerning, the Transferred Assets, the Assumed Liabilities, the Business and the Transactions, and any other rights or obligations to be transferred, directly or indirectly, pursuant to the Transaction Agreements and (b) has been furnished with, or given access to, the projections, forecasts, estimates, appraisals, statements, promises, advice, data or information about Seller, the Transferred Assets, the Assumed Liabilities, the Business and any other rights or obligations to be transferred, directly or indirectly, pursuant to the Transaction Agreements, as it has requested. Buyer further acknowledges and agrees that (x) the only representations and warranties made by Seller are the representations and warranties expressly set forth in Article IV (as modified by the Disclosure Schedules) and in any other Seller Transaction Agreement and Buyer has not relied upon any other express or implied representations, warranties or other projections, forecasts, estimates, appraisals, statements, promises, advice, data or information made, communicated or furnished by or on behalf of Seller or any of its Affiliates, any Representatives of Seller or any of its Affiliates or any other Person, including any projections, forecasts, estimates, appraisals, statements, promises, advice, data or information made, communicated or furnished by or through Seller's financial advisors, or management presentations, data rooms (electronic or otherwise) or other due diligence information, and that Buyer will not have any right or remedy arising out of any such representation, warranty or other projections, forecasts, estimates, appraisals, statements, promises, advice, data or information and (y) any claims Buyer may have for breach of any representation or warranty shall be based solely on the representations and warranties of Seller expressly set forth in Article IV (as modified by the Disclosure Schedules) or in any other Seller Transaction Agreement. Except as otherwise expressly set forth in this Agreement, Buyer understands and agrees that the Business, the Transferred Assets and the Assumed Liabilities are being transferred on a "where-is" and, as to condition, "as-is" basis subject to the representations and warranties contained in Article IV (as modified by the Disclosure Schedules) or in any other Seller Transaction Agreement, without any other representations or warranties of any nature whatsoever.

## ARTICLE VI

### ADDITIONAL AGREEMENTS

Section 6.01. Conduct of Business Before the Closing. Buyer acknowledges that Seller is operating the Business in the context of the Bankruptcy Cases. Subject to the foregoing, except (a) as required by applicable Law, by Order of the Bankruptcy Court or to the extent necessary in connection with the Bankruptcy Cases, (b) as required in connection with any Transaction Agreement, (c) for matters identified on Schedule 6.01, during the Pre-Closing Period:



(i) Seller shall use commercially reasonable efforts to (A) operate the Business in the ordinary course of business, (B) maintain the Transferred Assets substantially in their current condition (subject to ordinary wear and tear), and (C) preserve in all material respects the present business operations, organization and goodwill of the Business, and the present relationships with material suppliers of the Business; and

(ii) unless Buyer otherwise consents in writing (which consent shall not be unreasonably withheld, conditioned or delayed), Seller will not do any of the following:

(A) other than in the ordinary course of business, grant any Lien on any material Transferred Assets (in each case, whether tangible or intangible), other than a Permitted Lien or a Lien that will be discharged at or prior to the Closing;

(B) acquire (by merger, consolidation, acquisition of stock or assets or otherwise) any corporation, partnership or other business organization or division;

(C) sell, transfer, lease, sublease or otherwise dispose of any Transferred Assets having a value in excess of \$5,000,000, other than in the ordinary course of business or as requested by a Government Authority;

(D) in any material respect, (X) increase the wages, salaries, or bonuses payable to any Covered Employee or (Y) establish or materially increase any benefits under any Employee Plan, except, in either case, (1) as required by any Employee Plan or any Contract in existence on the Agreement Date, (2) any increase in wages, salaries, bonuses and incentives in the ordinary course of business, including the annual merit review process, or (3) as required by applicable Law;

(E) enter into any settlement or release with respect to any material Action Related to the Business other than any settlement or release that (X) that contemplates only the payment of money without ongoing limits on the conduct or operation of the Business, (Y) results in a full release of Seller with respect to the claims giving rise to such Action or (Z) involves the payment of Liabilities reflected or reserved against in full in the Financial Statements;

(F) materially amend or terminate any material Contract Related to the Business other than (i) in the ordinary course of business, and (ii) if prior to the Sale Hearing, with written notice to Buyer on or before three (3) Business Days prior to the Sale Hearing if such Contract is a Transferred Contract; provided, however, in no event shall Seller amend any Transferred Lease to defer rent if such rent deferral period includes a period on or after the Closing Date;

(G) enter into any material Contract Related to the Business, other than (i) in the ordinary course of business, and (ii) with written notice to Buyer on or before three (3) Business Days prior to Closing; or

(H) enter into any legally binding commitment with respect to any of the foregoing.

Notwithstanding the foregoing, any reasonable good faith action taken, or omitted to be taken, by Seller in relation to the COVID-19 Pandemic that is outside the ordinary course of business and (X) pursuant to state or local ordinances or franchisor requirements, or (Y) consistent with QSR industry actions for large QSR operators shall not (a) be deemed to be a breach of this Section 6.01, or (b) require the consent of Buyer; provided, that, in each case, Seller shall notify Buyer in writing (email shall suffice) prior to taking any such action to the extent reasonably practicable.

Section 6.02. Access to Information.

(a) During the Pre-Closing Period, upon reasonable prior written notice, Seller shall, at the sole cost and expense of Buyer, (i) afford the Representatives of Buyer reasonable access, during normal business hours, to the properties, books and records Related to the Business, (ii) timely furnish to the Representatives of Buyer such additional financial and operating data and other information regarding the Business, including without limitation monthly consolidated financial statements (excluding the Excluded Business) and monthly unit-level financial reporting, as Buyer or its Representatives may from time to time reasonably request for purposes of consummating the Transactions (including to obtain Permits), and (iii) make reasonably available to Buyer and its Representatives, during normal business hours (and so long as doing so does not cause any undue burden on, or disruption to, the operation of the Business or the Excluded Business, including the sale thereof), those (A) directors, officers and employees with day-to-day oversight of the Business and (B) auditors, accountants and other Representatives, in each case of Seller, except, in the case of (i), (ii) and (iii), as set forth in Section 6.02(b). Seller will use its commercially reasonable efforts to facilitate an orderly transition of the Business to Buyer.

(b) Notwithstanding anything in this Agreement to the contrary,

(i) (A) in no event shall Seller or any of its Affiliates be obligated to provide any (1) access or information in violation of any applicable Law, or any order of the Bankruptcy Court, (2) information the disclosure of which could reasonably be expected to jeopardize any applicable privilege (including the attorney-client privilege) available to Seller or any of its Affiliates relating to such information, or (3) information the disclosure of which would cause Seller or any of its Affiliates to breach a confidentiality obligation to which it is bound (provided that, in each case, Seller shall use commercially reasonable efforts to provide such access or information in an alternative manner so as to not violate any applicable Law or order of the Bankruptcy Court, waive any legal privilege or breach any confidentiality obligation) and (B) any access or investigation contemplated by **Error! Reference source not found.** shall not unreasonably interfere with any of the businesses, personnel or operations of Seller or any of its Affiliates or the Business;

(ii) the auditors and accountants of Seller or any of its Affiliates or the Business shall not be obligated to make any work papers available to any Person except in accordance with such auditors' and accountants' normal disclosure procedures and then only after such Person has signed a customary agreement relating to such access to work papers in form and substance reasonably acceptable to such auditors or accountants; and

(iii) Buyer and its Representatives shall not conduct any sampling or testing of soil, groundwater, air, or other environmental media of Seller.

(c) If so requested by Seller, Buyer shall enter into a customary joint defense agreement or common interest agreement with Seller or any of its Affiliates with respect to any information provided to Buyer, or to which Buyer gains access, pursuant to this Section 6.02 or otherwise.

**Section 6.03. Confidentiality.** Buyer acknowledges that the Confidential Information and Transaction Information (each as defined in the Confidentiality Agreement) provided to it in connection with this Agreement, including information provided under Section 6.02, is subject to the Confidentiality Agreement and the terms of the Confidentiality Agreement are incorporated into this Agreement by reference and shall continue in full force and effect (and all obligations thereunder shall be binding upon Buyer, its Representatives (as defined in the Confidentiality Agreement) and any other third party who signed (or signs) a joinder thereto subject to and in accordance with the Confidentiality Agreement as if parties thereto) until the Closing, at which time the obligations under the Confidentiality Agreement shall terminate; provided, however, that Buyer's confidentiality obligations shall terminate only in respect of that portion of the Confidential Information Related to the Business and constituting a Transferred Asset, and for all other Confidential Information, the Confidentiality Agreement shall continue in full force and effect in accordance with its terms. If for any reason the Closing does not occur and this Agreement is terminated, the Confidentiality Agreement shall continue in full force and effect in accordance with its terms. For the avoidance of doubt, the provisions in the Confidentiality Agreement which by their terms survive the termination of the Confidentiality Agreement shall continue in full force and effect in accordance with their terms.

**Section 6.04. Regulatory Approvals.**

(a) Buyer shall, and shall cause its Affiliates to take any and all steps to make all required filings and promptly obtain all Consents, Permits and Orders of all Government Authorities (other than any Required Approvals or action of the Bankruptcy Court, which are governed exclusively by Article VIII) that may be, or become, necessary for the execution and delivery of, and performance of its obligations pursuant to, the Transaction Agreements (including the consummation of the Transactions) (collectively, the "**Government Approvals**").

(b) As of the Agreement Date, each of the Parties has made its respective filing with respect to the Transactions under the HSR Act and the applicable HSR waiting period has expired, and any and all other filings required pursuant to other Antitrust Laws with respect to the Transactions. Each Party shall, and shall cause its Affiliates to, take any and all necessary steps to resolve as soon as reasonably practicable, but in any event not later than the Outside Date, any inquiry or investigation by any Government Authority relating to the Transactions under any Antitrust Law. In connection with any such inquiry or investigation and in furtherance of its obligations under Section 6.04(e), each Party further agrees to respond as promptly as reasonably practicable to any request for additional information made by any Government Authority pursuant to applicable Law, including any Antitrust Law. All filings fees related to the HSR Act or any other filings under any other Antitrust Laws shall be borne by Buyer.



(c) Notwithstanding any other provision in this Agreement, Buyer shall, and shall cause its Affiliates to, promptly take and diligently pursue any or all actions to the extent necessary to eliminate each and every impediment under any Antitrust Law that may be asserted by any Government Authority or any other Person in opposition to the consummation of any of the Transactions, so as to enable the Parties to consummate the Transactions as soon as reasonably practicable, but in any event not later than the Outside Date. In furtherance of this obligation, and without limitation, Buyer shall, and shall cause its Affiliates to: (i) propose, offer, negotiate, commit to, effect, and agree to, by consent decree, hold separate order, asset preservation order, or otherwise, any sale, divestiture, license, hold separate, or other disposition of or restriction on, any of the Transferred Assets or any of Buyer's or Buyer's Affiliates' assets or businesses; provided, however, that any such sale, divestiture, license, disposition, restriction on, holding separate, preservation of, or other similar arrangement or action on the Transferred Assets is conditioned on the occurrence of, the Closing Date; (ii) create, terminate, amend, or assign existing relationships, ventures, contractual rights, or obligations of Buyer or Buyer's Affiliate(s), or the Transferred Assets; (iii) amend, assign, or terminate existing licenses or other agreements (and entering into such new licenses or other agreements); (iv) otherwise take or commit to any and all actions that would limit Buyer's freedom of action with respect to, or its ability to retain or hold, directly or indirectly, any businesses, assets, products, or equity interests in the business of Buyer, Buyer's Affiliate(s), or the Transferred Assets; (v) enter into any governmental order, consent decree, or other agreement to effectuate any of the foregoing; and (vi) if necessary, defend any threatened or initiated litigation under any Antitrust Law that would prevent or delay consummation of the Transactions.

(d) To the extent reasonably practicable, each Party shall promptly notify the other Parties of any oral or written communication it or any of its Representatives receives from any Government Authority relating to the matters that are the subject of this Section 6.04, permit the other Parties and their respective Representatives to review in advance any communication relating to the matters that are the subject of this Section 6.04 proposed to be made by such Party to any Government Authority and provide the other Parties with copies of all substantive correspondence, filings or other communications between them or any of their Representatives, on the one hand, and any Government Authority or members of its staff, on the other hand, relating to the matters that are the subject of this Section 6.04, provided, however, that materials provided to the Party may be reasonably designated as "Outside Counsel Only" and also may be redacted: (i) to remove references concerning the valuation of the Business or competitively sensitive information; (ii) as necessary to comply with contractual arrangements, applicable Law or by order of the Bankruptcy Court; and (iii) as necessary to address reasonable attorney-client or other privilege or confidentiality concerns. To the extent reasonably practicable, no Party shall agree to participate in any substantive meeting or discussion with any Government Authority in respect of any such filings, investigation or other inquiry unless it consults with the other Parties in advance and, to the extent permitted by such Government Authority, gives the other Parties the opportunity to attend and participate at such meeting. Subject to the Confidentiality Agreement, the Parties will coordinate and cooperate fully with each other in exchanging such information and providing such assistance as the other Parties may reasonably request in connection with the foregoing and in seeking early termination of any applicable waiting periods. The Parties shall share the right to control and direct the process by which the Parties seek to avoid or eliminate impediments under any Antitrust Law, including by directing the strategy and making final determinations related to the review or investigation of the Transactions by any Government Authority and attending all

meetings, discussions, and communications with any Government Authority except to the extent that such Government Authority may request to communicate exclusively with one Party. Nothing in this Section 6.04(d) shall be applicable to Tax matters.

(e) Buyer shall not, and shall not permit any of its Affiliates to, take any action (including acquiring or agreeing to acquire by merging or consolidating with, or by purchasing the assets of or equity in, or by any other manner, any Person or portion thereof, or otherwise acquiring or agreeing to acquire any assets) that would reasonably be expected to have the effect of (i) delaying, impairing or impeding the receipt of, or increasing the risk of not receiving, any required Government Approval or the issuance or reissuance or transfer of any Permit or Environmental Permit, (ii) delaying, impairing or impeding the expiration or termination of any applicable waiting period with respect to a Government Approval (and shall not, without the consent of Seller, withdraw or refile any filing or restart the waiting period on any Government Authority's review, or enter into a timing agreement with a Government Authority), (iii) increasing the risk of any Government Authority entering an Order prohibiting the consummation of the Transactions or (iv) otherwise delaying the consummation of the Transactions.

(f) Actions or agreements required of Buyer pursuant to this Section 6.04 shall under no circumstances be considered a Material Adverse Effect.

Section 6.05. Third Party Consents. Each Party agrees to cooperate and use commercially reasonable efforts to obtain any other consents and approvals from any third person other than a Government Authority that may be required in connection with any Transaction (the "**Third Party Consents**"). Notwithstanding anything in this Agreement to the contrary, (i) neither Seller nor any of its Affiliates shall be required to compensate any third party, commence or participate in any Action or offer or grant any accommodation (financial or otherwise, including any accommodation or arrangement to remain primarily, secondarily or contingently liable for any Assumed Liability) to any third party to obtain any such Third Party Consent, and (ii) neither Buyer nor any of its Affiliates shall be required to compensate any third party, commence or participate in any Action or offer or grant any accommodation (financial or otherwise, including any accommodation or arrangement to remain primarily, secondarily or contingently liable for any Excluded Liability) to obtain any such Third Party Consent, other than the assumption of the Assumed Liabilities and payment of the Cure Costs for the Transferred Contracts. For the avoidance of doubt, no representation, warranty or covenant of Seller contained in any Transaction Agreement shall be breached or deemed breached, and no condition shall be deemed not satisfied, based solely on (a) the failure to obtain any Third Party Consents or (b) any Action commenced or threatened by or on behalf of any Person arising out of or relating to the failure to obtain any such Third Party Consents.

Section 6.06. Cooperation. During the Pre-Closing Period, (a) Seller and Buyer shall, and shall cause their respective Affiliates to, (i) other than as permitted by Article VIII, refrain from taking any actions that would reasonably be expected to impair, delay or impede the Closing and (ii) without limiting the foregoing or modifying Buyer's obligations pursuant to Section 6.04, use commercially reasonable efforts to cause all Closing Conditions of the other Party to be met as promptly as practicable and in any event on or before the Outside Date and (b) each Party shall keep the other Party reasonably apprised of the status of the matters relating to the completion of

the Transactions, including with respect to the negotiations relating to the satisfaction of the Closing Conditions of the other Party.

Section 6.07. Bulk Transfer Laws. Buyer acknowledges that Seller will not comply with the provisions of any bulk transfer Laws or similar Laws (including under any Tax Laws) of any jurisdiction in connection with the Transactions and hereby waives all claims related to the noncompliance therewith.

Section 6.08. Employee Matters.

(a) Employment of Covered Employees. Buyer shall offer employment to (i) all Covered Employees (including those on approved leave of absence or disability) (A) whose location of work is at Seller's restaurants (other than those restaurants that are part of the Excluded Business) or (B) whose primary responsibilities are direct supervision of the day to day operations at Seller's restaurants (e.g. area coaches, district managers) (other than those whose primary responsibilities are direct supervision of the day to day operations at the restaurants that are part of the Excluded Business) and (ii) substantially all of the remaining Covered Employees that support the Business, in each case, no later than fourteen (14) days prior to the Closing Date, provided that Buyer shall provide notice to Seller of the list of Covered Employees it will offer employment to no later than thirty (30) days prior to the Closing Date, such employment to be effective as of the Closing Date subject to such Covered Employees completing and meeting Buyer's customary hiring criteria and procedures. At a date and pursuant to a process mutually agreeable to Seller and Buyer prior to the Closing, Seller will cause its managers, in conjunction with Buyer, to hold information sessions and hiring sessions at each restaurant for Covered Employees of such restaurant to facilitate the hiring of any Covered Employees at the Closing. Seller shall be responsible for all costs related to Covered Employees for such information sessions and hiring sessions at each restaurant. Seller shall cooperate with Buyer to allow Buyer to make offers of employment to Covered Employees including those that are on approved leave of absence and disability. The offer of employment made by Buyer or an Affiliate of Buyer (i) with respect to each Covered Employee shall be effective as of the Closing Date (subject to such Covered Employees completing and meeting Buyer's customary hiring criteria and procedures); and (ii) with respect to substantially all Covered Employees, shall contain salary and wages no less favorable than provided by Seller immediately prior to the Closing Date with respect to such Covered Employee; and (iii) with respect to all Covered Employees, shall contain salary and wages and other terms and conditions of employment substantially similar to those provided to similarly situated employees of Buyer's Affiliates. For purposes of this Section 6.08, any individual who becomes employed by Buyer or an Affiliate of Buyer in accordance with this Section 6.08 is referred to as a "**Transferred Employee**." No later than each of twenty (20) and two (2) Business Days before the Closing, Seller shall deliver to Buyer updated, accurate, and complete Covered Employee Lists, as current as reasonably practicable, with the name replacing the identification number, including a list of Covered Employees that are on a current leave of absence or disability, a list of Covered Employees for whom garnishments are in place, and the information that will be required for Buyer to implement such garnishments, and a list of the accrued balances of vacation and sick pay awarded for each Covered Employee. Seller shall cooperate with Buyer and the applicable state agency to transfer any unemployment reserves to Buyer, if transferable under applicable Law. Seller shall, and shall cause its Affiliates to, reasonably cooperate with Buyer in connection with the onboarding and transition of the Transferred Employees to Buyer.

(b) Employees and Employee Plans.

(i) Liabilities. Except with respect to the Transferred Employee Liabilities and as provided in Section 6.08(c), Seller shall perform all employee related obligations through the Closing Date, including without limitation: giving required notices; paying all compensation through Closing; satisfying all of Seller's obligations to Excluded Employees, Covered Employees or former Covered Employees on account of their employment or former employment by Seller; and performing any obligations required by the Fair Labor Standards Act of 1938, the Equal Pay Act, applicable wage and hour Laws, or any other applicable Laws. Except with respect to the Transferred Employee Liabilities and as provided in Section 6.08(c), Buyer shall have no Liability for accrued wages (including salaries and commissions), severance benefits, vacation pay, COBRA, pension and profit sharing contributions, or other forms of benefits of any type or nature on account of said Excluded Employees' or Covered Employees' employment by Seller, all of which will be deemed Excluded Liabilities.

(c) Transferred Employees – Additional Employment Terms.

(i) Credit for Service. Subject to Section 6.08(c)(iii), Buyer shall, and shall cause its Affiliates to, credit Transferred Employees for service earned on and prior to the Closing Date with Seller and any of its Affiliates or predecessors, in addition to service earned with Buyer and its Affiliates on or after the Closing Date, (A) to the extent that service is relevant for purposes of eligibility, vesting, vacation, paid time off, paid-leave entitlement or the calculation of benefits under any employee benefit plan, program or arrangement of Buyer or any of its Affiliates for the benefit of the Transferred Employees on or after the Closing Date; provided, however, Buyer shall not be required to provide any credit for service for purposes of eligibility of 401(k) matching for any Covered Employee; and (B) for such additional purposes as may be required by applicable Law; provided, however, that nothing herein shall result in a duplication of benefits with respect to the Transferred Employees.

(ii) Pre-existing Conditions; Coordination. Buyer shall, and shall cause its Affiliates to, use commercially reasonable efforts to waive any pre-existing condition or actively at work limitations, evidence of insurability and waiting periods for the Transferred Employees and their eligible spouses and dependents under any employee benefit plan, program or arrangement of Buyer or any of its Affiliates for the benefit of the Transferred Employees on or after the Closing Date, but only to the extent waived under such employee benefit plans, programs or arrangements of Seller and its Affiliates. Buyer shall, and shall cause its Affiliates to, use commercially reasonable efforts to credit for purposes of determining and satisfying annual deductibles, co-insurance, co-pays, and out-of-pocket limits under the comparable health plans and arrangements offered to Transferred Employees, deductibles, co-insurance, co-pays and out-of-pocket expenses paid by Transferred Employees and their respective spouses and dependents under Seller or any of their respective Affiliates' health plans in the calendar year in which the Closing Date occurs, in each case solely to the extent Seller or the Transferred Employee, as applicable, provides the necessary verification for Buyer to provide such credits.

(iii) Earned and Vested Vacation Pay. In connection with the termination of employment of the Covered Employees with Seller, Seller will pay Covered Employees for the value of each such Covered Employee's earned and vested but unused vacation, in accordance



with applicable policy of Seller. Notwithstanding anything to the contrary in this Agreement, to the extent that Seller is not obligated to or does not pay the Covered Employees the value of the accrued or earned but unvested or unused vacation hours, Buyer shall not be required to grant credit to such Covered Employees for such accrued or earned but unvested or unused vacation hours. Seller shall not be entitled to amend, alter, repeal or otherwise modify its vacation policy without Buyer's consent.

(iv) COBRA. Seller and its Affiliates shall be solely responsible for providing continuation coverage under COBRA to those individuals (including all Covered Employees and their dependents or beneficiaries) who are or become M&A qualified beneficiaries (as defined in Treasury Regulation Section 54.4980B-9, Q&A-4(a)) with respect to the transactions contemplated by this Agreement or who otherwise experience a COBRA qualifying event on or before the Closing Date. Buyer and its Affiliates shall provide coverage required by COBRA to Transferred Employees and their eligible dependents or beneficiaries under group health plans maintained by Buyer or an Affiliate of Buyer with respect to qualifying events occurring after the Closing Date.

(d) Bonus Plan. Notwithstanding anything to the contrary, Buyer and its Affiliates shall pay within thirty (30) days after Closing the amounts set forth on a schedule delivered by Seller to Buyer within five (5) Business Days prior to Closing to certain Transferred Employees and current or former employees of Seller set forth on such schedule (such amounts, collectively with the employer-portion of payroll taxes and social security (including FICA) amounts related thereto, to the extent not previously paid by Seller (the “**Transferred Employee Liabilities**”). Buyer shall not assume or be obligated to continue any of Employee Plans or other incentive or bonus plans, programs, or arrangements giving rise to the Transferred Employee Liabilities and shall have no liabilities relating to the determination or calculation of the individual bonus or plan amounts for any Transferred Employee, Excluded Employee or former employee of Seller, and shall have no liability to any Covered Employee, Excluded Employee or Transferred Employee or former employee of Seller for the failure to pay any obligations arising out of any pre-Closing compensation arrangement; *provided, further* that Buyer is not assuming, agreeing to pay or agreeing to discharge any, and Seller shall be solely and exclusively liable with respect to, obligations arising under the KEIP and the KERP or any other incentive or retention-based compensation plan approved by the Bankruptcy Court. Buyer shall not claim any compensation deductions with respect to the Transferred Employee Liabilities.

(e) No Third Party Beneficiaries. Notwithstanding the provisions of this Section 6.08 or any provision of the Agreement, nothing in this Section 6.08 or the Agreement is intended to and shall not (i) create any third party rights, (ii) amend any employee benefit plan, program, policy or arrangement, (iii) require Buyer or any of its Affiliates or Seller or any of its Affiliates to continue any employee benefit plan, program, policy or arrangement beyond the time when it otherwise lawfully could be terminated or modified or as otherwise required herein or (iv) provide any Excluded Employee, Covered Employee or any Transferred Employee with any rights to continued employment. Buyer and its Affiliates expressly reserve the right to terminate the employment of any Transferred Employee (or, except as otherwise provided in this Section 6.08, amend the terms and conditions of employment of any Transferred Employee) for any reason at any time, including without cause.

Section 6.09. Guarantees; Other Obligations. Seller shall use commercially reasonable efforts to negotiate the termination, removal, or release of the Seller Guarantees set forth on Schedule 6.09 and any other Seller Guarantees prior to Closing, and Buyer shall cooperate with Seller in connection therewith. In the event that any Seller Guarantees secure obligations or performance of a Transferred Contract or relate to an Assumed Liability or a Transferred Asset and are not terminated, removed, or released prior to Closing (but excluding any obligations to the extent related to the Excluded Business) (the “Indemnified Seller Guarantee Obligations”), then (i) Buyer shall negotiate with the landlords for any such Transferred Leased Real Property set forth on Schedule 6.09, and, if so requested by such landlords, at Closing Buyer will provide a guaranty to such landlords in form and substance reasonably acceptable to Buyer solely with respect to matters arising from and after the Closing Date, and (ii) from and after the Closing Date, Buyer will indemnify, defend and hold harmless Seller and its Affiliates against, and reimburse Seller and its Affiliates to the extent an Indemnified Seller Guarantee Obligation is called upon and Seller or its Affiliates make any payment or are obligated to reimburse the party to whom the Indemnified Seller Guarantee Obligation is owed solely to the extent such payment or obligation to reimburse arises out of Buyer’s ownership of the Transferred Contract during the period from and after Closing.

Section 6.10. Services Agreement. In the event that on the Closing Date, the conditions to consummation of the transactions contemplated by the Wendy’s APA have not been satisfied or waived (other than those conditions that by their nature can only be satisfied at the closing of such transactions, but subject to the satisfaction or waiver of those conditions at such time) and the parties thereto are not ready to consummate such transactions concurrently with the Closing of the Transactions, then Buyer and Seller shall enter into a services agreement customary for the industry, which services will be provided at cost, pursuant to which Buyer will, as requested by Seller, provide shared services and/or manage the operations (including support center functions) of the Excluded Business at no cost to Buyer for Seller who will continue to own all of the assets, economics, risk and liabilities of the Excluded Business and employ the employees for the Excluded Business until such time as the Excluded Business is sold to the buyers under the Wendy’s APA or any back-up bidder or other buyer, but in no event more than twelve (12) months. The parties agree to negotiate in good faith the terms and conditions of such services agreement.

Section 6.11. Closing Timing. No sooner than fourteen (14) days prior to the then anticipated Closing Date, Buyer may request that Seller request confirmation from the buyer under the Wendy’s APA that no Eligible Assignee (as defined in the Wendy’s APA) is not, or may not be, ready, willing and able to consummate the Transactions contemplated by the Wendy’s APA in accordance with the terms thereof. Seller shall seek such confirmation as promptly as practicable and provide Buyer with a copy upon receipt. If as a result of such event the Closing Date is delayed, then each of Buyer and Seller shall agree to a mutually agreeable Closing Date, which shall in no event be later than the Outside Date.



## ARTICLE VII

### POST-CLOSING COVENANTS; FINANCING

#### Section 7.01. Access.

(a) From and after the Closing Date, in connection with any reasonable business purpose, including the preparation or amendment of Tax Returns, claims or obligations relating to Excluded Liabilities, financial statements, any Action to which Seller or any of its Affiliates is a party, the requirements of any Laws applicable to Seller and its Affiliates, or the determination of any matter relating to the rights or obligations of Seller or any of its Affiliates under any Transaction Agreement, or as is necessary to administer, or satisfy their obligations in connection with, the Bankruptcy Cases, upon reasonable prior written notice and at Seller's sole cost and expense, and except to the extent necessary to (i) ensure compliance with any applicable Law or an Order of the Bankruptcy Court, (ii) preserve any applicable privilege (including the attorney-client privilege) or (iii) comply with any contractual confidentiality obligations, Buyer shall, and shall cause its Affiliates and Representatives to (A) afford Seller and its Representatives and their respective Affiliates reasonable access, during normal business hours, to the properties, books and records of Buyer and its Affiliates in respect of the Business, the Transferred Assets and the Assumed Liabilities, (B) furnish to Seller and its Representatives and their respective Affiliates such additional financial and other information regarding the Business, the Transferred Assets and the Assumed Liabilities as Seller or its Representatives may from time to time reasonably request and (C) make available to Seller and its Representatives and their respective Affiliates those employees of Buyer or its Affiliates whose assistance, expertise, testimony, notes or recollections or presence may be necessary to assist Seller, its Representatives or their respective Affiliates in connection with its or their inquiries for any purpose referred to above, including the presence of such Persons for interviews and depositions and as witnesses in hearings or trials for such purposes; provided, however, that such investigation shall not unreasonably interfere with the business or operations of Buyer or any of its Affiliates; and provided, further, that the auditors and accountants of Buyer or its Affiliates shall not be obligated to make any work papers available to any Person except in accordance with such auditors' and accountants' normal disclosure procedures and then only after such Person has signed a customary agreement relating to such access to work papers in form and substance reasonably acceptable to such auditors or accountants. Notwithstanding anything to the contrary herein, Seller shall have continued access to all Transferred Books and Records as is necessary to administer the Bankruptcy Cases and Seller may retain copies of such Transferred Books and Records as necessary or appropriate in connection with such purpose.

(b) If so requested by Buyer, on the one hand, or Seller or any of its Affiliates, on the other hand, Seller or one of its Affiliates, or Buyer or one of its Affiliates, as the case may be, shall enter into a customary joint defense agreement or common interest agreement with Buyer and its Affiliates, or Seller and its Affiliates, as applicable, with respect to any information to be provided to Seller or its Affiliates pursuant to Section 7.01(a).

Section 7.02. Rights to Business Marks. Subject to the consent of Franchisor (if necessary), Seller and its Affiliates may, and Buyer and its Affiliates, as applicable, hereby grant to Seller and its Affiliates a limited, non-exclusive, non-transferable, nonsublicensable right to,

continue to use the Business Marks (a) in Seller's and its Affiliates' corporate names, to the extent used by Seller and its Affiliates prior to the Closing Date and (b) otherwise, in each case, solely in connection with winding down Seller's estate following the Closing. Nothing in this Section 7.02 shall prohibit Seller's or its Affiliates' use of Business Marks to the extent that such use (i) is required by Law to wind down Seller's estate or (ii) constitutes nominative or descriptive fair use under Law, which refers to Seller or its Affiliates and would not cause confusion as to the origin of a good or service, including in accurately stating the historical relationship between Seller and Buyer for information purposes (and in a non-Trademark manner) in historical, tax and similar records.

Section 7.03. Preservation of Books and Records. Seller and its Affiliates shall have the right to retain copies of all books and records of the Business relating to periods ending on or before the Closing Date. Buyer agrees that it shall preserve and keep all original books and records in respect of the Business in the possession or control of Buyer or its Affiliates for a period of six (6) years from the Closing Date or, if shorter, the applicable period specified in Seller's document retention policy. After such period, before Buyer or any Affiliate shall dispose of any of such books and records, Buyer shall give at least ninety (90) days' prior written notice to Seller of its such intention to dispose of such books and records, and Seller, and/or any of its Affiliates shall be given an opportunity, at Seller's cost and expense, to remove and retain all or any part of such books and records as it or they may elect.

Section 7.04. Financing.

(a) During the Pre-Closing Period, subject to the limitations set forth below, and unless otherwise agreed by Buyer, Seller will use commercially reasonable efforts to, and cause the management of Seller to use commercially reasonable efforts to, cooperate with Buyer as reasonably requested by Buyer and as is customary for financings of the type contemplated by the Debt Commitment Letter, and at Buyer's sole expense, to support Buyer's arrangement and obtaining the Debt Financing. Such assistance shall include using commercially reasonable efforts to: (i) upon reasonable advance notice, participate (including making members of management, with appropriate seniority and expertise, and other necessary Representatives of Seller) in a reasonable number of meetings, presentations, road shows, conference calls, drafting sessions and rating agency presentations with prospective Debt Financing Sources and their Representatives in connection with syndication or other marketing of the Debt Financing, in each case, at reasonable times and locations (including via audio or video conferences) to be mutually agreed; (ii) reasonably assist with the preparation of customary bank information memoranda, marketing materials, rating agency presentations and similar materials customarily required in connection with the Debt Financing, in each case, to the extent such materials relate to information concerning the Business or any Transferred Assets; (iii) furnishing Buyer with information required and reasonably requested in writing by the Debt Financing Sources at least ten (10) Business Days prior to the Closing Date under applicable "know your customer", "beneficial ownership" and anti-money laundering rules and regulations; (iv) providing financial and other pertinent information with respect to the Business as reasonably necessary to assist Buyer with the preparation of the pro forma consolidated balance sheet and related pro forma consolidated statements of income and cash flows of Buyer to the extent required by the Debt Commitment Letter; and (v) providing such information as may be reasonably requested by Buyer in connection with Buyer's satisfaction of the conditions precedent set forth in the Debt Commitment Letter, to the extent the satisfaction of

such conditions requires the cooperation of or is within the control of Seller or its respective Affiliates; provided, that such cooperation shall not be required to the extent it would:

(A) unreasonably interfere with any of the businesses, personnel or operations of Seller or any of its Affiliates or the Business;

(B) require Seller or any of its Affiliates to provide any (1) access or information in violation of any applicable Law, or any order of the Bankruptcy Court, (2) information the disclosure of which could reasonably be expected to jeopardize any applicable privilege (including the attorney-client privilege) available to Seller or any of its Affiliates relating to such information, or (3) information the disclosure of which would cause Seller or any of its Affiliates to breach a confidentiality obligation to which it is bound;

(C) require (1) the entry by Seller or any of its Affiliates into any agreement (whether or not conditioned on the Closing), except where such agreement is otherwise contemplated or required under the Transaction Agreements, or (2) Seller, any of its Affiliates or any of its or their Representatives to execute, deliver or enter into, or perform any agreement, document or instrument with respect to the Debt Financing, except where such agreement, document or instrument is reasonably requested by Buyer in order to consummate the Debt Financing and as is customary for financings of the type contemplated by the Debt Commitment Letter;

(D) cause any director, officer or Covered Employee to incur any personal liability (including that none of the board of directors of Seller or any of its Affiliates shall be required to enter into any resolutions or take any similar action approving the Financing until the Closing has occurred);

(E) except as set forth above, require the delivery of any projections or pro forma financial information to any third parties, *provided* that Buyer may share such projections or financial information with its Debt Financing Sources and their Affiliates if such sharing is not prohibited under the Confidentiality Agreement;

(F) require the waiver or amendment of any terms of this Agreement;

(G) require the delivery of any financial statements or financial information in a form or subject to a standard different than those provided to Buyer on or prior to the Agreement Date and not available under current reporting systems or maintained Seller in the ordinary course of business;

(H) require delivery of any legal opinions or accountants' cold comfort letters or reliance letters;

(I) pay any commitment or other fee for which Seller has not received prior reimbursement, provide any indemnity or security or incur any Liability or obligation in connection with the Debt Financing or any other financing;

(J) take or permit the taking of any action that would reasonably be expected to conflict with, result in any violation or breach of, or default (with or without lapse of time, or both) under, any organizational documents of Seller or any of its Affiliates, or any applicable Law or Contracts of Seller or any of its Affiliates; and/or

(K) require Seller or any of its Affiliates to make any representation, warranty or certification that, in the good faith determination of Seller or such Affiliate, is not true.

(b) Buyer agrees that in no event shall Seller or any of its Affiliates be required to execute or deliver any documents in connection with the Financing. All non-public or otherwise confidential information regarding Seller, any of its Affiliates, the Business or any of the Transferred Assets obtained by Buyer pursuant to this Section 7.04 shall be kept confidential in accordance with the Confidentiality Agreement. Buyer shall indemnify and hold harmless Seller and each of its Affiliates and its and their respective Representatives from and against any and all liabilities, losses, damages, claims and reasonable out-of-pocket costs and expenses (including reasonable attorney's fees) interest, awards, judgments and penalties suffered or incurred in connection with any failure of Buyer or any of its Affiliates to comply with this Section 7.04(b) (other than (a) arising from fraud or intentional misrepresentation on the part of Seller or its Affiliates or any of its or their Representatives or any other material inaccuracy in any information provided in writing by Seller or its Affiliates or any of its or their Representatives specifically for use in connection with the Financing or (b) as a result of the gross negligence or willful misconduct of Seller or its Affiliates or any of its or their Representatives), whether or not the Transactions are consummated or this Agreement is terminated. As a condition to Seller's obligations pursuant to this Section 7.04, Buyer shall promptly, upon request by Seller, reimburse Seller for all costs and expenses (including attorney's fees and expenses and disbursements) incurred by Seller, its Affiliates or its and their Representatives in connection with the cooperation contemplated by this Section 7.04.

(c) Other than as set forth in clause (f), Buyer shall not permit any assignment of any Commitment Letter, or any amendment or modification to be made to, or any waiver of any provision or remedy under, any Commitment Letter, in each case, without obtaining Seller's prior written consent if such assignment, amendment, modification or waiver (i) reduces the aggregate amount of the Financing to an amount such that the Closing could not be consummated, (ii) imposes any additional (or adversely modifies any existing) condition precedent to the availability of the Financing that would reasonably be expected to adversely affect (including with respect to timing) the ability or likelihood of Buyer to timely consummate the transactions contemplated by this Agreement, (iii) adversely impacts the ability of Buyer to enforce its rights against the other parties to the Commitment Letters or (iv) would otherwise reasonably be expected to prevent, impede or delay the funding of the Financing on the Closing Date or the consummation of the transactions contemplated by this Agreement; provided, that Buyer shall be permitted to amend, restate, supplement or otherwise modify the Debt Commitment Letter to (1) add lenders, arrangers, book-runners, syndication and documentation agents or similar entities who have not executed the Debt Commitment Letter as of the Agreement Date and/or (2) implement any "flex" provisions applicable thereto, in each case subject to the limitations set forth in this Section 7.04. Seller expressly acknowledges and agrees to the amended draft Commitment Letters delivered in connection with this Agreement, which Commitment Letters supersede in full any prior

commitment letter delivered in connection with the Original Agreement. In addition to the foregoing, Buyer shall not release or consent to the termination of the Debt Commitment Letter or of any Debt Financing Source in accordance with the terms of the Debt Commitment Letter prior to the first to occur of Closing and the expiration or other termination of the Debt Commitment Letter in accordance with its terms, except with Seller's prior written consent.

(d) Buyer shall take all actions and do all things necessary, proper or advisable to obtain the Equity Financing as promptly as practicable on the terms and conditions described in the Equity Commitment Letter, including by taking all actions and doing all things necessary, proper or advisable to (i) finalize and execute the Equity Commitment Letters, (ii) maintain in effect the Equity Commitment Letters, (iii) ensure the accuracy of all representations and warranties of Buyer, if any, set forth in the Equity Commitment Letters, (iv) comply with its obligations under the Equity Commitment Letters, (v) satisfy on a timely basis all conditions applicable to Buyer in the Equity Commitment Letters that are within its control, (vi) enforce its rights under the Equity Commitment Letters and (vii) consummate the Equity Financing at or prior to the Closing, including by causing the Equity Investors to fund the Equity Financing at the Closing contemporaneously with and contingent upon the consummation of the Debt Financing.

(e) Buyer shall use its reasonable best efforts to obtain the Debt Financing as promptly as practicable on the terms and conditions described in the Debt Commitment Letter, including using its reasonable best efforts to (i) finalize and execute the Debt Commitment Letter, (ii) maintain in effect the Debt Commitment Letter in accordance with its terms, (iii) comply with its obligations under the Debt Commitment Letter and any definitive agreements relating thereto (the "**Debt Financing Documents**"), (iv) as promptly as practicable negotiate, execute and deliver the Debt Financing Documents on the terms and conditions contained in the Debt Commitment Letter (including the "flex" provisions in respect thereof), (v) satisfy on a timely basis all conditions and obligations applicable to Buyer in the Debt Commitment Letter and such Debt Financing Documents that are within its control, (vi) enforce its rights under the Debt Commitment Letter and the Debt Financing Documents, (vii) in the event all Closing Conditions set forth in Section 10.02 have been satisfied or waived (other than those conditions that by their nature are to be satisfied or waived at the Closing) and all conditions applicable to the Debt Financing have been satisfied, cause the Debt Financing Sources to fund the Debt Financing in accordance with the terms of the Debt Commitment Letter, and (viii) consummate the Debt Financing at the Closing (which, for the avoidance of doubt, shall include agreeing to consummate the Debt Financing even if any flex rights are exercised to their maximum extent) in accordance with the terms of the Debt Commitment Letter; provided, however, notwithstanding the foregoing, in no event shall Buyer or any of its Affiliates be required to commence any proceeding against the Debt Financing Sources.

(f) If any portion of the Debt Financing becomes unavailable or the Debt Commitment Letter shall be withdrawn, repudiated, terminated or rescinded for any reason, Buyer shall use reasonable best efforts to obtain, as promptly as practicable following the occurrence of such event, alternative financing for any such portion from alternative sources that provides for financing (i) in an amount sufficient to pay the full amount of the Debt Financing required to consummate the Transactions on the terms contemplated by the Transaction Agreements and, in each case, to pay all related fees and expenses and (ii) not imposing any new or additional condition or otherwise expanding any condition to draw and other terms that would reasonably be expected to affect the availability thereof at Closing. In the event any alternative financing is obtained in



accordance with this clause (f) (“**Alternative Financing**”), references in this Agreement to the “Debt Financing” shall also be deemed to refer to such Alternative Financing, and if one or more commitment letters is entered into or proposed to be entered into in connection with such Alternative Financing, references in this Agreement to “Debt Commitment Letter” shall also be deemed to refer to such commitment letters relating to such Alternative Financing, and all obligations of the parties pursuant to this Section 7.04 shall be applicable thereto to the same extent as such party’s obligations with respect to the Debt Financing.

(g) Buyer shall (i) inform Seller promptly (and in any event, within no more than two (2) Business Days) in reasonable detail of all material activity concerning the Financing (including the status of its efforts to obtain the Financing or any alternative financing pursuant to clause (f) of this Section 7.04) and (ii) after the Commitment Letter Effective Time, promptly (and in any event, within no more than one (1) Business Day) provide Seller with copies of all executed amendments, modifications or replacements of the Debt Commitment Letter (it being understood that any amendments, modifications or replacements shall only be as permitted herein), and such other information and documentation available to Buyer as shall be reasonably requested by Seller. Without limiting the generality of the foregoing, Buyer shall promptly (and in any event, within no more than one (1) Business Day) notify Seller (A) of any breach (or threatened breach) or default (or any event or circumstance that could reasonably be expected to give rise to any breach or default) by any party to the Commitment Letters or definitive agreements related to the Financing of which Buyer becomes aware, (B) of the receipt by Buyer of any written notice or communication from any Equity Investor or Debt Financing Source with respect to any breach (or threatened breach) or default (or any event or circumstance that could reasonably be expected to give rise to any breach or default), or any termination or repudiation, in each case by any party to a Commitment Letter or any definitive agreements related to the Financing of any provisions of any Commitment Letter or such definitive agreements and (C) if for any reason Buyer at any time believes it will not be able to obtain all or any portion of the Financing on the terms, in the manner or from the sources contemplated by the Commitment Letters or any definitive agreements related to the Financing.

For the avoidance of doubt, after the Commitment Letter Effective Time and subject to Section 12.17(c)(ii), if the Financing (including any Alternative Financing) has not been obtained, Buyer shall continue to be obligated to consummate the Transactions on the terms contemplated by this Agreement and subject only to the satisfaction or waiver of the Closing Conditions set forth in Section 10.02 and to Buyer’s rights under Section 11.01, regardless of whether Buyer has complied with all of its other obligations under this Agreement (including its obligations in this Section 7.04).

(h) Seller consents to the termination of the equity commitment letters and debt commitment letters dated November 10, 2020 delivered by Buyer pursuant to the Original Agreement.

**Section 7.05. Further Assurances.** From time to time following the Closing, the Parties shall, and shall cause their respective Affiliates to, execute, acknowledge and deliver all reasonable further conveyances, notices, assumptions, releases and acquittances and such instruments, and shall take such reasonable actions as may be necessary or appropriate to make effective the Transactions as may be reasonably requested by the other Party (including (a) transferring back to



Seller or its designees each Excluded Asset and any asset or Liability not contemplated by this Agreement to be a Transferred Asset or an Assumed Liability, respectively, which asset or Liability was transferred to Buyer at the Closing, (b) transferring to Buyer (and having Buyer assume) any asset or Liability contemplated by this Agreement to be a Transferred Asset or an Assumed Liability, respectively, which was not transferred to Buyer at the Closing, and (c) delivering all original titles for any tangible asset requiring such titles (such as vehicles), duly endorsed for transfer by an authorized officer of Seller within five (5) Business Days after Closing); provided, however, that except for Buyer's obligations to discharge an Assumed Liability and as otherwise provided pursuant to Section 2.02, nothing in this Section 7.05 shall require any Party or its Affiliates to pay money to, commence or participate in any Action with respect to, or offer or grant any accommodation (financial or otherwise) to, any third party following the Closing.

## ARTICLE VIII

### BANKRUPTCY PROVISIONS

#### Section 8.01. Approval of Break-Up Fee and Expense Reimbursement.

(a) In the event that the Agreement is terminated by Buyer or Seller for any reason pursuant to Section 11.01 other than a termination pursuant to (i) Section 11.01(a), (ii) Section 11.01(b), (iii) Section 11.01(d) (except in the event that the failure to close by the Outside Date was not a result of Buyer failing to fulfill, in any material respect, its obligations under this Agreement (provided, that, for the avoidance of doubt, any failure to satisfy the conditions to Closing set forth in Section 10.02(g) shall not constitute any such failure by Buyer to fulfill, in material respect, its obligations under this Agreement)), (iv) Section 11.01(m), or (v) Section 11.01(n), in consideration for Buyer having expended considerable time and expense in connection with this Agreement and the negotiation thereof and the identification and quantification of assets of Seller, Seller shall pay Buyer, in accordance with the terms hereof and the Bidding Procedures Order, the amount of the reasonable, out-of-pocket and documented expenses of Buyer incurred in connection with the Transactions up to an aggregate amount of \$1,500,000 (the "**Expense Reimbursement**"). The Expense Reimbursement shall be paid via wire transfer in immediately available funds to an account specified by Buyer no later than two (2) Business Days following the date of such termination if no material breach by Buyer of this Agreement has occurred.

(b) In addition to any payments that may be due pursuant to Section 8.01(a), in the event that the Agreement is terminated: (i) by Buyer pursuant to (A) Section 11.01(c) or (B) Section 11.01(f)(x); (ii) by Seller pursuant to Section 11.01(d) (but only if such termination was not a result of Buyer failing to fulfill, in any material respect, its obligations under this Agreement); or (iii) by Buyer or Seller pursuant to Section 11.01(f); then in each case of the foregoing clauses (i), (ii), and (iii), upon the consummation by Seller of the Competing Bid(s), Seller shall also promptly (and in any event within two (2) Business Days of such consummation), pay to Buyer a break-up fee in an amount equal to 2.5% of the Base Value (the "**Break-Up Fee**"), such Break-Up Fee to be paid via wire transfer in immediately available funds to an account specified by Buyer no later than two (2) Business Days following the date of consummation of a Competing Bid if no material breach by Buyer of this Agreement has occurred; provided that the provisions of this

Section 8.01(b) shall not be deemed to be effective until such time as the conditions to Closing set forth in Section 10.01(f) and Section 10.02(g) have been irrevocably satisfied or waived, with such satisfaction or waiver of Section 10.02(g) to be confirmed in writing by Buyer to Seller; provided further, that, the Break-Up Fee shall not be payable in the event of the termination pursuant to clause (ii) unless the aggregate purchase price paid upon consummation of the applicable Competing Bid is an amount equal to at least (x) the Purchase Price plus (y) the Break-Up Fee.

(c) In addition to any payments that may be due pursuant to Section 8.01(a) (and provided that no amount is payable pursuant to Section 8.01(b)), in the event that: (i) (A) Seller has filed the Stalking Horse Motion, (B) the Auction occurs, and (C) Seller could have terminated this Agreement pursuant to Section 11.01(k); (ii) the conditions to Closing set forth in Section 10.01(f) and Section 10.02(g) have not been irrevocably satisfied or waived; and (iii) the Agreement is terminated by Seller within thirty (30) days following the conclusion of the Auction pursuant to Section 11.01(d), Section 11.01(f) or Section 11.01(k), then, in the case of the occurrence of all three of the foregoing clauses (i), (ii) and (iii), upon the consummation by Seller of one or more Competing Bid(s), which involve, collectively, the acquisition of all or substantially all of the Transferred Assets, Seller shall pay to Buyer a break-up fee in an amount equal to 1.25% of the Base Value (the “**Franchisor Consent Break-Up Fee**”); provided, however, that in the event that the aggregate cash consideration received in connection with such Competing Bids is less than an amount equal to the Purchase Price minus the Break-Up Fee (such amount, the “**Fee Threshold**”), such Franchisor Consent Break-Up Fee shall not be paid. If so payable, the Franchisor Consent Break-Up Fee shall be paid via wire transfer in immediately available funds to an account specified by Buyer no later than two (2) Business Days following the date of consummation of such Competing Bid(s) (and, for the avoidance of doubt, in the event that more than one Competing Bid is required to be consummated in order to exceed the Fee Threshold, the Franchisor Consent Break-Up Fee shall be payable upon the consummation of the Competing Bid which results in the Fee Threshold being exceeded).

(d) In accordance with Section 8.03, Seller shall file with and seek the entry by the Bankruptcy Court of the Stalking Horse Order approving the payment of the Expense Reimbursement, the Break-Up Fee, and the Franchisor Consent Break-Up Fee.

(e) Each of the Parties acknowledges and agrees that: (i) the agreements contained in this Section 8.01 are an integral part of the Transactions and this Agreement; (ii) the Break-Up Fee is not a penalty, but rather is liquidated damages in a reasonable amount that will reasonably compensate Buyer in the circumstances in which such Break-Up Fee is payable for the efforts and resources expended and opportunities foregone by Buyer while negotiating and pursuing the Transactions and this Agreement and in reasonable reliance on this Agreement and on the reasonable expectation of the consummation of the transactions contemplated hereby, which amount would otherwise be impossible to calculate with precision; and (iii) subject to approval by the Bankruptcy Court, the Break-Up Fee, the Expense Reimbursement, and the Franchisor Consent Break-Up Fee shall constitute allowed administrative expense claims pursuant to sections 105(a), 503(b), and 507(a)(2) of the Bankruptcy Code.

(f) The provisions of Section 8.01(a) and Section 8.01(b) shall not be deemed effective unless Buyer has delivered to Seller, by 12:00 p.m. on January 12, 2021, fully executed

(i) Debt Commitment Letters and Fee Letters from the Debt Financing Sources and (ii) Equity Commitment Letters from the Equity Investors.

Section 8.02. Competing Transaction. This Agreement is subject to approval by the Bankruptcy Court and the consideration by Seller of higher or better competing bids in respect of all or any part of the Transferred Assets (whether by sale or proposal of a plan of reorganization that vests control over the Transferred Assets in a Person other than Buyer) (each a “**Competing Bid**”), as determined in Seller’s sole and exclusive discretion. For the avoidance of doubt, a Reorganization Transaction (as defined in the joint Chapter 11 plan filed by the Debtors in the Bankruptcy Cases) shall not constitute a Competing Bid. From the date of entry of the Stalking Horse Order until the Transactions are consummated, Seller is permitted to, and to cause its Representatives and Affiliates to, initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Buyer and its Affiliates and Representatives) in connection with a Competing Bid. In addition, Seller (and its Affiliates and Representatives) shall have the authority to respond to any inquiries or offers for a Competing Bid and perform any and all other acts related thereto which are required under the Bankruptcy Code, the Bidding Procedures Order or other applicable Law, including supplying information relating to the Business and the Transferred Assets to prospective purchasers.

Section 8.03. Bankruptcy Court Filings. Seller has filed with the Bankruptcy Court the Stalking Horse Motion seeking entry of the Stalking Horse Order. Following the execution of this Agreement as amended and restated (any amendments hereto being made in accordance with Section 12.11), Seller shall promptly (and in any event within one (1) Business Day following the execution of this Agreement as amended and restated), file with the Bankruptcy Court this Agreement as amended and restated and promptly proceed to the Sale Hearing and seek entry of an order approving this Agreement as amended and restated, which motion and order will be substantially in the form reasonably acceptable to Buyer.

(a) Seller shall reasonably cooperate with Buyer concerning all material applications, pleadings, notices, proposed orders, and other documents related to the Transactions that Seller intends to file with the Bankruptcy Court in connection with the Transactions contemplated by this Agreement, including the Stalking Horse Motion, the Stalking Horse Order, the Sale Order, and any order approving this Agreement as amended and restated, and to the extent reasonably practicable, and so as to permit Buyer sufficient time to review and comment on such documents, Seller shall provide counsel to Buyer to the extent practicable no less than two (2) Business Days, to review draft copies of all material applications, pleadings, notices, proposed orders, and other documents related to the Transactions that Seller intends to file with the Bankruptcy Court in connection with the Transactions contemplated by this Agreement, including the Stalking Horse Motion, the Stalking Horse Order, the Sale Order, and any order approving this Agreement as amended and restated. Seller shall use commercially reasonable efforts to give Buyer reasonable advance notice of any hearings regarding any orders relating to the Transactions contemplated by this Agreement, including the Stalking Horse Order and the Sale Order.

(b) Buyer agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining entry of the Sale Order and the Stalking Horse Order and a finding of adequate assurance of future performance by Buyer, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among

others, of providing necessary assurances of performance by Buyer under this Agreement and demonstrating that Buyer is a “good faith” purchaser under Section 363(m) of the Bankruptcy Code. Counsel to Buyer shall consult in good faith with counsel to Seller prior to filing, joining in, or otherwise supporting in any manner whatsoever any motion or other pleading relating to the sale of the Transferred Asset hereunder, and Buyer shall not, without the prior written consent of Seller (such consent not to be unreasonably withheld), file, join in, or otherwise support in any manner whatsoever any motion or other pleading relating to the sale of the Transferred Assets hereunder to the extent inconsistent with this Agreement. In the event the entry of the Sale Order or the Stalking Horse Order shall be appealed, Seller and Buyer shall use their respective commercially reasonable efforts to defend such appeal.

(c) If this Agreement and the sale of the Transferred Assets to Buyer on the terms and conditions hereof are determined to be the “highest or otherwise best offer” in accordance with the Bidding Procedures Order, Buyer and Seller agree to use commercially reasonable efforts to cause the Bankruptcy Court to enter the Sale Order with such changes or modifications as may be requested by Buyer or Seller that are consented to in writing by the other Party, with such consent not to be unreasonably withheld, conditioned or delayed.

Section 8.04. [Intentionally Omitted].

Section 8.05. Milestones. The following milestone shall apply to the Agreement unless extended or waived in writing by Buyer (each a “**Milestone**” and together, the “**Milestones**”): within three Business Days following the Sale Hearing, but in any event no later than January 29, 2021, the Bankruptcy Court shall have entered the Sale Order.

The Milestone may be extended with the prior written consent (email from counsel being sufficient) of Buyer, in Buyer’s sole discretion.

## ARTICLE IX

### TAX MATTERS

Section 9.01. Transfer Taxes. Buyer and Seller shall each be responsible for fifty percent (50%) of any Transfer Tax imposed under applicable Law related to the Transferred Assets in connection with the Transaction; provided, however, Buyer shall promptly pay and discharge any such Transfer Taxes. The party required by Law to file a Tax Return with respect to such Transfer Taxes shall, with the cooperation of the other Parties, timely prepare and file such Tax Return; provided, however, that Buyer shall prepare any Transfer Tax forms required for the conveyance of the Transferred Owned Real Property hereunder and shall provide the same to Seller for approval and execution. If Seller or any of its Affiliates is required to pay 100% of any Transfer Tax, Buyer shall within five (5) days of receipt of evidence of filing reimburse Seller for fifty percent (50%) of such Transfer Taxes paid by Seller or such Affiliate in connection with the filing of the applicable Tax Return. Buyer and Seller each agree to timely sign and deliver (or to cause their respective Affiliates to timely sign and deliver) such certificates or forms as may be necessary or appropriate and otherwise to cooperate to establish any available exemption from (or otherwise reduce) any Transfer Taxes.

Section 9.02. Tax Adjustments. Taxes (other than Transfer Taxes) imposed upon or assessed directly against the Transferred Assets (including real estate Taxes, personal property Taxes and similar Taxes imposed upon or assessed directly against the Transferred Assets) for the Tax period in which the Closing occurs (the “**Straddle Period**”) will be apportioned and prorated between Seller and Buyer as of the Closing Date. Buyer shall bear its proportionate share of such Taxes (which shall be equal to the product obtained by multiplying (i) a fraction, the numerator being the amount of the Taxes and the denominator being the total number of days in the Straddle Period, times (ii) the number of days in the Straddle Period following the Closing Date), and Seller shall bear the remaining portion of such Taxes; provided, however, that Seller shall be solely responsible for any late fees, penalties, and back Taxes that are due and owing on or prior to the Closing Date that relate to the period prior to the Closing Date. If the precise amount of any such Tax cannot be ascertained on the Closing Date, apportionment and proration shall be computed on the basis of the amount payable for each respective item during the Tax period immediately preceding the Straddle Period and any proration shall be adjusted thereafter on the basis of the actual charges for such items in the Straddle Period. When the actual amounts become known, such proration shall be recalculated promptly, and Buyer or Seller, as applicable, shall within ten (10) days, or as soon as reasonably possible thereafter, after notice of payment due and delivery of reasonable supporting documentation with respect to such amounts, make any additional payment or refund so that the correct prorated amount is paid by each of Buyer and Seller.

Section 9.03. Tax Cooperation. Seller has or promptly after the Agreement Date will provide to Buyer true, correct, and complete copies of Seller’s Tax returns, related to the Business or the Transferred Assets, other than income Tax returns, but including sales and use Tax returns, property Tax returns, payroll Tax returns, and work papers related thereto. In addition, without limiting the obligations set forth in Sections 6.02 and 7.01, the Parties shall furnish or cause to be furnished to each other, upon request, and at the sole cost of the requesting Party, as promptly as practicable, such information and assistance relating to the Transferred Assets as is reasonably necessary for the filing of Tax Returns and the preparation for, or the prosecution or defense of, any audit, claim, demand, proposed adjustment or deficiency relating to Taxes, and any other matter or proceeding relating to Taxes. Buyer agrees that it shall preserve and keep, or cause to be preserved and kept, all original books and records Related to the Business that may relate to Taxes with respect to taxable years or periods (or portion thereof) ending on or before the Closing Date and in the possession of Buyer or its Affiliates in accordance with Section 7.03.

Section 9.04. Survival. The obligations set forth in this Article IX with respect to Taxes shall survive the Closing until the date that is thirty (30) days following the expiration of the applicable statute of limitations.

Section 9.05. Adjustment to Purchase Price. The Parties agree, to the extent permitted by Law, to treat any payment made pursuant to this Agreement as an adjustment to the Purchase Price for all U.S. federal income Tax purposes.



## ARTICLE X

### CONDITIONS TO CLOSING

Section 10.01. Conditions to Obligations of Seller. The obligation of Seller to consummate the Transactions shall be subject to the satisfaction or waiver by Seller in its sole discretion, at or before the Closing, of each of the following conditions:

(a) Representations and Warranties; Covenants.

(i) all representations and warranties of Buyer contained in this Agreement shall be true and correct in all respects as of the Closing as if made on the Closing Date (other than representations and warranties that are made as of a specific date, which representations and warranties shall have been true and correct in all respects as of such date), except for breaches or inaccuracies that, individually or in the aggregate, would not reasonably be expected to have a material adverse effect on Buyer or impair or delay the ability of Buyer to consummate the Transactions or otherwise timely perform its obligations under the Transaction Agreements; provided, however, that for purposes of determining the satisfaction of the condition in this clause (i), no effect shall be given to any “material” or “materiality” qualification in such representations and warranties;

(ii) the covenants contained in this Agreement required to be complied with by Buyer on or before the Closing shall have been complied with in all material respects; and

(iii) Seller shall have received a certificate signed by an authorized officer of Buyer, dated as of the Closing Date, certifying as to the satisfaction of the matters set forth in the foregoing clauses (i) and (ii).

(b) Governmental Approvals. All Required Approvals shall have been obtained or, if applicable, shall have expired, shall have been waived by the applicable Government Authority or shall have been terminated.

(c) No Order. There shall be no Order in existence or material Law which is in effect that prohibits the sale of the Transferred Assets or the other Transactions.

(d) Transaction Agreements. Buyer shall have executed and delivered to Seller all Buyer Transaction Agreements.

(e) Sale Order. The Bankruptcy Court shall have entered the Sale Order and such Sale Order shall not be subject to any stay as of the Closing Date.

(f) Franchisor Consents. The Franchisor Consents (as defined in Section 10.02(g)) shall have been obtained.

(g) Guarantees. With respect to the personal guarantees identified by Seller to Buyer, on or prior to the date hereof, which are in favor of the Franchisor in connection with the operation of the Business or the Transferred Assets, the release by Franchisor of any such Liability



thereunder for the guarantors with respect to operation of the Business and Transferred Assets after the Closing Date.

(h) Consummation of Wendy's APA. The conditions to consummation of the transactions contemplated by the Wendy's APA shall have been satisfied or waived (other than those conditions that by their nature can only be satisfied at the closing of such transactions, but subject to the satisfaction or waiver of those conditions at such time) and the parties thereto shall be ready to consummate such transactions concurrently with the Closing of the Transactions; provided, that this condition shall be deemed to have been satisfied as of the Outside Date, regardless of whether or not the conditions to consummation of the transactions contemplated by the Wendy's APA shall have been satisfied or waived.

Section 10.02. Conditions to Obligations of Buyer. The obligations of Buyer to consummate the Transactions contemplated by this Agreement shall be subject to the satisfaction or waiver by Buyer in its sole discretion, at or before the Closing, of each of the following conditions:

(a) Representations and Warranties; Covenants.

(i) all representations and warranties of Seller contained in this Agreement shall be true and correct as of the Closing as if made on the Closing Date (other than representations and warranties that are made as of a specific date, which representations and warranties shall have been true and correct as of such date), except for breaches or inaccuracies, as the case may be, as to matters that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect; provided, however, that for purposes of determining the satisfaction of the condition in this clause (i), no effect shall be given to any "material," "materiality," or "Material Adverse Effect" qualification in such representations and warranties;

(ii) the covenants contained in this Agreement required to be complied with by Seller on or before the Closing shall have been complied with in all material respects; and

(iii) Buyer shall have received a certificate signed by an authorized officer of Seller, dated as of the Closing Date, certifying as to the satisfaction of matters set forth in the foregoing clauses (i) and (ii).

(b) Governmental Approvals. All Required Approvals shall have been obtained or, if applicable, shall have expired or been waived by the applicable Government Authority, or have been terminated.

(c) No Order. There shall be no Order in existence or material Law which is in effect that prohibits the sale of the Transferred Assets or the other Transactions.

(d) Seller Transaction Agreements. Seller shall have executed and delivered, or caused to be executed and delivered, to Buyer all Seller Transaction Agreements.

(e) Sale Order. The Bankruptcy Court shall have entered the Sale Order and such Sale Order shall not be subject to any stay as of the Closing Date.

(f) No Material Adverse Effect. Since the Agreement Date, no Material Adverse Effect shall have occurred.

(g) Franchisor Consent. Each of Pizza Hut LLC and The Wendy's Company and their respective Affiliates (including Yum! and its Affiliates) party to the applicable Franchise Agreement or whose consent is otherwise required to consummate the Transactions shall have (A) consented to the transactions contemplated by this Agreement, and (B) waived any applicable rights of first refusal or purchase options if and to the extent applicable (collectively, the "**Franchisor Consents**").

Section 10.03. Frustration of Closing Conditions. Neither Seller nor Buyer may rely on the failure of any condition set forth in this Article X to be satisfied if such failure was caused by such Party's failure to act in good faith, to use commercially reasonable efforts to cause the Closing Conditions of each such other Party to be satisfied, or to satisfy its obligations set forth in Section 6.04.

Section 10.04. Waiver of Closing Conditions. Upon the occurrence of the Closing, any condition set forth in this Article X that was not satisfied as of the Closing shall be deemed to have been waived as of and from the Closing.

## ARTICLE XI

### TERMINATION

Section 11.01. Termination. Notwithstanding anything in this Agreement to the contrary, this Agreement may be terminated before the Closing:

(a) by the mutual written consent of Seller and Buyer;

(b) by Seller, if Buyer shall have breached any representation or warranty set forth in Article V or failed to comply with any covenant or agreement applicable to Buyer that would cause any Closing Condition set forth in Section 10.01(a) not to be satisfied, and (i) such breach is not waived by Seller or (ii) if such breach has not been waived by Seller but is curable and is not cured by Buyer prior to the earlier to occur of (A) ten (10) Business Days after receipt by Buyer of Seller's notice of its intent to terminate and (B) the Outside Date; provided, however, that Seller is not then in material breach of this Agreement which breach would result in the failure to satisfy a condition set forth in Section 10.02(a);

(c) by Buyer, if Seller shall have breached any representation or warranty set forth in Article IV or failed to comply with any covenant applicable to Seller that would cause any Closing Condition set forth in Section 10.02(a) not to be satisfied, and (i) such breach is not waived by Buyer or (ii) if such breach has not been waived by Buyer but is curable and is not cured by Seller prior to the earlier to occur of (A) ten (10) Business Days after receipt by Seller of Buyer's notice of its intent to terminate and (B) the Outside Date; provided, however, that Buyer is not then in material breach of this Agreement which breach would result in the failure to satisfy a condition set forth in Section 10.01(a);

(d) by either Seller or Buyer, if the Closing shall not have occurred on or before May 14, 2021 (the “**Outside Date**”); provided, that if the Closing shall not have occurred on or before the Outside Date due to a material breach of any representations, warranties or covenants contained in this Agreement by Buyer or Seller, then the breaching Party may not terminate this Agreement pursuant to this Section 11.01(d);

(e) by either Seller or Buyer, in the event that any Government Authority of competent jurisdiction shall have issued an Order that permanently enjoins the consummation of the purchase of the Transferred Assets contemplated by this Agreement and such Order shall have become final and non-appealable; provided, however, that the right to terminate this Agreement under this Section 11.01(e) shall not be available to Seller or Buyer whose action in breach of this Agreement, or whose failure to fulfill any obligation under this Agreement, has been the primary cause of, or has directly resulted in, the issuance of such Order or other action;

(f) by either Seller or Buyer, if (i) Seller enters into a definitive agreement with respect to a Competing Bid or (ii) Seller seeks, or the Bankruptcy Court enters, an Order approving a Competing Bid;

(g) by Buyer, if (x) Seller or any of its Subsidiaries seeks to (A) have the Bankruptcy Court enter an Order dismissing, or converting into cases under chapter 7 of the Bankruptcy Code, any of the cases commenced by Seller under chapter 11 of the Bankruptcy Code and comprising part of the Bankruptcy Cases, or (B) have a trustee or examiner with expanded powers operate or manage the financial affairs or reorganization of Seller appointed in the Bankruptcy Case, or (y) such order for dismissal, conversion or appointment is entered by the Bankruptcy Court for any reason and not reversed or vacated within fourteen (14) days after entry thereof;

(h) by Seller, if the Bankruptcy Court enters an Order dismissing, or converting into cases under chapter 7 of the Bankruptcy Code, any of the cases commenced by Seller under chapter 11 of the Bankruptcy Code and comprising part of the Bankruptcy Cases, or if a trustee or examiner with expanded powers to operate or manage the financial affairs or reorganization of Seller is appointed in the Bankruptcy Case, and such an Order or appointment is not reversed or vacated within fourteen (14) days after entry/appointment thereof;

(i) by Buyer upon the failure of the Milestone to be satisfied, which Milestone has not been waived or extended by Buyer in a manner consistent with this Agreement;

(j) by Buyer or Seller, if an Order of the Bankruptcy Court is entered denying approval of the Agreement or the Sale Order, and such Order becomes final and non-appealable;

(k) by Seller, if the condition to Closing set forth in Section 10.01(f) has not been satisfied or waived on or before January 14, 2021;

(l) [reserved];

(m) by Seller, if (i) the conditions set forth in Section 10.01 and Section 10.02 have been satisfied (other than those that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver thereof at the Closing) or waived, (ii) Seller has confirmed in

writing to Buyer that it stands ready, willing, and able to consummate the Closing pursuant to Section 2.03, and (iii) Buyer fails to consummate the Closing by the earlier to occur of (x) the Outside Date and (y) the date that is two (2) Business Days following the receipt of such confirmation from Seller; or

(n) automatically, at 9:00 p.m. Eastern Time on January 12, 2021, if Buyer has not delivered to Seller, on or before such deadline, fully executed (i) Debt Commitment Letters and Fee Letters from the Debt Financing Sources and (ii) Equity Commitment Letters from the Equity Investors.

Section 11.02. Notice of Termination. If either Buyer or Seller desires to terminate this Agreement pursuant to Section 11.01, such Party shall give written notice of such termination to the other Party.

Section 11.03. Effect of Termination.

(a) If this Agreement is terminated pursuant to Section 11.01, this Agreement shall thereupon become null and void and of no further force and effect, except for (i) Section 6.03, (ii) Section 8.01, (iii) Section 11.01, (iv) this Section 11.03 and (v) Article XII (including, in each case, the definitions set forth in Exhibit A to the extent applicable to such provisions), which will survive; provided, that for the avoidance of doubt, no party shall be entitled to specific performance or other injunctive or equitable relief under Section 12.17 except with respect to any provision that otherwise survives such termination pursuant to this Section 11.03(a); provided, further, that nothing in this Section 11.03(a) shall be deemed to release any Party from any Liability for any knowing and intentional breach of this Agreement or willfully and knowingly committed fraud against the non-breaching party with the specific intent to deceive and mislead, as determined by the Bankruptcy Court.

(b) Notwithstanding Section 11.03(a), in the event of a termination of this Agreement pursuant to Section 11.01(b) or Section 11.01(m) after the Escrowed Funds are delivered to the Escrow Agent, then Buyer and Seller shall, within two (2) Business Days after the date of such termination, deliver Joint Written Instructions to the Escrow Agent directing the Escrow Agent to deliver an amount equal to the Escrowed Funds (together with all accrued investment income thereon (if any)) to Seller. Buyer acknowledges that the agreements contained in this Section 11.03(b) are an integral part of the Transactions, and that without these agreements, Seller would not have entered into this Agreement; accordingly, if Buyer fails to timely deliver Joint Written Instructions pursuant to this Section 11.03(b) and, in order to obtain such payment, Seller commences an Action which results in a judgment against Buyer for any such payment set forth in this Section 11.03(b), Buyer shall pay Seller its costs and expenses (including attorney's fees and disbursements) in connection with such Action, together with interest on such payment at the Interest Rate through the date such payment was actually received. The remedy set forth in this Section will be the sole remedy of Seller and its Affiliates against the Buyer and its Affiliates and any of its or their former, current and future Affiliates, representatives, shareholders, members, managers, partners, lenders (including Debt Financing Sources), successors and assigns for any losses, damages, or liabilities suffered or incurred as a result of or under this Agreement or the transactions contemplated by this Agreement, including the failure of the Closing to occur.

(c) The Parties acknowledge and agree that in the event of a termination of this Agreement pursuant to Section 11.01(b) or Section 11.01(m), payment of the Escrowed Funds is not a penalty but is liquidated damages in a reasonable amount that will compensate the Seller in the circumstances in which such fees are payable for the efforts and resources expended and the opportunities forgone while negotiating the Agreement and in reliance on this Agreement and on the expectation of the consummation of the Transactions, which amount would otherwise be impossible to calculate with precision.

(d) Notwithstanding Section 11.03(a), in the event of any termination of this Agreement (other than a termination pursuant to Section 11.01(b) or Section 11.01(m)) after the Escrowed Funds are delivered to the Escrow Agent, then Buyer and Seller shall, within two (2) Business Days after the date of such termination, deliver Joint Written Instructions to the Escrow Agent directing the Escrow Agent to deliver an amount equal to the Escrowed Funds (together with all accrued investment income thereon (if any)) to Buyer.

## ARTICLE XII

### MISCELLANEOUS

Section 12.01. Rules of Construction. The following rules of construction shall govern the interpretation of this Agreement:

(a) references to “applicable” Law or Laws with respect to a particular Person, thing or matter means only such Law or Laws as to which the Government Authority that enacted or promulgated such Law or Laws has jurisdiction over such Person, thing or matter as determined under the Laws of the State of New York; references to any statute, rule, regulation or form (including in the definition thereof) shall be deemed to include references to such statute, rule, regulation or form as amended, modified, supplemented or replaced from time to time (and, in the case of any statute, include any rules and regulations promulgated under such statute), and all references to any section of any statute, rule, regulation or form include any successor to such section;

(b) when calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is referenced in beginning the calculation of such period will be excluded (for example, if an action is to be taken within two (2) days after a triggering event and such event occurs on a Tuesday, then the action must be taken by Thursday); if the last day of such period is a non-Business Day, the period in question will end on the next succeeding Business Day;

(c) whenever the context requires, words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other gender;

(d) (i) the provision of a table of contents, the division into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement and (ii) references to the terms “Article,” “Section,” “subsection,” “subclause,” “clause,” “Schedule” and “Exhibit” are



references to the Articles, Sections, subsections, subclauses, clauses, Schedules and Exhibits to this Agreement unless otherwise specified;

(e) (i) the terms “hereof,” “herein,” “hereby,” “hereto,” and derivative or similar words refer to this entire Agreement, including the Schedules and Exhibits hereto, (ii) the terms “thereof,” “therein,” “thereby,” “thereto” and derivative or similar words refer to this Agreement to which the context refers, including the Schedules and Exhibits hereto, (iii) the terms “include,” “includes,” “including” and words of similar import when used in this Agreement mean “including, without limitation” unless otherwise specified, (iv) the term “any” means “any and all” and (v) the term “or” shall not be exclusive and shall mean “and/or”;

(f) (i) references to “days” means calendar days unless Business Days are expressly specified, (ii) references to “written” or “in writing” include in electronic form (including by e-mail transmission or electronic communication by portable document format (.pdf)) and (iii) references to “\$” mean U.S. dollars;

(g) references to any Person includes such Person’s successors and permitted assigns;

(h) unless the context otherwise requires, the word “extent” in the phrase “to the extent” means the degree to which a subject or other thing extends, and such phrase does not mean simply “if”;

(i) references to “ordinary course of business” mean “ordinary course of business, consistent with past practice (including, for the avoidance of doubt, recent past practice in light of the COVID-19 Pandemic)”;

(j) each Party has participated in the negotiation and drafting of this Agreement, and if an ambiguity or question of interpretation should arise, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or burdening any Party by virtue of the authorship of any provision in this Agreement; the language used in this Agreement will be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction will be applied against any Party. Further, prior drafts of this Agreement or any ancillary agreements, schedules or exhibits thereto or the fact that any clauses have been added, deleted or otherwise modified from any prior drafts of this Agreement or any ancillary agreements, schedules or exhibits hereto shall not be used as an aide of construction or otherwise constitute evidence of the intent of the Parties; and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of such prior drafts.

Section 12.02. Expenses. Except as otherwise specified in the Transaction Agreements, each Party will pay its own costs and expenses, including legal, consulting, financial advisor and accounting fees and expenses, incurred in connection with the Transaction Agreements and the Transactions, irrespective of when incurred or whether or not the Closing occurs.

Section 12.03. Notices. All notices and other communications under or by reason of this Agreement shall be in writing and shall be deemed to have been duly given or made (a) when personally delivered, (b) when delivered by e-mail transmission with receipt confirmed or (c) upon



delivery by overnight courier service, in each case, to the addresses and attention parties indicated below (or such other address, e-mail address or attention party as the recipient party has specified by prior notice given to the sending party in accordance with this Section 12.03):

If to Seller prior to the Closing Date, to NPC International, Inc.  
4200 W. 115th Street, Suite 200  
Leawood, KS 66211  
Attention: David Wahlert  
Penny Lindemann Smith  
E-mail: david.wahlert@npcinternational.com  
penny.lindemannsmith@npcinternational.com

If to Seller following the Closing Date, to: AlixPartners, LLP  
909 Third Avenue,  
30th Floor, New York, NY 10022  
Attention: Eric Koza  
Email: ekoza@alixpartners.com

with a copy (which will not constitute notice) to: Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153  
Attention: Ray C. Schrock, Esq.  
Gavin Westerman, Esq.  
Kevin Bostel, Esq.  
E-mail: ray.schrock@weil.com  
gavin.westerman@weil.com  
kevin.bostel@weil.com

If to Buyer, to: Wend American Group LLC and Hut American Group LLC  
225 Bush Street, Suite 1800  
San Francisco, California 94104  
Attention: Lorin M. Cortina  
E-mail: lcortina@flynnholdings.com

with a copy (which will not constitute notice) to: Davis Wright Tremaine LLP  
920 Fifth Avenue, Suite 3300  
Seattle, Washington 98104  
Attention: Sarah English Tune  
E-mail: sarahtune@dwt.com

and

Kirkland & Ellis LLP  
300 North LaSalle Street  
Chicago, Illinois 60654  
Attention: Matthew S. Arenson, P.C.  
Josh Sussberg, P.C.  
Anthony R. Grossi  
E-mail: matthew.arenson@kirkland.com  
jsussberg@kirkland.com  
anthony.grossi@kirkland.com

Section 12.04. Survival. Except for any covenant, agreement or obligation that by its express terms is to be performed (in whole or in part) by any Party following the Closing (which covenants shall survive the Effective Time in accordance with their terms), none of the representations, warranties, or covenants of any Party set forth in this Agreement shall survive the Closing, and each of the same shall terminate and be of no further force or effect as of, or following, the Effective Time. For the avoidance of doubt, nothing in this Agreement shall be deemed to prohibit any right of the Debtors to wind-down the estate after Closing, including with respect to the timing thereof and the related closing of the Chapter 11 Cases, *provided* that nothing in this sentence shall modify or otherwise alter the obligations of the parties to the Transition Services Agreement.

Section 12.05. Limitation on Liability. Notwithstanding anything in this Agreement or in any other Transaction Agreement to the contrary, (a) except in the event of willfully and knowingly committed fraud with the specific intent to deceive and mislead the maximum aggregate Liability of Seller under this Agreement shall not exceed the Break-Up Fee; and (b) in no event shall any Party have any Liability under this Agreement (including under this Article XII) for any consequential, special, incidental, indirect or punitive damages, lost profits or similar items (including loss of revenue, income or profits, diminution of value or loss of business reputation or opportunity relating to a breach or alleged breach of this Agreement).

Section 12.06. Public Announcements. The press release with respect to the execution of this Agreement shall be a joint press release to be reasonably agreed upon prior to its release by the Parties. No Party nor any Affiliate or Representative of such Party shall issue or cause the publication of any press release or public announcement or otherwise communicate with any news media in respect of the Transaction Agreements or the Transactions without the prior written consent of the other Parties (which consent shall not be unreasonably withheld, conditioned or delayed), except as a Party believes in good faith and based on the advice of counsel is required by applicable Law or by order of the Bankruptcy Court.

Section 12.07. Severability. If any term or provision of this Agreement is held invalid, illegal or unenforceable in any respect under any applicable Law, as a matter of public policy or on any other grounds, the validity, legality and enforceability of all other terms and provisions of this Agreement will not in any way be affected or impaired. If the final judgment of a court of competent jurisdiction or other Government Authority declares that any term or provision hereof is invalid, illegal or unenforceable, the Parties agree that the court making such determination will have the power to reduce the scope, duration, area or applicability of the term or provision, to delete specific words or phrases, or to replace any invalid, illegal or unenforceable term or

provision with a term or provision that is valid, legal and enforceable and that comes closest to expressing the intention of the invalid, illegal or unenforceable term or provision.

Section 12.08. Assignment. This Agreement will be binding upon and inure to the benefit of and be enforceable by the respective successors and permitted assigns of the Parties. No Party may assign (whether by operation of Law or otherwise) this Agreement or any rights, interests or obligations provided by this Agreement without the prior written consent of the other Parties; provided, however, that (a) any Party may assign this Agreement and any or all rights and obligations under this Agreement to any of its Controlled Affiliates, and (b) Seller may assign any of its rights or obligations under this Agreement to any plan administrator, liquidator, examiner, receiver, liquidation trustee, or similar party appointed for Seller following the Closing and (c) Buyer may assign any of its rights or obligations under this Agreement, in whole or in part, without the prior written consent of any other party as collateral security to any lender to Buyer or its Affiliates; provided, further, that no such assignment pursuant to the foregoing clauses (a) and (c) shall release the assigning Party from any Liability under this Agreement. Any attempted assignment in violation of this Section 12.08 shall be void *ab initio*.

Section 12.09. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns, and except with respect to the Nonparty Affiliates pursuant to Section 12.18, or as otherwise expressly set forth in this Agreement, nothing in this Agreement shall create or be deemed to create any third-party beneficiary rights in any Person not a party hereto, including any Affiliates of any Party.

Section 12.10. Entire Agreement. This Agreement (including the Disclosure Schedules) and the other Transaction Agreements (and all exhibits and schedules hereto and thereto) collectively constitute and contain the entire agreement and understanding of the Parties with respect to the subject matter hereof and thereof and supersede all prior negotiations, correspondence, understandings, agreements and contracts, whether written or oral, among the Parties respecting the subject matter hereof and thereof including the Original Agreement, other than the Confidentiality Agreement.

Section 12.11. Amendments. This Agreement (including all exhibits and schedules hereto) may be amended, restated, supplemented or otherwise modified, only by written agreement duly executed by each Party.

Section 12.12. Waiver. At any time before the Closing, either Seller or Buyer may (a) extend the time for the performance of any obligation or other acts of the other Party, (b) waive any breaches or inaccuracies in the representations and warranties of the other Party contained in this Agreement or in any document delivered pursuant to this Agreement or (c) waive compliance with any covenant, agreement or condition contained in this Agreement but such waiver of compliance with any such covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure; provided, that any such waiver shall be in a written instrument duly executed by the waiving Party (which may be by email). No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Section 12.13. Governing Law. This Agreement, and any Action that may be based upon, arise out of or relate or be incidental to any Transaction, this Agreement, the negotiation, execution, performance or consummation of the foregoing or the inducement of any Party to enter into the foregoing, whether for breach of Contract, tortious conduct or otherwise, and whether now existing or hereafter arising (each, a “**Transaction Dispute**”), will be exclusively governed by and construed and enforced in accordance with the internal Laws of the State of New York, without giving effect to any Law or rule that would cause the Laws of any jurisdiction other than the State of New York to be applied.

Section 12.14. Dispute Resolution; Consent to Jurisdiction.

(a) Without limiting any Party’s right to appeal any order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any Transaction Dispute which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the Transactions, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 12.03 (as may be updated from time to time in accordance with Section 12.03); provided, however, upon the closing of the Bankruptcy Cases, the Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the U.S. District Court for the Southern District of New York sitting in New York County or the Commercial Division of the Courts of the State of New York sitting in the County of New York and any appellate court from any thereof, for the resolution of any such Transaction Dispute. In that context, and without limiting the generality of the foregoing, each Party irrevocably and unconditionally:

(i) submits for itself and its property to the exclusive jurisdiction of such courts with respect to any Transaction Dispute and for recognition and enforcement of any judgment in respect thereof, and agrees that all claims in respect of any Transaction Dispute shall be heard and determined in such courts;

(ii) agrees that venue would be proper in such courts, and waives any objection that it may now or hereafter have that any such court is an improper or inconvenient forum for the resolution of any Transaction Dispute; and

(iii) agrees that the mailing by certified or registered mail, return receipt requested, to the Persons listed in Section 12.03 (as may be updated from time to time in accordance with Section 12.03) of any process required by any such court, will be effective service of process; provided, however, that nothing herein will be deemed to prevent a Party from making service of process by any means authorized by the Laws of the State of New York.

(b) The foregoing consent to jurisdiction will not constitute submission to jurisdiction or general consent to service of process in the State of New York for any purpose except with respect to any Transaction Dispute.

Section 12.15. Waiver of Jury Trial. To the maximum extent permitted by Law, each Party irrevocably and unconditionally waives any right to trial by jury in any forum in respect of any

Transaction Dispute and covenants that neither it nor any of its Affiliates or Representatives will assert (whether as plaintiff, defendant or otherwise) any right to such trial by jury. Each Party certifies and acknowledges that (a) such Party has considered the implications of this waiver, (b) such Party makes this waiver voluntarily and (c) such waiver constitutes a material inducement upon which such Party is relying and will rely in entering into the this Agreement. Each Party may file an original counterpart or a copy of this Section 12.15 with any court as written evidence of the consent of each Party to the waiver of its right to trial by jury.

Section 12.16. Admissibility into Evidence. All offers of compromise or settlement among the Parties or their Affiliates or their respective Representatives in connection with the attempted resolution of any Transaction Dispute (a) shall be deemed to have been delivered in furtherance of a Transaction Dispute settlement, (b) shall be exempt from discovery and production and (c) shall not be admissible into evidence (whether as an admission or otherwise) in any proceeding for the resolution of the Transaction Dispute.

Section 12.17. Remedies; Specific Performance.

(a) Except to the extent set forth otherwise in this Agreement, all remedies under this Agreement expressly conferred upon a Party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by Law or equity upon such Party, and the exercise by a Party of any one remedy will not preclude the exercise of any other remedy.

(b) Each Party agrees that irreparable damage would occur and the Parties would not have an adequate remedy at law if any provision of this Agreement is not performed in accordance with its specific terms or is otherwise breached. Accordingly, each Party agrees that the other Party will be entitled to injunctive relief from time to time to prevent breaches of the provisions of this Agreement and to enforce specifically the terms and provisions of this Agreement, in each case (i) without the requirement of posting any bond or other indemnity and (ii) in addition to any other remedy to which it may be entitled, at law or in equity, but subject to Section 11.03(b) and Section 12.17(c). Furthermore, each Party agrees not to raise any objections to the availability of the equitable remedy of specific performance to prevent or restrain breaches of this Agreement, and to specifically enforce the terms of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the covenants and obligations of such Party under this Agreement. Each Party expressly disclaims that it is owed any duty not expressly set forth in this Agreement, and waives and releases all tort claims and tort causes of action that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement. For the avoidance of doubt, the Parties expressly agree that under no circumstance shall, except in connection with the Closing in accordance with the terms and conditions hereunder, in which case the Escrowed Funds shall be applied towards payment of the Purchase Price, (i) Seller be permitted or entitled to receive both a grant of specific performance that results in the funding of the Equity Financing under the Equity Commitment Letter and the payment of the Escrowed Funds or (ii) Buyer be obligated to both cause the Equity Financing to be funded and pay all or any portion of the Escrowed Funds.

(c) Notwithstanding anything to the contrary contained in this Agreement, including, without limitation, this Section 12.17, neither Seller nor any of its Affiliates (nor any of their and their respective Affiliates' respective directors, officers, employees, incorporators,



members, partners, managers, stockholders, Affiliates, agents, consultants, attorneys, accountants, advisors and representatives and their respective successors and assigns) (collectively, “**Non-Party Affiliates**”) shall be entitled to (i) specifically enforce any rights of Buyer or any Affiliate thereof to cause the Debt Financing to be funded, or (ii) specifically enforce Buyer’s obligation to cause the Equity Financing to be funded and to consummate the transactions contemplated by this Agreement in accordance with the terms of the Equity Commitment Letter unless, and only unless:

(i) all conditions in Section 10.01 and Section 10.02 have been satisfied (other than those conditions that by their terms or nature are to be satisfied at the Closing, each of which is capable of being, and is, satisfied or waived upon Closing), or the failure of which to be satisfied is due in any material part to a breach by Buyer of any of its representations, warranties, covenants or agreements contained in this Agreement);

(ii) Seller has irrevocably confirmed by written notice that if specific performance is granted and the Equity Financing and Debt Financing are funded, then the Closing shall occur; and

(iii) the Debt Financing, including any Alternative Financing, has been funded or shall be funded at the Closing if the Equity Financing is funded at the Closing.

(d) Notwithstanding anything to the contrary in this Agreement, in the event that Buyer fails to effect the Closing for any reason or no reason or it otherwise fails to perform hereunder, then, subject to the rights of Seller set forth in this Section 12.17, the remedies available pursuant to Section 11.03(b) shall be the sole and exclusive remedy, whether in any individual, corporate or any other capacity, with respect to any and all claims relating (directly or indirectly) to the subject matter of this Agreement or the transactions contemplated hereby, regardless of the legal theory under which such liability or obligation may be sought to be imposed, whether sounding in contract or in tort, or whether at law or in equity, of Seller or its Non-Party Affiliates, for any loss or damage suffered as a result of any breach of any representation, warranty, covenant or agreement in this Agreement or related to the subject matter of this Agreement or the transactions contemplated hereby, including the Financing, against Buyer, the Debt Financing Sources or any of their respective Non-Party Affiliates or the failure of the transaction contemplated hereby.

Section 12.18. Non-Recourse. All claims, obligations, Liabilities, Actions or causes of action (whether in Contract or in tort, at Law or in equity) that may be based upon, in respect of, arise under, out or by reason of, be connected with, or relate in any manner to this Agreement, or the negotiation, execution, or performance of this Agreement (including any representation or warranty made in, in connection with, or as an inducement to, this Agreement), may be made only against (and are expressly limited to) the entities that are expressly identified as parties hereto in the preamble to this Agreement or, if applicable, their successors and assigns (“**Contracting Parties**”). No Person who is not a Contracting Party, including any past, present or future director, officer, employee, incorporator, member, partner, manager, stockholder, Affiliate, agent, consultant, attorney, accountants or representative of, and any financial advisor or lender to, any Contracting Party, or any director, officer, employee, incorporator, member, partner, manager, stockholder, Affiliate, agent, attorney, or representative of, and any financial advisor or lender to, any of the foregoing (“**Nonparty Affiliates**”), shall have any Liability (whether in Contract or in



tort, at Law or in equity) for any Actions or Liabilities arising under, out of, in connection with, or related in any manner to this Agreement or based on, in respect of, or by reason of this Agreement or their negotiation, execution, performance, or breach; and, to the maximum extent permitted by Law, each Contracting Party hereby waives and releases all such Actions or Liabilities against any such Nonparty Affiliates. It is expressly agreed that the Nonparty Affiliates to whom this Section 12.18 applies shall be third-party beneficiaries of this Section 12.18. For the avoidance of doubt, the Contracting Parties hereby agree that the Debt Financing Sources are not Contracting Parties and, as such, the Debt Financing Source, together with their respective Affiliates and their and their respective Affiliates' past, present or future directors, officers, employees, incorporators, members, partners, managers, stockholders, Affiliates, agents, consultants, attorneys, accountants, advisors and representatives and their respective successors and assigns are Nonparty Affiliates.

Section 12.19. Interest. If any payment required to be made to a Party under this Agreement is made after the date on which such payment is due, interest shall accrue at the Interest Rate on such amount from (but not including) the due date of the payment to (and including) the date such payment is actually made. All computations of interest pursuant to this Agreement shall be made on the basis of a year of three hundred sixty-five (365) days, in each case for the actual number of days from (but not including) the first day to (and including) the last day occurring in the period for which such interest is payable.

Section 12.20. Disclosure Schedules and Exhibits. The Disclosure Schedules, Schedules and Exhibits attached to this Agreement shall be construed with and as an integral part of this Agreement to the same extent as if the same had been set forth verbatim herein. Any capitalized terms used in any Exhibit or Schedule or in the Disclosure Schedules but not otherwise defined therein shall be defined as set forth in this Agreement. The representations and warranties of Seller set forth in this Agreement are made and given subject to the applicable disclosures contained in the Disclosure Schedules, and neither Seller nor any of its Affiliates shall be, or deemed to be, in breach of any such representations and warranties (and no claim shall lie in respect thereof) in respect of any such matter so disclosed in the Disclosure Schedules. Where only brief particulars of a matter are set out or referred to in the Disclosure Schedules or a reference is made only to a particular part of a disclosed document, full particulars of the matter and the full contents of the document are deemed to be disclosed. Any matter, information or item disclosed in the Disclosure Schedules, under any specific representation or warranty or Schedule or Section thereof shall be deemed to be disclosed and incorporated by reference in any other Schedule or Section of the Disclosure Schedules as though fully set forth in such other Schedule(s) or Section(s) where it is reasonably apparent on its face that such matter, information or item may be applicable to such other Schedule(s) or Section(s). The inclusion of any matter, information or item in the Disclosure Schedules as an exception to a representation or warranty shall not be deemed to constitute (i) an admission of any Liability by Seller to any third party, (ii) an admission that any breach or violation of applicable Laws or any contract or agreement to which Seller is a party exists or has actually occurred, (iii) an admission that such item is outside the ordinary course of business or not consistent with past practice, or (iv) otherwise imply an admission that such item represents a material exception or material fact, event, circumstance or that such item has had, or would reasonably be expected to have a Material Adverse Effect. The Disclosure Schedules have been arranged for purposes of convenience in separately titled Schedules corresponding to the Sections of this Agreement.

Section 12.21. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. Facsimiles, e-mail transmission of .pdf signatures or other electronic copies of signatures shall be deemed to be originals.

Section 12.22. Financing Source Matters. Notwithstanding anything herein to the contrary, Seller, on behalf of itself and its Affiliates, and each of its and its Affiliates' respective directors, officers, employees, incorporators, members, partners, managers, stockholders, Affiliates, agents, consultants, attorneys, accountants, advisors and representatives and their respective successors and assigns, hereby (a) agrees that the Debt Financing Sources will not have any liability (whether in contract or in tort, in law or in equity, or granted by statute or otherwise) for any claims, causes of action, suits, litigation, proceedings, obligations or any related losses, costs or expenses arising under, out of, in connection with or related in any manner to this Agreement, the Debt Commitment Letter, the Debt Financing or any of the Transactions or based on, in respect of or by reason of this Agreement, the Debt Commitment Letter or their respective negotiation, execution, performance or breach (provided, that nothing in this Section 12.22 will limit the liability or obligations of the Debt Financing Sources party to the Debt Commitment Letter to Buyer (and its successors and assigns)); (b) agrees not to commence (and if commenced agrees to dismiss or otherwise terminate) any claim, cause of action, suit, litigation, or other proceeding (including any civil, criminal, administrative, investigative or appellate proceeding) against any Debt Financing Source arising under, out of, in connection with or related in any manner to this Agreement, the Debt Commitment Letters, the Debt Financing or any of the Transactions or based on, in respect of or by reason of this Agreement, the Debt Commitment Letters or their respective negotiation, execution, performance or breach; (c) agrees that the Debt Commitment Letter, the Debt Financing Documents and/or the Debt Financing and any dispute arising under, out of, in connection with or related in any manner to the Debt Commitment Letter, the Debt Financing Documents and/or Debt Financing will be governed by and construed in accordance with the Laws of the State of New York to the extent specified therein, regardless of the laws that might otherwise govern under applicable principles of conflicts of law, (d) irrevocably and unconditionally waives, to the fullest extent permitted by applicable Law, any right it may have to a trial by jury in respect of any litigation directly or indirectly arising out of the Debt Commitment Letter, the Debt Financing Documents and/or the Debt Financing or the performance of services in respect thereof or thereunder, (e) agrees (without limiting the foregoing clauses (a) and (b)) not to bring any suit, action or proceeding against the Debt Financing Sources or which may arise pursuant to the Debt Commitment Letter, the Debt Financing Documents and/or the Debt Financing or the performance of services in respect thereof or thereunder in any forum other than the United States District Court for the Southern District of New York located in the Borough of Manhattan or any New York State court sitting in the Borough of Manhattan, and Seller, on behalf of itself and its Affiliates, and each of its and its Affiliates' respective directors, officers, employees, incorporators, members, partners, managers, stockholders, Affiliates, agents, consultants, attorneys, accountants, advisors and representatives and their respective successors and assigns, consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by applicable Law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum, and agrees that it will not, and will not support any of its Affiliates in bringing, any suit, action or proceeding in

any other court, and (f) the Debt Financing Sources are express and intended third party beneficiaries of this Section 12.22 and Section 7.04, Section 12.08(c), Section 12.17(c), and Section 12.18. Without limiting the generality of the foregoing, no Debt Financing Source shall be subject to any special, consequential, punitive or indirect damages or damages of a tortious nature to Seller or any of its Affiliates (or any of their respective directors, officers, employees, incorporators, members, partners, managers, stockholders, Affiliates, agents, consultants, attorneys, accountants, advisors or representatives). Notwithstanding anything to the contrary contained herein, any modification, waiver or termination of this Section 12.22, Section 7.04, Section 12.08(c), Section 12.17(c), Section 12.18 or the definition of “Debt Financing Sources” (or any other provision of this Agreement to the extent such modification, waiver or termination would modify the substance of such Sections or such definition) that is adverse to any Debt Financing Source will not be effective without the prior written consent of such Debt Financing Source. This Section 12.22 will, with respect to the matters referenced herein, supersede any provision of this Agreement to the contrary. The provisions of this Section 12.22 will survive any termination of this Agreement. For purposes of this Section, “Debt Financing Sources” shall include the Debt Financing Sources, their respective Affiliates, the Debt Financing Sources’ and their Affiliates’ respective directors, officers, employees, incorporators, members, partners, managers, stockholders, Affiliates, agents, consultants, attorneys, accountants, advisors and representatives and their respective successors and assigns.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed on the date first written above by their respective duly authorized officers.

**SELLER:**

NPC QUALITY BURGERS, INC.

By:   
Name: Eric Koza  
Title: Chief Restructuring Officer


NPC INTERNATIONAL, INC.

By:   
Name: Eric Koza  
Title: Chief Restructuring Officer

NPC HOLDINGS, INC.

By:   
Name: Eric Koza  
Title: Chief Restructuring Officer

NPC INTERNATIONAL HOLDINGS, LLC

By:   
Name: Eric Koza  
Title: Chief Restructuring Officer

NPC RESTAURANT HOLDINGS I LLC

By:   
Name: Eric Koza  
Title: Chief Restructuring Officer

NPC RESTAURANT HOLDINGS II LLC

By:   
Name: Eric Koza  
Title: Chief Restructuring Officer


NPC RESTAURANT HOLDINGS, LLC

By:   
Name: Eric Koza  
Title: Chief Restructuring Officer

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date first written above by their respective duly authorized officers.

**BUYER:**

HUT AMERICAN GROUP LLC

By:  \_\_\_\_\_  
Name: Lorin M. Cortina  
Title: Chief Financial Officer

WEND AMERICAN GROUP LLC

By:  \_\_\_\_\_  
Name: Lorin M. Cortina  
Title: Chief Financial Officer



**EXHIBIT A**

**DEFINITIONS**

**“Accounts Receivable”** means (a) all accounts, accounts receivable, contractual rights to payment, notes, notes receivable, negotiable instruments, chattel paper, and vendor and supplier rebates of Seller and (b) any security interest, claim, remedy or other right related to any of the foregoing.

**“Action”** means any action, suit, arbitration, litigation, investigation or proceeding by or before any Government Authority.

**“Affiliate”** means, with respect to any specified Person, any other Person that, at the time of determination, directly or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with such specified Person.

**“Agreement”** means this Amended and Restated Asset Purchase Agreement, dated as of January 7, 2021, by and between Seller and Buyer, including the Disclosure Schedules and the Exhibits, and all amendments to such agreement made in accordance with Section 12.11.

**“Antitrust Laws”** means the Sherman Antitrust Act, as amended, the Clayton Antitrust Act, as amended, the HSR Act, the Federal Trade Commission Act, as amended and all other Laws and orders that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition, whether in the United States or any other jurisdiction.

**“Bankruptcy and Equity Exception”** means the effect on enforceability of (a) any applicable Law relating to bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance or preferential transfers, or similar Law relating to or affecting creditors’ rights generally and (b) general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law).

**“Beverage Rebate”** means all beverage rebates Related to the Business, including those on account of or accrued by The Coca Cola Company, PepsiCo, Dr Pepper Snapple Group or any Affiliate thereof, but excluding any beverage rebates with respect to the Excluded Business.

**“Beverage Rebate Amount”** means the unearned portion of the Beverage Rebate for 2020, which will offset the Beverage Rebate for 2021, currently estimated to be \$4,150,000, and subject to adjustment based on actual performance volume and calculated with the methodology used by Seller in the ordinary course of business in determining the Beverage Rebates.

**“Bidding Procedures Order”** means that certain order of the Bankruptcy Court, entered into on September 25, 2020 (Docket No. 693), that among other things, establishes the date by which Competing Bids are due.

“**Business**” means the operation of franchised restaurant businesses owned and operated by Seller under the Wendy’s brand in the Central Maryland, Baltimore North, Baltimore South and Salt Lake City markets and under the Pizza Hut brand, excluding the Excluded Business.

“**Business Day**” means any day that is not a Saturday, a Sunday or other day on which commercial banks in New York City, New York are required or authorized by Law to be closed.

“**Business Intellectual Property**” means the Intellectual Property (including the Business Registrable IP) owned by Seller and Related to the Business.

“**Business Marks**” means the Trademarks included in the Transferred Assets.

“**Business Registrable IP**” means the patents, patent applications, registered Trademarks, applications for registered Trademarks, copyright registrations and Internet domain names owned by Seller and Related to the Business.

“**Business Systems**” means the Systems owned by Seller and Related to the Business.

“**Buyer Transaction Agreements**” means this Agreement and each other Transaction Agreement to which Buyer is named as a party on the signature pages thereto.

“**Buyer Transactions**” means the transactions contemplated by Buyer Transaction Agreements.

“**CARES Act**” means the Coronavirus Aid, Relief, and Economic Security Act of 2020, Pub. L. 116-136.

“**Cash**” means all cash and cash equivalents, including checks, commercial paper, treasury bills, certificates of deposit and other bank deposits, securities, securities entitlements, instruments and other investments and all bank accounts and securities accounts, calculated in accordance with GAAP and Seller’s books and records.

“**Change**” has the meaning set forth in the definition of “Material Adverse Effect”.

“**Closing Conditions**” means the conditions to the respective obligations of the Parties to consummate the Transactions contemplated by this Agreement, in each case, as set forth in Article X.

“**COBRA**” means the continuation of coverage requirements under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

“**Code**” means the U.S. Internal Revenue Code of 1986, as amended.

“**Commitment Letter Effective Time**” means 9:00 p.m. on January 12, 2021; provided, however, that if the executed Equity Commitment Letter and Debt Commitment Letters

are not delivered by such time in accordance with Section 5.06(a) and (b), the Commitment Letter Effective Time shall be deemed not to have occurred.

“**Confidentiality Agreement**” the means the Confidentiality Agreement dated as of July 18, 2020, by and between Buyer and NPC Restaurant Holdings I LLC, as the same may be amended from time to time in accordance with its terms.

“**Consent**” means any consent, approval or authorization.

“**Contract**” means any written contract, agreement, undertaking, indenture, note, bond, mortgage, lease, sublease, license, sublicense, sales order, purchase order or other instrument or commitment that purports to be binding on any Person or any part of its property (or subjects any such assets or property to a Lien).

“**Control**” means, with respect to any Person, the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by Contract or otherwise. The terms “Controlled by,” “Controlled,” “under common Control with” and “Controlling” shall have correlative meanings.

“**Covered Employee**” means each person who is employed by Seller or any of its Affiliates and who provides services in connection with the Business and each other person employed by Seller or any of its Affiliates set forth on the Covered Employee List, in each case excluding the Excluded Employees.

“**COVID-19 Pandemic**” means the SARS-Cov2 or COVID-19 pandemic, including any future resurgence or evolutions or mutations thereof and/or any related or associated disease outbreaks, epidemics and/or pandemics.

“**Credit Card Receivables**” means each Account or Payment Intangible (each as defined in the UCC) together with all income, payments and proceeds thereof, owed by a credit card payment processor or an issuer of credit cards to Seller.

“**Cure Costs**” means, with respect to any Transferred Contract, any and all monetary amounts, costs or expenses that must be paid or satisfied pursuant to section 365(b)(1) of the Bankruptcy Code to effectuate the assumption by Seller, and the assignment to Buyer, of such Transferred Contract, as determined by final Order of the Bankruptcy Court or agreed to by Buyer and the applicable counterparty to the applicable Transferred Contract. For the avoidance of doubt, Cure Costs shall not include any Liabilities allocated to Seller pursuant to Section 2.01(d) or any Liabilities with respect to any Transferred Contract accruing or payable after the Petition Date and before the Closing, all of which shall be paid by Seller.

“**Debt**” means financial indebtedness for borrowed money from third party lending sources, calculated in accordance with GAAP and Seller’s books and records.

“**Debtors**” means Seller and each of the Affiliates of Seller set forth on Schedule A.

“**Deferred Payroll Taxes**” means payroll taxes deferred by Seller under section 2302 of the CARES Act.

**“Disclosure Schedules”** means the disclosure schedules dated as of the Agreement Date delivered by Seller to Buyer, which form a part of this Agreement.

**“Effective Time”** means 12:01 a.m. (local time) on the Closing Date.

**“Employee Plans”** means all employee benefit plans (within the meaning of Section 3(3) of ERISA), and each other material retirement, welfare benefit, bonus, stock option, stock purchase, restricted stock, incentive, deferred compensation, employment, retention, termination, or severance programs or agreements, in each case pursuant to which Seller or any of its Affiliates currently has any obligation with respect to any current or former employee of Seller or other Covered Employee.

**“Environmental Law”** means any applicable U.S. federal, state, local or non-U.S. statute, law, ordinance, regulation, rule, code, Order or other requirement or rule of law (including common law) promulgated by a Government Authority relating to pollution or protection of the environment.

**“Environmental Permit”** means any Permit that is required by a Government Authority under any Environmental Law and necessary to the operation of the Business as of the Agreement Date.

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

**“Escrow Agreement”** means the escrow agreement entered to among Buyer, Seller and the Escrow Agent, dated as of November 10, 2020.

**“Excluded Business”** means the ownership and operation by Seller of the franchised restaurants under the Wendy’s brand, in all market areas other than the Central Maryland, Baltimore North, Baltimore South and Salt Lake City markets, the locations of which are set forth on Schedule 1.01(d).

**“Excluded Employees”** means all employees of Seller other than the Covered Employees including those employees who provide services in connection with the Excluded Business unless such employee is specifically designated as a Covered Employee by mutual agreement of the Seller and Buyer.

**“Exhibits”** means the exhibits dated as of the Agreement Date (and as may be amended from time to time in accordance herewith) which form a part of this Agreement.

**“Franchisor”** means, as applicable, Pizza Hut LLC and its Affiliates and predecessors and The Wendy’s Company and/or Quality is Our Recipe, LLC (collectively, **“The Wendy’s Company”**) and their Affiliates and predecessors.

**“GAAP”** means U.S. generally accepted accounting principles.

**“Government Authority”** means any U.S. federal, state or local or any supra-national or non-U.S. government, political subdivision, governmental, regulatory or administrative

authority, instrumentality, agency, body or commission, self-regulatory organization or any court, tribunal, or judicial or arbitral body.

“**Hazardous Materials**” means any substance, material or waste that is defined or regulated as “hazardous,” “toxic,” a “pollutant,” a “contaminant” or words of similar meaning and regulatory effect under any applicable Environmental Law.

“**HSR Act**” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

“**Insurance Policies**” means, collectively, all policies and programs of or agreements for insurance and interests in insurance pools and programs (in each case including self-insurance and insurance from Affiliates).

“**Intellectual Property**” means any and all of the following intellectual property and similar rights, title, or interest in or arising under the Laws of the U.S. or any other country: (a) patents, patent applications, and patent rights, including any such rights granted upon any reissue, reexamination, renewal, division, extension, provisional, continuation, or continuation-in-part applications; (b) copyrights, moral rights, mask work rights, database rights and design rights, whether or not registered, and registrations and applications for registration thereof, and all rights therein provided by international treaties or conventions; (c) Trademarks; (d) trade secrets, know-how and corresponding rights in confidential and proprietary information; and (e) Internet domain names, web addresses, web pages, websites, accounts with Twitter, Facebook, Instagram and other social media companies and related thereto, and URLs.

“**Interest Rate**” means the rate designated from time to time in Section 6621(a)(2) of the Code, compounded on a daily basis.

“**Inventory Value**” means Seller’s food, beverage, operating supplies, paper goods, uniforms and other similar inventory used or held for use in connection with the restaurants acquired hereunder on hand as of the Closing, valued at actual landed “first-in, first-out” cost basis (i.e., actual purchase cost, including all third-party shipping and handling charges, but adjusted for all discounts and rebates actually received or receivable), as determined by Seller’s most recent physical weekly inventory count conducted prior to the Closing in a manner consistent with Seller’s past practices and using the form of inventory mutually agreed by the parties; provided, however, that Seller’s inventory shall only be given a value if it is useable for the current menu and in unopened original shipped containers, or prorated amounts for opened cases containing individual unused items or individual unopened containers and value shall not be attributed to any internally proceed and prepared food items and ingredients.

“**IRS**” means the U.S. Internal Revenue Service.

“**Joint Written Instructions**” has the meaning ascribed to such term in the Escrow Agreement.

“**KEIP**” has the meaning ascribed to such term in the KEIP/KERP Order.

“**KERP**” has the meaning ascribed to such term in the KEIP/KERP Order.

**“KEIP/KERP Order”** means that certain order of the Bankruptcy Court entered into on September 17, 2020 (Docket No. 693) that, among other things, approves the Debtors’ proposed key employee incentive plan and proposed key employee retention plan.

**“Knowledge of Seller”** means the actual knowledge as of the Agreement Date of the Persons listed in Schedule 1.01(a).

**“Law”** means any U.S. federal, state, local or non-U.S. statute, law, ordinance, regulation, rule, code, Order or other requirement or rule of law (including common law) promulgated by a Government Authority.

**“Liabilities”** means any liability, Debt, guarantee, claim, demand, expense, commitment, damage, assurance or obligation (whether direct or indirect, fixed, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due) of every kind and description, including all costs and expenses related thereto.

**“Lien”** means any mortgage, deed of trust, pledge, hypothecation, security interest, encumbrance, claim, lien or charge of any kind.

**“Liquor License Approvals”** means the necessary consents and approvals pertaining to the transfer and/or issuance of any of the Liquor Licenses to Buyer, or the granting of temporary or interim operating permits allowing the service of alcohol until the final transfer and/or issuance of the Liquor Licenses.

**“Liquor Licenses”** means all liquor licenses (including, without limitation, beer and wine licenses) held or used by Seller.

**“Loyalty Programs and Gift Card Liability Amounts”** means the obligations to honor the (i) Pizza Hut loyalty programs and gift cards redemptions by customers, and (ii) Wendy’s loyalty programs and gift card redemptions by customers, in each case calculated with the methodology used by Seller in the ordinary course of business in determining such obligations and excluding any amounts incurred or associated with the Excluded Business.

**“Material Adverse Effect”** means any fact, event, change, effect, development, circumstance, or occurrence (each, a **“Change”**) that, individually or in the aggregate, (i) has had or would reasonably be expected to have a material adverse effect on the business, operations, properties, assets or financial condition of the Business, or (ii) prevents or materially delays the performance by Seller of its obligations to consummate the Transactions by the Outside Date; provided, that, with respect to clause (i) of this definition, none of the following, either alone or in combination, will be taken into account in determining whether there has been or may be a Material Adverse Effect: (a) any Change in the United States or foreign economies or securities or financial markets in general (including any decline in the price of securities generally or any market or index); (b) any Change that generally affects any industry in which the Business operates; (c) any Change in the general business or economic conditions in any of the geographical areas in which Seller or the Business operates; (d) the occurrence of any act of God or other calamity or force majeure event (whether or not declared as such), including any strike, labor dispute, civil disturbance, embargo, natural disaster, fire, flood, hurricane, tornado, or other weather event, or any global health conditions (including any epidemic, pandemic, or other outbreak of illness,



including as a result of the COVID-19 virus or other disease or virus, or any actions by a Government Authority related to the foregoing) (e) any Change in national or international political or social conditions, including any Change arising in connection with, hostilities, acts of war, cyber-attack, sabotage or terrorism or military actions or any escalation or material worsening of any such hostilities, acts of war, cyber-attack, sabotage or terrorism or military actions, whether commenced before or after the date hereof and whether or not pursuant to the declaration of a national emergency or war; (f) any actions taken by Buyer or its Affiliates or otherwise expressly required to be taken or omitted by Seller pursuant to this Agreement or any other Transaction Agreement or actions taken or omitted to be taken by Seller at the written request of, or with the prior written consent of, Buyer; (g) any Changes in applicable Laws or GAAP (or other relevant accounting rules) following the date hereof; (h) any Change resulting from the filing of the Bankruptcy Cases, (i) and Change resulting from the public announcement of the entry into this Agreement, compliance with terms of this Agreement or the consummation of the Transactions; or (j) any effects or Changes arising from or related to the breach of this Agreement by Buyer; *provided further*, that the exceptions set forth in clauses (a) through (e) of this definition shall not be regarded as exceptions to the extent that any such described Change has a disproportionately adverse impact on the Business, as compared to other companies similarly situated in the industries in which the Business operates.

**“Order”** means any order, writ, judgment, injunction, temporary restraining order, decree, stipulation, determination, settlement or award entered by or with any Government Authority.

**“Permits”** means all permits, licenses, authorizations, clearances, registrations, concessions, grants, franchises, certificates, waivers and filings issued or required by any Government Authority under applicable Law, in each case, necessary for the operation of the Business.

**“Permitted Liens”** means the following Liens: (a) Liens for Taxes, assessments or other governmental charges or levies that (i) are not yet due or payable, (ii) are being contested in good faith by appropriate proceedings, or (iii) may thereafter be paid without penalty; (b) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, materialmen, workmen, repairmen and other Liens imposed or permitted by Law in the ordinary course of business; (c) Liens incurred or deposits made in the ordinary course of business in connection with workers’ compensation, unemployment insurance or other types of social security; (d) defects or imperfections of title, exceptions, easements, covenants, rights-of-way, restrictions and other similar charges, defects or encumbrances not materially interfering with the ordinary conduct of the Business; (e) zoning, entitlement, building and other generally applicable land use and environmental restrictions by a Government Authority; (f) Liens not created by Seller that affect the underlying fee, lessor, licensor or sublessor interest of any Transferred Leased Real Property or real property over which Seller (with respect to the Business) has easement or other property rights; (g) Liens created by or through, or resulting from any facts or circumstances relating to, Buyer or its Affiliates; (h) Liens arising out of, under or in connection with this Agreement or the other Transaction Agreements; (i) any set of facts an accurate up-to-date survey would show, provided, that such facts do not materially interfere with the ordinary conduct of the Business; (j) right, terms or conditions of any leases, subleases, licenses or occupancy agreements under Transferred Contracts copies of which were made available to Buyer prior to the Agreement Date,

including title of a lessor under a capital or operating lease; (k) in the case of Intellectual Property, licenses, options to license, covenants or other grants or gaps or defects in the chain of title evident from the publicly-available records of the applicable Government Authority maintaining such records; (l) any set of facts an accurate up to date survey would show, provided, that such facts do not materially interfere with the ordinary conduct of the Business; (m) rights, terms or conditions of any leases, subleases, licenses or occupancy agreements made available to Buyer, including title of a lessor under a capital or operating lease; (n) any non-financial title matters shown in any title policy or report made available to Buyer, (o) other non-financial Liens that individually or in the aggregate would not reasonably be expected to be material to the Business, taken as a whole, and (p) any other Lien that will be cleared by the Bankruptcy Court.

**“Person”** means any natural person, general or limited partnership, corporation, company, trust, limited liability company, limited liability partnership, firm, association or organization or other legal entity.

**“Personal Information”** means, in addition to any definition for any similar term (e.g., “personally identifiable information” or “PII”) provided by applicable Law, all information that identifies an individual person.

**“Pizza Hut”** means the Pizza Hut franchised restaurants owned by Seller identified on Schedule 1.01(b).

**“Pre-Closing Period”** means the period beginning on the Agreement Date and ending on the earlier of the Closing Date and the date this Agreement is terminated in accordance with its terms.

**“Prepays Value”** means the value of the Prepays solely to the extent transferrable and to the extent Buyer will receive the benefit of such Prepays after Closing, evidenced by documentation reasonably satisfactory to Buyer; provided, however, that the Prepays Value will not exceed \$3,500,000 *other than* (i) with respect to Prepays directly related to Seller’s development obligations with The Wendy’s Company up to an aggregate amount of \$1,800,000 solely to the extent The Wendy’s Company provides Buyer credit for such Prepays, and (ii) increases or decreases to such amount arising during the pre-Closing period in the ordinary course of business.

**“Related to the Business”** means primarily related to, primarily held for use in, or primarily used in connection with the Business.

**“Representative”** of a Person means the directors, officers, employees, advisors, agents, consultants, attorneys, accountants, financial advisors or other representatives of such Person.

**“Required Approvals”** means the approvals of the Government Authorities required under applicable Antitrust Law (other than HSR Act) as described in Section 10.01(b).

**“Sale Hearing”** means, the hearing to be held by the Bankruptcy Court regarding the approval of the Sale Order, as such hearing may be adjourned or continued from time to time.

**“Sale Order”** shall be an order or orders of the Bankruptcy Court, in form and substance reasonably acceptable to Buyer and Seller, approving and authorizing Seller to consummate the Transactions.

**“Seller Guarantees”** means, collectively, all letters of credit, guarantees, surety bonds, performance bonds and other financial assurance or other performance obligations issued or entered into by or on behalf of (or for the account of) Seller or any of its Affiliates in connection with the Transferred Assets or the Assumed Liabilities.

**“Seller Transaction Agreements”** means this Agreement and each other Transaction Agreement to which Seller or an Affiliate is named as a party on the signature pages thereto.

**“Seller Transactions”** means the transactions contemplated by the Seller Transaction Agreements.

**“Specified Consents”** means (A) the material consents required by applicable Law to keep the restaurants open and operating immediately after the Closing, including any required health permits or business license required to operate as a food establishment (regardless of the name of such permit), but excluding any alcohol license, gaming/music license, sign license or single asset license (e.g. alarm, dumpster, CO2) or (B) in absence of the foregoing consents, reasonable assurances from local authorities that Buyer will be able to operate under Seller’s permits for a transitional period after Closing pursuant to the Sale Order.

**“Stalking Horse Motion”** means the motion or motions of Seller, in form and substance reasonably acceptable to Buyer seeking approval and entry of the Stalking Horse Order.

**“Stalking Horse Order”** means that certain order of the Bankruptcy Court, in form and substance reasonably acceptable to Buyer and Seller, that among other things approves this Agreement and the Break-Up Fee.

**“Store Cash”** means cash in an amount equal to the average amount of cash held at all Wendy’s and Pizza Hut restaurants acquired hereunder, calculated based on the trailing twelve month period as of the last day of the month immediately prior to the month in which the Closing occurs, divided by the number of restaurants acquired hereunder.

**“Subsidiary”** of any specified Person means any other Person of which such first Person owns (either directly or through one or more other Subsidiaries) a majority of the outstanding equity securities or securities carrying a majority of the voting power in the election of the board of directors or other governing body of such Person, and with respect to which entity such first Person is not otherwise prohibited contractually or by other legally binding authority from exercising Control.

**“Systems”** means all the software, hardware, network and telecommunications equipment and internet-related information technology that are used in the operation of the Business as conducted on the Agreement Date.

“**Tax**” or “**Taxes**” means all U.S. federal, state, local, foreign and other income, excise, gross receipts, ad valorem, value-added, sales, use, premium, employment, unemployment, severance, franchise, profits, registration, license, lease, service, custom duties, environmental, social security (or similar), recording, documentary, filing, permit or authorization, stamp, business and occupation, gains, property, leasing, transfer, payroll, intangibles, alternative or add-on minimum, estimated or other taxes of any kind whatsoever (whether payable directly or by withholding), together with any interest and any penalties, additions to tax or additional amounts imposed by any Taxing Authority with respect thereto.

“**Tax Returns**” means all returns and reports (including elections, declarations, disclaimers, notices, disclosures, schedules, estimates, claims (including claims for refunds) and information returns) relating to Taxes including any schedule or attachment thereto, and including any amendment thereof.

“**Taxing Authority**” means any federal, state, local or foreign jurisdiction (including any subdivision and any revenue agency of a jurisdiction) imposing Taxes and the agencies, if any, charged with the collection of such Taxes for such jurisdiction.

“**Title Company**” means First American Title Insurance Company.

“**Trademarks**” means trademarks, service marks, trade names, service names, trade dress, logos and other identifiers of same, including all goodwill associated therewith, and all common law rights, and registrations and applications for registration thereof, all rights therein provided by international treaties or conventions, and all reissues, extensions and renewals of any of the foregoing.

“**Transaction Agreements**” means this Agreement, the Bill of Sale, Assignment and Assumption Agreement, the Transferred Leased Property Assignment and Assumption Agreement, the IP Assignment Agreement, the Escrow Agreement, and any other agreements, instruments or documents required to be delivered at the Closing, in each case including all exhibits and schedules thereto and all amendments thereto made in accordance with the respective terms thereof.

“**Transactions**” means the transactions contemplated by this Agreement and the other Transaction Agreements.

“**Transfer Taxes**” means all stamp, documentary, filing, recording, registration, sales, use, transfer, added-value or other non-income Tax, fee or governmental charge, including title recording or filing fees and other amounts payable in respect of transfer filings, together with any interest and any penalties, additions to tax or additional amounts imposed by any Taxing Authority with respect thereto.

“**Transferred Books and Records**” means all books, records, files and papers, whether in hard copy or computer format, including sales and promotional literature, manuals and data, sales and purchase correspondence, lists of suppliers, personnel and employment records, in each case, solely to the extent Related to the Business, other than any Tax Returns and any Excluded Assets of the type described in Section 2.01(b)(xiv) and Section 2.01(b)(xv).

“U.S.” means the United States of America.

“Wendy’s” means the Wendy’s franchised restaurants owned by Seller identified on Schedule 1.01(c).

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Fee Threshold.....	Section 8.01(c)
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Milestones.....	Section 8.05
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Transferred Contracts .....	Section 2.01(a)(iii)
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Transferred Leases .....	Section 2.01(a)(ii)
Transferred Owned Real Property .....	Section 2.01(a)(i)

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Wendy's .....	Exhibit A
Wendy's APA.....	Preliminary Statements

**SCHEDULE A**

Debtors

NPC Restaurant Holdings I LLC

NPC Restaurant Holdings II LLC

NPC Holdings, Inc.

NPC International Holdings, Inc.

NPC Restaurant Holdings, LLC

NPC Operating Company B, Inc.

NPC Quality Burgers, Inc.

**FORM OF BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT**

**BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT** (this “Agreement”), dated as of [●] by and among NPC Quality Burgers, Inc., a Kansas corporation, NPC International, Inc., a Kansas corporation, NPC Restaurant Holdings, LLC, a Delaware limited liability company, NPC International Holdings, LLC, a Delaware limited liability company, NPC Holdings, Inc., a Delaware corporation, NPC Restaurant Holdings I LLC, a Delaware limited liability company, and NPC Restaurant Holdings II LLC, a Delaware limited liability company (collectively, “Assignors”) and Wend American Group LLC, a Delaware limited liability company, and Hut American Group LLC, a Delaware limited liability company (collectively, “Assignees”) (each of the Assignors and Assignees, a “Party” and, together, the “Parties”).

Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in that certain Asset Purchase Agreement (as amended, supplemented or otherwise modified, the “Purchase Agreement”), dated as of [●], by and between Assignors and Assignees.

**WHEREAS**, Assignors and Assignees have entered into the Purchase Agreement pursuant to which Assignees have agreed to purchase the Transferred Assets and to assume the Assumed Liabilities with respect to the franchised restaurant businesses owned and operated by Assignees under the Wendy’s and Pizza Hut brands as set forth on Exhibit A attached hereto (the “Restaurants”), in each case on the terms and subject to the conditions set forth in the Purchase Agreement; and

**WHEREAS**, pursuant to this Agreement, each of the Assignors shall sell, convey, assign, transfer, and deliver to the applicable Assignee or such Assignee’s subsidiaries, as set forth on Exhibit A attached hereto (the applicable assignee for each Restaurant, the “Applicable Assignee”), and such Applicable Assignee shall purchase, acquire, and accept delivery from each such Assignor, all of such Assignor’s right, title and interest in, to, and under the Transferred Assets, as applicable, in each case on the terms and subject to the conditions set forth in the Purchase Agreement.

**WHEREAS**, pursuant to this Agreement, each Applicable Assignee shall assume and thereafter timely pay, discharge and perform in accordance with their terms the Assumed Liabilities, in each case on the terms and subject to the conditions set forth in the Purchase Agreement.

**NOW, THEREFORE**, in consideration of the foregoing and the representations, warranties, covenants and agreements set forth in the Purchase Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. Assignment of Purchased Assets. Effective as of the Closing, on the terms and subject to the conditions set forth in the Purchase Agreement, each Assignor hereby sells, conveys, assigns, transfers, and delivers to the Applicable Assignee, and such Applicable Assignee hereby purchases, acquires, and accepts delivery from each such Assignor, all of such Assignor’s right, title and interest in, to and under the Transferred Assets, including the Transferred Contracts

set forth on Exhibit B attached hereto, and the Transferred Permits set forth on Exhibit C attached hereto.

2. Assumption of Assumed Liabilities. Effective as of the Closing, on the terms and subject to the conditions set forth in the Purchase Agreement, each Applicable Assignee hereby assumes and agrees to pay, discharge and perform in accordance with their terms, all of the Assumed Liabilities.

3. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns.

4. Conflict. The respective rights of Assignors and Assignees with respect to the Transferred Assets sold, conveyed, assigned, transferred and delivered hereby and the Assumed Liabilities assumed hereby shall be governed exclusively by the Purchase Agreement and nothing in this Agreement shall alter any liability or obligation arising under the Purchase Agreement, which shall (without limiting the generality of the foregoing) govern, and shall contain the sole and exclusive representations, warranties and obligations of the Parties with respect to such Transferred Assets and such Assumed Liabilities. If there is any conflict or inconsistency between the provisions of the Purchase Agreement and this Agreement, the provisions of the Purchase Agreement shall govern.

5. Sole Remedy. The sole and exclusive remedy of the Assignees and Assignors with respect to any breach of this Agreement shall be as set forth in the Purchase Agreement.

6. Notices. All notices and other communications under or by reason of this Agreement shall be in writing and shall be deemed to have been duly given or made (a) when personally delivered, (b) when delivered by e-mail transmission with receipt confirmed or (c) upon delivery by overnight courier service, in each case, to the addresses and attention parties indicated below (or such other address, e-mail address or attention party as the recipient party has specified by prior notice given to the sending party in accordance with this Section):

If to Assignors, to:

NPC International, Inc.  
4200 W. 115th Street, Suite 200  
Leawood, KS 66211  
Attention: David Wahlert  
Penny Lindemann Smith  
E-mail: david.wahlert@npcinternational.com  
penny.lindemannsmith@npcinternational.com

With a copy (which will not constitute notice) to:

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153  
Attention: Ray C. Schrock, Esq.  
Gavin Westerman, Esq.  
Kevin Bostel, Esq.  
E-mail: ray.schrock@weil.com  
gavin.westerman@weil.com



kevin.bostel@weil.com

If to Assignees, to: Wend American Group LLC and Hut American Group  
LLC  
225 Bush Street, Suite 1800  
San Francisco, California 94104  
Attention: Lorin M. Cortina  
E-mail: lcortina@flynnholdings.com

with a copy (which will not constitute notice) to: Davis Wright Tremaine LLP  
920 Fifth Avenue, Suite 3300  
Seattle, Washington 98104  
Attention: Sarah English Tune  
E-mail: sarahtune@dwt.com

and

Kirkland & Ellis LLP  
300 North LaSalle Street  
Chicago, Illinois 60654  
Attention: Matthew S. Arenson, P.C.  
Josh Sussberg, P.C.  
Anthony R. Grossi  
E-mail: matthew.arenson@kirkland.com  
jsussberg@kirkland.com  
anthony.grossi@kirkland.com

7. Severability. If any term or provision of this Agreement is held invalid, illegal or unenforceable in any respect under any applicable Law, as a matter of public policy or on any other grounds, the validity, legality and enforceability of all other terms and provisions of this Agreement will not in any way be affected or impaired. If the final judgment of a court of competent jurisdiction or other Government Authority declares that any term or provision hereof is invalid, illegal or unenforceable, the Parties agree that the court making such determination will have the power to reduce the scope, duration, area or applicability of the term or provision, to delete specific words or phrases, or to replace any invalid, illegal or unenforceable term or provision with a term or provision that is valid, legal and enforceable and that comes closest to expressing the intention of the invalid, illegal or unenforceable term or provision.

8. Entire Agreement. This Agreement and the other Transaction Agreements (and all exhibits and schedules hereto and thereto) collectively constitute and contain the entire agreement and understanding of the Parties with respect to the subject matter hereof and thereof and supersede all prior negotiations, correspondence, understandings, agreements and contracts, whether written or oral, among the Parties respecting the subject matter hereof and thereof. The Schedules and Exhibits attached to this Agreement shall be construed with and as an integral part of this Agreement to the same extent as if the same had been set forth verbatim herein. Any

capitalized terms used in any Exhibit or Schedule but not otherwise defined therein shall be defined as set forth in this Agreement.

9. Governing Law. This Agreement, and any Transaction Dispute, will be exclusively governed by and construed and enforced in accordance with the internal Laws of the State of New York, without giving effect to any Law or rule that would cause the Laws of any jurisdiction other than the State of New York to be applied.

10. Dispute Resolution; Consent to Jurisdiction. Without limiting any Party's right to appeal any order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any Transaction Dispute which may arise or result from, or be connected with, this Agreement or any breach or default hereunder, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 12.03 of the Purchase Agreement (as may be updated from time to time in accordance with Section 12.03 of the Purchase Agreement); provided, however, upon the closing of the Bankruptcy Cases, the Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the U.S. District Court for the Southern District of New York sitting in New York County or the Commercial Division of the Courts of the State of New York sitting in the County of New York and any appellate court from any thereof, for the resolution of any such Transaction Dispute. In that context, and without limiting the generality of the foregoing, each Party irrevocably and unconditionally:

- a. submits for itself and its property to the exclusive jurisdiction of such courts with respect to any such Transaction Dispute and for recognition and enforcement of any judgment in respect thereof, and agrees that all claims in respect of any such Transaction Dispute shall be heard and determined in such court;
- b. agrees that venue would be proper in such courts, and waives any objection that it may now or hereafter have that any such court is an improper or inconvenient forum for the resolution of any such Transaction Dispute; and
- c. agrees that the mailing by certified or registered mail, return receipt requested, to the Persons listed in Section 12.03 of the Purchase Agreement (as may be updated from time to time in accordance with Section 12.03 of the Purchase Agreement) of any process required by any such court, will be effective service of process; provided, however, that nothing herein will be deemed to prevent a Party from making service of process by any means authorized by the Laws of the State of New York.

The foregoing consent to jurisdiction will not constitute submission to jurisdiction or general consent to service of process in the State of New York for any purpose except with respect to any Transaction Dispute which may arise or result from, or be connected with, this Agreement or any breach or default hereunder.

11. Waiver of Jury Trial. To the maximum extent permitted by Law, each Party irrevocably and unconditionally waives any right to trial by jury in any forum in respect of any Transaction Dispute and covenants that neither it nor any of its Affiliates or Representatives will assert (whether as plaintiff, defendant or otherwise) any right to such trial by jury. Each Party certifies and acknowledges that (a) such Party has considered the implications of this waiver, (b) such Party makes this waiver voluntarily and (c) such waiver constitutes a material inducement upon which such Party is relying and will rely in entering into the this Agreement. Each Party may file an original counterpart or a copy of this Section 11 with any court as written evidence of the consent of each Party to the waiver of its right to trial by jury.

12. Successors. This Agreement will be binding upon and inure to the benefit of and be enforceable by the respective successors and permitted assigns of the Parties.

13. Headings. The division into Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement.

14. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. Facsimiles, e-mail transmission of .pdf signatures or other electronic copies of signatures shall be deemed to be originals.

15. Amendments. This Agreement (including all exhibits and schedules hereto) may be amended, restated, supplemented or otherwise modified, only by written agreement duly executed by each Party.

*[Signature page follows]*

IN WITNESS WHEREOF, Assignees and Assignors have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

**ASSIGNORS:**

NPC INTERNATIONAL, INC.

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

NPC QUALITY BURGERS, INC.

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

NPC RESTAURANT HOLDINGS, LLC

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

NPC INTERNATIONAL HOLDINGS, LLC.

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

[SIGNATURE PAGE TO BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT]

NPC HOLDINGS, INC.

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

NPC RESTAURANT HOLDINGS I LLC

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

NPC RESTAURANT HOLDINGS II LLC

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

**ASSIGNEES:**

WEND AMERICAN GROUP LLC

By: \_\_\_\_\_  
Name: Lorin M. Cortina  
Title: Chief Financial Officer

HUT AMERICAN GROUP LLC

By: \_\_\_\_\_  
Name: Lorin M. Cortina  
Title: Chief Financial Officer

EXHIBIT A

RESTAURANTS

Wend American Group LLC or its subsidiaries set forth below shall acquire the Transferred Assets and assume the Assumed Liabilities with respect to the following Restaurants:

[●]

Hut American Group LLC or its subsidiaries set forth below shall acquire the Transferred Assets and assume the Assumed Liabilities with respect to the following Restaurants:

[●]



EXHIBIT B

TRANSFERRED CONTRACTS

[●]

EXHIBIT C

TRANSFERRED PERMITS

[●]

EXHIBIT C  
FINAL FORM**FORM OF TRANSFERRED LEASED PROPERTY ASSIGNMENT AND  
ASSUMPTION AGREEMENT**

**THIS TRANSFERRED LEASE ASSIGNMENT AND ASSUMPTION AGREEMENT** (this “Assignment”) is made as of the [•] day of [•], by and between [•], a [•] (“Assignor”), and [•], a [•] (“Assignee”) (each of Assignor and Assignee, a “Party” and, together, the “Parties”).

**WHEREAS**, [the Parties are parties] / [Assignor and Assignee are parties] to that certain Asset Purchase Agreement, dated [•], 2020, by and between Assignor and Assignee (as amended, supplemented or otherwise modified, the “Purchase Agreement”). Capitalized terms used but not otherwise defined herein have the meanings given to such terms in the Purchase Agreement;

**WHEREAS**, the execution and delivery of this Assignment is contemplated by Sections 3.03(a)(iii) and 3.03(b)(v) of the Purchase Agreement; and

**WHEREAS**, Assignor desires to assign, transfer, convey and deliver to Assignee all of Assignor’s right, title and interest including any leasehold improvements and fixtures, if any, under the leases described on Schedule I attached hereto, including all amendments, modifications, and supplements thereto (the “Leases”, and each a “Lease”), and Assignee desires to accept such assignment of the Leases, together with all right, title, and interest of Assignor thereunder. The properties demised under the Leases are collectively referred to as the “Leased Premises”.

**NOW, THEREFORE**, in consideration of the foregoing and the representations, warranties, covenants and agreements set forth in the Purchase Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. Assignment and Assumption of Lease. For and in consideration of Ten Dollars (\$10.00) and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, effective as of the Effective Time, Assignor hereby assigns, transfers, conveys, and delivers to Assignee, its successors and assigns, all of Assignor’s estate, right, title and interest in to and under the Leases, including, without limitation all of Assignor’s rights, if any, related to options to purchase and options to terminate, renew or extend the term and Assignor’s interest in all buildings and improvements presently located on the Leased Premises and all easements and appurtenances and nondisturbance rights in favor of or benefiting the Leased Premises under the Leases, and, as of the Effective Time, Assignee hereby accepts the assignment, transfer, conveyance and delivery of Assignor’s estate, right, title and interest in, to and under such leasehold estates.
2. Assumption of Assumed Liabilities. Effective as of the Effective Time, Assignor hereby assigns, and Assignee hereby assumes and agrees to pay, discharge, or perform when due all Assumed Liabilities related to the Lease and agrees to be bound by all duties and obligations, arising on or after the Effective Time.

3. Binding Agreement. This Assignment shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns.
4. Sole Remedy. The sole and exclusive remedy of the Assignees and Assignor with respect to any breach of this Assignment shall be as set forth in the Purchase Agreement.
5. For Ground Lease Sites: Conveyance of Improvements. Assignor does hereby grant and convey unto Assignee, its successors and assigns, all of Assignor's rights, title and interest, if any, in and to the buildings, appurtenances, and related improvements thereto (together with all guaranties, manufacturer's service agreements and warranties applicable thereto, the "**Improvements**") which are now located on the Leased Premises.
6. Severability. If any term or provision of this Agreement is held invalid, illegal or unenforceable in any respect under any applicable law, as a matter of public policy or on any other grounds, the validity, legality and enforceability of all other terms and provisions of this Assignment will not in any way be affected or impaired. If the final judgment of a court of competent jurisdiction or other government authority declares that any term or provision hereof is invalid, illegal or unenforceable, the Parties agree that the court making such determination will have the power to reduce the scope, duration, area or applicability of the term or provision, to delete specific words or phrases, or to replace any invalid, illegal or unenforceable term or provision with a term or provision that is valid, legal and enforceable and that comes closest to expressing the intention of the invalid, illegal or unenforceable term or provision.
7. Governing Law. This Assignment shall be deemed to be made under, construed in accordance with and governed by the laws of the State of where the Leased Premises are located, without regard to any applicable conflicts of law principles.
8. Dispute Resolution; Consent to Jurisdiction. Without limiting any Party's right to appeal any order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Assignment and to decide any Transaction Dispute which may arise or result from, or be connected with, this Assignment or any breach or default hereunder, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 12.03 of the Purchase Agreement (as may be updated from time to time in accordance with Section 12.03 of the Purchase Agreement); provided, however, upon the closing of the Bankruptcy Cases, the Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the U.S. District Court for the Southern District of New York sitting in New York County or the Commercial Division of the Courts of the State of New York sitting in the County of New York and any appellate court from any thereof, for the resolution of any such Transaction Dispute. In that context, and without limiting the generality of the foregoing, each Party irrevocably and unconditionally:
  - a. submits for itself and its property to the exclusive jurisdiction of such courts with respect to any such Transaction Dispute and for recognition and

enforcement of any judgment in respect thereof, and agrees that all claims in respect of any such Transaction Dispute shall be heard and determined in such court;

- b. agrees that venue would be proper in such courts, and waives any objection that it may now or hereafter have that any such court is an improper or inconvenient forum for the resolution of any such Transaction Dispute; and
  - c. agrees that the mailing by certified or registered mail, return receipt requested, to the Persons listed in Section 12.03 of the Purchase Agreement (as may be updated from time to time in accordance with Section 12.03 of the Purchase Agreement) of any process required by any such court, will be effective service of process; provided, however, that nothing herein will be deemed to prevent a Party from making service of process by any means authorized by the Laws of the State of New York.
9. Waiver of Jury Trial. To the maximum extent permitted by Law, each Party irrevocably and unconditionally waives any right to trial by jury in any forum in respect of any Transaction Dispute and covenants that neither it nor any of its Affiliates or Representatives will assert (whether as plaintiff, defendant or otherwise) any right to such trial by jury. Each Party certifies and acknowledges that (a) such Party has considered the implications of this waiver, (b) such Party makes this waiver voluntarily and (c) such waiver constitutes a material inducement upon which such Party is relying and will rely in entering into the this Assignment. Each Party may file an original counterpart or a copy of this Section 9 with any court as written evidence of the consent of each Party to the waiver of its right to trial by jury.
10. Successors. This Assignment will be binding upon and inure to the benefit of and be enforceable by the respective successors and permitted assigns of the Parties.
11. Headings. The division into Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Assignment.
12. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. Facsimiles, e-mail transmission of .pdf signatures or other electronic copies of signatures shall be deemed to be originals.
13. Amendments. This Assignment (including all exhibits and schedules hereto) may be amended, restated, supplemented or otherwise modified, only by written agreement duly executed by each Party.

\* \* \* \* \*

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

**Assignor:**

[•] a [•]

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

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

Title: \_\_\_\_\_

**Assignee:**

[•], a [•]

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

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

Title: \_\_\_\_\_

*[Signature Page to Lease Assignment and Assumption Agreement]*



**SCHEDULE I**

**LEASES**

[To come.]

EXHIBIT D  
FINAL FORMFORM OF  
INTELLECTUAL PROPERTY ASSIGNMENT AND ASSUMPTION AGREEMENT

This Intellectual Property Assignment and Assumption Agreement (this “Assignment”) is made and entered into as of [●], 2020 (the “Effective Date”) by and among NPC Quality Burgers, Inc., a Kansas corporation, NPC International, Inc., a Kansas corporation, NPC Restaurant Holdings, LLC, a Delaware limited liability company, NPC International Holdings, LLC, a Delaware limited liability company, NPC Holdings, Inc., a Delaware corporation, NPC Restaurant Holdings I LLC, a Delaware limited liability company, and NPC Restaurant Holdings II LLC, a Delaware limited liability company (collectively, “Assignors”) and Wend American Group LLC, a Delaware limited liability company, and Hut American Group LLC, a Delaware limited liability company (collectively “Assignee”). The Assignors, on the one hand, and the Assignees, on the other hand, are referred to herein collectively as the “Parties” and individually as a “Party.” Capitalized terms used but not defined herein shall have the meanings set forth in the Purchase Agreement (as defined below).

## RECITALS

**WHEREAS**, this Assignment is made and entered into in connection with the Closing of the Transactions contemplated by that certain Asset Purchase Agreement, dated as of [●], 2020, by and among Assignors and Assignees (the “Purchase Agreement”);

**WHEREAS**, pursuant to the Purchase Agreement, Assignors agreed to sell to the Applicable Assignee (defined below), and such Applicable Assignees agreed to purchase from Assignors, the Business Intellectual Property included in the Transferred Assets, including the registered Business Intellectual Property and applications for registration of Business Intellectual Property set forth on Exhibit A (collectively, the “Assigned IP”, and the applicable Assignee or its subsidiaries with respect to such Assigned IP as set forth on Exhibit A, the “Applicable Assignee”); and

**WHEREAS**, the execution and delivery of this Assignment is contemplated by Section 3.03(a)(iv) and Section 3.03(b)(vi) of the Purchase Agreement.

**NOW, THEREFORE**, in consideration of the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignors and Assignees agree as follows:

1. Assignment. Each Assignor hereby sells, conveys, assigns and transfers to the Applicable Assignee, and such Applicable Assignee hereby accepts from each Assignor, all of such Assignor’s entire worldwide right, title and interest in and to the Assigned IP, together with any and all goodwill connected with and symbolized by the Assigned IP, the same to be held and enjoyed by the Applicable Assignee for its own use and enjoyment and the use and enjoyment of its successors, assigns and other legal representatives as fully and entirely as the same would have been held and enjoyed by the applicable Assignor if this assignment and sale had not been made, as assignee of its respective entire right, title and interest therein, including all rights in and to all income, royalties, damages and payments now or hereafter due or payable with respect thereto, all causes of action (whether in law or in equity) with respect thereto, and the right to sue, counterclaim, and recover for past, present and future infringement of the rights assigned or to be assigned under this Assignment.
2. Filing and Recordation. The Parties agree that Assignees shall, at its sole cost and expense, promptly file and record this Assignment, or the equivalent of this Assignment to the extent

required with the United States Patent and Trademark Office or United States Copyright Office as necessary to record the Applicable Assignee as the assignee and owner of the Assigned IP, as applicable.

3. Binding Agreement. This Assignment shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns.
4. Conflict. The respective rights of Assignors and Assignees with respect to the Assigned IP sold, conveyed, assigned, transferred and delivered hereby shall be governed exclusively by the Purchase Agreement and nothing in this Assignment shall alter any liability or obligation arising under the Purchase Agreement, which shall (without limiting the generality of the foregoing) govern, and shall contain the sole and exclusive representations, warranties and obligations of the Parties with respect to such Assigned IP. If there is any conflict or inconsistency between the provisions of the Purchase Agreement and this Assignment, the provisions of the Purchase Agreement shall govern.
5. Sole Remedy. The sole and exclusive remedy of the Assignees and Assignors with respect to any breach of this Assignment shall be as set forth in the Purchase Agreement.
6. Notices. All notices and other communications under or by reason of this Assignment shall be in writing and shall be deemed to have been duly given or made (a) when personally delivered, (b) when delivered by e-mail transmission with receipt confirmed or (c) upon delivery by overnight courier service, in each case, to the addresses and attention parties indicated below (or such other address, e-mail address or attention party as the recipient party has specified by prior notice given to the sending party in accordance with this Section):

If to Assignors, to:

NPC International, Inc.  
4200 W. 115th Street, Suite 200  
Leawood, KS 66211  
Attention: David Wahlert  
Penny Lindemann Smith  
E-mail: david.wahlert@npcinternational.com  
penny.lindemannsmith@npcinternational.com

With a copy (which will not constitute notice) to:

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153  
Attention: Ray C. Schrock, Esq.  
Gavin Westerman, Esq.  
Kevin Bostel, Esq.  
E-mail: ray.schrock@weil.com  
gavin.westerman@weil.com  
kevin.bostel@weil.com

If to Assignees, to:

Wend American Group LLC and Hut American Group  
LLC  
225 Bush Street, Suite 1800  
San Francisco, California 94104  
Attention: Lorin M. Cortina  
E-mail: lcortina@flynnholdings.com

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

Davis Wright Tremaine LLP  
920 Fifth Avenue, Suite 3300  
Seattle, Washington 98104  
Attention: Sarah English Tune  
E-mail: sarahtune@dwt.com

and

Kirkland & Ellis LLP  
300 North LaSalle Street  
Chicago, Illinois 60654  
Attention: Matthew S. Arenson, P.C.  
Josh Sussberg, P.C.  
Anthony R. Grossi  
E-mail: matthew.arenson@kirkland.com  
jsussberg@kirkland.com  
anthony.grossi@kirkland.com

7. Severability. If any term or provision of this Assignment is held invalid, illegal or unenforceable in any respect under any applicable Law, as a matter of public policy or on any other grounds, the validity, legality and enforceability of all other terms and provisions of this Assignment will not in any way be affected or impaired. If the final judgment of a court of competent jurisdiction or other Government Authority declares that any term or provision hereof is invalid, illegal or unenforceable, the Parties agree that the court making such determination will have the power to reduce the scope, duration, area or applicability of the term or provision, to delete specific words or phrases, or to replace any invalid, illegal or unenforceable term or provision with a term or provision that is valid, legal and enforceable and that comes closest to expressing the intention of the invalid, illegal or unenforceable term or provision.
8. Entire Agreement. This Assignment and the other Transaction Agreements (and all exhibits and schedules hereto and thereto) collectively constitute and contain the entire agreement and understanding of the Parties with respect to the subject matter hereof and thereof and supersede all prior negotiations, correspondence, understandings, agreements and contracts, whether written or oral, among the Parties respecting the subject matter hereof and thereof. The Schedules and Exhibits attached to this Assignment shall be construed with and as an integral part of this Assignment to the same extent as if the same had been set forth verbatim herein. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein shall be defined as set forth in this Assignment.
9. Governing Law. This Assignment, and any Transaction Dispute, will be exclusively governed by and construed and enforced in accordance with the internal Laws of the State of New York, without giving effect to any Law or rule that would cause the Laws of any jurisdiction other than the State of New York to be applied.
10. Dispute Resolution; Consent to Jurisdiction. Without limiting any Party's right to appeal any order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Assignment and to decide any Transaction Dispute which may arise or result from, or be connected with, this Assignment or any breach or default hereunder, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy

Court and shall receive notices at such locations as indicated in Section 12.03 of the Purchase Agreement (as may be updated from time to time in accordance with Section 12.03 of the Purchase Agreement); provided, however, upon the closing of the Bankruptcy Cases, the Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the U.S. District Court for the Southern District of New York sitting in New York County or the Commercial Division of the Courts of the State of New York sitting in the County of New York and any appellate court from any thereof, for the resolution of any such Transaction Dispute. In that context, and without limiting the generality of the foregoing, each Party irrevocably and unconditionally:

- a. submits for itself and its property to the exclusive jurisdiction of such courts with respect to any such Transaction Dispute and for recognition and enforcement of any judgment in respect thereof, and agrees that all claims in respect of any such Transaction Dispute shall be heard and determined in such court;
- b. agrees that venue would be proper in such courts, and waives any objection that it may now or hereafter have that any such court is an improper or inconvenient forum for the resolution of any such Transaction Dispute; and
- c. agrees that the mailing by certified or registered mail, return receipt requested, to the Persons listed in Section 12.03 of the Purchase Agreement (as may be updated from time to time in accordance with Section 12.03 of the Purchase Agreement) of any process required by any such court, will be effective service of process; provided, however, that nothing herein will be deemed to prevent a Party from making service of process by any means authorized by the Laws of the State of New York.

The foregoing consent to jurisdiction will not constitute submission to jurisdiction or general consent to service of process in the State of New York for any purpose except with respect to any Transaction Dispute which may arise or result from, or be connected with, this Assignment or any breach or default hereunder.

11. Waiver of Jury Trial. To the maximum extent permitted by Law, each Party irrevocably and unconditionally waives any right to trial by jury in any forum in respect of any Transaction Dispute and covenants that neither it nor any of its Affiliates or Representatives will assert (whether as plaintiff, defendant or otherwise) any right to such trial by jury. Each Party certifies and acknowledges that (a) such Party has considered the implications of this waiver, (b) such Party makes this waiver voluntarily and (c) such waiver constitutes a material inducement upon which such Party is relying and will rely in entering into the this Assignment. Each Party may file an original counterpart or a copy of this Section 11 with any court as written evidence of the consent of each Party to the waiver of its right to trial by jury.
12. Successors. This Assignment will be binding upon and inure to the benefit of and be enforceable by the respective successors and permitted assigns of the Parties.
13. Headings. The division into Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Assignment.
14. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

Facsimiles, e-mail transmission of .pdf signatures or other electronic copies of signatures shall be deemed to be originals.

15. Amendments. This Assignment (including all exhibits and schedules hereto) may be amended, restated, supplemented or otherwise modified, only by written agreement duly executed by each Party.

*[Signature Pages to Follow]*



IN WITNESS WHEREOF, Assignors and Assignees caused this Assignment to be duly executed and delivered by a duly authorized representative of each of the Parties as of the date first written above.

**ASSIGNORS:**

NPC QUALITY BURGERS, INC.

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

NPC INTERNATIONAL, INC.

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

NPC RESTAURANT HOLDINGS, LLC

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

NPC INTERNATIONAL HOLDINGS, LLC

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

NPC HOLDINGS, INC.

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

NPC RESTAURANT HOLDINGS I LLC

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

*Signature Page to IP Assignment and Assumption Agreement*

NPC RESTAURANT HOLDINGS II LLC

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

**ASSIGNEES:**

WEND AMERICAN GROUP LLC

By: \_\_\_\_\_  
Name: Lorin M. Cortina  
Title: Chief Financial Officer

HUT AMERICAN GROUP LLC

By: \_\_\_\_\_  
Name: Lorin M. Cortina  
Title: Chief Financial Officer

**Exhibit A**<sup>1</sup>

Wend American Group LLC shall acquire the following Assigned IP:

[●]

Hut American Group LLC shall acquire the following Assigned IP:

[●]

---

<sup>1</sup> **Note to Draft:** To be populated based on the IP included in Schedule 4.07(a) to the Purchase Agreement that is owned by an Assignor.

**Exhibit B**

**Wendy's Purchase Agreement**

**ASSET PURCHASE AGREEMENT**

**dated as of January 7, 2021 by**

**and between**

**NPC Quality Burgers, Inc., as Seller,**

**and**

**Wendy's International, LLC, as Buyer,**

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This ASSET PURCHASE AGREEMENT, dated as of January 7, 2021 (the “**Agreement Date**”), is made by and between NPC Quality Burgers, Inc., a Kansas corporation (“**Seller**”), and Wendy’s International, LLC, an Ohio limited liability company (“**Buyer**” and, together with Seller, the “**Parties**”).

## PRELIMINARY STATEMENTS

A. Seller and certain of its Affiliates are debtors-in-possession under title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the “**Bankruptcy Code**”) and, on July 1, 2020, filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas (the “**Bankruptcy Court**” and, such cases, the “**Bankruptcy Cases**”).

B. Seller and certain of its Affiliates entered into that certain Asset Purchase Agreement, dated as of November 5, 2020, with Hut American Group LLC and Wend American Group LLC, each a Delaware limited liability company.

C. Simultaneously with the execution of this Agreement, Seller and certain of its Affiliates are entering into an amended and restated asset purchase agreement (the “**A&R Flynn APA**”) with Wend American Group LLC (the “**Flynn Buyer**”) and Hut American Group LLC.

D. Seller is engaged in, and hold assets and Liabilities relating to, the Business.

E. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, all of the Transferred Assets, and Buyer desires to assume the Assumed Liabilities, in each case, on the terms and subject to the conditions set forth in this Agreement.

F. Buyer desires to assign certain of its rights and obligations under this Agreement to the Eligible Assignees at or prior to Closing.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

## ARTICLE I

### DEFINITIONS

Section 1.01. Certain Defined Terms. Capitalized terms used in this Agreement have the meanings specified in Exhibit A.

## ARTICLE II

### PURCHASE AND SALE; CLOSING

#### Section 2.01. Purchase and Sale of Transferred Assets.

(a) Transferred Assets. On the terms and subject to the conditions set forth in this Agreement and subject to the exclusions set forth in Section 2.01(b) and Section 2.02, at the Closing, Seller shall sell, convey, assign, transfer and deliver to Buyer, and Buyer shall purchase, acquire and accept from Seller, all of Seller's and its Affiliates' right, title and interest in, to and under the following assets, properties and rights, as the same shall exist immediately prior to the Closing (collectively, the "**Transferred Assets**"), free and clear of (x) any and all Liens of any kind, nature or description (other than Permitted Liens) and (y) any "claims" as defined in section 101(5) of the Bankruptcy Code pursuant to section 363 and 365 of the Bankruptcy Code:

(i) all owned real property listed on Schedule 2.01(a)(i) held by Seller, together with (to the extent of Seller's and its Affiliates' interest therein) all rights (including parking, access, zoning and development rights, and other general intangibles and other similar rights), improvements, facilities, fixtures and appurtenances thereto and all rights in respect thereof and all servitudes, easements, privileges, rights-of-way, other surface use agreements and water use and rights agreements related thereto and such other fee interests related to the operation of the portion of the Business conducted at such owned real property (collectively, any such property together with such rights, the "**Transferred Owned Real Property**");

(ii) to the maximum extent permitted by the Bankruptcy Code and applicable Law, the leasehold interests under the real property leases, subleases or licenses listed on Schedule 2.01(a)(ii) held by Seller and all rights of Seller and its Affiliates, if any, in respect thereof (including parking, access, zoning and development rights, and other general intangibles and other similar rights and all options and rights of first offer and/or refusal) and all tenements, hereditaments, appurtenances, improvements, facilities, fixtures and all servitudes, easements, privileges, rights-of-way, leasehold and license interests in which Seller is a sublessor (or sub-sublessor) or sublicensor (or sub-sublicensor), other surface use agreements and other property rights appertaining thereto and such other fee, leasehold or license interests (including ground leasehold, subleasehold and sublicense interests) related to the operation of the portion of the Business conducted at such leased real property (collectively, any such property together with such rights, the "**Transferred Leased Real Property**" and such leases, subleases, sub-subleases, licenses, sublicenses or sub-sublicenses, collectively, the "**Transferred Leases**");

(iii) to the maximum extent permitted by the Bankruptcy Code and applicable Law, all Contracts set forth on Schedule 2.01(a)(iii) (which Schedule may be modified from time to time after the date hereof in accordance with Section 2.02) (collectively with the Transferred Leases, and in each case, all rights under any such Transferred Leases and Contracts, the "**Transferred Contracts**");

(iv) to the maximum extent permitted by the Bankruptcy Code and applicable Law, all Permits, including Environmental Permits, set forth on Schedule 2.01(a)(iv) (the "**Transferred Permits**") (for the avoidance of doubt, solely to the extent, if required under

applicable Law, the applicable Government Authority consents to or otherwise approves the assignment or transfer of the applicable Permit);

(v) all Cash deposits and non-Cash deposits (including those comprising customer deposits and security deposits for rent, electricity, telephone or otherwise) and prepaid or deferred charges and expenses (including all lease and rental payments, subject to and in accordance with Section 3.01(c)), in each case, that have been prepaid by Seller relating to the Transferred Contracts or any Transferred Permits (collectively, the “**Prepays**”), other than (x) any adequate assurance deposits posted in accordance with section 366 of the Bankruptcy Code or (y) to the extent paid in connection with or relating to any Excluded Assets;

(vi) [reserved];

(vii) to the maximum extent permitted by the Bankruptcy Code and applicable Law, all rights of Seller and its Affiliates under or pursuant to all warranties, indemnities, representations and guarantees made by suppliers, manufacturers, contractors and other third parties to Seller or any of its Affiliates, solely to the extent arising under any Transferred Contract or to the extent relating to a Transferred Asset, other than any warranties, indemnities, representations and guarantees to the extent pertaining to any Excluded Assets or rights and defenses to the extent pertaining to any Excluded Liabilities;

(viii) to the maximum extent permitted by the Bankruptcy Code and applicable Law, all Business Intellectual Property, together with all goodwill connected with the use of and symbolized by the Trademarks included in such Business Intellectual Property and the Business Systems (including in each case of the foregoing together with the rights (A) to sue and bring claims or causes of action and recover damages and obtain equitable relief for past, present and future infringement, misappropriation, dilution or other violation of such Business Intellectual Property, (B) to collect past and future royalties and other payments thereunder, (C) to claim priority thereon under any Law, (D) to prosecute register, maintain and defend such Business Intellectual Property before any public or private agency, office or registrar and (E) to fully and entirely stand in the place of Seller, as applicable, in all matters related thereto);

(ix) [reserved];

(x) the Transferred Books and Records to the extent permitted by the Bankruptcy Code, applicable Law and, unless approved otherwise by the Bankruptcy Court, Seller’s contractual obligations and Seller’s privacy policy or notice in effect at the time of collection of such information;

(xi) all personal property and interests therein, including furniture, fixtures, equipment, smallwares, furnishings, office equipment, kitchen equipment, communications equipment, vehicles, in-store processors, front-end systems, point-of-sale systems, credit card readers, computers, computer equipment, hardware, software, peripherals, pin pads and direct access storage devices, counters, shelving, racks, slat walls, display cases, décor, tables, seating, signs, promotional items and materials, new and unused uniforms, smallwares, office supplies and other tangible personal property, in each case, owned by Seller or any of its Affiliates and Related to the Business, in each case, (A) solely to the extent physically located at

any Transferred Owned Real Property or any Transferred Lease and (B) excluding Personal Information embedded therein;

(xii) all good and saleable inventory, wherever located, Related to the Business, including goods, merchandise, food, beverages, supplies and other products of a quality usable or saleable in the conduct of the Business consistent with the good and accepted practices in the restaurant industry, whether held at any restaurant being acquired hereunder or in transit to any such restaurant, in each case, Related to the Business, and specifically not including any inventory related to the Excluded Business;

(xiii) goodwill Related to the Business as a going concern and all other right, title and interest of Seller in and to general intangibles Related to the Business;

(xiv) Store Cash;

(xv) all avoidance claims or causes of action arising under Sections 544, 547, 548, 549 and 550 of the Bankruptcy Code or any similar state Law (the “**Avoidance Actions**”), and all other claims, causes of action, lawsuits, judgments, privileges, counterclaims, defenses, rights of recovery, rights of set-off, rights of subrogation and all other rights of any kind under any other provision of the Bankruptcy Code or applicable Laws, including all actions relating to vendors and service providers, in each case, Related to the Business; provided, that neither Buyer, nor any Person claiming, by, through, or on behalf of Buyer (including by operation of law, sale, assignment, conveyance, or otherwise) shall pursue, prosecute, litigate, institute, or commence an action based on, assert, sell, convey, assign, or file any claim that relates to the Avoidance Actions, or assert or use any such Avoidance Actions for defense purposes; provided, further, however, that, notwithstanding the foregoing, Seller shall retain the right to assert setoff rights that arise from Avoidance Actions in relation to any Liability that is not an Assumed Liability; and

(xvi) other than any Excluded Assets, all other assets or rights of Seller or its Affiliates of every kind and description to the extent exclusively related to the Business, wherever located, whether real, personal or mixed, tangible or intangible to the extent such assets are of a quality usable or saleable in the conduct of the Business, consistent with the good and accepted practices in the restaurant industry.

(b) Excluded Assets. Notwithstanding anything to the contrary herein, the following assets and properties of or in the possession of Seller (the “**Excluded Assets**”) shall be retained by Seller and its Affiliates:

(i) all Contracts to which Seller or any of its Affiliates is a party, other than Transferred Contracts, including those Contracts set forth on Schedule 2.01(b)(i) (which schedule may be modified from time to time after the date hereof in accordance with Section 2.02) (“**Excluded Contracts**”);

(ii) any Account Receivable, including all Credit Card Receivables and the receivables set forth on Schedule 2.01(b)(ii);



(iii) all Cash (other than (x) Store Cash and (y) Cash deposits, as set forth in Section 2.01(a)(v)) and all bank accounts;

(iv) other than the Transferred Owned Real Property, Transferred Leased Real Property and Transferred Leases, all right, title and interest in owned and leased real property together with all improvements, facilities, fixtures and appurtenances thereto and all rights in respect thereof, and all servitudes, easements, rights-of-way, other surface use agreements and water use agreements related thereto and, with respect to any such leased real property, all rights in respect thereof (including all options and rights of first refusal) and all tenements, hereditaments, appurtenances and other property rights appertaining thereto, including the properties listed on Schedule 2.01(b)(iii);

(v) all causes of action (including counterclaims) and defenses, including those arising in connection with the Bankruptcy Cases (other than the Avoidance Actions pursuant to Section 2.01(a)(xiv)), in each case, to the extent relating to the Excluded Assets or the Excluded Liabilities;

(vi) all claims, rights or interests of or with respect to Seller in or to any refund, rebate, abatement, credit, deposit, prepayment, or other recovery, in each case, for Taxes (other than in respect of any Transfer Taxes borne by Buyer pursuant to this Agreement), and any other Tax assets (including any net operating or other losses, credits, carry forwards and other Tax attributes) of Seller and its Affiliates, together with any refund of interest due thereon or penalty rebate arising therefrom, for any Tax period (or portion thereof);

(vii) all Tax Returns;

(viii) subject to and without limiting Section 3.06, all Insurance Policies and all rights of any nature with respect to any such Insurance Policy, including any recoveries thereunder and any rights to assert claims seeking any such recoveries;

(ix) all nontransferable Permits, including nontransferable Environmental Permits;

(x) the Intellectual Property and Systems set forth on Schedule 2.01(b)(x) and all other Intellectual Property and Systems, other than the Business Intellectual Property and the Business Systems;

(xi) to the extent not transferrable under applicable Law, all customer data (including Personal Information), customer lists, and information derived from branded loyalty promotion programs (including all Wendy's rewards data and participation information) and related to customer purchases and preferences at any stores or through any e-commerce platform owned, operated, or controlled by Seller or its Affiliates, and all analytics relating to any of the foregoing and other customer-based analyses or reports;

(xii) all rights and interests of Seller under the Transaction Agreements;

(xiii) all assets relating to the Employee Plans;

(xiv) (A) all minute books (and other similar corporate records) and stock records, (B) any books and records to the extent relating to the Excluded Assets, (C) any books and records or other materials of or in the possession of Seller that (x) Seller is required by Law or by Order of the Bankruptcy Court to retain (in which case Buyer shall be provided copies thereof), (y) Seller reasonably believes is necessary to enable Seller to prepare and/or file Tax Returns (in which case Buyer shall be provided copies of such retained books and records) or (z) Seller is prohibited by Law or Contract from delivering to Buyer (including confidential and personal medical records) or (D) any copies of any books and records that Seller and its Affiliates retain pursuant to Section 7.03;

(xv) (A) all records and reports prepared or received by Seller or any of its Affiliates in connection with the sale of the Business or the Transactions or any other Transaction Agreement, including all analyses relating to the Business so prepared or received and (B) all bids and expressions of interest received from third parties with respect to the Business;

(xvi) any warranties, representations and guarantees to the extent pertaining to any Excluded Asset or rights and defenses pertaining to any Excluded Liability;

(xvii) all adequate assurance deposits paid in accordance with Section 366 of the Bankruptcy Code, and any deposits or prepaid or deferred charges and expenses to the extent paid in connection with or relating to any Excluded Assets;

(xviii) all right, title and interest in and to all shares, capital stock and other equity interests of any Person owned by Seller;

(xix) except as otherwise expressly included as Transferred Assets, all assets of Seller that are not Related to the Business;

(xx) Seller's airplane and corresponding prepaid maintenance deposit;

(xxi) the Shared Services;

(xxii) all assets of Seller set forth on Schedule 2.01(b)(xxii); and

(xxiii) except as otherwise expressly included as Transferred Assets, all assets of Seller primarily related to the Excluded Business.

(c) Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement and subject to the exclusions set forth in Section 2.01(d), as partial consideration for the Transferred Assets, Buyer shall, effective at the Effective Time, assume and thereafter timely pay or cause to be paid, discharge and perform in accordance with their terms, all of the following Liabilities of Seller (the "**Assumed Liabilities**"), and, subject to the exclusions set forth in Section 2.01(d), the Assumed Liabilities means only (and shall only include) the following Liabilities of Seller:

(i) all Liabilities arising under any of the Transferred Contracts solely to the extent arising on or after the Closing Date;

(ii) all amounts allocated to Buyer under Section 9.02, and the portion of the Transfer Taxes allocated to Buyer under Section 9.01;

(iii) all Liabilities of Seller under Environmental Laws to the extent such Liabilities (A) arise from events, facts or circumstances that occur from and after the Effective Time or (B) otherwise would be imposed on Buyer as a matter of applicable Law after Closing, in each case, solely to the extent as a result of the ownership or operation of the Transferred Assets;

(iv) all Cure Costs payable by Buyer pursuant to Section 2.04;

(v) all Liabilities arising out of Buyer's ownership or operation of the Transferred Assets from and after Closing;

(vi) [Reserved];

(vii) all Liabilities assumed by Buyer pursuant to Section 6.08;

(viii) all Liabilities for payment of deferred rent due on or after Closing evidenced by written amendments to the Transferred Leases entered into by Seller prior to the Agreement Date (copies of which have been made available, or the economic terms of which have otherwise been disclosed, to Buyer prior to the Agreement Date) in an aggregate amount not to exceed \$500,000;

(ix) the Loyalty Programs and Gift Card Liability Amounts; and

(x) all accounts payable (whether or not invoiced as of the Closing) solely to the extent arising out of the operation of the Business from and after the Closing;

*provided*, that, notwithstanding anything to the contrary set forth in this definition of Assumed Liabilities, (x) the Assumed Liabilities shall not include any rejection damages claims or administrative expenses or priority claims, other than claims or expenses that are included in the Cure Costs, and (y) nothing in this definition shall be construed to limit Buyer's obligations under any Transaction Agreement.

(d) Excluded Liabilities. Buyer is not assuming, agreeing to pay, or agreeing to discharge any, and Seller shall be solely and exclusively liable with respect to all, Liabilities of Seller other than the Assumed Liabilities (such Liabilities, including the following Liabilities, the "**Excluded Liabilities**"):

(i) except as set forth in Section 6.09, any Liability of Seller associated with any and all Debt, including any guarantees of third party obligations and reimbursement obligations to guarantors of Seller's obligations, other than the Liabilities set forth in the Assumed Liabilities;

(ii) any Liability to the extent arising out of any Excluded Asset;

(iii) any Liability arising out of or related to the Excluded Business or the Excluded Employees;

(iv) any Liability of Seller for Taxes with respect to the Transferred Assets for any taxable period (or portion thereof, as determined under Section 9.02) ending on or before the Closing Date (including the Deferred Payroll Taxes), including the portion of the Transfer Taxes allocated to Seller under Section 9.01;

(v) any Liabilities retained by Seller pursuant to Section 6.08;

(vi) any Liability for any intercompany accounts payable to Seller;

(vii) Liabilities relating to amounts to be paid by Seller hereunder, including brokers fees;

(viii) other than the Cure Costs payable by Buyer pursuant to Section 2.04, all other amounts, costs or expenses that must be paid or actions or obligations that must be performed or satisfied pursuant to Section 365(b)(1) of the Bankruptcy Code to effectuate the assignment to Buyer of the Transferred Contracts;

(ix) all accounts payable existing on the Closing Date with respect to the period prior to the Closing (including, for the avoidance of doubt, (A) invoiced accounts payable with respect to such period, (B) accrued but uninvoiced accounts payable with respect to such period, and (C) to the extent not included in the Cure Costs required to be paid by Buyer pursuant to Section 2.04(a) and except to the extent any such Liabilities for payment of deferred rent are expressly assumed by Buyer pursuant to Section 2.01(c)(viii), the amount by which any payment to any vendor (including landlords, franchisors, suppliers) with respect to such period has been deferred until a period after the Closing Date);

(x) any Liabilities to the extent arising prior to the Closing or arising from the operation of the Business prior to the Effective Time, except to the extent such Liabilities are assumed by Buyer pursuant to Section 2.02(c);

(xi) any Liabilities in respect of any Contracts that are not Transferred Contracts or Transferred Leases, including any Liabilities arising out of the rejection of any such Contracts pursuant to Section 365 of the Bankruptcy Code;

(xii) all Liabilities, to the extent arising from events, facts or circumstances that occurred prior to the Effective Time, under Environmental Laws, including those relating to the environment or natural resources, or Hazardous Materials, but excluding any such Liabilities imposed on Buyer as a matter of applicable Law as a result of its ownership of the Transferred Assets; and

(xiii) all Liabilities of Seller or any of their predecessors with respect to the termination of employment of Seller's "insiders" (as such term is defined under the Bankruptcy Code), except to the extent such Liabilities are expressly assumed by Buyer pursuant to Section 6.08 (and solely to such extent).

Section 2.02. Assignment of Certain Transferred Assets.

(a) Notwithstanding any other provision of this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or transfer any Transferred Asset if an attempted assignment or transfer thereof, without the Consent of a third party thereto (each such Consent, a “**Necessary Consent**”), would constitute a breach, default or violation thereof or a violation of Law or order by the Bankruptcy Court. If, on the Closing Date, any such Consent has not been obtained, or if an attempted transfer or assignment thereof would be ineffective or a violation of Law or an order of the Bankruptcy Court or would in any way adversely affect the rights of Buyer thereunder and the Bankruptcy Court has not entered an Order approving such assignment or transfer, such assignment or transfer will be subject to such Necessary Consent being obtained and Buyer and Seller will comply with their respective obligations in Section 6.05. If such Necessary Consent is not obtained or if an attempted assignment or transfer thereof would be ineffective or would adversely affect the rights of Buyer to such Transferred Asset following the Closing, Seller and Buyer will, subject to Section 6.04 and Section 6.05, cooperate in a mutually agreeable arrangement, to the extent reasonably practicable, under which, for up to six (6) months following Closing, (x) Buyer would, in compliance with Law or an order of the Bankruptcy Court, obtain the benefits and assume the obligations thereunder in accordance with this Agreement and the Sale Order, including, for example (and without limitation of other similar arrangements being employed instead and in place thereof), by subcontracting, sublicensing or subleasing such Transferred Asset to Buyer or (y) under which Seller would enforce for the benefit (and at the expense) of Buyer any and all of Seller’s rights, claims or benefit against a third party associated with such Transferred Asset, and Seller would promptly pay to Buyer when received all monies received by them under any such Transferred Asset, claim, right or benefit (net of Seller’s reasonable and documented, out-of-pocket expenses incurred in connection with any assignment or other performance contemplated by this Section 2.02).

(b) Subject to this Section 2.02, if after the Closing (i) Buyer holds any Excluded Assets or Excluded Liabilities or (ii) Seller holds any Transferred Assets or Assumed Liabilities, Buyer or Seller will promptly transfer or cause to be transferred such assets or assume (or cause to be assumed) such Liabilities to or from (as the case may be) the other Party. Prior to any such transfer, the Party receiving or possessing such asset will hold it in trust for such other Party. Notwithstanding anything herein to the contrary, at any time prior to the date that is forty-five (45) days following entry of the Sale Order, and in any event no later than fourteen (14) days prior to Closing, Buyer will be entitled, in its sole discretion, to add or remove any Transferred Contracts (other than any Transferred Leases) that are Related to the Business to or from Schedule 2.01(a)(iii) and make corresponding changes to Schedule 2.01(b)(i) except (1) for any Contracts previously rejected in the Bankruptcy Cases and (2) any franchise agreements between Seller and Quality Is Our Recipe, LLC; provided that Buyer shall be liable for and shall reimburse Seller for any administrative expense claims under Sections 503, 507, and 365 of the Bankruptcy Code that (A) are incurred as a result of, arise out of, or in connection with Transferred Contracts removed from Schedule 2.01(a)(iii) following the date of entry of the Sale Order, and (B) solely arise out of or relate to the period (whether or not invoiced during such period) subsequent to the date of entry of the Sale Order to the date of removal of any other Transferred Contracts.



(c) At or reasonably promptly following the Closing, Seller shall deliver to Buyer or the applicable Eligible Assignee original titles for any tangible asset requiring such titles (such as vehicles), duly endorsed for transfer by an officer of Seller.

Section 2.03. Closing. The closing of the sale and purchase of the Transferred Assets and the assumption of the Assumed Liabilities (the “**Closing**”) shall take place remotely by exchange of documents and signatures (or their electronic counterparts) at 9:00 a.m. (New York City time) on the second (2nd) Business Day following the date upon which all Closing Conditions are satisfied or waived in writing (to the extent permitted by applicable Law) in accordance with Article X (other than those Closing Conditions that by their nature can only be satisfied at the Closing, but subject to the satisfaction or waiver of those Closing Conditions at such time), or on such other date or at such other time or place as the Parties may agree in writing; provided that, notwithstanding the foregoing, the Closing shall not occur prior to March 24, 2021, unless consented to by Buyer. The date on which the Closing occurs is referred to in this Agreement as the “**Closing Date**”; provided that Buyer may elect to delay the Closing, in its sole discretion, for up to thirty (30) days (but (x) not to a date that is later than the Outside Date and (y) to a date that is mutually agreeable to Buyer and Seller) (the “**Buyer Delay Period**”) following the date upon which all Closing Conditions are satisfied or waived in writing (to the extent permitted by applicable Law) in accordance with Article IX (other than those Closing Conditions that by their nature can only be satisfied at the Closing, but subject to the satisfaction or waiver of those Closing Conditions at such time) in the event that an Eligible Assignee is not ready, willing and able to consummate the transactions contemplated by the assignment agreement to which it and Buyer are party in respect of the assignment of certain rights and obligations of Buyer under this Agreement. For all purposes under this Agreement and each other Transaction Agreement, (a) except as otherwise provided in this Agreement or such other Transaction Agreements, all matters at the Closing will be considered to take place simultaneously and (b) the Closing shall be deemed effective as of the Effective Time. Buyer hereby covenants and agrees to (x) promptly notify Seller in the event that Buyer becomes aware that an Eligible Assignee is not, or may not be, ready, willing and able to consummate the Transactions contemplated by this Agreement in accordance with the terms hereof and (y) promptly following the written request by Seller, Buyer will confirm in writing to Seller, after reasonable inquiry of each Eligible Assignee, whether Buyer is aware that any Eligible Assignee is not, or may not be, ready, willing and able to consummate the Transactions contemplated by this Agreement in accordance with the terms hereof.

Section 2.04. Transferred Leases and Contracts; Cure Costs.

(a) Cure Costs. At the Closing and pursuant to Section 365 of the Bankruptcy Code and the Sale Order, Seller shall assume and, subject to the terms herein, assign to Buyer, and Buyer shall take assignment from Seller of, the Transferred Contracts. Except as otherwise provided in Section 2.02, and subject to the terms of the Sale Order, all Cure Costs in an aggregate amount not to exceed \$1,704,562 (the “**Cure Costs Cap**”), shall be paid by Buyer, on or before Closing, unless Seller elects or is otherwise required under the Bankruptcy Code to make such payments prior to the Closing, in which case, (i) Seller shall obtain Buyer’s written consent before making such payments, and (ii) Buyer shall reimburse Seller for such amounts paid by Seller (for the avoidance of doubt, up to the Cure Costs Cap minus the amount of Cure Costs previously paid by Buyer). Seller shall not have any Liability for any Cure Costs except for those in excess of the Cure Costs Cap.

(b) Preservation of Contracts and Unexpired Leases. Seller shall not, and shall cause its Affiliates that are debtors-in-possession under the Bankruptcy Cases not to, reject any Transferred Contract. Seller shall provide timely and proper written notice of its intent to seek entry of the Sale Order, in accordance with the Bidding Procedures Order, to all parties to Transferred Contracts and Transferred Leases and take all other actions necessary to cause such Transferred Contracts and Transferred Leases to be assumed by Seller and assigned to Buyer pursuant to Section 365 of the Bankruptcy Code, and Buyer shall, at or prior to Closing, comply with all requirements under Section 365 of the Bankruptcy Code necessary to assign to Buyer the Transferred Contracts and Transferred Leases.

Section 2.05. Withholding. Notwithstanding any provision contained herein to the contrary, Buyer and its respective Affiliates shall be entitled to deduct and withhold (or instruct the Title Company to deduct and withhold) from amounts otherwise payable to Seller or any other Person pursuant to this Agreement such amounts as are required to be deducted and withheld in connection with the making of such payment under any provision of applicable Tax Law; provided that Buyer and its respective Affiliates shall (a) provide Seller with advance written notice no later than five (5) Business Days prior to any such deduction or withholding or as soon as reasonably practicable thereafter and (b) reasonably cooperate with Seller to establish any available exemption from or reduction to any such requirement to deduct and withhold under any provision of applicable Tax Law. To the extent that amounts are properly deducted and withheld by or at the direction of Buyer or its Affiliates, as the case may be, and are timely remitted to the appropriate Government Authority or Taxing Authority, such withheld and remitted amounts shall be treated for all purposes of this Agreement as having been paid to the relevant Person in respect of which such deduction and withholding was made.

### ARTICLE III

#### PURCHASE PRICE

##### Section 3.01. Purchase Price.

(a) The aggregate consideration to be paid by Buyer for the sale of all of the Transferred Assets and the obligations of Seller set forth in this Agreement shall be (A) payment of an amount in cash equal to (x) the sum of (i) \$248,250,000 (which amount includes the Wendy's Settlement Amount) plus (ii) Store Cash, plus (iii) the Inventory Value, plus (iv) the Prepaids Value, plus (v) the Construction in Process Amount, plus (vi) the Seller Proration Amount, if any, minus (y) the aggregate amount of the credits set forth in Section 3.01(b) (such aggregate amount, the "**Purchase Price**"), and (B) the assumption of the Assumed Liabilities.

(b) At Closing, Buyer shall receive a credit towards the Purchase Price in an amount equal to the value of:

- (i) the Transferred Employee Liabilities;
- (ii) the Beverage Rebate Amount;
- (iii) the amount of the Cure Costs payable by Buyer pursuant to Section 2.04 (including amounts to be reimbursed to Seller thereunder); and



(iv) any Buyer Proration Amount.

(c) Proration.

(i) On the Closing Date, all monthly payments for the month in which the Closing occurs (including base rent, common area maintenance fees, security expenses, insurance and utility charges) under the Transferred Leases (the “**Prorated Charges**”) shall be apportioned and prorated between Seller on the one hand and Buyer on the other hand as of the Closing Date with (i) Buyer bearing the expense of Buyer’s proportionate share of such Prorated Charges that shall be equal to the product obtained by multiplying (A) a fraction, the numerator being the amount of the Prorated Charges under the applicable Transferred Lease and the denominator being the total number of days in the lease month in which the Closing Date occurs, and (B) the number of days in such lease month following the day that immediately precedes the Closing Date, and paying such amount to Seller to the extent payment for such Prorated Charges has been made by Seller prior to the Closing Date and not already included in the calculation of the Purchase Price, and (ii) Seller bearing the remaining portion of such Prorated Charges (and crediting the amounts thereof to Buyer to the extent payment for such Prorated Charges has not been previously made by Seller and not already taken into account in the Purchase Price). The net amount of all Prorated Charges owed to Buyer and Seller under this Section 3.01(c) shall be referred to as the “**Buyer Proration Amount**” if owed to Buyer or the “**Seller Proration Amount**” if owed to Seller.

(ii) As to all non-monthly real estate related payments under the Transferred Leases, the same shall be apportioned between Seller and Buyer as of the Effective Time. If any amounts are payable in installments, all installments due through the Effective Time together with the accrued but unpaid portion of any other installments not yet due as of the Effective Time shall be prorated based on the periods of time covered by such installments occurring before and after the Effective Time.

(iii) As to real estate Taxes and assessments related to the Transferred Assets, the apportionment of such Taxes shall be calculated in accordance with Section 9.02.

(d) Seller shall deliver an estimate of the calculation of the Purchase Price and its related components no later than ten (10) Business Days prior to the estimated Closing. Seller shall deliver the funds flow and closing statement calculating the Purchase Price and its related components, along with all supporting documentation regarding same, to Buyer no later than ten (10) Business Days prior to Closing for Buyer’s good faith review, input and approval. The closing statement shall include calculations specifying the Purchase Price Components related to each of the Kansas City Business, North Greensboro Business, South Greensboro Business, Raleigh Business and Pennsylvania Business. On the date seven (7) days prior to the estimated Closing Date, a physical count shall be conducted at each Wendy’s restaurant acquired hereunder, at which the amount of inventory and Store Cash at each such restaurant shall be confirmed in writing by a representative of Seller. Promptly following such count, Seller shall (i) deliver to Buyer a schedule of the amount of inventory and Store Cash at each restaurant (and the estimated Purchase Price delivered pursuant to the first sentence of this Section 3.01(d) shall be adjusted accordingly) and (ii) confirm that orders for delivery of replacement inventory have been made for the following

seven (7) days in amounts in all material respects consistent with the two (2) preceding seven (7) day periods.

Section 3.02. Reserved.

Section 3.03. Purchase Price Deposit. Pursuant to the terms of the Escrow Agreement, Buyer has deposited, or caused to be deposited, with Citibank N.A., in its capacity as escrow agent (the “**Escrow Agent**”), the sum of \$43,240,000 by wire transfer of immediately available funds (together with all investment income accrued thereon, if any, the “**Escrowed Funds**”), to be released by the Escrow Agent and delivered to either Buyer or Seller in accordance with this Agreement and the provisions of the Escrow Agreement. Immediately following execution of this Agreement, Buyer and Seller shall deliver Joint Written Instructions to the Escrow Agent directing the Escrow Agent to deliver to Buyer an amount equal to \$18,415,000. The remaining Escrowed Funds shall be distributed upon the earlier of the Closing or the termination of this Agreement in accordance with Section 3.04(a)(i), Section 3.04(b)(ii) and Section 11.03, as applicable.

Section 3.04. Certain Closing Deliverables. At the Closing:

(a) Seller shall deliver or cause to be delivered to Buyer the following:

(i) a counterpart of the Joint Written Instructions, duly executed by Seller, directing the Escrow Agent to deliver to Seller the Escrowed Funds;

(ii) a counterpart of each Bill of Sale, Assignment and Assumption Agreement for Transferred Assets (other than the Transferred Leases), in the form attached hereto as Exhibit B (the “**Bill of Sale, Assignment and Assumption Agreement**”), duly executed by Seller and its applicable Affiliates;

(iii) a counterpart of each Assignment and Assumption Agreement for Transferred Leases, in the form attached hereto as Exhibit C (the “**Transferred Leased Property Assignment and Assumption Agreement**”), duly executed by Seller and, if applicable, its Affiliates, together with duly executed Transfer Tax forms, where applicable;

(iv) a counterpart of each IP Assignment Agreement, in the form attached hereto as Exhibit D (the “**IP Assignment Agreement**”), duly executed by Seller and its applicable Affiliates;

(v) the officer’s certificate required to be delivered pursuant to Section 10.02(a)(iii);

(vi) duly executed quitclaim deeds, or, if requested by the Title Company, special warranty deeds (in customary form) (the “**Deeds**”), conveying to Buyer good and valid fee simple title to the Transferred Owned Real Property free and clear of all Liens, except for Permitted Liens, together with duly executed Transfer Tax or sales disclosure forms, where applicable, unless under applicable Law such Transfer Tax stamps or duly stamped transfer forms are only available post-Closing;

(vii) customary owner's title affidavits or other similar instruments, in form and substance reasonably acceptable to Seller and the Title Company;

(viii) a properly completed and duly executed IRS Form W-9 from Seller;

(ix) in the event that the Closing occurs prior to the consummation of the transactions under the A&R Flynn APA, a counterpart of a transition services agreement, the form of which shall be negotiated in good faith, to the reasonable satisfaction of Seller and Buyer, which shall terminate no later than the consummation of the transactions under the A&R Flynn APA (the "**Transition Services Agreement**"), duly executed by Seller; and

(x) all other instruments of conveyance and transfer in form and as may be necessary to convey the Transferred Assets to Buyer or an Eligible Assignee as Buyer may reasonably request, including, for the avoidance of doubt, separate assignment and assumption agreements for Transferred Leased Real Property as Buyer may determine are necessary in its reasonable discretion.

(b) Buyer shall deliver or cause to be delivered to Seller the following:

(i) an amount equal to the Purchase Price, less the Escrowed Funds which will be delivered pursuant to the Joint Written Instructions, by wire transfer of immediately available funds to an account or accounts as directed by Seller;

(ii) a counterpart of the Joint Written Instructions, duly executed by Buyer, directing the Escrow Agent to deliver to Seller the Escrowed Funds;

(iii) all required Transfer Tax stamps and transfer forms (if any), unless under applicable Law such Transfer Tax stamps or duly stamped transfer forms are only available post-Closing (in which case such Transfer Tax stamps or duly stamped transfer forms shall be delivered to Seller promptly and in any event no later than five (5) Business Days after receipt thereof by Buyer);

(iv) a counterpart of each Bill of Sale, Assignment and Assumption Agreement, duly executed by Buyer or an Eligible Assignee party thereto;

(v) a counterpart of each Transferred Leased Property Assignment and Assumption Agreement, duly executed by Buyer or an Eligible Assignee party thereto;

(vi) a counterpart of each IP Assignment Agreement, duly executed by Buyer or an Eligible Assignee party thereto;

(vii) the officer's certificate required to be delivered to Seller pursuant to Section 10.01(a)(iii);

(viii) in the event that the Closing occurs prior to the consummation of the transactions under the A&R Flynn APA, a counterpart of the Transition Services Agreement, duly executed by Buyer and/or each Eligible Assignee party thereto; and

(ix) such other documents, instruments and certificates as Seller may reasonably request.

**Section 3.05. Purchase Price Allocation.** For U.S. federal and applicable state and local income Tax purposes, Buyer, the Eligible Assignees and Seller agree to allocate the Purchase Price (as finally determined hereunder), the Assumed Liabilities and all other relevant items treated as part of the purchase price for applicable income Tax purposes among the Transferred Assets in accordance with Section 1060 of the Code and Treasury Regulations thereunder based on Closing GAAP value or other reasonable method that approximates fair market value (the “**Allocation Methodology**”). No later than thirty (30) days after the Closing Date, Buyer (on behalf of itself and the Eligible Assignees) shall deliver to Seller an allocation of the Purchase Price and the Assumed Liabilities (and all other relevant items) as of the Closing Date among the Transferred Assets, determined in a manner consistent with the Allocation Methodology (the “**Purchase Price Allocation**”), for Seller’s review, comment and approval (not to be unreasonably withheld, conditioned or delayed). If Seller fails to deliver a written objection in accordance with this Section 3.05 within thirty (30) days after receipt of the draft Purchase Price Allocation, the Purchase Price Allocation shall be conclusive and binding on the Parties and Eligible Assignees. If Seller delivers a written objection, which objection sets forth in reasonable detail its objections within thirty (30) days after receipt of the draft Purchase Price Allocation proposed by Buyer (provided that Seller shall not object to, with respect to any restaurant being acquired, an allocation of not more than \$200,000 attributable to the value of the equipment acquired in such restaurant), then Buyer and Seller agree to negotiate in good faith to resolve any such objection, and, if Seller and Buyer cannot resolve such dispute within thirty (30) days of Buyer’s receipt of Seller’s objection, then, provided that each of Buyer (on behalf of itself and the Eligible Assignees) and Seller agrees to bear fifty percent (50%) of the related costs and expenses of a nationally-recognized, independent public accounting firm, such accounting firm shall resolve such dispute and the resolution of such dispute shall be final and binding on the Parties and Eligible Assignees. The Parties agree (and agree to cause their respective Subsidiaries and Affiliates (and Buyer shall cause the Eligible Assignees including to cause their respective Subsidiaries and Affiliates)) to prepare, execute, and file IRS Form 8594 and all Tax Returns in accordance with the Purchase Price Allocation (as finally determined under this Section 3.05). None of the Parties shall (and Buyer shall cause the Eligible Assignees not to) take any position inconsistent with the Purchase Price Allocation, unless otherwise required by a final determination by a Government Authority. Notwithstanding any other provision of this Agreement, the terms and provisions of this Section 3.05 shall survive the Closing without limitation.

**Section 3.06. Casualty and Condemnation.** If, during the period beginning on the date hereof and ending on the Closing Date, any Transferred Owned Real Property or Transferred Leased Real Property, are damaged or destroyed, by fire or other casualty, or subject to a taking, then Seller shall undertake commercially reasonable efforts to assert claims with respect to any such damage, destruction or condemnation and shall remit to Buyer any insurance proceeds or condemnation awards (“**Proceeds**”) received by Seller in respect of any such damage or destruction on the later of (a) the Closing and (b) the third (3rd) Business Day after Seller’s receipt of such Proceeds, and shall, upon the request of Buyer, assign to Buyer, effective upon the Closing Date, Seller’s rights to receive any such Proceeds. The foregoing shall represent Buyer’s sole and exclusive rights and recourse with respect to an event described in this Section 3.06. For the avoidance of doubt, the foregoing shall be subject to the rights (if any) of the applicable landlord

or its lender(s) as to any affected Transferred Leased Real Property. Seller may elect to restore such Transferred Owned Real Property or Transferred Leased Real Property but shall have no obligation to do so. Notwithstanding anything to the contrary in this Section 3.06, any remittance or assignment of Proceeds under this Section 3.06 shall not include any Proceeds to the extent attributable to lost rents or similar costs applicable to any period prior to the Closing, nor any uncollected Proceeds that Seller may be entitled to receive from such damage, destruction or taking, and shall be reduced by (i) the amount of all reasonable and documented, out-of-pocket costs incurred by Seller in connection with any repair of any damage or destruction related thereto, (ii) the reasonable and documented, out-of-pocket collection costs of Seller with respect to any Proceeds and (iii) the amounts (if any) required to be paid to the applicable landlord under the applicable Transferred Lease or to any lender to such landlord pursuant to any financing of the real property underlying the applicable Transferred Lease, as applicable, in each case, with respect to such damage, destruction or taking.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer that, except as set forth in the Disclosure Schedules that each of the statements contained in this Article IV is true and correct as of the date hereof (except for representations and warranties that speak as of a specific date, in which case such representations and warranties are true and correct as of such date):

Section 4.01. Formation and Authority of Seller; Enforceability. Seller is a corporation duly incorporated, validly existing and in good standing under the Laws of Kansas. Subject to the Bankruptcy Court's entry of the Sale Order, Seller has the requisite corporate power and authority to execute, deliver and perform its obligations under the Seller Transaction Agreements (including the consummation of the Seller Transactions) to which it is a party. Seller has the requisite corporate power to operate its business with respect to the Transferred Assets that it owns as now conducted and is duly qualified as a foreign corporation to do business, and to the extent legally applicable, is in good standing, with respect to the Business, in each jurisdiction in which the character of its owned, operated or leased properties or the nature of its activities makes such qualification necessary, except for jurisdictions where the failure to be so qualified or in good standing would not reasonably be expected to have a Material Adverse Effect. The execution, delivery and performance by Seller of the Seller Transaction Agreements (including the consummation of the Seller Transactions) to which it is a party have been duly authorized by all requisite corporate action on the part of Seller. This Agreement has been duly executed and delivered by Seller, and upon execution and delivery thereof, the other Seller Transaction Agreements will be duly executed and delivered by Seller, and (assuming due authorization, execution and delivery thereof by the other parties hereto and thereto) this Agreement constitutes, and upon execution and delivery thereof, the other Seller Transaction Agreements will constitute, legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, subject to the Bankruptcy and Equity Exception and the Bankruptcy Court's entry of the Sale Order.

Section 4.02. No Conflict. Provided that all Consents, waivers or other actions listed on Schedule 4.02 or described in Section 4.03 have been obtained or satisfied, except as otherwise



provided in this Agreement, and except as may result from any facts or circumstances relating to Buyer or its Affiliates, the execution, delivery and performance by Seller of the Seller Transaction Agreements do not and will not (a) violate or conflict with in any material respect the articles of incorporation or bylaws of Seller, (b) violate or conflict with in any material respect any Law or Order applicable to the Business, or (c) violate, conflict with, result in a breach of or constitute a default (or any event that, with notice or lapse of time or both would constitute a default) under or give rise to any right to terminate, cancel or accelerate, or result in a loss of a material benefit under, any Material Contract, except in the case of clause (b) or (c), where such violation, conflict, breach, default, termination, cancellation, acceleration or loss of a material benefit would not reasonably be expected to have a Material Adverse Effect.

Section 4.03. Consents and Approvals. Subject to the Bankruptcy Court's entry of the Sale Order, the execution, delivery and performance by Seller of the Seller Transaction Agreements do not and will not require any material Consent, waiver, or other action by, or any material filing with or notification to, any Government Authority by Seller, except (a) in connection with applicable filing, notification, waiting period or approval requirements under applicable Antitrust Laws, (b) where the failure to obtain such Consent or waiver, or to take such action or make such filing or notification would not reasonably be expected to have a Material Adverse Effect, or (c) as may be necessary as a result of any facts or circumstances relating to Buyer or Buyer's Affiliates.

Section 4.04. Financial Information; Absence of Undisclosed Liabilities.

(a) Schedule 4.04(a) sets forth true, complete and accurate copies of (i) the audited consolidated balance sheet and related statements of income and cash flows of NPC Restaurant Holdings, LLC for the year ended December 31, 2019, (ii) the unaudited balance sheet and related statements of income and cash flows of NPC Restaurant Holdings, LLC for the nine (9) month period ended September 29, 2020 and (iii) the unaudited statements of income of Seller for the nine (9) month period ended September 29, 2020 (such balance sheets and related statements collectively, the "**Financial Statements**"). The Financial Statements (i) have been prepared based on and in accordance with the books and records of Seller, (ii) have been prepared in all material respects in accordance with GAAP, and (iii) present fairly, in all material respects in accordance with GAAP, the financial condition and results of operation of the Business as of the respective dates and for the respective periods presented, subject to normal year-end adjustments and the absence of complete notes (as applicable).

(b) Other than (i) as set forth in the Financial Statements, (ii) Liabilities for Taxes, (iii) Liabilities incurred in the ordinary course of business since July 1, 2020, (iv) Liabilities arising under this Agreement, (v) Excluded Liabilities, and (vi) Liabilities that would not reasonably be expected to have a Material Adverse Effect, there are no Liabilities of the Business that are required to be reflected on, reserved against or otherwise described in a balance sheet prepared in accordance with GAAP. The only gift cards issued for use at the Wendy's restaurants are gift cards issued through the applicable franchisor gift card programs.

Section 4.05. Absence of Litigation. As of the Agreement Date, no Actions (other than the Bankruptcy Cases) are pending or, to the Knowledge of Seller, threatened in writing against Seller with respect to the Business that, individually or in the aggregate, would reasonably be

expected to have a Material Adverse Effect. Neither Seller nor any of the Transferred Assets are subject to any ongoing or incomplete compliance obligations resulting from or relating to any concluded or settled Action pursuant to settlement agreements, consent decrees or any other documented resolutions, except as would not reasonably be expected result in a Material Adverse Effect.

Section 4.06. Compliance with Laws; Permits.

(a) Seller is not in violation of any Laws or Orders applicable to the conduct of the Business, except where the failure to be in compliance would not reasonably be expected to have a Material Adverse Effect. Seller has not received any written notice of or been charged with the violation of any Laws applicable to the conduct of the Business, except where such violation would not be reasonably expected to have a Material Adverse Effect.

(b) (i) Seller holds all Permits necessary for the operation of the Business as conducted as of the Agreement Date and (ii) each Transferred Permit is valid, binding and in full force and effect, except, in the case of each of clauses (i) and (ii), as would not reasonably be expected to have a Material Adverse Effect. Schedule 4.06(b) contains a complete list of all material licenses, franchises and permits issued by any Government Authority to Seller or any of its Affiliates which are necessary or required for the ownership of the Transferred Assets or the conduct of the Business.

Section 4.07. Intellectual Property.

(a) Schedule 4.07(a) sets forth all Business Registrable IP included in the Transferred Assets as of the Agreement Date. To the Knowledge of Seller, the operation of the Business by Seller as it is conducted on the Agreement Date does not infringe upon or misappropriate, and has not in the past one (1) year period ending on the Agreement Date, infringed or misappropriated any Intellectual Property of any third party in a manner that would reasonably be expected to have a Material Adverse Effect. Seller exclusively owns the Business Intellectual Property included in the Transferred Assets, free and clear of all Liens, other than Permitted Liens, and, to the Knowledge of Seller, the material Business Intellectual Property included in the Transferred Assets is valid and enforceable.

(b) Seller has not received any written claim or notice (including in the form of “cease-and-desist” letters, indemnification claims or “invitation to license” offers) from any Person during the past one (1) year period ending on the Agreement Date alleging that the operation of the Business by Seller infringes upon or misappropriates any Intellectual Property of any third party which, if proven or established, would reasonably be expected to have a Material Adverse Effect. There are no Actions pending or, to the Knowledge of Seller, threatened in writing against Seller or its Affiliates alleging that the operation of the Business by Seller infringes upon or misappropriates any Intellectual Property of any third party which, if proven or established, would reasonably be expected to have a Material Adverse Effect.

(c) To the Knowledge of Seller, no Person infringes or misappropriates in any respect any Business Intellectual Property included in the Transferred Assets, except for any such



infringements or misappropriations that would not reasonably be expected to have a Material Adverse Effect.

(d) During the one (1) year period ending on the Agreement Date, there have been no security breaches of the Business Systems included in the Transferred Assets, or to the Knowledge of Seller, any other Systems, in each case, that would reasonably be expected to have a Material Adverse Effect.

(e) Seller has taken commercially reasonable steps to maintain the confidentiality of all material trade secrets included in the Business Intellectual Property included in the Transferred Assets and, to the Knowledge of Seller, during the one (1) year period ending on the Agreement Date, there has been no unauthorized use or disclosure by any Person of any such material trade secrets.

Section 4.08. Privacy. To the Knowledge of Seller, Seller has materially complied with all applicable Laws relating to privacy, or to the Processing, protection or security of Personal Information, as well as with Seller's and its Affiliates' policies and contractual obligations with respect to the Processing of Personal Information during the past one (1) year period ending on the Agreement Date. To the Knowledge of Seller, Seller has reasonable safeguards in place designed to protect Personal Information in its possession or under its control against loss, theft, or unauthorized disclosure. To the Knowledge of Seller, during the past one (1) year period ending on the Agreement Date, there have been (a) no material unauthorized intrusions, access, misuse or breaches of the Systems (including any material successful ransomware attack) or (b) material loss, acquisition or breach of, or unauthorized access to, or the rendering unavailable of, any data (including Personal Information) held by or on behalf of Seller. In the one (1) year period ending on the Agreement Date, Seller has not received any written notice of any claims of, or been charged with, the violation of any Laws concerning the privacy, or the Processing, protection or security of Personal Information.

Section 4.09. Environmental Matters.

(a) Except as would not reasonably be expected to have a Material Adverse Effect, with respect to the Business, Seller is in compliance with all Environmental Laws, which compliance includes obtaining, maintaining and complying with those Environmental Permits necessary to operate the Business.

(b) Except as would not reasonably be expected to have a Material Adverse Effect, with respect to the Business as of the Agreement Date, there are no Actions pending or, to the Knowledge of Seller, threatened in writing, against Seller alleging that Seller is violating, or potentially responsible for any Liability under, any Environmental Law, in each case with respect to the Business or the Transferred Assets.

(c) To the Knowledge of Seller, there are no Hazardous Materials on, under, about or migrating to or from the Transferred Owned Real Property or Transferred Leased Real Property in concentrations or amounts requiring any material investigation, remediation, cleanup, containment or mitigation by Seller under any Environmental Law.

(d) As of the Agreement Date, there are no Actions pending, or to the Knowledge of Seller, threatened in writing, against Seller alleging that Seller is not in material non-compliance, or is responsible for any material Liability under, any Environmental Law, in each case with respect to the Transferred Owned Real Property or Transferred Leased Real Property.

(e) Notwithstanding anything in this Agreement to the contrary, the representations and warranties made by Seller in this Section 4.09 are the sole and exclusive representations and warranties made by Seller pertaining or relating to any environmental matters, including those related to Environmental Laws, Environmental Permits or Hazardous Materials.

#### Section 4.10. Employment and Employee Benefits Matters.

(a) Schedule 4.10(a) lists, as of the Agreement Date, all material Employee Plans. With respect to each material Employee Plan, Seller has previously made available to Buyer a true and complete copy of the following documents, to the extent applicable: (i) any written plan documents and all amendments thereto, (ii) the most recent summary plan description, (iii) the most recent Forms 5500 and all schedules thereto, and (iv) the most recent IRS determination letter.

(b) Each Employee Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter, or is entitled to rely on an opinion letter, from the IRS and, to the Knowledge of Seller, no event has occurred, either by reason of any action or failure to act, which would reasonably be expected to cause the loss of any such qualification.

(c) No Employee Plan is (i) subject to Title IV of ERISA, (ii) a multiemployer plan (within the meaning of Section 3(37) or 4001(a)(3) of ERISA), or (iii) a “multiple employer plan” as defined in Section 413(e) of the Code and, to the Knowledge of Seller, neither Seller nor any of its Affiliates has any Liability or reasonable expectation of Liability with respect to any plan that is or was subject to Title IV of ERISA.

(d) Each Employee Plan has been operated in accordance with its terms and the requirements of ERISA and all applicable Laws, except where the failure to be so operated would not reasonably be expected to have a Material Adverse Effect.

(e) No material Actions are pending or, to the Knowledge of Seller, threatened in writing from any Government Authority in connection with any Employee Plan (other than routine benefit claims) that would reasonably be expected to have a Material Adverse Effect.

(f) Seller is not party to or bound by any collective bargaining agreement or other Contract with a union, and no Covered Employee is represented by a union. To the Knowledge of Seller, there is no effort currently being made or threatened by, or on behalf of, any union to organize any Covered Employees, and there has been no such effort during the past six (6) months. With respect to the Covered Employees, there are no (i) strikes, work stoppages, work slowdowns or lockouts pending, or, to the Knowledge of Seller, threatened against Seller, or any of its Affiliates, or (ii) unfair labor practice charges, grievances or complaints pending, or, to the Knowledge of Seller, threatened by or on behalf of any employee or group of employees of Seller, or any of its Controlled Affiliates, except as in each case would not reasonably be expected to

result in a material disruption to the conduct of the Business or a material portion of the Business, when taken as a whole.

(g) Unless prohibited by applicable Law, Seller has provided a true and complete list, in all material respects, of each person who, as of as of December 9, 2020, was determined to be a Covered Employee, including the identification number, job location, job title or duty, date of hire, annual salary or hourly wage rate, and year-to-date wages, salary or bonus paid for each such person (the “**Covered Employee List**”). Other than set forth on Schedule 4.10(g), no Covered Employees (i) are employed on any basis other than an at-will basis or (ii) are party to an employment letter, agreement or contract. Schedule 4.10(g) lists all of the independent contractors providing material services to the Business, a description of the services provided, rate of pay and term of service.

#### Section 4.11. Taxes.

(a) For periods beginning after January 1, 2018, Seller has timely filed (or has had filed on its behalf) all material Tax Returns required to be filed, taking into account any extensions of time to file such Tax Returns granted or to be obtained by or on behalf of Seller, and all such Tax Returns are true, correct and complete in all material respects. All material amounts of Taxes shown due on such Tax Returns have been fully paid or properly accrued for on Seller’s applicable Financial Statements, other than with respect to any Taxes the payment of which was precluded by reason of the Bankruptcy Cases.

(b) There are no Liens for Taxes on the Transferred Assets other than Permitted Liens.

(c) Seller has complied in all material respects with all applicable withholding obligations for Taxes that are Related to the Business required to have been withheld in connection with amounts paid to any Covered Employee or independent contractor.

(d) Nothing in this Section 4.11 or otherwise in this Agreement shall be construed as a representation or warranty with respect to (i) the amount or availability of any net operating loss, capital loss, or Tax credit carryover or other Tax attribute or asset or (ii) any Tax positions that Buyer or any of its respective Representatives or Affiliates may take in or in respect of a taxable period (or portion thereof) beginning after the Closing Date.

(e) The representations and warranties in Section 4.10 and this Section 4.11 constitute the sole and exclusive representations and warranties of Seller with respect to Taxes, and no other representation or warranty contained in any other Section of this Agreement shall apply to any Tax matters, and no other representation or warranty, express or implied, is being made with respect thereto.

#### Section 4.12. Real Property.

(a) Schedule 4.12(a) sets forth a list of all Transferred Owned Real Property and all Transferred Leased Real Property as of the Agreement Date and including, as applicable, unit # and address. Seller has good, marketable and valid title to all such Transferred Owned Real Property and valid title to the leasehold estate (as lessee or sublessee or as a lessor or sublessor) in

all such Transferred Leased Real Property and Transferred Owned Real Property (as applicable), in each case free and clear of all Liens, except for Permitted Liens. Except as set forth on Schedule 4.12(a), none of the Transferred Owned Real Property is subject to any leases, licenses, concessions or tenancies or other rights of occupancy.

(b) All Transferred Leases under which Seller is a lessee or sublessee are in full force and effect and enforceable as against Seller, and to the Knowledge of Seller, as against any other counterparty thereto, in all material respects, in accordance with their respective terms, subject to the Bankruptcy and Equity Exception. No written notices of material default under any such lease or sublease have been sent or received by Seller within the twelve (12)-month period ending on the Agreement Date. Except as set forth on Schedule 4.12(b), none of the Transferred Leased Real Property is subject to any leases, licenses, concessions or tenancies or other rights of occupancy.

(c) To the Knowledge of Seller, Seller has not received any written notice from any Government Authority asserting any violation of applicable Laws (except for Environmental Law, which is subject to Section 4.09 hereof) with respect to the Transferred Owned Real Property or Transferred Leased Real Property that remains uncured as of the Agreement Date that would reasonably be expected to have a Material Adverse Effect.

(d) To the Knowledge of Seller, all material buildings, structures and improvements on the Transferred Owned Real Property and Transferred Leased Real Property are in reasonably good condition and repair, normal wear and tear excepted, sufficient and appropriate for the operation of the Business as currently conducted in all material respects, in material compliance with all material obligations under the Transferred Leases.

(e) Seller has not received any written notice of any pending or threatened condemnations, planned public improvements, annexation, special assessments, zoning or subdivision changes, or similar adverse actions or claims affecting the Transferred Owned Real Property or the Transferred Leased Real Property.

Section 4.13. Brokers. Except for fees and expenses of Greenhill & Co., LLC and Cypress Advisors, Inc., no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission from Seller or any of its Affiliates in connection with the Transactions. Seller is solely responsible for the fees and expenses of Greenhill & Co., LLC and Cypress Advisors, Inc.

Section 4.14. Title; Sufficiency. Except for Permitted Liens, the Transferred Assets (other than (i) the Transferred Owned Real Property and the leasehold estate (as lessee or sublessee) in the Transferred Leased Real Properties, which are the subject of Section 4.12, (ii) any personal property leased pursuant to a Transferred Contract, and (iii) the Business Intellectual Property and the Business Systems included in the Transferred Assets (which are addressed in Section 4.07) are owned by or otherwise made available to Seller, and at the Closing, Buyer will own each of the Transferred Assets or will be vested with good title to such Transferred Assets, as the case may be, free and clear of all Liens, to the fullest extent permissible under Section 363(f) of the Bankruptcy Code. Other than the Business Intellectual Property and the Business Systems included in the Transferred Assets (which are addressed in Section 4.07) and the Excluded Assets,

the Transferred Assets constitute all of the material assets and properties used or held for use, necessary, sufficient and adequate for the conduct and operation of the Business as of the date hereof.

Section 4.15. Material Contracts.

(a) Schedule 4.15(a) lists the following Transferred Contracts (excluding Transferred Leases, which are listed in Schedule 4.12(a)) that are in effect on the Agreement Date (other than purchase orders) (collectively with the Transferred Leases, the “**Material Contracts**”):

(i) Contracts for the sale of any of the assets of the Business since January 1, 2019 other than in the ordinary course of business, for consideration in excess of \$1,000,000;

(ii) Contracts relating to the acquisition by Seller since January 1, 2019 of any operating business or the capital stock of any other Person, in each case, for consideration in excess of \$1,000,000;

(iii) Contracts relating to incurrence of Debt or the making of any loans, in each case, involving amounts in excess of \$10,000,000;

(iv) Contracts, (A) the performance of which resulted in aggregate payments to or from Seller during the twelve (12)-month period ending on August 31, 2020 in excess of \$750,000, (B) that require performance by any party thereto for more than one (1) year from the Agreement Date and (C) that are not terminable by Seller without penalty on less than ninety (90) days’ notice;

(v) Contracts with any labor union or association representing employees of Seller;

(vi) Contracts between or among Seller, on the one hand, and any of its Affiliates on the other hand;

(vii) Contracts that grant any Person a right of first refusal, first offer, option to purchase or similar right to purchase any material Transferred Asset or require Seller to purchase its total requirements of any product or service from any other Person or contains “take or pay” or similar provisions; and

(viii) material settlements or other arrangements entered into in the twelve months prior to the Agreement Date with respect to any Action Related to the Business.

(b) Other than as set forth on Schedule 4.15(b), Seller has made available to Buyer true and complete copies of each Material Contract (including, for the avoidance of doubt, amendments and modifications thereto in effect as of the date of this Agreement), provided, that to the extent such Material Contracts could not be disclosed in whole or part as a result of any confidentiality or other legal restriction, Seller have made available to Buyer such portions of those Material Contracts as they could lawfully disclose.



(c) Each Material Contract is a legal, valid and binding obligation of Seller or its applicable Affiliate(s) party thereto, and, to the Knowledge of Seller, each other party to such Material Contract, and is enforceable against Seller and its Affiliates party thereto, and, to the Knowledge of Seller, each other party to such Material Contract, in accordance with its terms, subject, in each case, to the Bankruptcy and Equity Exception.

(d) Since January 1, 2020, Seller has not amended any Material Contract to extend or defer payment to a period after the Closing Date, assuming a Closing Date of March 24, 2021, for payments that otherwise would have been due or will be due prior to such date, except that, since such date, Seller has entered into binding written amendments to the Transferred Leases evidencing rent deferrals (deferring rent to a period after the Closing Date) in the aggregate amount of approximately \$500,000. Seller has not received any notice of any default or event that with notice or lapse of time or both would constitute a default by Seller or any of its Affiliates, or to the Knowledge of Seller any third party (other than payment defaults), under any Material Contract, except for defaults that would not reasonably be expected to have a Material Adverse Effect.

Section 4.16. Anti-Corruption. During the past one (1) year, neither Seller nor any of its Affiliates or, to the Knowledge of Seller, any Representative acting on behalf of Seller or any of its Affiliates, in each case, in connection with the Business, has violated the U.S. Foreign Corrupt Practices Act (15 U.S.C. §§ 78dd-1, et seq.), or any similar anticorruption Laws that apply to the Business or offered, given, promised or authorized the giving of anything of value, directly or indirectly, to any Person, including any Government Official, for the purpose of influencing any action or decision of a Government Official in his or her official capacity to assist Seller or any of its Affiliates in obtaining or retaining business or any business advantage, or directing business to, any Person. “**Government Official**” means: (a) any officer, employee or representative of any foreign Government Authority; (b) any officer, employee or representative of any public international organization; (c) any person acting in an official capacity for any foreign Government Authority identified above; and (d) any foreign political party, party official or candidate for political office.

Section 4.17. Absence of Certain Changes, Event and Conditions. Since December 31, 2019 through the date hereof, other than as a result of the Bankruptcy Cases, Seller has conducted the Business in the ordinary course of business and there has occurred no fact, event or circumstance that has had or would, individually or in the aggregate, reasonably be expected to have, a Material Adverse Effect.

Section 4.18. Insurance. Seller maintains various property, liability and other insurance policies under which the Transferred Assets are insured. All Insurance Policies to which Seller is a party or under which Seller, the Business or the Transferred Assets is covered as an additional named insured or otherwise (or replacement policies therefor) are in full force and effect, and Seller has paid all premiums due and is not in default. No notice of cancellation or nonrenewal with respect to, or disallowance of any claim under, any such policy has been received by Seller.

Section 4.19. No Other Representations or Warranties. Except for the representations and warranties expressly set forth in this Article IV (as modified by the Disclosure Schedules) or in any other Seller Transaction Agreement, neither of Seller nor any other Person has made, makes or shall be deemed to make any other representation or warranty of any kind whatsoever, express



or implied, written or oral, at law or in equity, on behalf of Seller or any of its respective Affiliates, including any representation or warranty regarding Seller or any other Person, any Transferred Assets, any Liabilities of Seller, including any Assumed Liabilities, the Business, any Transaction, any other rights or obligations to be transferred pursuant to the Transaction Agreements or any other matter, and Seller hereby disclaim all other representations and warranties of any kind whatsoever, express or implied, written or oral, at law or in equity, whether made by or on behalf of Seller, or any other Person, including any of their respective Representatives. Except for the representations and warranties expressly set forth in this Article IV (as modified by the Disclosure Schedules) or in any other Seller Transaction Agreement, Seller hereby (a) disclaims and negates any representation or warranty, expressed or implied, at common law, by statute, or otherwise, relating to the condition of the Transferred Assets or the Business, and (b) disclaims all Liability and responsibility for all projections, forecasts, estimates, financial statements, financial information, appraisals, statements, promises, advice, data or information made, communicated or furnished (orally or in writing, including electronically) to Buyer or any of Buyer's Affiliates or any Representatives of Buyer or any of Buyer's Affiliates (including any opinion, information, projection, or advice that may have been or may be provided to Buyer by any Representative of Seller), including omissions therefrom. Without limiting the foregoing, Seller makes no representation or warranty of any kind whatsoever, express or implied, written or oral, at law or in equity, to Buyer or any of its Affiliates or any Representatives of Buyer of any of its Affiliates regarding the probable success, profitability or value of the Transferred Assets or the Business. The disclosure of any matter or item in any Schedule shall not be deemed to constitute an acknowledgment that any such matter is required to be disclosed or is material or that such matter would be reasonably expected to result in a Material Adverse Effect. Seller acknowledges and agrees that the only representations and warranties made by Buyer are the representations and warranties expressly set forth in Article V and Seller has not relied upon any other express or implied representations, warranties or other projections, forecasts, estimates, appraisals, statements, promises, advice, data or information made, communicated or furnished by or on behalf of Buyer or any of its Affiliates, any Representatives of Buyer or any of its Affiliates or any other Person.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller that:

Section 5.01. Formation and Authority of Buyer; Enforceability. Buyer is a corporation or other entity duly incorporated, formed or organized, validly existing and, to the extent legally applicable, in good standing under the Laws of its jurisdiction of incorporation, formation or organization and has the requisite corporate or other appropriate power and authority to execute, deliver and perform its obligations under the Buyer Transaction Agreements (including the consummation of the Buyer Transactions). The execution, delivery and performance by Buyer of the Buyer Transaction Agreements (including the consummation of the Buyer Transactions) have been duly authorized by all requisite corporate or other organizational action on the part of Buyer, and no shareholder or other similar approval is required in connection with Buyer's execution, delivery and performance of the Buyer Transaction Agreements. This Agreement has been, and upon execution and delivery thereof, the other Buyer Transaction Agreements will be, duly

executed and delivered by Buyer, and (assuming due authorization, execution and delivery by the other parties hereto and thereto) this Agreement constitutes, and upon execution and delivery thereof, the other Buyer Transaction Agreements will constitute, legal, valid and binding obligations of Buyer enforceable against Buyer in accordance with their respective terms, subject to the Bankruptcy and Equity Exception.

Section 5.02. Qualification of Buyer. Buyer has the corporate or other appropriate power and authority to operate its businesses as now conducted, except where the failure to have such power or authority would not materially impair or delay the ability of Buyer to consummate the transactions contemplated by, or perform its obligations under, the Buyer Transaction Agreements. Buyer is qualified as a foreign corporation or other organization to do business and, to the extent legally applicable, is in good standing in each jurisdiction where the character of its owned, operated or leased properties or the nature of its activities makes such qualification necessary, except for jurisdictions where the failure to be so qualified or in good standing would not materially impair or delay the ability of Buyer to consummate the transactions contemplated by, or perform its obligations under, the Buyer Transaction Agreements.

Section 5.03. No Conflict. Provided that all Consents, waivers and other actions described in Section 5.04 have been obtained, the execution, delivery and performance by Buyer of the Buyer Transaction Agreements do not and will not:

- (a) violate or conflict with in any material respect the certificate or articles of incorporation or bylaws or similar organizational documents of Buyer;
- (b) conflict with or violate in any material respect any Law or Order applicable to Buyer; or
- (c) violate, conflict with, result in any breach of, or constitute a default (or any event that, with notice or lapse of time, or both would constitute a default) under, or give rise to any right to terminate, cancel or accelerate, or result in a loss of a material benefit under, any Contract to which Buyer or any of its Subsidiaries or Affiliates is a party or by which any of such assets or properties is bound; in the case of clauses (b) and (c) except for any such violations, conflicts, breaches, defaults, terminations, cancellations, accelerations, or losses of a material benefit as would not materially impair or delay the ability of Buyer to consummate the Buyer Transactions or otherwise perform its obligations under the Buyer Transaction Agreements.

Section 5.04. Consents and Approvals.

(a) The execution, delivery and performance by Buyer of the Buyer Transaction Agreements do not and will not require any Consent, waiver or other action by, or any filing with or notification to, any Government Authority, except (i) in connection with applicable filing, notification, waiting period or approval requirements under applicable Antitrust Laws or (ii) where the failure to obtain such Consent or waiver, to take such action, or to make such filing or notification, would not materially impair or delay the ability of Buyer to consummate the Buyer Transactions or otherwise perform its obligations under the Buyer Transaction Agreements.

(b) As of the date of this Agreement, Buyer does not expect that Buyer or any Eligible Assignee will, pursuant to this Agreement, acquire Transferred Assets with a value that

would exceed the threshold for making a filing with respect to the Transactions under the HSR Act.

Section 5.05. Absence of Restraints; Compliance with Laws.

(a) To the knowledge of Buyer, as of the Agreement Date, no facts or circumstances exist that would reasonably be expected to impair or delay the ability of Buyer to consummate the Buyer Transactions or otherwise perform its obligations under the Buyer Transaction Agreements.

(b) Buyer is not in violation of any Laws or Orders applicable to the conduct of its business, except for violations the existence of which would not reasonably be expected to materially impair or delay the ability of Buyer to consummate the Buyer Transactions or otherwise perform its obligations under the Buyer Transaction Agreements.

(c) As of the Agreement Date, there are no Actions pending or, to the knowledge of Buyer, threatened, that would affect in any material respect Buyer's ability to perform its obligations under the Buyer Transaction Agreements or to consummate the Transactions contemplated by the Buyer Transaction Agreements.

Section 5.06. Financial Ability. Buyer has, and will have at the Closing, sufficient immediately available funds and the financial ability to pay the Purchase Price and any costs and expenses incurred by Buyer pursuant to, or in connection with the negotiation, execution and performance of the Transaction Agreements.

Section 5.07. Brokers. Except for fees and expenses of Jefferies Group LLC, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission from Buyer or any of Buyer's Affiliates in connection with the Transactions. Buyer is solely responsible for the fees and expenses of Jefferies Group LLC.

Section 5.08. Investigation. Buyer acknowledges and agrees that it (a) has completed such inquiries and investigations as it has deemed appropriate into, and, based thereon, has formed an independent judgment concerning, the Transferred Assets, the Assumed Liabilities, the Business and the Transactions, and any other rights or obligations to be transferred, directly or indirectly, pursuant to the Transaction Agreements and (b) has been furnished with, or given access to, certain projections, forecasts, estimates, appraisals, statements, promises, advice, data or information about Seller, the Transferred Assets, the Assumed Liabilities, the Business and any other rights or obligations to be transferred, directly or indirectly, pursuant to the Transaction Agreements. Buyer further acknowledges and agrees that (x) the only representations and warranties made by Seller are the representations and warranties expressly set forth in Article IV (as modified by the Disclosure Schedules) and in any other Seller Transaction Agreement and Buyer has not relied upon any other express or implied representations, warranties or other projections, forecasts, estimates, appraisals, statements, promises, advice, data or information made, communicated or furnished by or on behalf of Seller or any of its Affiliates, any Representatives of Seller or any of its Affiliates or any other Person, including any projections, forecasts, estimates, appraisals, statements, promises, advice, data or information made, communicated or furnished by or through Seller's financial advisors, or management

presentations, data rooms (electronic or otherwise) or other due diligence information, and that Buyer will not have any right or remedy arising out of any such other representation, warranty or other projections, forecasts, estimates, appraisals, statements, promises, advice, data or information and (y) any claims Buyer may have for breach of any representation or warranty shall be based solely on the representations and warranties of Seller expressly set forth in Article IV (as modified by the Disclosure Schedules) or in any other Seller Transaction Agreement. Except as otherwise expressly set forth in this Agreement, Buyer understands and agrees that the Business, the Transferred Assets and the Assumed Liabilities are being transferred on a “where-is” and, as to condition, “as-is” basis subject to the representations and warranties contained in Article IV (as modified by the Disclosure Schedules) or in any other Seller Transaction Agreement, without any other representations or warranties of any nature whatsoever.

## ARTICLE VI

### ADDITIONAL AGREEMENTS

Section 6.01. Conduct of Business Before the Closing. Buyer acknowledges that Seller is operating the Business in the context of the Bankruptcy Cases. Subject to the foregoing, except (a) as required by applicable Law, by Order of the Bankruptcy Court or to the extent necessary in connection with the Bankruptcy Cases, (b) as required in connection with any Transaction Agreement, (c) for matters identified on Schedule 6.01, during the Pre-Closing Period:

(i) Seller shall use commercially reasonable efforts to (A) operate the Business in the ordinary course of business, (B) maintain the Transferred Assets substantially in their current condition (subject to ordinary wear and tear), and (C) preserve in all material respects the present business operations, organization and goodwill of the Business, and the present relationships with material suppliers of the Business; and

(ii) unless Buyer otherwise consents in writing (which consent shall not be unreasonably withheld, conditioned or delayed), Seller will not do any of the following:

(A) other than in the ordinary course of business, grant any Lien on any material Transferred Assets (in each case, whether tangible or intangible), other than a Permitted Lien or a Lien that will be discharged at or prior to the Closing;

(B) acquire (by merger, consolidation, acquisition of stock or assets or otherwise) any corporation, partnership or other business organization or division;

(C) sell, transfer, lease, sublease or otherwise dispose of any Transferred Assets having an aggregate value in excess of \$500,000 (and not in excess of \$100,000 with respect to any of the Kansas City Business, North Greensboro Business, South Greensboro Business, Raleigh Business or Pennsylvania Business), other than in the ordinary course of business or as requested by a Government Authority;

(D) sell, assign, transfer, otherwise dispose of or convey any material Business Registrable IP included in the Transferred Assets, or any other material Business Intellectual Property or Customer Data included in the Transferred Assets;

(E) allow to lapse, abandon, cancel, fail to renew or fail to continue to prosecute, protect or defend any material Business Registrable IP included in the Transferred Assets, or any other material Business Intellectual Property included in the Transferred Assets;

(F) license or grant any Person any rights to any material Business Intellectual Property included in the Transferred Assets (other than, in each case, non-exclusive licenses granted to customers, vendors, suppliers and other service providers of Seller in the ordinary course of business);

(G) in any material respect, (X) increase the wages, salaries, or bonuses payable to any Covered Employee or (Y) establish or materially increase any benefits under any Employee Plan, except, in either case, (1) as required by any Employee Plan or any Contract in existence on the Agreement Date, (2) any increase in wages, salaries, bonuses and incentives in the ordinary course of business, including the annual merit review process, or (3) as required by applicable Law;

(H) transfer any Covered Employee to provide services in connection with the Excluded Business;

(I) adopt, enter into, amend or terminate any Employee Plan or any plan, program, agreement, Contract or arrangement that would be an Employee Plan if in existence on the date hereof in respect of any Covered Employee;

(J) adopt, enter into, amend or terminate any collective bargaining agreement or similar labor agreement with respect to any Covered Employee;

(K) enter into any settlement or release with respect to any material Action Related to the Business other than any settlement or release that (X) that contemplates only the payment of money without ongoing limits on the conduct or operation of the Business, (Y) results in a full release of Seller with respect to the claims giving rise to such Action or (Z) involves the payment of Liabilities reflected or reserved against in full in the Financial Statements;

(L) materially amend or terminate any (i) Transferred Contract or (ii) any other material Contract Related to the Business, other than, in the case of clause (ii), in the ordinary course of business;

(L) enter into any material Contract Related to the Business, other than in the ordinary course of business;

(M) settle, pay, discharge or satisfy any material Action where such settlement, payment, discharge or satisfaction would impose any restrictions or limitation upon the operation the Business or any Transferred Asset after the Closing Date;

(N) cancel or compromise any material claim or waive or release any material right related to any Transferred Asset; or



(O) enter into any legally binding agreement or commitment to take action with respect to any of the foregoing.

Notwithstanding the foregoing, any reasonable good faith action taken, or omitted to be taken, by Seller in relation to the COVID-19 Pandemic that is outside the ordinary course of business and (X) pursuant to state or local ordinances or franchisor requirements, or (Y) consistent with QSR industry actions for large QSR operators shall not (1) be deemed to be a breach of this Section 6.01, or (2) require the consent of Buyer; provided, that, in each case, Seller shall notify Buyer in writing (email shall suffice) prior to taking any such action to the extent reasonably practicable.

#### Section 6.02. Access to Information.

(a) During the Pre-Closing Period, upon reasonable prior written notice, Seller shall, at the sole cost and expense of Buyer, (i) afford the Representatives of Buyer reasonable access, during normal business hours, to the properties, books and records Related to the Business, (ii) furnish to the Representatives of Buyer such additional financial and operating data and other information regarding the Business as Buyer or its Representatives may from time to time reasonably request for purposes of consummating the Transactions (including to obtain Permits), and (iii) make available to Buyer and its Representatives, during normal business hours, those (A) directors, officers and employees with day-to-day oversight of the Business and (B) auditors, accountants and other Representatives, in each case of Seller, except, in the case of (i), (ii) and (iii), as set forth in Section 6.02(b). Seller will use its commercially reasonable efforts to facilitate an orderly transition of the Business to Buyer.

(b) Notwithstanding anything in this Agreement to the contrary,

(i) (A) in no event shall Seller or any of its Affiliates be obligated to provide any (1) access or information in violation of any applicable Law, or any order of the Bankruptcy Court, (2) information the disclosure of which could reasonably be expected to jeopardize any applicable privilege (including the attorney-client privilege) available to Seller or any of its Affiliates relating to such information, or (3) information the disclosure of which would cause Seller or any of its Affiliates to breach a confidentiality obligation to which it is bound (provided that, in each case, Seller shall use commercially reasonable efforts to provide such access or information in an alternative manner so as to not violate any applicable Law or order of the Bankruptcy Court, waive any legal privilege or breach any confidentiality obligation, including by redacting or otherwise not disclosing any portion thereof the disclosure of which jeopardizes such privilege) and (B) any access or investigation contemplated by Section 6.02(a) shall not unreasonably interfere with any of the businesses, personnel or operations of Seller or any of its Affiliates or the Business;

(ii) the auditors and accountants of Seller or any of its Affiliates or the Business shall not be obligated to make any work papers available to any Person except in accordance with such auditors' and accountants' normal disclosure procedures and then only after such Person has signed a customary agreement relating to such access to work papers in form and substance reasonably acceptable to such auditors or accountants; and



(iii) Buyer and its Representatives shall not conduct any sampling or testing of soil, groundwater, air, or other environmental media of Seller.

(c) If so requested by Seller, Buyer shall enter into a customary joint defense agreement or common interest agreement with Seller or any of its Affiliates with respect to any information provided to Buyer, or to which Buyer gains access, pursuant to this Section 6.02 or otherwise.

(d) Seller shall, within ten (10) Business Days of the Agreement Date, provide to Buyer a schedule that sets forth all Contracts Related to the Business, the performance of which resulted in aggregate payments to or from Seller during the twelve (12)-month period ending on August 31, 2020 in excess of \$250,000.

#### Section 6.03. Confidentiality.

(a) The terms of the Confidentiality Agreement shall continue in full force and effect until the Closing, at which time Buyer's and Seller's obligations under the Confidentiality Agreement shall terminate. If for any reason the Closing does not occur and this Agreement is terminated, the Confidentiality Agreement shall continue in full force and effect in accordance with its terms. For the avoidance of doubt, the provisions in the Confidentiality Agreement which by their terms survive the termination of the Confidentiality Agreement shall continue in full force and effect in accordance with their terms.

(b) The Parties shall (i) treat and hold as confidential all Confidential Information of the other Party and its Affiliates (which, as such term is used in this Section 6.03(b), shall mean the information provided to the receiving Party by or on behalf of a disclosing Party in connection with this Agreement and the other Transaction Agreements and the Transactions and shall, in the case of Seller, include any information provided by or on behalf of an Eligible Assignee acquiring a portion of the Transferred Assets and assuming a portion of the Assumed Liabilities hereunder) and (ii) not disclose any such Confidential Information of a disclosing Party to any other Person without the prior written consent of such disclosing Party, in each case for so long as such information remains Confidential Information. In the event any receiving Party is requested or required (by oral or written request for information or documents in any legal proceeding, interrogatory, subpoena, civil investigative demand or similar process or by applicable Law) to disclose any Confidential Information of a disclosing Party provided in accordance with this Section 6.03(b), then such receiving Party shall, to the extent legally permitted, notify the disclosing Party promptly of the request or requirement so the disclosing Party, at its expense, may seek an appropriate protective Order or waive compliance with this Section 6.03(b). If, in the absence of a protective Order or receipt of a waiver hereunder, the receiving Party is, on the advice of counsel, compelled to disclose such Confidential Information, the applicable receiving Party may so disclose such Confidential Information; provided that the applicable receiving Party shall use commercially reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to such Confidential Information. Notwithstanding the foregoing, the provisions of this Section 6.03(b) shall not prohibit the disclosure of Confidential Information by the receiving Party to the extent reasonably required (i) to comply with applicable Law or any regulatory authority or self-regulatory organization having jurisdiction or of which a Party is a member or (ii) to such Party's Affiliates and Representatives. Notwithstanding the foregoing, the provisions of

this Section 6.03(b) shall not apply to information that (A) is or becomes publicly available other than as a result of a disclosure by any receiving Party in violation of this Agreement, (B) is or becomes available to a receiving Party on a non-confidential basis from a source that, to the receiving Party's knowledge, is not prohibited from disclosing such information by a legal, contractual or fiduciary obligation, or (C) is or has been independently developed by a receiving Party. For the avoidance of doubt, following the Closing, all Confidential Information Related to the Business, the Transferred Assets or the Assumed Liabilities shall be deemed to be Confidential Information of Buyer and the Eligible Assignees acquiring Transferred Assets and assuming Assumed Liabilities hereunder.

Section 6.04. Regulatory Approvals.

(a) Buyer and Seller shall, and shall cause their respective Affiliates to take any and all steps to make all required filings and promptly obtain all Consents, Permits and Orders of all Government Authorities (other than any Required Approvals or action of the Bankruptcy Court, which are governed exclusively by Article VIII) that may be, or become, necessary for the execution and delivery of, and performance of its obligations pursuant to, the Transaction Agreements (including the consummation of the Transactions) (collectively, the “**Government Approvals**”).

(b) Without limiting the generality of the Parties' obligations under Section 6.04(a), to the extent required, each of the Parties shall, and shall cause its Affiliates to, consult and cooperate with the other party to make its respective filing with respect to the Transactions under the HSR Act, and any and all other filings required pursuant to other Antitrust Laws, with respect to the Transactions. Each Party shall, and shall cause its Affiliates to, take any and all necessary steps to resolve as soon as reasonably practicable, but in any event not later than the Outside Date, any inquiry or investigation by any Government Authority relating to the Transactions under any Antitrust Law. In connection with any such inquiry or investigation and in furtherance of its obligations under Section 6.04(e), each Party further agrees to respond as promptly as reasonably practicable to any request for additional information made by any Government Authority pursuant to applicable Law, including any Antitrust Law. All filing fees related to the HSR Act or any other filings under any other Antitrust Laws shall be borne by Buyer. For the avoidance of doubt, each of the Parties acknowledges that, as of the Agreement Date, and in the case of Seller, in reliance on Buyer's representation in Section 5.04(b), it is not currently contemplated that Buyer or any Eligible Assignee would acquire Transferred Assets with a value that would exceed the threshold for making a filing with respect to the Transactions under the HSR Act and, accordingly, neither Party shall be required to make any filing under the HSR Act unless and until (i) Buyer elects to delay the Closing in accordance with Section 2.03 in the event that an Eligible Assignee is not ready, willing and able to consummate the transactions contemplated by the assignment agreement to which it and Buyer are party in respect of the assignment of certain rights and obligations of Buyer under this Agreement (or, if sooner, such time that Buyer reasonably determines or otherwise becomes aware of the likelihood of such Eligible Assignee not being ready, willing and able to consummate the transactions contemplated by such assignment agreement) and (ii) the acquisition of the Transferred Assets contemplated to be acquired by such Eligible Assignee by Buyer, taken together with the other Transferred Assets to be acquired by Buyer (if any), would exceed the threshold for making a filing with respect to the Transactions

under the HSR Act, in which case the Parties shall make the filing under the HSR Act within two (2) Business Days following Buyer's election to delay the Closing.

(c) Notwithstanding any other provision in this Agreement, Buyer shall, and shall cause its Affiliates to, promptly take and diligently pursue any or all actions to the extent necessary to eliminate each and every impediment under any Antitrust Law that may be asserted by any Government Authority or any other Person in opposition to the consummation of any of the Transactions, so as to enable the Parties to consummate the Transactions as soon as reasonably practicable, but in any event not later than the Outside Date. In furtherance of this obligation, and without limitation, Buyer shall, and shall cause its Affiliates to: (i) propose, offer, negotiate, commit to, effect, and agree to, by consent decree, hold separate order, asset preservation order, or otherwise, any sale, divestiture, license, hold separate, or other disposition of or restriction on, any of the Transferred Assets or any of Buyer's or Buyer's Affiliates' assets or businesses; provided, however, that any such sale, divestiture, license, disposition, restriction on, holding separate, preservation of, or other similar arrangement or action on the Transferred Assets is conditioned on the occurrence of, the Closing Date; (ii) create, terminate, amend, or assign existing relationships, ventures, contractual rights, or obligations of Buyer or Buyer's Affiliate(s), or the Transferred Assets; (iii) amend, assign, or terminate existing licenses or other agreements (and entering into such new licenses or other agreements); (iv) otherwise take or commit to any and all actions that would limit Buyer's freedom of action with respect to, or its ability to retain or hold, directly or indirectly, any businesses, assets, products, or equity interests in the business of Buyer, Buyer's Affiliate(s), or the Transferred Assets; (v) enter into any governmental order, consent decree, or other agreement to effectuate any of the foregoing; and (vi) if necessary, defend initiated litigation under any Antitrust Law that would prevent or delay consummation of the Transactions.

(d) To the extent reasonably practicable, each Party shall promptly notify the other Parties of any oral or written communication it or any of its Representatives receives from any Government Authority relating to the matters that are the subject of this Section 6.04, permit the other Parties and their respective Representatives to review in advance any communication relating to the matters that are the subject of this Section 6.04 proposed to be made by such Party to any Government Authority and provide the other Parties with copies of all substantive correspondence, filings or other communications between them or any of their Representatives, on the one hand, and any Government Authority or members of its staff, on the other hand, relating to the matters that are the subject of this Section 6.04; provided, however, that materials provided to the Party may be reasonably designated as "Outside Counsel Only" and also may be redacted: (i) to remove references concerning the valuation of the Business or competitively sensitive information; (ii) as necessary to comply with contractual arrangements, applicable Law or by order of the Bankruptcy Court; and (iii) as necessary to address reasonable attorney-client or other privilege or confidentiality concerns. To the extent reasonably practicable, no Party shall agree to participate in any substantive meeting or discussion with any Government Authority in respect of any such filings, investigation or other inquiry unless it consults with the other Parties in advance and, to the extent permitted by such Government Authority, gives the other Parties the opportunity to attend and participate at such meeting. Subject to the Confidentiality Agreement, the Parties will coordinate and cooperate fully with each other in exchanging such information and providing such assistance as the other Parties may reasonably request in connection with the foregoing and in seeking early termination of any applicable waiting periods. Buyer shall have the right to control and direct the process by which the Parties seek to avoid or eliminate impediments under any

Antitrust Law, including by directing the strategy and making final determinations related to the review or investigation of the Transactions by any Government Authority and the Parties shall have the right to attend all meetings, discussions, and communications with any Government Authority except to the extent that such Government Authority may request to communicate exclusively with one Party. Nothing in this Section 6.04(d) shall be applicable to Tax matters.

(e) Buyer shall not, and shall not permit any of its Affiliates to, take any action (including acquiring or agreeing to acquire by merging or consolidating with, or by purchasing the assets of or equity in, or by any other manner, any Person or portion thereof, or otherwise acquiring or agreeing to acquire any assets) that would reasonably be expected to have the effect of (i) delaying, impairing or impeding the receipt of, or increasing the risk of not receiving, any required Government Approval or the issuance or reissuance or transfer of any Permit or Environmental Permit, (ii) delaying, impairing or impeding the expiration or termination of any applicable waiting period with respect to a Government Approval (and shall not, without the consent of Seller, withdraw or refile any filing or restart the waiting period on any Government Authority's review, or enter into a timing agreement with a Government Authority), (iii) increasing the risk of any Government Authority entering an Order prohibiting the consummation of the Transactions or (iv) otherwise delaying the consummation of the Transactions; provided, that, for the avoidance of doubt, any assignment of Buyer's rights or obligations to an Eligible Assignee shall not be deemed to violate this Section 6.04(e).

(f) Actions or agreements required of Buyer pursuant to this Section 6.04 shall under no circumstances be considered a Material Adverse Effect.

**Section 6.05. Third Party Consents.** Each Party agrees to cooperate and use commercially reasonable efforts to obtain any other consents and approvals from any third person other than a Government Authority that may be required in connection with any Transaction (the "**Third Party Consents**"). Notwithstanding anything in this Agreement to the contrary, (i) neither Seller nor any of its Affiliates shall be required to compensate any third party, commence or participate in any Action or offer or grant any accommodation (financial or otherwise, including any accommodation or arrangement to remain primarily, secondarily or contingently liable for any Assumed Liability) to any third party to obtain any such Third Party Consent, and (ii) neither Buyer nor any of its Affiliates shall be required to compensate any third party, commence or participate in any Action or offer or grant any accommodation (financial or otherwise, including any accommodation or arrangement to remain primarily, secondarily or contingently liable for any Excluded Liability) to obtain any such Third Party Consent, other than the assumption of the Assumed Liabilities and payment of the Cure Costs for the Transferred Contracts. For the avoidance of doubt, no representation, warranty or covenant of Seller contained in any Transaction Agreement shall be breached or deemed breached, and no condition shall be deemed not satisfied, based solely on (a) the failure to obtain any Third Party Consents or (b) any Action commenced or threatened by or on behalf of any Person arising out of or relating to the failure to obtain any such Third Party Consents.

**Section 6.06. Cooperation.** During the Pre-Closing Period, (a) Seller and Buyer shall, and shall cause their respective Affiliates to, (i) refrain from taking any actions that would reasonably be expected to impair, delay or impede the Closing and (ii) without limiting the foregoing or modifying the Parties' obligations pursuant to Section 6.04, use commercially reasonable efforts



to cause all Closing Conditions of the other Party to be met as promptly as practicable and in any event on or before the Outside Date and (b) each Party shall keep the other Party reasonably apprised of the status of any material developments relating to the completion of the Transactions, including with respect to the satisfaction of the Closing Conditions of the other Party.

Section 6.07. Bulk Transfer Laws. Buyer acknowledges that Seller will not comply with the provisions of any bulk transfer Laws or similar Laws (including under any Tax Laws) of any jurisdiction in connection with the Transactions and hereby waives all claims against Seller related to the noncompliance therewith.

Section 6.08. Employee Matters.

(a) Employment of Covered Employees. Buyer, one of its Affiliates or an Eligible Assignee shall offer employment to (i) all Covered Employees (including those on approved leave of absence or disability) (A) whose location of work is at Seller's restaurants or (B) whose primary responsibilities are direct supervision of the day to day operations at Seller's restaurants (e.g. area coaches, district managers) and (ii) substantially all of the remaining Covered Employees, in each case, no later than fourteen (14) days prior to the Closing Date, such employment to be effective as of the Closing Date subject to such Covered Employees completing and meeting Buyer's or such Affiliate's or Eligible Assignee's customary hiring criteria and procedures, including Form I-9 compliance and a satisfactory background check. At a date and pursuant to a process mutually agreeable to Seller and Buyer prior to the Closing, Seller will cause its managers, in conjunction with Buyer, its applicable Affiliate or an Eligible Assignee to hold information sessions and hiring sessions at each restaurant for Covered Employees of such restaurant to facilitate the hiring of any Covered Employees at the Closing. Seller shall be responsible for all costs related to Covered Employees for such information sessions and hiring sessions at each restaurant. Seller shall cooperate with Buyer, its Affiliates or Eligible Assignees to allow Buyer, its Affiliates or its Eligible Assignees to make offers of employment to Covered Employees including those that are on approved leave of absence or disability. The offer of employment made by Buyer or an Affiliate of Buyer or an Eligible Assignee (i) with respect to each Covered Employee shall be effective as of the Closing Date (subject to such Covered Employees completing and meeting Buyer's, its Affiliate's or its Eligible Assignee's customary hiring criteria and procedures); and (ii) with respect to all Covered Employees, shall contain (A) salary and wages no less favorable than provided by Seller or its Affiliates immediately prior to the Closing Date with respect to such Covered Employee, and (B) other terms and conditions of employment substantially similar to those provided to similarly situated employees of Buyer, its applicable Affiliates or its Eligible Assignee that is hiring such Covered Employee. For purposes of this Section 6.08, any individual who becomes employed by Buyer, an Affiliate of Buyer or an Eligible Assignee in accordance with this Section 6.08 is referred to as a "**Transferred Employee**." No later than each of twenty (20) and two (2) Business Days before the Closing, Seller shall deliver to Buyer updated, accurate, and complete Covered Employee Lists, as current as reasonably practicable, with the name replacing the identification number, including a list of Covered Employees that are on a current leave of absence or disability, a list of Covered Employees for whom garnishments are in place, and the information that will be required for Buyer, its applicable Affiliate or its Eligible Assignee to implement such garnishments, and a list of the accrued balances of vacation and sick pay awarded for each Covered Employee. Seller shall, and shall cause its Affiliates to, reasonably cooperate with Buyer, Buyer's Affiliates and Eligible

Assignees in connection with the onboarding and transition of the Transferred Employees to Buyer, Buyer's Affiliates and Eligible Assignees, as applicable.

(b) Employees and Employee Plans.

(i) Liabilities. Except with respect to the Transferred Employee Liabilities and as provided in Section 6.08(c), Seller shall perform all employee related obligations through the Closing Date, including: giving required notices; paying all compensation through Closing; satisfying all of Seller's obligations to Covered Employees or former Covered Employees on account of their employment or former employment by Seller; and performing any obligations required by the Fair Labor Standards Act of 1938, the Equal Pay Act, applicable wage and hour Laws, or any other applicable Laws. Except with respect to the Transferred Employee Liabilities and as provided in Section 6.08(c), Buyer, its Affiliates and its Eligible Assignees shall have no Liability for accrued wages (including salaries and commissions), severance benefits, vacation pay, COBRA, pension and profit sharing contributions, or other forms of benefits of any type or nature on account of said Covered Employees' employment by Seller, all of which will be deemed Excluded Liabilities.

(c) Transferred Employees – Additional Employment Terms.

(i) Credit for Service. Subject to Section 6.08(c)(iii), Buyer, Buyer's Affiliate(s) or an Eligible Assignee, as applicable, shall credit Transferred Employees for service earned on and prior to the Closing Date with Seller and any of its Affiliates or predecessors, in addition to service earned with Buyer, Buyer's Affiliates and Eligible Assignees on or after the Closing Date, (A) to the extent that service is relevant for purposes of eligibility, vesting, vacation, paid time off, paid-leave entitlement or the calculation of benefits under any employee benefit plan, program or arrangement of Buyer, Buyer's Affiliates or Eligible Assignees for the benefit of the Transferred Employees on or after the Closing Date; provided, however, Buyer, Buyer's Affiliates and the Eligible Assignees shall not be required to provide any credit for service for purposes of eligibility of 401(k) matching for any Covered Employee or for the purposes of benefit accruals under any defined benefit pension plan; and (B) for such additional purposes as may be required by applicable Law; provided, however, that nothing herein shall result in a duplication of benefits with respect to the Transferred Employees.

(ii) Pre-existing Conditions; Coordination. Buyer, Buyer's Affiliate(s) or an Eligible Assignee, as applicable, shall use commercially reasonable efforts to waive any pre-existing condition or actively at work limitations, evidence of insurability and waiting periods for the Transferred Employees and their eligible spouses and dependents under any employee benefit plan, program or arrangement of Buyer, Buyer's Affiliate(s) or an Eligible Assignee for the benefit of the Transferred Employees on or after the Closing Date, but only to the extent waived under such employee benefit plans, programs or arrangements of Seller and its Affiliates. Buyer, Buyer's Affiliate(s) or an Eligible Assignee, as applicable, shall use commercially reasonable efforts to credit for purposes of determining and satisfying annual deductibles, co-insurance, co-pays, and out-of-pocket limits under the comparable health plans and arrangements offered to Transferred Employees, deductibles, co-insurance, co-pays and out-of-pocket expenses paid by Transferred Employees and their respective spouses and dependents under Seller or any of its Affiliates' health plans in the calendar year in which the Closing Date occurs, in each case solely



to the extent Seller or the Transferred Employee, as applicable, provides the necessary verification for Buyer to provide such credits.

(iii) Earned and Vested Vacation Pay. In connection with the termination of employment of the Covered Employees with Seller, Seller will pay Covered Employees for the value of each such Covered Employee's earned and vested but unused vacation, in accordance with applicable Law and the applicable policy of Seller.

(iv) Health Coverage; COBRA. On the Closing Date, Seller and its Affiliates shall cease to provide health and welfare coverage to each Transferred Employee and his or her covered dependents and beneficiaries. Effective as of the Closing Date, Buyer, Buyer's Affiliate or an Eligible Assignee shall commence providing health and welfare coverage that is consistent with Buyer's, Buyer's Affiliate's or the applicable Eligible Assignee's current health and welfare plans (except with regard to any eligibility waiting periods) to each Transferred Employee and his or her covered dependents and beneficiaries. Seller and its Affiliates shall be solely responsible for providing continuation coverage under COBRA to those individuals (including all Covered Employees and their dependents or beneficiaries) who are or become M&A qualified beneficiaries (as defined in Treasury Regulation Section 54.4980B-9, Q&A-4(a)) with respect to the transactions contemplated by this Agreement or who otherwise experience a COBRA qualifying event on or before the Closing Date. Buyer, Buyer's Affiliate or an Eligible Assignee shall provide coverage required by COBRA to Transferred Employees and their eligible dependents or beneficiaries under group health plans maintained by Buyer, an Affiliate of Buyer or an Eligible Assignee with respect to qualifying events occurring on and after the Closing Date.

(d) Bonus Plan. Notwithstanding anything to the contrary, Buyer, Buyer's Affiliate(s) or an Eligible Assignee, as applicable, shall pay within thirty (30) days after Closing the amounts set forth on a schedule delivered by Seller to Buyer within five (5) Business Days prior to Closing to certain Transferred Employees and former employees of Seller set forth on such schedule (such amounts, collectively with the employer-portion of payroll taxes and social security (including FICA) amounts related thereto, to the extent not previously paid by Seller, the "**Transferred Employee Liabilities**"). Buyer, Buyer's Affiliates and Eligible Assignees shall not assume or be obligated to continue any of Employee Plans or other incentive or bonus plans, programs, or arrangements giving rise to the Transferred Employee Liabilities and shall have no liabilities relating to the determination or calculation of the individual bonus or plan amounts for any Transferred Employee or former employee of Seller, and shall have no liability to any Covered Employee or Transferred Employee or former employee of Seller for the failure to pay any obligations arising out of any pre-closing compensation arrangement; provided, further that Buyer, Buyer's Affiliates and Eligible Assignees are not assuming, agreeing to pay or agreeing to discharge any, and Seller shall be solely and exclusively liable with respect to, obligations arising under the KEIP and the KERP or any other incentive or retention-based compensation plan approved by the Bankruptcy Court. Buyer shall not claim any compensation deductions with respect to the Transferred Employee Liabilities.

(e) Termination of Transferred Employees. Seller shall, or shall cause its Affiliates to, terminate, as of the Effective Time, the employment of all Transferred Employees. Consistent with Seller retention of Liabilities as set forth in Section 6.08(b), Seller shall, or shall cause its Affiliates to, pay promptly after the Effective Time and in compliance with applicable

Laws and Company policy all wages and benefits owed by Seller or any of its Affiliates to the Transferred Employees.

(f) No Third Party Beneficiaries. Notwithstanding the provisions of this Section 6.08 or any provision of the Agreement, nothing in this Section 6.08 or the Agreement is intended to and shall not (i) create any third party rights, (ii) amend any employee benefit plan, program, policy or arrangement, (iii) require Buyer, any of its Affiliates or any Eligible Assignee or Seller or any of its Affiliates to continue any employee benefit plan, program, policy or arrangement beyond the time when it otherwise lawfully could be terminated or modified or as otherwise required herein or (iv) provide any Covered Employee or any Transferred Employee with any rights to continued employment. Buyer, its Affiliates and its Eligible Assignees expressly reserve the right to terminate the employment of any Transferred Employee (or, except as otherwise provided in this Section 6.08, amend the terms and conditions of employment of any Transferred Employee) for any reason at any time, including without cause.

Section 6.09. Guarantees; Other Obligations. Seller shall use commercially reasonable efforts to negotiate the termination, removal, or release of the Seller Guarantees set forth on Schedule 6.09 and any other Seller Guarantees prior to Closing, and Buyer shall cooperate with Seller in connection therewith. In the event that any Seller Guarantees secure obligations or performance of a Transferred Contract or relate to an Assumed Liability or a Transferred Asset and are not terminated, removed, or released prior to Closing (the “**Indemnified Seller Guarantee Obligations**”), then (i) Buyer shall negotiate with the landlords for any such Transferred Leased Real Property set forth on Schedule 6.09, and, if so requested by such landlords, at Closing Buyer will provide a guaranty to such landlords in form and substance reasonably acceptable to Buyer solely with respect to matters arising from and after the Closing Date, and (ii) from and after the Closing Date, Buyer will indemnify, defend and hold harmless Seller and its Affiliates against, and reimburse Seller and its Affiliates to the extent an Indemnified Seller Guarantee Obligation is called upon and Seller or its Affiliates make any payment or are obligated to reimburse the party to whom the Indemnified Seller Guarantee Obligation is owed solely to the extent such payment or obligation to reimburse arises out of Buyer’s ownership of the Transferred Contract during the period from and after Closing.

## ARTICLE VII

### POST-CLOSING COVENANTS

#### Section 7.01. Access.

(a) From and after the Closing Date, in connection with any reasonable business purpose, including the preparation or amendment of Tax Returns, claims or obligations relating to Excluded Liabilities, financial statements, any Action to which Seller or any of its Affiliates is a party, the requirements of any Laws applicable to Seller and its Affiliates, or the determination of any matter relating to the rights or obligations of Seller or any of its Affiliates under any Transaction Agreement, or as is necessary to administer, or satisfy their obligations in connection with, the Bankruptcy Cases, upon reasonable prior written notice and at Seller’s sole cost and expense, and except to the extent necessary to (i) ensure compliance with any applicable Law or an Order of the Bankruptcy Court, (ii) preserve any applicable privilege (including the

attorney-client privilege) or (iii) comply with any contractual confidentiality obligations, Buyer shall, and shall cause its Affiliates and Representatives to (A) afford Seller and its Representatives and their respective Affiliates reasonable access, during normal business hours, to the properties, books and records of Buyer and its Affiliates in respect of the Business, the Transferred Assets and the Assumed Liabilities, (B) furnish to Seller and its Representatives and their respective Affiliates such additional financial and other information regarding the Business, the Transferred Assets and the Assumed Liabilities as Seller or its Representatives may from time to time reasonably request and (C) make available to Seller and its Representatives and their respective Affiliates those employees of Buyer or its Affiliates whose assistance, expertise, testimony, notes or recollections or presence may be necessary to assist Seller, its Representatives or their respective Affiliates in connection with its or their inquiries for any purpose referred to above, including the presence of such Persons for interviews and depositions and as witnesses in hearings or trials for such purposes; provided, however, that such investigation shall not unreasonably interfere with the business or operations of Buyer or any of its Affiliates; and provided, further, that the auditors and accountants of Buyer or its Affiliates shall not be obligated to make any work papers available to any Person except in accordance with such auditors' and accountants' normal disclosure procedures and then only after such Person has signed a customary agreement relating to such access to work papers in form and substance reasonably acceptable to such auditors or accountants. Notwithstanding anything to the contrary herein, Seller shall have continued access to all Transferred Books and Records as is necessary to administer the Bankruptcy Cases and Seller may retain copies of such Transferred Books and Records as necessary or appropriate in connection with such purpose.

(b) If so requested by Buyer, on the one hand, or Seller or any of its Affiliates, on the other hand, Seller or one of its Affiliates, or Buyer or one of its Affiliates, as the case may be, shall enter into a customary joint defense agreement or common interest agreement with Buyer and its Affiliates, or Seller and its Affiliates, as applicable, with respect to any information to be provided to Seller or its Affiliates pursuant to Section 7.01(a).

Section 7.02. Rights to Business Marks. As of the Closing Date, Seller and its Affiliates shall not use or exploit the Business Intellectual Property included in the Transferred Assets, provided, however, nothing in this Section 7.02 shall prohibit Seller's or its Affiliates' use of Business Marks to the extent that such use (x) is in connection with winding down Seller's estate or (y) constitutes nominative or descriptive fair use under Law, which refers to Seller or its Affiliates and would not cause confusion as to the origin of a good or service, including in accurately stating the historical relationship between Seller and Buyer for information purposes (and in a non-Trademark manner) in historical, tax and similar records.

Section 7.03. Preservation of Books and Records. Seller and its Affiliates shall have the right to retain copies of all books and records of the Business relating to periods ending on or before the Closing Date. Buyer agrees that it shall preserve and keep all original books and records in respect of the Business in the possession or control of Buyer or its Affiliates for a period of six (6) years from the Closing Date or, if shorter, the applicable period specified in Buyer's document retention policy (but in any event for at least twelve (12) months). After such period, before Buyer or any Affiliate shall dispose of any of such books and records, Buyer shall give at least ninety (90) days' prior written notice to Seller of its such intention to dispose of such books and records,

and Seller and/or any of its Affiliates shall be given an opportunity, at Seller's cost and expense, to remove and retain all or any part of such books and records as it or they may elect.

**Section 7.04. Further Assurances.**

(a) From time to time following the Closing, the Parties shall, and shall cause their respective Affiliates to, at Buyer's expense, use their commercially reasonable efforts to cooperate in connection with the transfer of the Transferred Assets to Buyer, including by making regulatory or other filings. The Parties shall, and shall cause their respective Affiliates to, at Buyer's expense, execute, acknowledge and deliver all reasonable further conveyances, notices, assumptions, releases and acquittances and such instruments, and shall take such reasonable actions as may be necessary or appropriate to make effective the Transactions as may be reasonably requested by the other Party (including (a) transferring back to Seller or its designees each Excluded Asset and any asset or Liability not contemplated by this Agreement to be a Transferred Asset or an Assumed Liability, respectively, which asset or Liability was transferred to Buyer at the Closing and (b) transferring to Buyer (and having Buyer assume) any asset or Liability contemplated by this Agreement to be a Transferred Asset or an Assumed Liability, respectively, which was not transferred to Buyer at the Closing); provided, however, that except for Buyer's obligations to discharge an Assumed Liability and as otherwise provided pursuant to Section 2.02, nothing in this Section 7.04 shall require any Party or its Affiliates to pay money to, commence or participate in any Action with respect to, or offer or grant any accommodation (financial or otherwise) to, any third party following the Closing.

(b) Effective as of the Closing Date, Seller (on behalf of itself and its Affiliates) hereby grants to Buyer a perpetual, irrevocable, worldwide, non-terminable, sublicenseable, transferable, non-exclusive, royalty-free license under all Intellectual Property (other than Trademarks, Internet domain names, social media accounts and Excluded Assets) (i) owned by Seller or its Affiliates as of the Closing Date (other than the Business Intellectual Property acquired by Buyer) and (ii) used or held for use in the Business as of the Closing Date, to use for all purposes in connection with the Business and the natural evolutions thereof.

**Section 7.05. Flynn Services.** In the event that the transactions contemplated by the A&R Flynn APA are consummated prior to the Closing, Buyer acknowledges and consents to the provision of shared and other support services to Seller and its Affiliates by the Flynn Buyer and its Affiliates, such services to be provided to Seller and its Affiliates at cost.

## **ARTICLE VIII**

### **BANKRUPTCY PROVISIONS**

**Section 8.01. Bankruptcy Court Filings.**

(a) Seller shall reasonably cooperate with Buyer concerning all material applications, pleadings, notices, proposed orders, and other documents related to the Transactions that Seller intends to file with the Bankruptcy Court in connection with the Transactions contemplated by this Agreement, including the Sale Order, and to the extent reasonably practicable, and so as to permit Buyer sufficient time to review and comment on such documents,

Seller shall provide counsel to Buyer to the extent practicable no less than two (2) Business Days, to review draft copies of all material applications, pleadings, notices, proposed orders, and other documents related to the Transactions that Seller intends to file with the Bankruptcy Court in connection with the Transactions contemplated by this Agreement, including the Sale Order. Seller shall use commercially reasonable efforts to give Buyer reasonable advance notice of any hearings regarding any orders relating to the Transactions contemplated by this Agreement, including the Sale Order.

(b) (i) Each of Buyer and Seller agrees that it will promptly take such actions as are reasonably requested by the other Party to assist in obtaining entry of the Sale Order and (ii) Buyer agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining a finding of adequate assurance of future performance by Buyer and each of the Eligible Assignees, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Buyer and each of the Eligible Assignees under this Agreement and demonstrating that Buyer and each of the Eligible Assignees is a “good faith” purchaser under Section 363(m) of the Bankruptcy Code. Counsel to Buyer shall consult in good faith with counsel to Seller prior to filing, joining in, or otherwise supporting in any manner whatsoever any motion or other pleading relating to the sale of the Transferred Asset hereunder, and Buyer shall not, without the prior written consent of Seller (such consent not to be unreasonably withheld), file, join in, or otherwise support in any manner whatsoever any motion or other pleading relating to the sale of the Transferred Assets hereunder to the extent inconsistent with this Agreement. In the event the entry of the Sale Order shall be appealed, Seller and Buyer shall use their respective commercially reasonable efforts to defend such appeal.

(c) If this Agreement and the sale of the Transferred Assets to Buyer on the terms and conditions hereof are determined to be the “highest or otherwise best offer” in accordance with the Bidding Procedures Order, Buyer and Seller agree to use commercially reasonable efforts to cause the Bankruptcy Court to enter the Sale Order with such changes or modifications as may be requested by Buyer or Seller that are consented to in writing by the other Party, with such consent not to be unreasonably withheld, conditioned or delayed.

(d) Seller shall file such motions or pleadings as may be appropriate or necessary to assume and assign the Transferred Contracts and to determine the amount of the Cure Costs.

(e) After entry of the Sale Order, each of Buyer and Seller shall not 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.

## ARTICLE IX

### TAX MATTERS

Section 9.01. Transfer Taxes. Buyer and Seller shall each be responsible for fifty percent (50%) of any Transfer Tax imposed under applicable Law in connection with the Transaction; provided, however, Buyer shall promptly pay and discharge any such Transfer Taxes and Seller



shall within five (5) days of receipt of evidence of such payment reimburse Buyer for fifty percent (50%) of such Transfer Taxes paid by Buyer. The Party required by Law to file a Tax Return with respect to such Transfer Taxes shall, with the cooperation of the other Parties, timely prepare and file such Tax Return; provided, however, that Buyer shall prepare any Transfer Tax forms required for the conveyance of the Transferred Owned Real Property hereunder and shall provide the same to Seller for approval and execution. If Seller or any of its Affiliates is required to pay more than its allocable share of any Transfer Tax in connection with the filing of an applicable Tax Return, Buyer and its Affiliates shall within five (5) days of receipt of evidence of filing reimburse Seller or such Affiliate for such excess amount. Buyer and Seller each agree to timely sign and deliver (or to cause their respective Affiliates to timely sign and deliver) such certificates or forms as may be necessary or appropriate and otherwise to cooperate to establish any available exemption from (or otherwise reduce) any Transfer Taxes.

Section 9.02. Tax Adjustments. Taxes (other than Transfer Taxes and Deferred Payroll Taxes) imposed upon or assessed directly against the Transferred Assets (including real estate Taxes, personal property Taxes and similar Taxes imposed upon or assessed directly against the Transferred Assets) for the Tax period in which the Closing occurs (the “**Straddle Period**”) will be apportioned and prorated between Seller and Buyer as of the Closing Date. Buyer shall bear its proportionate share of such Taxes (which shall be equal to the product obtained by multiplying (i) a fraction, the numerator being the amount of the Taxes and the denominator being the total number of days in the Straddle Period, times (ii) the number of days in the Straddle Period following the Closing Date), and Seller shall bear the remaining portion of such Taxes; provided, however, that Seller shall be solely responsible for any late fees, penalties, and back Taxes that are due and owing on or prior to the Closing Date that relate to the period prior to the Closing Date. If the precise amount of any such Tax cannot be ascertained on the Closing Date, apportionment and proration shall be computed on the basis of the amount payable for each respective item during the Tax period immediately preceding the Straddle Period and any proration shall be adjusted thereafter on the basis of the actual charges for such items in the Straddle Period. When the actual amounts become known, such proration shall be recalculated promptly, and Buyer or Seller, as applicable, shall within ten (10) days, or as soon as reasonably possible thereafter, after notice of payment due and delivery of reasonable supporting documentation with respect to such amounts, make any additional payment or refund so that the correct prorated amount is paid by each of Buyer and Seller.

Section 9.03. Tax Cooperation. Seller has or promptly after the Agreement Date will provide to Buyer true, correct, and complete copies of Seller’s Tax returns related to the Business or the Transferred Assets, other than income Tax returns, but including sales and use Tax returns, property Tax returns, payroll Tax returns, and work papers related thereto. In addition, without limiting the obligations set forth in Sections 6.02 and 7.01, the Parties shall furnish or cause to be furnished to each other, upon request, and at the sole cost of the requesting Party, as promptly as practicable, such information and assistance relating to the Transferred Assets as is reasonably necessary for the filing of Tax Returns and the preparation for, or the prosecution or defense of, any audit, claim, demand, proposed adjustment or deficiency relating to Taxes, and any other matter or proceeding relating to Taxes. Buyer agrees that it shall preserve and keep, or cause to be preserved and kept, all original books and records Related to the Business that may relate to Taxes with respect to taxable years or periods (or portion thereof) ending on or before the Closing Date and in the possession of Buyer or its Affiliates in accordance with Section 7.03.



Section 9.04. Survival. The obligations set forth in this Article IX with respect to Taxes shall survive the Closing until the date that is thirty (30) days following the expiration of the applicable statute of limitations.

Section 9.05. Adjustment to Purchase Price. The Parties agree, to the extent permitted by Law, to treat any payment made pursuant to this Agreement as an adjustment to the Purchase Price for all U.S. federal income Tax purposes.

## ARTICLE X

### CONDITIONS TO CLOSING

Section 10.01. Conditions to Obligations of Seller. The obligation of Seller to consummate the Transactions shall be subject to the satisfaction or waiver by Seller in its sole discretion, at or before the Closing, of each of the following conditions (and subject to the continued satisfaction or waiver of the following conditions at the Closing):

(a) Representations and Warranties; Covenants.

(i) all representations and warranties of Buyer contained in this Agreement shall be true and correct in all respects as of the Closing as if made on the Closing Date (other than representations and warranties that are made as of a specific date, which representations and warranties shall have been true and correct in all respects as of such date), except for breaches or inaccuracies that, individually or in the aggregate, would not reasonably be expected to have a material adverse effect on Buyer or materially impair or delay the ability of Buyer to consummate the Transactions or otherwise timely perform its obligations under the Transaction Agreements; provided, however, that for purposes of determining the satisfaction of the condition in this clause (i), no effect shall be given to any “material” or “materiality” qualification in such representations and warranties;

(ii) the covenants contained in this Agreement required to be complied with by Buyer at or before the Closing shall have been complied with in all material respects; and

(iii) Seller shall have received an officer’s certificate signed by an authorized officer of Buyer, dated as of the Closing Date, certifying as to the satisfaction of the matters set forth in the foregoing clauses (i) and (ii).

(b) Governmental Approvals. All applicable waiting periods under the HSR Act shall have expired or been terminated and all other Required Approvals shall have been obtained or, if applicable, shall have expired, shall have been waived by the applicable Government Authority or shall have been terminated.

(c) No Order. There shall be no Order in existence or material Law which is in effect that prohibits the sale of the Transferred Assets or the other Transactions.

(d) Transaction Agreements. Buyer shall have executed and delivered to Seller all Buyer Transaction Agreements.

(e) Sale Order. The Bankruptcy Court shall have entered the Sale Order and such Sale Order shall not be subject to any stay as of the Closing Date.

(f) Guarantees. With respect to the personal guarantees identified by Seller to Buyer in writing prior to the execution of this Agreement, which are in favor of an Affiliate of Buyer in connection with the operation of the Business or the Transferred Assets, the mutual release by such Affiliate of Buyer and the guarantors of any and all Liability thereunder or otherwise with respect to operation of the Business and Transferred Assets.

(g) Consummation of A&R Flynn APA. The conditions to consummation of the transactions contemplated by the A&R Flynn APA shall have been satisfied or waived (other than those conditions that by their nature can only be satisfied at the closing of such transactions, but subject to the satisfaction or waiver of those conditions at such time) and the parties thereto shall be ready to consummate such transactions concurrently with the Closing of the Transactions; provided any waiver of this condition by Seller shall require the consent of the Requisite Creditors (as defined in the Restructuring Support Agreement), and the parties comprising the Requisite Creditors shall be third-party beneficiaries of this Agreement as it pertains to enforcing the consent right set forth in this proviso of this Section 10.01(g).

Section 10.02. Conditions to Obligations of Buyer. The obligations of Buyer to consummate the Transactions contemplated by this Agreement shall be subject to the satisfaction or waiver by Buyer in its sole discretion, at or before the Closing, of each of the following conditions (and subject to the continued satisfaction or waiver of the following conditions at the Closing):

(a) Representations and Warranties; Covenants.

(i) all representations and warranties of Seller contained in this Agreement shall be true and correct as of the Closing as if made on the Closing Date (other than representations and warranties that are made as of a specific date, which representations and warranties shall have been true and correct as of such date), except for breaches or inaccuracies, as the case may be, as to matters that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect; provided, however, that for purposes of determining the satisfaction of the condition in this clause (i), no effect shall be given to any “material,” “materiality,” or “Material Adverse Effect” qualification in such representations and warranties;

(ii) the covenants contained in this Agreement required to be complied with by Seller at or before the Closing shall have been complied with in all material respects; and

(iii) Buyer shall have received an officer’s certificate signed by an authorized officer of Seller, dated as of the Closing Date, certifying as to the satisfaction of matters set forth in the foregoing clauses (i) and (ii) and in Section 10.02(f).

(b) Governmental Approvals. All applicable waiting periods under the HSR Act shall have expired or been terminated and all other Required Approvals shall have been obtained or, if applicable, shall have expired or been waived by the applicable Government Authority, or have been terminated.

(c) No Order. There shall be no Order in existence or material Law which is in effect that prohibits the sale of the Transferred Assets or the other Transactions.

(d) Seller Transaction Agreements. Seller shall have executed and delivered, or caused to be executed and delivered, to Buyer all Seller Transaction Agreements.

(e) Sale Order. The Bankruptcy Court shall have entered the Sale Order and such Sale Order shall not be subject to any stay as of the Closing Date.

(f) No Material Adverse Effect. Since the Agreement Date, no Material Adverse Effect shall have occurred.

(g) Seller Franchise Agreement Matters. Seller has paid, or caused to be paid, all amounts payable to Buyer under the letter agreement attached hereto as Exhibit E.

Section 10.03. Frustration of Closing Conditions. Neither Seller nor Buyer may rely on the failure of any condition set forth in this Article X to be satisfied if such failure was caused by such Party's failure to act in good faith, to use commercially reasonable efforts to cause the Closing Conditions of each such other Party to be satisfied, or to satisfy its obligations set forth in Section 6.04.

Section 10.04. Waiver of Closing Conditions. Upon the occurrence of the Closing, any condition set forth in this Article X that was not satisfied as of the Closing shall be deemed to have been waived as of and from the Closing.

## ARTICLE XI

### TERMINATION

Section 11.01. Termination. Notwithstanding anything in this Agreement to the contrary, this Agreement may be terminated before the Closing:

(a) by the mutual written consent of Seller and Buyer;

(b) by Seller, if Buyer shall have breached any representation or warranty set forth in Article V or failed to comply with any covenant or agreement applicable to Buyer that would cause any Closing Condition set forth in Section 10.01(a) not to be satisfied, and (i) such breach is not waived by Seller or (ii) if such breach has not been waived by Seller but is curable and is not cured by Buyer prior to the earlier to occur of (A) ten (10) Business Days after receipt by Buyer of Seller's notice of its intent to terminate and (B) the Outside Date; provided, however, that Seller is not then in material breach of this Agreement which breach would result in the failure to satisfy a condition set forth in Section 10.02(a);

(c) by Buyer, if Seller shall have breached any representation or warranty set forth in Article IV or failed to comply with any covenant applicable to Seller that would cause any Closing Condition set forth in Section 10.02(a) not to be satisfied, and (i) such breach is not waived by Buyer or (ii) if such breach has not been waived by Buyer but is curable and is not cured by Seller prior to the earlier to occur of (A) ten (10) Business Days after receipt by Seller of Buyer's

notice of its intent to terminate and (B) the Outside Date; provided, however, that Buyer is not then in material breach of this Agreement which breach would result in the failure to satisfy a condition set forth in Section 10.01(a);

(d) by either Seller or Buyer, if the Closing shall not have occurred on or before May 14, 2021 (the “**Outside Date**”); provided, that if the Closing shall not have occurred on or before the Outside Date due to a material breach of any representations, warranties or covenants contained in this Agreement by Buyer or Seller, then the breaching Party may not terminate this Agreement pursuant to this Section 11.01(d);

(e) by either Seller or Buyer, in the event that any Government Authority of competent jurisdiction shall have issued an Order that permanently enjoins the consummation of the purchase of the Transferred Assets contemplated by this Agreement and such Order shall have become final and non-appealable; provided, however, that the right to terminate this Agreement under this Section 11.01(e) shall not be available to Seller or Buyer whose action in breach of this Agreement, or whose failure to fulfill any obligation under this Agreement, has been the primary cause of, or has directly resulted in, the issuance of such Order or other action;

(f) by Buyer, if (x) Seller or any of its Subsidiaries seeks to (A) have the Bankruptcy Court enter an Order dismissing, or converting into cases under chapter 7 of the Bankruptcy Code, any of the cases commenced by Seller under chapter 11 of the Bankruptcy Code and comprising part of the Bankruptcy Cases, or (B) have a trustee or examiner with expanded powers operate or manage the financial affairs or reorganization of Seller appointed in the Bankruptcy Case, or (y) such order for dismissal, conversion or appointment is entered by the Bankruptcy Court for any reason and not reversed or vacated within fourteen (14) days after entry thereof;

(g) by Seller, if the Bankruptcy Court enters an Order dismissing, or converting into cases under chapter 7 of the Bankruptcy Code, any of the cases commenced by Seller under chapter 11 of the Bankruptcy Code and comprising part of the Bankruptcy Cases, or if a trustee or examiner with expanded powers to operate or manage the financial affairs or reorganization of Seller is appointed in the Bankruptcy Case, and such an Order or appointment is not reversed or vacated within fourteen (14) days after entry/appointment thereof;

(h) by Buyer or Seller, if an Order of the Bankruptcy Court is entered denying approval of the Sale Order, and such Order becomes final and non-appealable;

(i) by Seller, if on or before January 14, 2021, The Wendy’s Company and its Affiliates party to the applicable Franchise Agreement with the Flynn Buyer or whose consent is otherwise required to consummate the transactions contemplated by the A&R Flynn APA (a) have not consented to the transactions contemplated by the A&R Flynn APA, and (B) waived any applicable rights of first refusal or purchase options with respect to the purchase by the Flynn Buyer of the Wendy’s restaurants being sold to the Flynn Buyer, if and to the extent applicable; or

(j) by Seller, if (i) the Buyer Delay Period (if any) has ended, (ii) the conditions set forth in Section 10.01 and Section 10.02 have been satisfied (other than those that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver thereof at the

Closing) or waived, (iii) Seller has confirmed in writing to Buyer that it stands ready, willing, and able to consummate the Closing pursuant to Section 2.03, and (iv) Buyer fails to consummate the Closing by the earlier to occur of (x) the Outside Date and (y) the date that is two (2) Business Days following the receipt of such confirmation from Seller.

Section 11.02. Notice of Termination. If either Buyer or Seller desires to terminate this Agreement pursuant to Section 11.01, such Party shall give written notice of such termination to the other Party.

Section 11.03. Effect of Termination.

(a) If this Agreement is terminated pursuant to Section 11.01, this Agreement shall thereupon become null and void and of no further force and effect, except for (i) Section 6.03, (ii) Section 8.01, (iii) Section 11.01, (iv) this Section 11.03 and (v) Article XII (including, in each case, the definitions set forth in Exhibit A to the extent applicable to such provisions), which will survive; for the avoidance of doubt, following termination, no party shall be entitled to specific performance or other injunctive or equitable relief under Section 12.17 except with respect to any provision that otherwise survives such termination pursuant to this Section 11.03(a). Nothing in this Section 11.03(a) shall be deemed to (x) release any Party from any Liability for any knowing and intentional breach of this Agreement or willfully and knowingly committed fraud against the non-breaching party with the specific intent to deceive and mislead, as determined by the Bankruptcy Court or (y) impair the right of any Party to compel specific performance by any other Party of its obligations under this Agreement prior to its termination.

(b) Notwithstanding Section 11.03(a), in the event of a termination of this Agreement pursuant to Section 11.01(b) or Section 11.01(j) after the Escrowed Funds are delivered to the Escrow Agent, then Buyer and Seller shall, within two (2) Business Days after the date of such termination, deliver Joint Written Instructions to the Escrow Agent directing the Escrow Agent to deliver an amount equal to the Escrowed Funds to Seller. Buyer acknowledges that the agreements contained in this Section 11.03(b) are an integral part of the Transactions, and that without these agreements, Seller would not have entered into this Agreement; accordingly, if Buyer fails to timely deliver Joint Written Instructions pursuant to this Section 11.03(b) and, in order to obtain such payment, Seller commences an Action which results in a judgment against Buyer for any such payment set forth in this Section 11.03(b), Buyer shall pay Seller its costs and expenses (including attorney's fees and disbursements) in connection with such Action, together with interest on such payment at the Interest Rate through the date such payment was actually received. Subject to the right to seek specific performance in accordance with the terms of this Agreement (including the limitation set forth in Section 11.03(a)), the remedy set forth in this Section will be the sole remedy of Seller and its Affiliates against Buyer and its Affiliates and any of its or their former, current and future Affiliates, representatives, shareholders, members, managers, partners, lenders, successors and assigns for any losses, damages, or liabilities suffered or incurred as a result of or under this Agreement or the transactions contemplated by this Agreement, including the failure of the Closing to occur.

(c) The Parties acknowledge and agree that in the event of a termination of this Agreement pursuant to Section 11.03(b) or Section 11.01(j), payment of the Escrowed Funds is not a penalty but is liquidated damages in a reasonable amount that will



compensate the Seller in the circumstances in which such fees are payable for the efforts and resources expended and the opportunities forgone while negotiating the Agreement and in reliance on this Agreement and on the expectation of the consummation of the Transactions, which amount would otherwise be impossible to calculate with precision.

(d) Notwithstanding Section 11.03(a), in the event of any termination of this Agreement (other than a termination pursuant to Section 11.01(b) or Section 11.01(j)) after the Escrowed Funds are delivered to the Escrow Agent, then Buyer and Seller shall, within two (2) Business Days after the date of such termination, deliver Joint Written Instructions to the Escrow Agent directing the Escrow Agent to deliver an amount equal to the Escrowed Funds to Buyer.

## ARTICLE XII

### MISCELLANEOUS

Section 12.01. Rules of Construction. The following rules of construction shall govern the interpretation of this Agreement:

(a) references to “applicable” Law or Laws with respect to a particular Person, thing or matter means only such Law or Laws as to which the Government Authority that enacted or promulgated such Law or Laws has jurisdiction over such Person, thing or matter as determined under the Laws of the State of New York; references to any statute, rule, regulation or form (including in the definition thereof) shall be deemed to include references to such statute, rule, regulation or form as amended, modified, supplemented or replaced from time to time (and, in the case of any statute, include any rules and regulations promulgated under such statute), and all references to any Section of any statute, rule, regulation or form include any successor to such section;

(b) when calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is referenced in beginning the calculation of such period will be excluded (for example, if an action is to be taken within two (2) days after a triggering event and such event occurs on a Tuesday, then the action must be taken by Thursday); if the last day of such period is a non-Business Day, the period in question will end on the next succeeding Business Day;

(c) whenever the context requires, words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other gender;

(d) (i) the provision of a table of contents, the division into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement and (ii) references to the terms “Article,” “Section,” “subsection,” “subclause,” “clause,” “Schedule” and “Exhibit” are references to the Articles, Sections, subsections, subclauses, clauses, Schedules and Exhibits to this Agreement unless otherwise specified;

(e) (i) the terms “hereof,” “herein,” “hereby,” “hereto,” and derivative or similar words refer to this entire Agreement, including the Schedules and Exhibits hereto, (ii) the



terms “thereof,” “therein,” “thereby,” “thereto” and derivative or similar words refer to this Agreement to which the context refers, including the Schedules and Exhibits hereto, (iii) the terms “include,” “includes,” “including” and words of similar import when used in this Agreement mean “including, without limitation” unless otherwise specified, (iv) the term “any” means “any and all” and (v) the term “or” shall not be exclusive and shall mean “and/or”;

(f) (i) references to “days” means calendar days unless Business Days are expressly specified, (ii) references to “written” or “in writing” include in electronic form (including by e-mail transmission or electronic communication by portable document format (.pdf)) and (iii) references to “\$” mean U.S. dollars;

(g) references to any Person includes such Person’s successors and permitted assigns;

(h) unless the context otherwise requires, the word “extent” in the phrase “to the extent” means the degree to which a subject or other thing extends, and such phrase does not mean simply “if”;

(i) references to “ordinary course of business” mean “ordinary course of business, consistent with past practice (including, for the avoidance of doubt, recent past practice in light of the COVID-19 Pandemic)”;

(j) each Party has participated in the negotiation and drafting of this Agreement, and if an ambiguity or question of interpretation should arise, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or burdening any Party by virtue of the authorship of any provision in this Agreement; the language used in this Agreement will be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction will be applied against any Party. Further, prior drafts of this Agreement or any ancillary agreements, schedules or exhibits thereto or the fact that any clauses have been added, deleted or otherwise modified from any prior drafts of this Agreement or any ancillary agreements, schedules or exhibits hereto shall not be used as an aide of construction or otherwise constitute evidence of the intent of the Parties; and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of such prior drafts; and

(k) any document or information shall be deemed to have been “made available” by Seller to Buyer only if such document or information was posted to the data room in a manner in which Buyer and its Representatives have access on or before the date that is one (1) day prior to the date hereof.

Section 12.02. Expenses. Except as otherwise expressly specified in the Transaction Agreements, each Party will pay its own costs and expenses, including legal, consulting, financial advisor and accounting fees and expenses, incurred in connection with the Transaction Agreements and the Transactions, irrespective of when incurred or whether or not the Closing occurs.

Section 12.03. Notices. All notices and other communications under or by reason of this Agreement shall be in writing and shall be deemed to have been duly given or made (a) when personally delivered, (b) when delivered by e-mail transmission with receipt confirmed (and each

Party shall confirm receipt of any notice received reasonably promptly following its receipt) or (c) upon delivery by overnight courier service, in each case, to the addresses and attention parties indicated below (or such other address, e-mail address or attention party as the recipient party has specified by prior notice given to the sending party in accordance with this Section 12.03):

If to Seller prior to the Closing Date, to	NPC International, Inc. 4200 W. 115th Street, Suite 200 Leawood, KS 66211 Attention: David Wahlert Penny Lindemann Smith E-mail: david.wahlert@npcinternational.com penny.lindemannsmith@npcinternational.com
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If to Seller following the Closing Date, to:	AlixPartners, LLP 909 Third Avenue, 30th Floor, New York, NY 10022 Attention: Eric Koza Email: ekoza@alixpartners.com
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with a copy (which will not constitute notice) to:	Weil, Gotshal & Manges LLP 767 Fifth Avenue New York, New York 10153 Attention: Ray C. Schrock, Esq. Gavin Westerman, Esq. Kevin Bostel, Esq. E-mail: ray.schrock@weil.com gavin.westerman@weil.com kevin.bostel@weil.com
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If to Buyer, to:	Wendy's International, LLC One Dave Thomas Boulevard Dublin, Ohio 43017 Attention: EJ Wunsch, Esq. Kirk Vidra, Esq. E-mail: EJ.Wunsch@wendys.com Kirk.Vidra@wendys.com
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with a copy (which will not constitute notice) to:	Cleary Gottlieb Steen & Hamilton LLP One Liberty Plaza New York, New York 10006 Attention: Benet J. O'Reilly, Esq. Sean A. O'Neal, Esq. Neil R. Markel, Esq. E-mail: boreilly@cgsh.com soneal@cgsh.com nmarkel@cgsh.com
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Section 12.04. Survival. Except for any covenant, agreement or obligation that by its express terms is to be performed (in whole or in part) by any Party following the Closing (which covenants shall survive the Effective Time in accordance with their terms), none of the representations, warranties, or covenants of any Party set forth in this Agreement shall survive the Closing, and each of the same shall terminate and be of no further force or effect as of, or following, the Effective Time. For the avoidance of doubt, nothing in this Agreement shall be deemed to prohibit any right of the Debtors to wind-down the estate, including with respect to the timing thereof and the related closing of the Chapter 11 Cases.

Section 12.05. Limitation on Liability. Notwithstanding anything in this Agreement or in any other Transaction Agreement to the contrary, (a) except in the event of willfully and knowingly committed fraud with the specific intent to deceive and mislead, the maximum aggregate Liability of Seller under this Agreement shall not exceed \$6,206,250 (b) in no event shall any Party have any Liability under this Agreement (including under this Article XII) for any consequential, special, incidental, indirect or punitive damages, lost profits or similar items (including loss of revenue, income or profits, diminution of value or loss of business reputation or opportunity relating to a breach or alleged breach of this Agreement).

Section 12.06. Public Announcements. The initial press release, if any, with respect to the execution of this Agreement shall be a joint press release to be reasonably agreed upon prior to its release by the Parties. No Party nor any Affiliate or Representative of such Party shall issue or cause the publication of any press release or public announcement or otherwise communicate with any news media in respect of the Transaction Agreements or the Transactions without the prior written consent of the other Parties (which consent shall not be unreasonably withheld, conditioned or delayed), except as a Party believes in good faith and based on the advice of external counsel is required by applicable Law or by order of the Bankruptcy Court, in which case the Party seeking to make such disclosure shall promptly notify the other Party thereof and the Parties shall cause a mutually agreeable release or announcement to be issued.

Section 12.07. Severability. If any term or provision of this Agreement is held invalid, illegal or unenforceable in any respect under any applicable Law, as a matter of public policy or on any other grounds, the validity, legality and enforceability of all other terms and provisions of this Agreement will not in any way be affected or impaired. If the final judgment of a court of competent jurisdiction or other Government Authority declares that any term or provision hereof is invalid, illegal or unenforceable, the Parties agree that the court making such determination will have the power to reduce the scope, duration, area or applicability of the term or provision, to delete specific words or phrases, or to replace any invalid, illegal or unenforceable term or provision with a term or provision that is valid, legal and enforceable and that comes closest to expressing the intention of the invalid, illegal or unenforceable term or provision.

Section 12.08. Assignment.

(a) This Agreement will be binding upon and inure to the benefit of and be enforceable by the respective successors and permitted assigns of the Parties.

(b) Subject to Buyer's right to assignment as set forth in Section 12.08(c), no Party may assign (whether by operation of Law or otherwise) this Agreement or any rights,

interests or obligations provided by this Agreement without the prior written consent of the other Parties; provided, however, that (i) any Party may assign this Agreement and any or all rights and obligations under this Agreement to any of its Controlled Affiliates, or (ii) Seller may assign any of its rights or obligations under this Agreement to any plan administrator, liquidator, examiner, receiver, liquidation trustee, or similar party appointed for Seller following the Closing; provided, further, that no such assignment pursuant to the foregoing clauses (i) or (ii) shall release the assigning Party from any Liability under this Agreement.

(c) Buyer may assign this Agreement or any portion of its rights hereunder and/or delegate any of its obligations hereunder to one or more Eligible Assignees without the consent of Seller. No assignment pursuant to this Section 12.08(c) shall release Buyer from any Liability under this Agreement.

(d) Any attempted assignment in violation of this Section 12.08 shall be void *ab initio*.

Section 12.09. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns, and except with respect to the Nonparty Affiliates pursuant to Section 12.18, or as otherwise expressly set forth in this Agreement, nothing in this Agreement shall create or be deemed to create any third-party beneficiary rights in any Person not a party hereto, including any Affiliates of any Party.

Section 12.10. Entire Agreement. This Agreement (including the Disclosure Schedules) and the other Transaction Agreements (and all exhibits and schedules hereto and thereto) collectively constitute and contain the entire agreement and understanding of the Parties with respect to the subject matter hereof and thereof and supersede all prior negotiations, correspondence, understandings, agreements and contracts, whether written or oral, among the Parties respecting the subject matter hereof and thereof, other than the Confidentiality Agreement.

Section 12.11. Amendments. This Agreement (including all exhibits and schedules hereto) may be amended, restated, supplemented or otherwise modified, only by written agreement duly executed by each Party.

Section 12.12. Waiver. Either Seller or Buyer may (a) extend the time for the performance of any obligation or other acts of the other Party, (b) waive any breaches or inaccuracies in the representations and warranties of the other Party contained in this Agreement or in any document delivered pursuant to this Agreement or (c) waive compliance with any covenant, agreement or condition contained in this Agreement but such waiver of compliance with any such covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure; provided, that any such waiver shall be in a written instrument duly executed by the waiving Party (which may be by email). No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Section 12.13. Governing Law. Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Agreement, and any Action that may be based upon, arise out of or

relate or be incidental to any Transaction, this Agreement, the negotiation, execution, performance or consummation of the foregoing or the inducement of any Party to enter into the foregoing, whether for breach of Contract, tortious conduct or otherwise, and whether now existing or hereafter arising (each, a “**Transaction Dispute**”), will be exclusively governed by and construed and enforced in accordance with the internal Laws of the State of New York, without giving effect to any Law or rule that would cause the Laws of any jurisdiction other than the State of New York to be applied.

Section 12.14. Dispute Resolution; Consent to Jurisdiction.

(a) Without limiting any Party’s right to appeal any order of the Bankruptcy Court, and except with respect to dispute related to the determination of the Purchase Price Allocation, which shall be resolved in accordance with Section 3.05, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any Transaction Dispute which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the Transactions, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 12.03 (as may be updated from time to time in accordance with Section 12.03); provided, however, upon the closing of the Bankruptcy Cases, the Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the U.S. District Court for the Southern District of New York sitting in New York County or the Commercial Division of the Courts of the State of New York sitting in the County of New York and any appellate court from any thereof, for the resolution of any such Transaction Dispute. In that context, and without limiting the generality of the foregoing, each Party irrevocably and unconditionally:

(i) submits for itself to the exclusive jurisdiction of such courts with respect to any Transaction Dispute and for recognition and enforcement of any judgment in respect thereof, and agrees that all claims in respect of any Transaction Dispute shall be heard and determined in such courts;

(ii) agrees that venue would be proper in such courts, and waives any objection that it may now or hereafter have that any such court is an improper or inconvenient forum for the resolution of any Transaction Dispute; and

(iii) agrees that the mailing by certified or registered mail, return receipt requested, to the Persons listed in Section 12.03 (as may be updated from time to time in accordance with Section 12.03) of any process required by any such court, will be effective service of process; provided, however, that nothing herein will be deemed to prevent a Party from making service of process by any means authorized by the Laws of the State of New York.

(b) The foregoing consent to jurisdiction will not constitute submission to jurisdiction or general consent to service of process in the State of New York for any purpose except with respect to any Transaction Dispute.

Section 12.15. Waiver of Jury Trial. To the maximum extent permitted by Law, each Party irrevocably and unconditionally waives any right to trial by jury in any forum in respect of any



Transaction Dispute and covenants that neither it nor any of its Affiliates or Representatives will assert (whether as plaintiff, defendant or otherwise) any right to such trial by jury. Each Party certifies and acknowledges that (a) such Party has considered the implications of this waiver, (b) such Party makes this waiver voluntarily and (c) such waiver constitutes a material inducement upon which such Party is relying and will rely in entering into the this Agreement. Each Party may file an original counterpart or a copy of this Section 12.15 with any court as written evidence of the consent of each Party to the waiver of its right to trial by jury.

Section 12.16. Admissibility into Evidence. All offers of compromise or settlement among the Parties or their Affiliates or their respective Representatives in connection with the attempted resolution of any Transaction Dispute (a) shall be deemed to have been delivered in furtherance of a Transaction Dispute settlement, (b) shall be exempt from discovery and production and (c) shall not be admissible into evidence (whether as an admission or otherwise) in any proceeding for the resolution of the Transaction Dispute.

Section 12.17. Remedies; Specific Performance.

(a) Except to the extent set forth otherwise in this Agreement, all remedies under this Agreement expressly conferred upon a Party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by Law or equity upon such Party, and the exercise by a Party of any one remedy will not preclude the exercise of any other remedy.

(b) Each Party agrees that irreparable damage would occur and the Parties would not have an adequate remedy at law if any provision of this Agreement is not performed in accordance with its specific terms or is otherwise breached. Accordingly, each Party agrees that the other Party will be entitled to injunctive relief from time to time to prevent breaches of the provisions of this Agreement and to enforce specifically the terms and provisions of this Agreement, in each case (i) without the requirement of posting any bond or other indemnity and (ii) in addition to any other remedy to which it may be entitled, at law or in equity, but subject to the last sentence of Section 11.03(b). Furthermore, each Party agrees not to raise any objections to the availability of the equitable remedy of specific performance to prevent or restrain breaches of this Agreement, and to specifically enforce the terms of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the covenants and obligations of such Party under this Agreement. Each Party expressly disclaims that it is owed any duty not expressly set forth in this Agreement, and waives and releases all tort claims and tort causes of action that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement, except in the event of willfully and knowingly committed fraud with the specific intent to mislead.

Section 12.18. Non-Recourse. All claims, obligations, Liabilities, Actions or causes of action (whether in Contract or in tort, at Law or in equity) that may be based upon, in respect of, arise under, out or by reason of, be connected with, or relate in any manner to this Agreement, or the negotiation, execution, or performance of this Agreement (including any representation or warranty made in, in connection with, or as an inducement to, this Agreement), may be made only against (and are expressly limited to) the entities that are expressly identified as parties hereto in the preamble to this Agreement or, if applicable, their successors and assigns (“**Contracting Parties**”). No Person who is not a Contracting Party, including any past, present or future director,



officer, employee, incorporator, member, partner, manager, stockholder, Affiliate, agent, consultant, attorney, accountants or representative of, and any financial advisor or lender to, any Contracting Party, or any director, officer, employee, incorporator, member, partner, manager, stockholder, Affiliate, agent, attorney, or representative of, and any financial advisor or lender to, any of the foregoing (“**Nonparty Affiliates**”), shall have any Liability (whether in Contract or in tort, at Law or in equity) for any Actions or Liabilities arising under, out of, in connection with, or related in any manner to this Agreement or based on, in respect of, or by reason of this Agreement or their negotiation, execution, performance, or breach; and, to the maximum extent permitted by Law, each Contracting Party hereby waives and releases all such Actions or Liabilities against any such Nonparty Affiliates. It is expressly agreed that the Nonparty Affiliates to whom this Section 12.18 applies shall be third-party beneficiaries of this Section 12.18.

**Section 12.19. Interest.** If any payment required to be made to a Party under this Agreement is made after the date on which such payment is due, interest shall accrue at the Interest Rate on such amount from (but not including) the due date of the payment to (and including) the date such payment is actually made. All computations of interest pursuant to this Agreement shall be made on the basis of a year of three hundred sixty-five (365) days, in each case for the actual number of days from (but not including) the first day to (and including) the last day occurring in the period for which such interest is payable.

**Section 12.20. Disclosure Schedules and Exhibits.** The Disclosure Schedules, Schedules and Exhibits attached to this Agreement shall be construed with and as an integral part of this Agreement to the same extent as if the same had been set forth verbatim herein. Any capitalized terms used in any Exhibit or Schedule or in the Disclosure Schedules but not otherwise defined therein shall be defined as set forth in this Agreement. Each representation and warranty of Seller set forth in Article IV of this Agreement is made and given subject only to the disclosures contained in the correspondingly numbered and lettered Section of the Disclosure Schedules, and neither Seller nor any of its Affiliates shall be, or deemed to be, in breach of any such representations and warranties (and no claim shall lie in respect thereof) in respect of any such matter so disclosed in the Disclosure Schedules. Where only brief particulars of a matter are set out or referred to in the Disclosure Schedules or a reference is made only to a particular part of a disclosed document, further particulars of the matter and the further contents of the document are deemed to be disclosed to the extent such further particulars and further contents are reasonably apparent upon reading the disclosure contained in the relevant section of the Disclosure Schedules, without independent knowledge, on the part of the reader regarding the matter disclosed. Any matter, information or item disclosed in the Disclosure Schedules, under any specific representation or warranty or Schedule or Section thereof shall be deemed to be disclosed and incorporated by reference in any other Schedule or Section of the Disclosure Schedules that qualifies Article IV of this Agreement as though set forth in such other Schedule(s) or Section(s) where it is reasonably apparent on its face that such matter, information or item may be applicable to such other Section(s) of Article IV of this Agreement. The inclusion of any matter, information or item in the Disclosure Schedules as an exception to a representation or warranty shall not be deemed to constitute (i) an admission of any Liability by Seller to any third party, (ii) an admission that any breach or violation of applicable Laws or any contract or agreement to which Seller is a party exists or has actually occurred, (iii) an admission that such item is outside the ordinary course of business or not consistent with past practice, or (iv) otherwise imply an admission that such

item represents a material exception or material fact, event, circumstance or that such item has had, or would reasonably be expected to have a Material Adverse Effect.

Section 12.21. Counterparts and Electronic Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. E-mail transmission of .pdf signatures of the Transaction Agreements or other electronic copies of signatures of the Transaction Agreements shall be deemed to have the same legal effect as delivery of original signatures of the Transaction Agreements.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date first written above by their respective duly authorized officers.

**SELLER:**

NPC QUALITY BURGERS, INC.

By: 

Name: Eric Koza

Title: Chief Restructuring Officer

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed on the date first written above by their respective duly authorized officers.

**BUYER:**

WENDY'S INTERNATIONAL, LLC

DocuSigned by:

*Todd Penegor*

By: 072AF7C5C846447...

Name: Todd A. Penegor

Title: President & Chief Executive Officer

Legal Dept. <sup>DS</sup> *EW*

**EXHIBIT A**

**DEFINITIONS**

**“Accounts Receivable”** means (a) all accounts, accounts receivable, contractual rights to payment, notes, notes receivable, negotiable instruments, chattel paper, and vendor and supplier rebates of Seller and (b) any security interest, claim, remedy or other right related to any of the foregoing.

**“Action”** means any action, suit, arbitration, litigation, investigation or proceeding by or before any Government Authority.

**“Affiliate”** means, with respect to any specified Person, any other Person that, at the time of determination, directly or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with such specified Person. With respect to Seller, any references to “Seller and its Affiliates” include only NPC Restaurant Holdings I LLC and its Subsidiaries.

**“Agreement”** means this Asset Purchase Agreement, dated as of January 7, 2021, by and between Seller and Buyer, including the Disclosure Schedules and the Exhibits, and all amendments to such agreement made in accordance with Section 12.11.

**“Antitrust Laws”** means the Sherman Antitrust Act, as amended, the Clayton Antitrust Act, as amended, the HSR Act, the Federal Trade Commission Act, as amended and all other Laws and orders of any U.S. Government Authority that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition.

**“Bankruptcy and Equity Exception”** means the effect on enforceability of (a) any applicable Law relating to bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance or preferential transfers, or similar Law relating to or affecting creditors’ rights generally and (b) general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law).

**“Beverage Rebate”** means all beverage rebates Related to the Business, and other certain incentives Related to the Business for markets in which Seller had previously received a credit for such in conjunction with the prior acquisition of these respective markets, including those on account of or accrued by The Coca Cola Company, Dr Pepper Snapple Group or any Affiliate thereof, but excluding any beverage rebates with respect to the Excluded Business.

**“Beverage Rebate Amount”** means the unearned portion of any Beverage Rebate received by Seller or its Affiliates prior to the Effective Time. The Beverage Rebate Amount related to 2020 beverage volumes is currently estimated to be \$2,850,000 and shall be subject to adjustment based on actual performance volume and any additional Beverage Rebates received by Seller or its Affiliates prior to the Effective Time, and calculated with the methodology used by Seller in the ordinary course of business in determining the Beverage Rebates.

**“Bidding Procedures Order”** means that certain order of the Bankruptcy Court, entered into on September 25, 2020 (Docket No. 693), that among other things, establishes the date by which competing bids are due.

**“Business”** means the Kansas City Business, North Greensboro Business, South Greensboro Business, Raleigh Business, and Pennsylvania Business.

**“Business Day”** means any day that is not a Saturday, a Sunday or other day on which commercial banks in New York City, New York are required or authorized by Law to be closed.

**“Business Intellectual Property”** means the Intellectual Property (including the Business Registrable IP) owned by Seller or its Affiliates and Related to the Business.

**“Business Marks”** means the Trademarks included in the Transferred Assets

**“Business Registrable IP”** means the patents, patent applications, registered Trademarks, applications for registered Trademarks, copyright registrations and applications, social media account handles and Internet domain names owned by Seller or its Affiliates and Related to the Business.

**“Business Systems”** means the Systems owned by Seller or its Affiliates and Related to the Business.

**“Buyer Transaction Agreements”** means this Agreement and each other Transaction Agreement to which Buyer is named as a party on the signature pages thereto.

**“Buyer Transactions”** means the transactions contemplated by the Buyer Transaction Agreements.

**“CARES Act”** means the Coronavirus Aid, Relief, and Economic Security Act of 2020, Pub. L. 116-136.

**“Cash”** means all cash and cash equivalents, including checks, commercial paper, treasury bills, certificates of deposit and other bank deposits, securities, securities entitlements, instruments and other investments and all bank accounts and securities accounts, calculated in accordance with GAAP and Seller’s books and records.

**“Change”** has the meaning set forth in the definition of “Material Adverse Effect”.

**“Closing Conditions”** means the conditions to the respective obligations of the Parties to consummate the Transactions contemplated by this Agreement, in each case, as set forth in Article X.

**“COBRA”** means the continuation of coverage requirements under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

**“Code”** means the U.S. Internal Revenue Code of 1986, as amended.



**“Confidential Information”** means shall mean, with respect to any Person, all information of a confidential or proprietary nature (whether or not specifically labeled or identified as “confidential”), in any form or medium, which relates to such Person or their respective business relations and its respective business activities. Confidential Information includes, but is not limited to, the following: (a) internal business information (including historical and projected financial information and budgets and information relating to strategic and staffing plans and practices, business, training, marketing, promotional and sales plans and practices, cost, rate and pricing structures and accounting and business methods); (b) identities and individual requirements of, and specific contractual arrangements with, such Person’s customers, clients, distributors, vendors, service providers, independent contractors, joint venture partners and other business relations and their confidential information; (c) trade secrets; and (d) other non-public Intellectual Property.

**“Confidentiality Agreement”** the means the Confidentiality Agreement dated as of October 28, 2020, by and between Buyer and NPC Restaurant Holdings I LLC, as the same may be amended from time to time in accordance with its terms.

**“Consent”** means any consent, approval or authorization.

**“Construction in Process Amount”** means the amount of the capital expenditures incurred for construction in process at the Wendy’s restaurants as set forth on Schedule 1.01(d).

**“Contract”** means any written contract, agreement, undertaking, indenture, note, bond, mortgage, lease, sublease, license, sublicense, sales order, purchase order or other instrument or commitment that purports to be binding on any Person or any part of its property (or subjects any such assets or property to a Lien).

**“Control”** means, with respect to any Person, the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by Contract or otherwise. The terms “Controlled by,” “Controlled,” “under common Control with” and “Controlling” shall have correlative meanings.

**“Covered Employee”** means each person who is employed by Seller or any of its Affiliates and who provides services in connection with the Business and is employed at or below the regional manager level and each other person employed by Seller or any of its Affiliates set forth on the Covered Employee List.

**“COVID-19 Pandemic”** means the SARS-Cov2 or COVID-19 pandemic, including any future resurgence or evolutions or mutations thereof and/or any related or associated disease outbreaks, epidemics and/or pandemics.

**“Credit Card Receivables”** means each Account or Payment Intangible (each as defined in the UCC) together with all income, payments and proceeds thereof, owed by a credit card payment processor or an issuer of credit cards to Seller.

**“Cure Costs”** means, with respect to any Transferred Contract, any and all monetary amounts, costs or expenses that must be paid or satisfied pursuant to Section 365(b)(1) of the Bankruptcy Code to effectuate the assumption by Seller, and the assignment to Buyer, of such Transferred Contract, as determined by final Order of the Bankruptcy Court or agreed to by Buyer

and the applicable counterparty to the applicable Transferred Contract. For the avoidance of doubt, Cure Costs shall not include any Liabilities allocated to Seller pursuant to Section 2.01(d) or any Liabilities with respect to any Transferred Contract accruing or payable after the petition date and before the Closing, all of which shall be paid by Seller.

**“Debt”** of any Person means (a) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable and all other indebtedness of such Person for money borrowed; (b) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable arising in the ordinary course of business); (c) all obligations of such Person under leases required to be capitalized in accordance with GAAP; (d) all obligations of such Person with respect to any letter of credit, banker’s acceptance or similar credit transaction; and (e) all obligations of the type referred to in clauses (a) through (d) of any Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including guarantees of such obligations.

**“Debtors”** means Seller and each of the Affiliates of Seller set forth on Schedule A.

**“Deferred Payroll Taxes”** means payroll taxes deferred by Seller under Section 2302 of the CARES Act.

**“Disclosure Schedules”** means the disclosure schedules dated as of the Agreement Date delivered by Seller to Buyer, which form a part of this Agreement.

**“Effective Time”** means 12:01 a.m. (local time) on the Closing Date.

**“Eligible Assignee”** means any Person set forth on Schedule 1.01(g).

**“Employee Plans”** means all employee benefit plans (within the meaning of Section 3(3) of ERISA), and each other retirement, welfare benefit, bonus, stock option, stock purchase, restricted stock, incentive, deferred compensation, employment, retention, termination, or severance plans, programs or agreements, in each case pursuant to which Seller or any of its Affiliates currently has any obligation or Liability with respect to any current or former employee of Seller or other Covered Employee.

**“Environmental Law”** means any applicable U.S. federal, state, local or non-U.S. statute, law, ordinance, regulation, rule, code, Order or other requirement or rule of law (including common law) promulgated by a Government Authority relating to pollution or protection of the environment (including ambient air, surface water, ground water, land surface or subsurface strata, and natural resources).

**“Environmental Permit”** means any Permit that is required by a Government Authority under any Environmental Law and necessary to the operation of the Business as of the Agreement Date.

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

**“Escrow Agreement”** means the escrow agreement entered into among Buyer, Seller and the Escrow Agent, dated as of November 18, 2020.

**“Excluded Business”** means the ownership and operation by Seller of the franchised restaurants under the Wendy’s brand, in all market areas other than the Kansas City, North Greensboro, South Greensboro, Raleigh and Pennsylvania market areas.

**“Exhibits”** means the exhibits dated as of the Agreement Date (and as may be amended from time to time in accordance herewith) which form a part of this Agreement.

**“GAAP”** means U.S. generally accepted accounting principles.

**“Government Authority”** means any U.S. federal, state or local or any supra- national or non-U.S. government, political subdivision, governmental, regulatory or administrative authority, instrumentality, agency, body or commission, self-regulatory organization or any court, tribunal, or judicial or arbitral body.

**“Hazardous Materials”** means any substance, chemicals, material or waste (solid, liquid, gaseous or combination thereof) that is defined or regulated as “hazardous,” “toxic,” a “pollutant,” “explosive”, a “contaminant” or words of similar meaning and regulatory effect under any applicable Environmental Law.

**“HSR Act”** means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

**“Insurance Policies”** means, collectively, all policies and programs of or agreements for insurance and interests in insurance pools and programs (in each case including self-insurance and insurance from Affiliates).

**“Intellectual Property”** means any and all of the following intellectual property rights, whether registered or unregistered, and similar rights, title, or interest in or arising under the Laws of the U.S. or any other country: (a) patents, patent applications, and patent rights, including any such rights granted upon any reissue, reexamination, renewal, division, extension, provisional, continuation, or continuation-in-part applications, as well as inventions and invention disclosures; (b) copyrights, moral rights, mask work rights, database rights and design rights, whether or not registered, and registrations and applications for registration thereof, and all rights therein provided by international treaties or conventions; (c) Trademarks; (d) trade secrets, know-how and corresponding rights in confidential and proprietary information; (e) computer programs and applications and software; and (f) Internet domain names, web addresses, web pages, websites, accounts with Twitter, Facebook, Instagram and other social media companies and related thereto, and URLs.

**“Interest Rate”** means the rate designated from time to time in Section 6621(a)(2) of the Code, compounded on a daily basis.

**“Inventory Value”** means Seller’s food, beverage, operating supplies, paper goods, uniforms and other similar inventory used or held for use in connection with the restaurants acquired hereunder on hand as of the Closing, valued at actual landed “first-in, first-out” cost basis

(i.e., actual purchase cost, including all third-party shipping and handling charges, but adjusted for all discounts and rebates actually received or receivable), as determined by Seller's most recent physical weekly inventory count conducted prior to the Closing in a manner consistent with Seller's past practices and using the form of inventory mutually agreed by the parties; provided, however, that Seller's inventory shall only be given a value if it is useable for the current menu and in unopened original shipped containers, or prorated amounts for opened cases containing individual unused items or individual unopened containers and value shall not be attributed to any internally processed and prepared food items and ingredients.

**"IRS"** means the U.S. Internal Revenue Service.

**"Joint Written Instructions"** has the meaning ascribed to such term in the Escrow Agreement.

**"Kansas City Business"** means the operation of franchised restaurant businesses owned and operated by Seller under the Wendy's brand in the Kansas City, Missouri and Kansas City, Kansas region and listed on Schedule 1.01(f).

**"KEIP"** has the meaning ascribed to such term in the KEIP/KERP Order.

**"KERP"** has the meaning ascribed to such term in the KEIP/KERP Order.

**"KEIP/KERP Order"** means that certain order of the Bankruptcy Court entered into on September 17, 2020 (Docket No. 693) that, among other things, approves the Debtors' proposed key employee incentive plan and proposed key employee retention plan.

**"Knowledge of Seller"** means the actual knowledge after reasonable inquiry as of the Agreement Date of the Persons listed in Schedule 1.01(h).

**"Law"** means any U.S. federal, state, local or non-U.S. statute, law, ordinance, regulation, rule, code, Order or other requirement or rule of law (including common law) promulgated by a Government Authority.

**"Liabilities"** means any liability, Debt, guarantee, claim, demand, loss, deficiency, assessment, expense, commitment, damage, assurance or obligation (whether direct or indirect, fixed, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due) of every kind and description (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, whether due or to become due, whether determined or determinable, whether choate or inchoate, whether secured or unsecured, whether matured or unmatured), including all costs and expenses related thereto.

**"Lien"** means any mortgage, deed of trust, pledge, hypothecation, security interest, encumbrance, claim, lien or charge of any kind.

**"Loyalty Programs and Gift Card Liability Amounts"** means the obligations to honor the Wendy's loyalty programs and gift cards redemptions by customers and calculated with the methodology used by Seller in the ordinary course of business in determining such obligations.

**“Material Adverse Effect”** means any fact, event, change, effect, development, circumstance, or occurrence (each, a **“Change”**) that, individually or in the aggregate, (i) has had or would reasonably be expected to have a material adverse effect on the business, operations, properties, assets or financial condition of the Business, or (ii) prevents or materially delays the performance by Seller of its obligations to consummate the Transactions by the Outside Date; provided, that, with respect to clause (i) of this definition, none of the following, either alone or in combination, will be taken into account in determining whether there has been or may be a Material Adverse Effect: (a) any Change in the United States or foreign economies or securities or financial markets in general (including any decline in the price of securities generally or any market or index); (b) any Change that generally affects any industry in which the Business operates; (c) any Change in the general business or economic conditions in any of the geographical areas in which Seller or the Business operates; (d) the occurrence of any act of God or other calamity or force majeure event (whether or not declared as such), including any strike, labor dispute, civil disturbance, embargo, natural disaster, fire, flood, hurricane, tornado, or other weather event, or any global health conditions (including any epidemic, pandemic, or other outbreak of illness, including as a result of the COVID-19 virus or other disease or virus, or any actions by a Government Authority related to the foregoing); (e) any Change in national or international political or social conditions, including any Change arising in connection with, hostilities, acts of war, cyber-attack, sabotage or terrorism or military actions or any escalation or material worsening of any such hostilities, acts of war, cyber-attack, sabotage or terrorism or military actions, whether commenced before or after the date hereof and whether or not pursuant to the declaration of a national emergency or war; (f) any actions taken by Buyer or its Affiliates or otherwise expressly required to be taken or omitted by Seller pursuant to this Agreement or any other Transaction Agreement or actions taken or omitted to be taken by Seller at the written request of, or with the prior written consent of, Buyer; (g) any Changes in applicable Laws or GAAP (or other relevant accounting rules) following the date hereof; (h) any Change resulting from the filing of the Bankruptcy Cases, (i) any Change resulting from the public announcement of the entry into this Agreement, compliance with the terms of this Agreement or the consummation of the Transactions; or (j) any effects or Changes arising from or related to the breach of this Agreement by Buyer; *provided further*, that the exceptions set forth in clauses (a) through (e) of this definition shall not be regarded as exceptions to the extent that any such described Change has a disproportionately adverse impact on the Business, as compared to other companies similarly situated in the U.S. QSR industry.

**“North Greensboro Business”** means the operation of the franchised restaurant businesses owned and operated by Seller under the Wendy’s brand in the North Greensboro region and listed on Schedule 1.01(e).

**“Order”** means any order, writ, judgment, injunction, temporary restraining order, decree, stipulation, determination, settlement or award entered by or with any Government Authority.

**“Pennsylvania Business”** means the operation of franchised restaurant businesses owned and operated by Seller under the Wendy’s brand in the Pennsylvania region and listed on Schedule 1.01(i).



**“Permits”** means all permits, licenses, authorizations, clearances, registrations, concessions, grants, franchises, certificates, orders, variances, consents, approvals, waivers and filings issued or required by any Government Authority under applicable Law, in each case, necessary for the operation of the Business or related to the Transferred Owned Real Property or the Transferred Leased Real Property.

**“Permitted Liens”** means the following Liens: (a) Liens for Taxes, assessments or other governmental charges or levies that (i) are not yet due or payable, (ii) are being contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP, or (iii) may thereafter be paid without penalty; (b) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, materialmen, workmen, repairmen and other Liens imposed or permitted by Law in the ordinary course of business for amounts not yet due and payable; (c) Liens incurred or deposits made in the ordinary course of business in connection with workers’ compensation, unemployment insurance or other types of social security; (d) defects or imperfections of title, exceptions, easements, covenants, rights-of-way, restrictions and other similar charges, defects or encumbrances that do not interfere with the ordinary conduct of the Business, the market value of such property or the present use of such real property in any material respect; (e) zoning, entitlement, building and other generally applicable land use and environmental restrictions by a Government Authority that do not interfere with the present use of such real property in any material respect; (f) Liens not created by Seller that affect the underlying fee, lessor, licensor or sublessor interest of any Transferred Leased Real Property or real property over which Seller (with respect to the Business) has easement or other property rights and that do not interfere with the present use of such real property in any material respect; (g) Liens created by or through, or resulting from any facts or circumstances relating to, Buyer or its Affiliates; (h) Liens arising out of, under or in connection with this Agreement or the other Transaction Agreements; (i) any set of facts an accurate up-to-date survey would show, provided, that such facts do not materially interfere with the ordinary conduct of the Business and that do not interfere with the present use of such real property in any material respect; (j) right, terms or conditions of any leases, subleases, licenses or occupancy agreements under Transferred Contracts copies of which were made available to Buyer prior to the date hereof, including title of a lessor under a capital or operating lease; (k) in the case of Intellectual Property, licenses, options to license, covenants or other grants or gaps or defects in the chain of title evident from the publicly-available records of the applicable Government Authority maintaining such records; (l) any set of facts an accurate up to date survey would show, provided, that such facts do not materially interfere with the ordinary conduct of the Business; (m) rights, terms or conditions of any leases, subleases, licenses or occupancy agreements made available to Buyer, including title of a lessor under a capital or operating lease; (n) any non-financial title matters shown in any title policy or report made available to Buyer, (o) other non-financial Liens that individually or in the aggregate would not reasonably be expected to be material to the Business, taken as a whole, and (p) any other Lien that will be cleared by the Bankruptcy Court in the Sale Order.

**“Person”** means any natural person, general or limited partnership, corporation, company, trust, limited liability company, limited liability partnership, firm, association or organization or other legal entity.

**“Personal Information”** means, in addition to any definition for any similar term (e.g., “personal data”, “personally identifiable information” or “PII”) provided by applicable Law



or policy of Seller or any of its Affiliates relating to privacy or personal information, all data or information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with an individual person or household.

**“Pre-Closing Period”** means the period beginning on the Agreement Date and ending on the earlier of the Closing Date and the date this Agreement is terminated in accordance with its terms.

**“Prepays Value”** means the value of the Prepays solely to the extent transferrable and to the extent Buyer will receive the benefit of such Prepays after Closing, evidenced by documentation reasonably satisfactory to Buyer; provided, however, that the Prepays Value will not exceed \$250,000 *other than* increases or decreases to such amount arising during the pre-Closing period in the ordinary course of business.

**“Processed”** or **“Processing”**, with respect to data means collected, accessed, recorded, acquired, stored, organized, altered, adapted, retrieved, disclosed, used, disposed, erased, disclosed, destructed, transferred or otherwise processed, in each case, whether or not by automated means.

**“Purchase Price Components”** means each of (i) Store Cash, (ii) the Inventory Value, (iii) the Prepays Value, (iv) the Construction in Process Amount, (v) the Seller Proration Amount, if any, (vi) the Transferred Employee Liabilities, (vii) the Beverage Rebate Amount, (viii) the amount of the Cure Costs payable by Buyer pursuant to Section 2.04 (including amounts to be reimbursed to Seller thereunder) and (ix) any Buyer Proration Amount.

**“Raleigh Business”** means the operation of franchised restaurant businesses owned and operated by Seller under the Wendy’s brand in the Raleigh, North Carolina region and listed on Section 1.01(j).

**“Related to the Business”** means primarily related to, primarily held for use in, or primarily used in connection with the Business.

**“Representative”** of a Person means the directors, officers, employees, advisors, agents, consultants, attorneys, accountants, financial advisors or other representatives of such Person.

**“Required Approvals”** means the approvals of the Government Authorities required under applicable Antitrust Law (other than HSR Act) as described in Section 10.01(b).

**“Sale Order”** shall be an order or orders of the Bankruptcy Court, in form and substance reasonably acceptable to Buyer, Eligible Assignees and Seller, approving and authorizing Seller to consummate the Transactions, and providing Buyer and the Eligible Assignees with, among other standard protections, all of the protections afforded under Sections 363(b), (f) and (m) and 365 of the Bankruptcy Code.

**“Seller Guarantees”** means, collectively, all letters of credit, guarantees, surety bonds, performance bonds and other financial assurance or other performance obligations issued

or entered into by or on behalf of (or for the account of) Seller or any of its Affiliates in connection with the Transferred Assets or the Assumed Liabilities.

“**Seller Transaction Agreements**” means this Agreement and each other Transaction Agreement to which Seller or an Affiliate is named as a party on the signature pages thereto.

“**Seller Transactions**” means the transactions contemplated by the Seller Transaction Agreements.

“**Shared Services**” means those corporate shared services set forth on Schedule 1.01(k).

“**South Greensboro Business**” means the operation of the franchised restaurant businesses owned and operated by Seller under the Wendy’s brand in the South Greensboro region and listed on Schedule 1.01(l).

“**Store Cash**” means cash in the amount of \$1,500 held at each of the Wendy’s restaurants acquired hereunder as of the Effective Time.

“**Subsidiary**” of any specified Person means any other Person of which such first Person owns (either directly or through one or more other Subsidiaries) a majority of the outstanding equity securities or securities carrying a majority of the voting power in the election of the board of directors or other governing body of such Person, and with respect to which entity such first Person is not otherwise prohibited contractually or by other legally binding authority from exercising Control.

“**Systems**” means all the software, hardware, network, databases, systems and telecommunications equipment and internet-related information technology that are used in the operation of the Business.

“**Tax**” or “**Taxes**” means all U.S. federal, state, local, foreign and other income, excise, gross receipts, ad valorem, value-added, sales, use, premium, employment, unemployment, severance, franchise, profits, registration, license, lease, service, custom duties, environmental, social security (or similar), recording, documentary, filing, permit or authorization, stamp, business and occupation, gains, property, leasing, transfer, payroll, intangibles, alternative or add-on minimum, estimated or other taxes of any kind whatsoever (whether payable directly or by withholding), together with any interest and any penalties, additions to tax or additional amounts imposed by any Taxing Authority with respect thereto.

“**Tax Returns**” means all returns and reports (including elections, declarations, disclaimers, notices, disclosures, schedules, estimates, claims (including claims for refunds) and information returns) relating to Taxes including any schedule or attachment thereto, and including any amendment or supplement thereof.

“**Taxing Authority**” means any federal, state, local or foreign jurisdiction (including any subdivision and any revenue agency of a jurisdiction) imposing Taxes and the agencies, if any, charged with the collection of such Taxes for such jurisdiction.

**“Title Company”** means First American Title Insurance Company.

**“Trademarks”** means trademarks, service marks, trade names, service names, trade dress, logos and other identifiers of same, including all goodwill associated therewith, and all common law rights, and registrations and applications for registration thereof, all rights therein provided by international treaties or conventions, and all reissues, extensions and renewals of any of the foregoing.

**“Transaction Agreements”** means this Agreement, the Bill of Sale, Assignment and Assumption Agreement, the Transferred Leased Property Assignment and Assumption Agreement, the IP Assignment Agreement, the Escrow Agreement, each Deed, and any other agreements, instruments or documents required to be delivered at the Closing, in each case including all exhibits and schedules thereto and all amendments thereto made in accordance with the respective terms thereof.

**“Transactions”** means the transactions contemplated by this Agreement and the other Transaction Agreements.

**“Transfer Taxes”** means all stamp, documentary, filing, recording, registration, sales, use, transfer, added-value or other non-income Tax, fee or governmental charge, including title recording or filing fees and other amounts payable in respect of transfer filings, together with any interest and any penalties, additions to tax or additional amounts imposed by any Taxing Authority with respect thereto.

**“Transferred Books and Records”** means all books, records, data (including Personal Information), files and papers, in whatever form or media (including all hard and electronic copies and all discs, tapes and other media-storage data and materials containing such information, including original, if available), including sales and promotional literature, manuals and data, sales and purchase correspondence, lists of suppliers, personnel and employment records, in each case, to the extent Related to the Business, other than any Tax Returns and any Excluded Assets of the type described in Section 2.01(b)(xiv) and Section 2.01(b)(xv).

**“U.S.”** means the United States of America.

**“Wendy’s”** means Wendy’s or Wendy’s Old Fashioned Hamburgers.

**“Wendy’s Settlement Amount”** means an amount in cash equal to \$1,350,000.

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U.S. ....	Exhibit A
Wendy's .....	Exhibit A
Wendy's Settlement Amount.....	Exhibit A

**FORM OF BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT**

This Bill of Sale, Assignment and Assumption Agreement (this “Agreement”), dated as of [●] by and between NPC Quality Burgers, Inc., a Kansas corporation (together with any applicable Affiliate party hereto, “Assignor”) and [●], a [●] (“Assignee”) (each of Assignor and Assignee, a “Party” and, together, the “Parties”).

Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in that certain Asset Purchase Agreement (as amended, supplemented or otherwise modified, the “Purchase Agreement”), dated as of [●], by and between Assignor and Wendy’s International, LLC, an Ohio limited liability company (“Buyer”).

**WHEREAS**, Assignor and Buyer have entered into the Purchase Agreement pursuant to which Seller has agreed to sell, convey, assign, transfer and deliver to Buyer or the applicable Eligible Assignee, and Buyer or such applicable Eligible Assignee shall purchase, acquire and accept delivery from Seller, all right, title and interest in, to and under the Transferred Assets, and Buyer, or the applicable Eligible Assignee, shall assume, effective as of the Closing, and shall timely perform and discharge in accordance with their terms, the Assumed Liabilities;

**WHEREAS**, Buyer entered into that certain Partial Assignment and Assumption of Asset Purchase Agreement, dated [●] (the “Assignment Agreements”), among Buyer and Assignee, pursuant to which Buyer assigned to the Assignee, and the Assignee accepted and assumed, certain rights and obligations of the Buyer under the Asset Purchase Agreement exclusively related to the [●] Business;

**WHEREAS**, Assignor acknowledges that Assignee is an Eligible Assignee under the Purchase Agreement;

**WHEREAS**, pursuant to this Agreement, Assignor shall sell, convey, assign, transfer, and deliver to Assignee and Assignee shall purchase, acquire, and accept delivery from Assignor, all of Assignor’s right, title and interest in, to, and under the Transferred Assets exclusively related to the [●] Business, in each case on the terms and subject to the conditions set forth in the Purchase Agreement;

**WHEREAS**, the execution and delivery of this Agreement is contemplated by Section 3.04(a)(ii) and Section 3.04(b)(iv) of the Purchase Agreement; and

**WHEREAS**, pursuant to this Agreement, Assignee shall assume and thereafter timely pay, discharge and perform in accordance with their terms the Assumed Liabilities exclusively related to the [●] Business, in each case on the terms and subject to the conditions set forth in the Purchase Agreement.

**NOW, THEREFORE**, in consideration of the foregoing and the representations, warranties, covenants and agreements set forth in the Purchase Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. Assignment of Purchased Assets. Effective as of the Effective Time, on the terms and subject to the conditions set forth in the Purchase Agreement, Assignor hereby sells, conveys, assigns, transfers, and delivers to Assignee, and Assignee hereby purchases, acquires, and accepts delivery from such Assignor, all of such Assignor's right, title and interest in, to and under the Transferred Assets exclusively related to the [●] Business.

2. Assumption of Assumed Liabilities. Effective as of the Effective Time, on the terms and subject to the conditions set forth in the Purchase Agreement, Assignee hereby assumes and agrees to pay, discharge and perform in accordance with their terms, all of the Assumed Liabilities exclusively related to the [●] Business.

3. Further Assurances; Cooperation. Assignor and Assignee shall, and shall cause their respective Affiliates to execute, acknowledge and deliver all further conveyances, notices, assumptions, releases, consents, assurances, powers of attorney and such other instruments, and shall take such further actions, as may reasonably be necessary or appropriate to assure fully to the Assignee and its respective successors or assigns, all of the Assignor's rights, titles and interests in, to and under, the Transferred Assets exclusively related to the [●] Business, and to assure fully to Assignor and its Affiliates and their respective successors and permitted assigns, the assumption of the Assumed Liabilities pursuant to paragraph 2 above and to otherwise make effective and carry out the purpose and intent of this Agreement. If Assignee is unable for any reason to secure any Assignor's signature to any document it is entitled to hereunder (including those referenced in Section 3 below), Assignor hereby irrevocably designates and appoints Assignee, and Assignee's duly authorized officers, agents and representatives, as its agents and attorneys-in-fact with full power of substitution to act for and on the behalf and instead of such Assignor, to execute and file any such document or documents and to do all other lawfully permitted acts to further the purposes of this Assignment with the same legal force and effect as if executed by such Assignor. Assignor shall not enter into any agreement in conflict with this Agreement.

4. Conflict. The respective rights of Assignor and Assignee with respect to the Transferred Assets sold, conveyed, assigned, transferred and delivered hereby and the Assumed Liabilities assumed hereby are more fully set forth in the Purchase Agreement, the terms and provisions of which are hereby incorporated herein by reference as if fully set forth herein, and nothing in this Agreement shall alter any liability or obligation arising under the Purchase Agreement, which shall (without limiting the generality of the foregoing) govern, and shall contain the sole and exclusive representations, warranties and obligations of the Parties with respect to such Transferred Assets and such Assumed Liabilities. If there is any conflict or inconsistency between the provisions of the Purchase Agreement and this Agreement, the provisions of the Purchase Agreement shall govern.

5. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns.

6. Sole Remedy. The sole and exclusive remedy of the Assignee and Assignor with respect to any breach of this Agreement shall be as set forth in the Purchase Agreement.

7. Notices. All notices and other communications under or by reason of this Agreement shall be in writing and shall be deemed to have been duly given or made (a) when personally delivered, (b) when delivered by e-mail transmission with receipt confirmed or (c) upon delivery by overnight courier service, in each case, to the addresses and attention parties indicated below (or such other address, e-mail address or attention party as the recipient party has specified by prior notice given to the sending party in accordance with this Section):

If to Assignor, to: NPC Quality Burgers, Inc.  
4200 W. 115th Street, Suite 200  
Leawood, KS 66211  
Attention: David Wahlert  
Penny Lindemann Smith  
E-mail: david.wahlert@npcinternational.com  
penny.lindemannsmith@npcinternational.com

With a copy (which will not constitute notice) to: Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153  
Attention: Ray C. Schrock, Esq.  
Gavin Westerman, Esq.  
Kevin Bostel, Esq.  
E-mail: ray.schrock@weil.com  
gavin.westerman@weil.com  
kevin.bostel@weil.com

If to Assignee, to: [•]  
[•]  
[•]  
Attention: [•]  
E-mail: [•]

with a copy (which will not constitute notice) to: [•]  
[•]  
[•]  
Attention: [•]  
E-mail: [•]

and

[•]  
[•]  
[•]  
Attention:[•]  
E-mail:[•]

8. Severability. The provisions of Section 12.07 of the Purchase Agreement are hereby incorporated into this Agreement by this reference to the fullest extent as if the text of such provisions were set forth in their entirety herein.

9. Entire Agreement. This Agreement and the other Transaction Agreements (and all exhibits and schedules hereto and thereto) collectively constitute and contain the entire agreement and understanding of the Parties with respect to the subject matter hereof and thereof and supersede all prior negotiations, correspondence, understandings, agreements and contracts, whether written or oral, among the Parties respecting the subject matter hereof and thereof. The schedules and exhibits attached to this Agreement shall be construed with and as an integral part of this Agreement to the same extent as if the same had been set forth verbatim herein. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein shall be defined as set forth in this Agreement.

10. Governing Law. Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Agreement, and any Transaction Dispute, will be exclusively governed by and construed and enforced in accordance with the internal Laws of the State of New York, without giving effect to any Law or rule that would cause the Laws of any jurisdiction other than the State of New York to be applied.

11. Dispute Resolution; Consent to Jurisdiction. The provisions of Section 12.14 of the Purchase Agreement are hereby incorporated into this Agreement by this reference to the fullest extent as if the text of such provisions were set forth in their entirety herein.

12. Waiver of Jury Trial. The provisions of Section 12.15 of the Purchase Agreement are hereby incorporated into this Agreement by this reference to the fullest extent as if the text of such provisions were set forth in their entirety herein.

13. Successors. This Agreement will be binding upon and inure to the benefit of, and be enforceable by the respective successors and permitted assigns of the Parties.

14. Authority. Each Party represents and warrants that it has full authority to enter into and perform under this Agreement without the consent or approval of any other person or entity and it has the full and complete authority to bind such party.

15. Headings. The division into Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement.

16. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. Facsimiles, e-mail transmission of .pdf signatures or other electronic copies of signatures shall be deemed to be originals.

17. Amendments. This Agreement (including all exhibits and schedules hereto) may be amended, restated, supplemented or otherwise modified, only by written agreement duly executed by the Party against whom enforcement of such amendment, restatement, supplement or other modification is or may be sought.

*[Signature page follows]*



IN WITNESS WHEREOF, Assignee and Assignor have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

**ASSIGNOR:**

NPC QUALITY BURGERS, INC.

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

**ASSIGNEE:**

[•]

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

Consented and agreed to  
as of the date first above written.

**BUYER:**

WENDY'S INTERNATIONAL, LLC

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

**EXHIBIT C  
FINAL FORM**

**FORM OF TRANSFERRED LEASED PROPERTY ASSIGNMENT AND  
ASSUMPTION AGREEMENT<sup>1</sup>**

This Transferred Lease Assignment and Assumption Agreement (this “Assignment”) dated as of [•], by and between NPC Quality Burgers, Inc., a Kansas corporation (together with any applicable Affiliate party hereto, “Assignor”) and [•], a [•] (“Assignee”) (each of Assignor and Assignee, a “Party” and, together, the “Parties”).

Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in that certain Asset Purchase Agreement (as amended, supplemented or otherwise modified, the “Purchase Agreement”), dated as of [•], by and between Assignor and Wendy’s International, LLC, an Ohio limited liability company (“Buyer”).

**WHEREAS**, Assignor and Buyer have entered into the Purchase Agreement pursuant to which Seller has agreed to sell, convey, assign, transfer and deliver to Buyer or the applicable Eligible Assignee, and Buyer or such applicable Eligible Assignee shall purchase, acquire and accept delivery from Seller, all right, title and interest in, to and under the Transferred Assets, and Buyer, or the applicable Eligible Assignee, shall assume, effective as of the Closing, and shall timely perform and discharge in accordance with their terms, the Assumed Liabilities;

**WHEREAS**, the execution and delivery of this Assignment is contemplated by Sections 3.04(a)(iii) and 3.04(b)(v) of the Purchase Agreement;

**WHEREAS**, Buyer entered into that certain Partial Assignment and Assumption of Asset Purchase Agreement, dated [•] (the “Assignment Agreements”), among Buyer and Assignee, pursuant to which Buyer assigned to the Assignee, and the Assignee accepted and assumed, certain rights and obligations of the Buyer under the Asset Purchase Agreement exclusively related to the [•] Business;

**WHEREAS**, Assignor acknowledges that Assignee is an Eligible Assignee under the Purchase Agreement; and

**WHEREAS**, Assignor desires to assign, transfer, convey and deliver to Assignee the leases described on Schedule I attached hereto, including all amendments, modifications, and supplements thereto (the “Leases”, and each a “Lease”), and Assignee desires to accept such assignment of the Leases, together with all right, title, and interest of Assignor thereunder. The properties demised under the Leases are collectively referred to as the “Leased Premises”.

**NOW, THEREFORE**, in consideration of the foregoing and the representations, warranties, covenants and agreements set forth in the Purchase Agreement, and for other good and

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<sup>1</sup> **Note to Form:** Form to be conformed to local law requirements (including local recording formatting and other requirements) with respect to any assignment of a recorded lease or for which a memo of lease or similar instrument has been recorded.

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

1. Assignment and Assumption of Lease. For and in consideration of Ten Dollars (\$10.00) and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, effective as of the Effective Time, Assignor hereby assigns, transfers, conveys, and delivers to Assignee, its successors and assigns, all of Assignor's estate, right, title and interest as tenant of the leasehold estate described under the Leases [and as sublessor with respect to any subleases that has been designated for assumption and assignment with respect to the Lease(s)]<sup>2</sup>, and, as of the Effective Time, Assignee hereby accepts the assignment, transfer, conveyance and delivery of Assignor's estate, right, title and interest in, to and under such leasehold estates.
2. Assumption of Assumed Liabilities. Effective as of the Effective Time, on the terms and subject to the conditions set forth in the Purchase Agreement, Assignor hereby assigns, and Assignee hereby assumes and agrees to pay, discharge, and perform in accordance with their terms, all Assumed Liabilities related to the Lease(s) and agrees to be bound by all duties and obligations, arising on or after the Effective Time.
3. Further Assurances; Cooperation. Assignor and Assignee shall, and shall cause their respective Affiliates to execute, acknowledge and deliver all further conveyances, notices, assumptions, releases, consents, assurances, powers of attorney and such other instruments, and shall take such further actions, as may reasonably be necessary or appropriate to assure fully to the Assignee and its respective successors or assigns, all of the Assignor's rights, titles and interests in, to and under, the Assumed Lease, and to assure fully to Assignor and its Affiliates and their respective successors and permitted assigns, the assumption of the Assumed Liabilities pursuant to paragraph 2 above and to otherwise make effective and carry out the purpose and intent of this Assignment. If Assignee is unable for any reason to secure any Assignor's signature to any document it is entitled to hereunder, Assignor hereby irrevocably designates and appoints Assignee, and Assignee's duly authorized officers, agents and representatives, as its agents and attorneys-in-fact with full power of substitution to act for and on the behalf and instead of such Assignor, to execute and file any such document or documents and to do all other lawfully permitted acts to further the purposes of this Assignment with the same legal force and effect as if executed by such Assignor. Assignor shall not enter into any agreement in conflict with this Agreement.
4. Conflict. The respective rights of Assignor and Assignee with respect to the assignment and assumption of the Leases (and the Assumed Liabilities related thereto) assumed hereby are more fully set forth in the Purchase Agreement, the terms and provisions of which are hereby incorporated herein by reference as if fully set forth herein, and nothing in this Agreement shall alter any liability or obligation arising under the Purchase Agreement, which shall (without limiting the generality of the foregoing) govern, and shall contain the sole and exclusive representations, warranties and obligations of the

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<sup>2</sup> **Note to Form:** Include only if Buyer has designated sublessor interests in a Lease for assumption and assignment.

Parties with respect to such Transferred Assets and such Assumed Liabilities. If there is any conflict or inconsistency between the provisions of the Purchase Agreement and this Agreement, the provisions of the Purchase Agreement shall govern.

5. Binding Agreement. This Assignment shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns.
6. Sole Remedy. The sole and exclusive remedy of the Assignee and Assignor with respect to any breach of this Assignment shall be as set forth in the Purchase Agreement.
7. Notices. All notices and other communications under or by reason of this Agreement shall be in writing and shall be deemed to have been duly given or made (a) when personally delivered, (b) when delivered by e-mail transmission with receipt confirmed or (c) upon delivery by overnight courier service, in each case, to the addresses and attention parties indicated below (or such other address, e-mail address or attention party as the recipient party has specified by prior notice given to the sending party in accordance with this Section):

If to Assignor, to:	NPC Quality Burgers, Inc. 4200 W. 115th Street, Suite 200 Leawood, KS 66211 Attention: David Wahlert Penny Lindemann Smith E-mail: david.wahlert@npcinternational.com penny.lindemannsmith@npcinternational.com
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With a copy (which will not constitute notice) to:	Weil, Gotshal & Manges LLP 767 Fifth Avenue New York, New York 10153 Attention: Ray C. Schrock, Esq. Gavin Westerman, Esq. Kevin Bostel, Esq. E-mail: ray.schrock@weil.com gavin.westerman@weil.com kevin.bostel@weil.com
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If to Assignee, to:	[●] [●] [●] Attention: [●] E-mail: [●]
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with a copy (which will not constitute notice) to:	[●] [●] [●] Attention: [●] E-mail: [●]
--	--

and

[•]

[•]

[•]

Attention:[•]

E-mail:[•]

8. Severability. The provisions of Section 12.07 of the Purchase Agreement are hereby incorporated into this Assignment by this reference to the fullest extent as if the text of such provisions were set forth in their entirety herein.
9. Entire Agreement. This Assignment and the other Transaction Agreements (and all exhibits and schedules hereto and thereto) collectively constitute and contain the entire agreement and understanding of the Parties with respect to the subject matter hereof and thereof and supersede all prior negotiations, correspondence, understandings, agreements and contracts, whether written or oral, among the Parties respecting the subject matter hereof and thereof. The schedules and exhibits attached to this Assignment shall be construed with and as an integral part of this Assignment to the same extent as if the same had been set forth verbatim herein. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein shall be defined as set forth in this Assignment.
10. Governing Law. This Assignment will be exclusively governed by and construed and enforced in accordance with the internal Laws of the State of New York, without giving effect to any Law or rule that would cause the Laws of any jurisdiction other than the State of New York to be applied; provided that, with respect to recorded leases, this Assignment shall be governed by and construed in accordance with the Laws of the state in which such recorded lease is located, except to the extent that the Laws of such state are superseded by the Bankruptcy Code.
11. Dispute Resolution; Consent to Jurisdiction. The provisions of Section 12.14 of the Purchase Agreement are hereby incorporated into this Assignment by this reference to the fullest extent as if the text of such provisions were set forth in their entirety herein.
12. Waiver of Jury Trial. The provisions of Section 12.15 of the Purchase Agreement are hereby incorporated into this Assignment by this reference to the fullest extent as if the text of such provisions were set forth in their entirety herein.
13. Successors. This Assignment will be binding upon and inure to the benefit of and be enforceable by the respective successors and permitted assigns of the Parties.
14. Authority. Each Party represents and warrants that it has full authority to enter into and perform under this Assignment without the consent or approval of any other person or entity and it has the full and complete authority to bind such party.

15. Headings. The division into Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Assignment.
16. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. Facsimiles, e-mail transmission of .pdf signatures or other electronic copies of signatures shall be deemed to be originals.
17. Amendments. This Assignment (including all exhibits and schedules hereto) may be amended, restated, supplemented or otherwise modified, only by written agreement duly executed by the Party against whom enforcement of such amendment, restatement, supplement or other modification is or may be sought.

\* \* \* \* \*



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

**Assignor:**

[•] a [•]

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

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

Title: \_\_\_\_\_

**ACKNOWLEDGMENT<sup>3</sup>**

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 202[ ], before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) and that by his/her/their signature(s) on the instrument, the person(s), or the entity, in its capacity(ies) above noted, upon behalf of which the person(s) acted, executed the instrument.

Signature: \_\_\_\_\_

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

Official Seal

<sup>3</sup> **Note to Form:** Acknowledgment to be included for any assignment of a recorded lease or for which a memo of lease or similar instrument has been recorded. Form of acknowledgment to be updated to conform with local law requirements.

Assignee:

[•], a [•]

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

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

Title: \_\_\_\_\_

**ACKNOWLEDGMENT<sup>4</sup>**

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 202[ ], before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) and that by his/her/their signature(s) on the instrument, the person(s), or the entity, in its capacity(ies) above noted, upon behalf of which the person(s) acted, executed the instrument.

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_

Official Seal

<sup>4</sup> **Note to Form:** Acknowledgment to be included for any assignment of a recorded lease or for which a memo of lease or similar instrument has been recorded. Form of acknowledgment to be updated to conform with local law requirements.

Consented and agreed to  
As of the date first above written.

**Buyer:**

**Wendy's International, LLC, an Ohio limited  
liability company**

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

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

Title: \_\_\_\_\_

## **SCHEDULE I**

### **LEASES**

[To come.]

**EXHIBIT D**  
**FINAL FORM**

**FORM OF**  
**INTELLECTUAL PROPERTY ASSIGNMENT AND ASSUMPTION AGREEMENT**

This Intellectual Property Assignment and Assumption Agreement (this “Assignment”) dated as of [●] by and between NPC Quality Burgers, Inc., a Kansas corporation (together with any applicable Affiliate party hereto, “Assignor”) and [●], a [●] (“Assignee”) (each of Assignor and Assignee a “Party” and, together, the “Parties”).

Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in that certain Asset Purchase Agreement (as amended, supplemented or otherwise modified, the “Purchase Agreement”) dated as of [●], by and between Assignor and Wendy’s International, LLC, an Ohio limited liability company (“Buyer”).

**RECITALS**

**WHEREAS**, Assignor and Buyer have entered into the Purchase Agreement, pursuant to which, Assignor agreed to sell to Assignee, and Assignee agreed to purchase from Assignor, the Business Intellectual Property included in the Transferred Assets, including the Business Registrable IP included in the Transferred Assets and set forth on Exhibit A (such Business Intellectual Property and such Business Registrable IP, collectively, the “Assigned IP”);

**WHEREAS**, Buyer entered into that certain Partial Assignment and Assumption of Asset Purchase Agreement, dated [●] (the “Assignment Agreements”), among Buyer and Assignee, pursuant to which Buyer assigned to the Assignee, and the Assignee accepted and assumed, certain rights and obligations of the Buyer under the Asset Purchase Agreement exclusively related to the [●] Business;

**WHEREAS**, Assignor acknowledges that Assignee is an Eligible Assignee under the Purchase Agreement;

**WHEREAS**, Assignor is the owner of the Assigned IP; and

**WHEREAS**, the execution and delivery of this Assignment is contemplated by Section 3.04(a)(iv) and Section 3.04(b)(v) of the Purchase Agreement.

**NOW, THEREFORE**, in consideration of the foregoing and the promises contained herein and in the Purchase Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignment. As of the Effective Time, Assignor hereby irrevocably sells, conveys, assigns and transfers to Assignee, and its successors and assigns, and Assignee hereby accepts from Assignor, all of Assignor’s entire worldwide right, title and interest in and to the Assigned IP, together with all common law rights thereto and all goodwill connected with and symbolized by the Assigned IP, free and clear of Liens (other than Permitted Liens), the same to be held and enjoyed by Assignee for its own use and enjoyment and the use and enjoyment of its successors, assigns and other legal representatives as fully and entirely as the same would have been held and enjoyed by Assignor if this Assignment and sale had not been made, as assignee of its respective entire right, title and interest therein, including all rights in and to (a) all income, royalties, damages and other payments now or hereafter due or payable with respect thereto, (b) all causes of action (whether in law or in equity, known or unknown) with respect thereto, and the right to sue, counterclaim, obtain equitable relief and recover damages for past, present and future infringement, misappropriation or other

violation of the rights assigned or to be assigned under this Assignment, (c) the right to file, prosecute, register, maintain and defend the Assigned IP before any public or private agency, office or registrar, (d) the right to fully and entirely stand in the place of Assignor on all matters related to the Assigned IP throughout the respective countries in which Assignor holds rights in the Assigned IP and (e) all other rights corresponding to the Assigned IP throughout the respective countries in which Assignor holds rights. This Assignment is intended to be an absolute assignment and not by way of security.

2. Further Assurances; Cooperation. Upon reasonable request by Assignee, Assignor will timely execute and deliver any additional documents (including those referenced in Section 3 below) and take such other actions as may be necessary to record or memorialize the assignments of the Assigned IP set forth herein, or to vest or perfect in Assignee such right, title, and interest in, to and under the Assigned IP. If Assignee is unable for any reason to secure any Assignor's signature to any document it is entitled to hereunder (including those referenced in Section 3 below), Assignor hereby irrevocably designates and appoints Assignee, and Assignee's duly authorized officers, agents and representatives, as its agents and attorneys-in-fact with full power of substitution to act for and on the behalf and instead of such Assignor, to execute and file any such document or documents and to do all other lawfully permitted acts to further the purposes of this Assignment with the same legal force and effect as if executed by such Assignor. Assignee shall not enter into any agreement in conflict with this Assignment.
3. Filing and Recordation. The Parties agree that Assignee shall, at its sole cost and expense, promptly file and record this Assignment, or additional short-form assignments substantially equivalent to this Assignment, with the United States Patent and Trademark Office, United States Copyright Office or any corresponding foreign offices worldwide as reasonably necessary to record Assignee as the assignee and owner of any Assigned IP that is registered or filed with the United States Patent and Trademark Office, United States Copyright Office or any such corresponding foreign offices, as applicable, and Assignor hereby agrees to execute and deliver to Assignee all such additional assignments upon request. Assignor hereby authorizes and requests the Director of Patents and Trademarks in the United States Patent and Trademark Office and the corresponding entities or agencies in any applicable foreign countries or multinational authorities, as applicable, to record Assignee as the assignee and owner of the Assigned IP and to deliver to Assignee and to Assignee's attorneys, agents, representatives, successors or assigns, all official documents and communications as may be warranted by this Agreement.
4. Conflict. The respective rights of Assignor and Assignee with respect to the Assigned IP sold, conveyed, assigned, transferred and delivered are more fully set forth in the Purchase Agreement, the terms and provisions of which are hereby incorporated herein by reference as if fully set forth herein, and nothing in this Assignment shall alter any liability or obligation arising under the Purchase Agreement, which shall (without limiting the generality of the foregoing) govern, and shall contain the sole and exclusive representations, warranties and obligations of the Parties with respect to such Assigned IP. If there is any conflict or inconsistency between the provisions of the Purchase Agreement and this Assignment, the provisions of the Purchase Agreement shall govern.
5. Binding Agreement. This Assignment shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns.
6. Sole Remedy. The sole and exclusive remedy of the Assignee and Assignor with respect to any breach of this Assignment shall be as set forth in the Purchase Agreement.



7. Notices. All notices and other communications under or by reason of this Assignment shall be in writing and shall be deemed to have been duly given or made (a) when personally delivered, (b) when delivered by e-mail transmission with receipt confirmed or (c) upon delivery by overnight courier service, in each case, to the addresses and attention parties indicated below (or such other address, e-mail address or attention party as the recipient party has specified by prior notice given to the sending party in accordance with this Section 8):

If to Assignor, to:

NPC Quality Burgers, Inc.  
4200 W. 115th Street, Suite 200  
Leawood, KS 66211  
Attention: David Wahlert  
Penny Lindemann Smith  
E-mail: david.wahlert@npcinternational.com  
penny.lindemannsmith@npcinternational.com

With a copy (which will not constitute notice) to:

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153  
Attention: Ray C. Schrock, Esq.  
Gavin Westerman, Esq.  
Kevin Bostel, Esq.  
E-mail: ray.schrock@weil.com  
gavin.westerman@weil.com  
kevin.bostel@weil.com

If to Assignee, to:

[•]  
[•]  
[•]  
Attention: [•]  
E-mail: [•]

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

[•]  
[•]  
[•]  
Attention: [•]  
E-mail: [•]

8. Severability. The provisions of Section 12.07 of the Purchase Agreement are hereby incorporated into this Assignment by this reference to the fullest extent as if the text of such provisions were set forth in their entirety herein.
9. Entire Agreement. This Assignment and the other Transaction Agreements (and all exhibits and schedules hereto and thereto) collectively constitute and contain the entire agreement and understanding of the Parties with respect to the subject matter hereof and thereof and supersede all prior negotiations, correspondence, understandings, agreements and contracts, whether written or oral, among the Parties respecting the subject matter hereof and thereof. The schedules and exhibits attached to this Assignment shall be construed with and as an integral part of this Assignment to the same extent as if the same had been set forth verbatim herein. Any capitalized terms used in

any exhibit or schedule but not otherwise defined therein shall be defined as set forth in this Assignment.

10. Governing Law. Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Assignment, and any Transaction Dispute, will be exclusively governed by and construed and enforced in accordance with the internal Laws of the State of New York, without giving effect to any Law or rule that would cause the Laws of any jurisdiction other than the State of New York to be applied.
11. Dispute Resolution; Consent to Jurisdiction. The provisions of Section 12.14 of the Purchase Agreement are hereby incorporated into this Assignment by this reference to the fullest extent as if the text of such provisions were set forth in their entirety herein.
12. Waiver of Jury Trial. The provisions of Section 12.15 of the Purchase Agreement are hereby incorporated into this Assignment by this reference to the fullest extent as if the text of such provisions were set forth in their entirety herein.
13. Successors. This Assignment will be binding upon and inure to the benefit of and be enforceable by the respective successors and permitted assigns of the Parties.
14. Authority. Each Party represents and warrants that it has full authority to enter into and perform under this Assignment without the consent or approval of any other person or entity and it has the full and complete authority to bind such party.
15. Headings. The division into Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Assignment.
16. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. Facsimiles, e-mail transmission of .pdf signatures or other electronic copies of signatures shall be deemed to be originals.
17. Amendments. This Assignment (including all exhibits and schedules hereto) may be amended, restated, supplemented or otherwise modified, only by written agreement duly executed by the Party against whom enforcement of such amendment, restatement, supplement or other modification is or may be sought.

*[Signature page follows]*

IN WITNESS WHEREOF, Assignee and Assignor have caused this Assignment to be executed by their duly authorized representatives as of the date first written above.

**ASSIGNOR:**

NPC QUALITY BURGERS, INC.

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

**ASSIGNEE:**

[●]

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

Consented and agreed to as of the date first above written.

**BUYER:**

WENDY'S INTERNATIONAL, LLC

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

Name:

Title:

**EXHIBIT A**

**ASSIGNED IP**

[TBD]



Direct Dial No.  
(614) 764-8443

Kris.Kaffenbarger@wendys.com

January 6, 2021

VIA EMAIL

NPC International, Inc.  
4200 W. 115th Street, Suite 200  
Leawood, KS 66211

Ladies and Gentlemen:

In connection with that certain Asset Purchase Agreement, dated as of January 7, 2021, by and among NPC Quality Burgers, Inc. (“**Seller**”) and Wendy’s International, LLC (together with its affiliates, “**Wendy’s**” and together with Seller, the “**Parties**”) (such agreement, the “**Wendy’s Purchase Agreement**”) and that certain Amended and Restated Asset Purchase Agreement, dated as of January [●], 2021, by and among the Seller and certain of its affiliates and Hut American Group LLC and Wend American Group LLC (“**Wend American**”), which is led by Flynn Restaurant Group LP (“**FRG**”), (the “**Flynn Purchase Agreement**”, and together with the Wendy’s Purchase Agreement, the “**Purchase Agreements**”), the Parties hereby memorialize their mutual understanding as to the matters addressed in this letter resulting from the mediation among the Parties and certain other parties-in-interest concerning Wendy’s rights (including contractual rights) with respect to the transactions contemplated by the Flynn Purchase Agreement.

In connection with the closings of the transactions contemplated by the Purchase Agreements (each, a “**Closing**”): (a) concurrently with the Wendy’s Purchase Agreement Closing, (1) Seller will pay, in immediately available funds, to Wendy’s the sum of \$4,618,177.85, which represents the amounts due and payable under the applicable franchise agreements between Seller and Quality Is Our Recipe, LLC (the “**Franchise Agreements**”) as of the date hereof, and (2) Quality Is Our Recipe, LLC will terminate the applicable existing Franchise Agreements and enter into new franchise agreements with the Eligible Assignees (as defined in the Wendy’s Purchase Agreement) and (b) concurrently with the Flynn Purchase Agreement Closing, (1) Seller will pay, in immediately available funds, to Wendy’s the sum of \$4,811,498.92, which represents the amounts due and payable under the applicable Franchise Agreements as of the date hereof, (2) Quality Is Our Recipe, LLC will terminate the applicable existing Franchise Agreements and enter into new franchise agreements with Wend American. The foregoing amounts do not include any additional amounts that become due and payable under the Franchise Agreements between the date hereof and the applicable Closing which agreed amounts Seller will also pay, in immediately available funds, to Wendy’s concurrently with the applicable Closing; *provided*, that, if the Closings occur on or prior to May 14, 2021, then (i) no additional late fees on account of the Franchise Agreements shall be due or payable and (ii) no attorneys’ fees on account of the Franchise Agreements shall be due or payable.



Very truly yours,

WENDY'S INTERNATIONAL, LLC

DocuSigned by:  
By: kris kaffenbarger  
4978F3904A5D4B9...

Name: Kris A. Kaffenbarger

Title: VP, Global System Optimization,  
Franchise & Portfolio Management

Legal Dept. <sup>DS</sup>  
KU

Agreed and accepted:

NPC QUALITY BURGERS, INC.

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

Name:

Title:

Very truly yours,

WENDY'S INTERNATIONAL, LLC

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

Name:

Title:

Agreed and accepted:

NPC QUALITY BURGERS, INC.

By: 

Name: Eric Koza

Title: Chief Restructuring Officer

**SCHEDULE A**

Debtors

NPC Restaurant Holdings I LLC

NPC Restaurant Holdings II LLC

NPC Holdings, Inc.

NPC International Holdings, LLC

NPC Restaurant Holdings, LLC

NPC Operating Company B, Inc. NPC

Quality Burgers, Inc.

NPC International, Inc.