

U.S. SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

for the fiscal year ended December 30, 2018

or

Transition Report Under Section 13 or 15(d) of the Securities Exchange Act of 1934

Commission File No. 000-53577

DIVERSIFIED RESTAURANT HOLDINGS, INC.



(Exact name of registrant as specified in its charter)

Nevada

(State or other jurisdiction of incorporation
or organization)

03-0606420

(I.R.S. Employer Identification No.)

**27680 Franklin Rd., Southfield, MI 48034
(833) 374-7282**

(Address, including zip code and telephone number, including area code, of Registrant's principal executive offices)

Securities registered pursuant to Section 12(b) of the Exchange Act:

None

Securities registered pursuant to Section 12(g) of the Act:

Common Stock, \$.0001 par value per share

(Title of Class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes No

The aggregate market value of the Registrant's voting common stock held by non-affiliates was \$17.1 million based on the per share closing price of the Company's common stock as reported on the NASDAQ stock market on June 29, 2018 .

The number of shares outstanding of the registrant's common stock as of March 29, 2019 was 33,182,875 shares.

DOCUMENTS INCORPORATED BY REFERENCE:

None.

TABLE OF CONTENTS

	<u>Page</u>
<u>PART I</u>	<u>4</u>
Item 1. Business	<u>6</u>
Item 1A. Risk Factors	<u>12</u>
Item 1B. Unresolved Staff Comments	<u>22</u>
Item 2. Properties	<u>22</u>
Item 3. Legal Proceedings	<u>22</u>
Item 4. Mine Safety Disclosures	<u>22</u>
<u>PART II</u>	<u>23</u>
Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities	<u>23</u>
Item 6. Selected Financial Data	<u>23</u>
Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operation	<u>24</u>
Item 7A. Quantitative and Qualitative Disclosures about Market Risk	<u>34</u>
Item 8. Consolidated Financial Statements and Supplementary Data	<u>35</u>
Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure	<u>66</u>
Item 9A. Controls and Procedures	<u>66</u>
Item 9B. Other Information	<u>67</u>
<u>PART III</u>	<u>68</u>
Item 10. Directors, Executive Officers and Corporate Governance	<u>68</u>
Item 11. Executive Compensation	<u>71</u>
Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters	<u>79</u>
Item 13. Certain Relationships and Related Transactions, and Director Independence	<u>81</u>
Item 14. Principal Accountant Fees and Services	<u>84</u>
<u>PART IV</u>	<u>85</u>
Item 15. Exhibits and Financial Statement Schedules	<u>85</u>
Item 16. Summary	<u>86</u>
<u>SIGNATURES</u>	<u>87</u>

PART I

When used in this Form 10-K, the “Company” and “DRH” refers to Diversified Restaurant Holdings, Inc. and, depending on the context, could also be used to refer generally to the Company and its subsidiaries, which are described below.

Cautionary Statement Regarding Forward-Looking Information

Some of the statements in the sections entitled “Business,” and “Risk Factors,” and statements made elsewhere in this Form 10-K may constitute forward-looking statements. These statements reflect the current views of our senior management team with respect to future events, including our financial performance, business, and industry in general. Statements that include the words “expect,” “intend,” “plan,” “believe,” “project,” “forecast,” “estimate,” “may,” “should,” “anticipate” and similar statements of a future or forward-looking nature identify forward-looking statements for purposes of the federal securities laws or otherwise.

Forward-looking statements address matters that involve risks and uncertainties. Accordingly, there are or will be important factors that could cause our actual results to differ materially from those indicated in these statements. We believe that these factors include, but are not limited to, the following:

- the success of our existing and new restaurants;
- our ability to obtain debt or other financing on favorable terms, or at all;
- our ability to identify appropriate sites and to finance the development and expansion of our operations;
- changes in economic conditions;
- damage to our reputation or lack of acceptance of our brand in existing or new markets;
- economic and other trends and developments, including adverse weather conditions, in the local or regional areas in which our restaurants are located;
- the impact of negative economic factors, including the availability of credit, on our landlords and surrounding tenants;
- changes in food availability and costs;
- labor shortages and increases in our compensation costs, including, as a result, changes in government regulation;
- increased competition in the restaurant industry and the segments in which we compete;
- the impact of legislation and regulations regarding nutritional information, new information or attitudes regarding diet and health, or adverse opinions about the health of consuming our menu offerings;
- the impact of federal, state, and local beer, liquor, and food service regulations;
- the success of our and our franchisor's marketing programs;
- the impact of new restaurant openings, including the effect on our existing restaurants of opening new restaurants in the same markets;
- the loss of key members of our management team;
- inability or failure to effectively manage our growth, including without limitation, our need for liquidity and human capital;
- the impact of litigation;
- the adequacy of our insurance coverage and fluctuating insurance requirements and costs;
- the impact of our indebtedness on our ability to invest in the ongoing needs of our business;

[Table of Contents](#)

- the impact of a potential asset impairment charge in the future;
- the impact of any security breaches of confidential guest information in connection with our electronic processing of credit/debit card transactions;
- our ability to protect our intellectual property;
- the impact of any failure of our information technology system or any breach of our network security;
- the impact of any materially adverse changes in our federal, state, and local taxes;
- the impact of any food-borne illness outbreak;
- our ability to maintain our relationship with our franchisor on economically favorable terms;
- the impact of future sales of our common stock in the public market, the exercise of stock options, and any additional capital raised by us through the sale of our common stock;
- the effect of changes in accounting principles applicable to us; and
- the impact on the Company's future results as a result of its guarantees of certain leases of Bagger Dave's Burger Tavern, Inc.

The foregoing factors should not be construed as exhaustive and should be read together with the other cautionary statements included in this Form 10-K. If one or more of these or other risks or uncertainties materialize, or if our underlying assumptions prove to be incorrect, actual results may differ materially from what we anticipate. Any forward-looking statements you read in this Form 10-K reflect our views as of the date of this Form 10-K with respect to future events and are subject to these and other risks, uncertainties, and assumptions relating to our operations, results of operations, growth strategy, and liquidity. You should carefully consider all of the factors identified in this Form 10-K that could cause actual results to differ. Investors are cautioned that all forward-looking statements involve risk and uncertainties and speak only as of the date on which they were made, and we do not undertake any obligation to update any forward-looking statement.

ITEM 1. BUSINESS

Business Overview

DRH is a restaurant company operating a single concept, Buffalo Wild Wings® (“BWW”). As one of the largest franchisees of BWW, we provide a unique guest experience in a casual and inviting environment. We were incorporated in 2006 and are headquartered in the Detroit metropolitan area. As of December 30, 2018, we owned 64 restaurants in Florida, Illinois, Indiana, Michigan and Missouri, including the nation’s largest BWW, based on square footage, in downtown Detroit, Michigan.

In 2008, DRH became publicly-owned by completing a self-underwritten initial public offering for \$735,000 and 140,000 shares. We subsequently completed underwritten, follow-on offerings on April 23, 2013 of 6.9 million shares with net proceeds of \$31.9 million and on July 24, 2018 of 5.3 million shares with net proceeds of \$4.6 million.

DRH and its wholly-owned subsidiaries AMC Group, Inc. (“AMC”), AMC Wings, Inc. (“WINGS”), and AMC Real Estate, Inc. (“REAL ESTATE” and collectively, the “Company”) own and operate BWW restaurants.

DRH is continually recognized as a leading franchisee in the BWW system. In 2018, our restaurants claimed 8 out of 15 Grand Prix awards, recognizing the top 15 operators in the franchise system. In 2017 and 2016, three and four of the Company's restaurants, respectively, were recognized as Blazin' 25 restaurants, which rewarded the top performing 25 franchise restaurants in the system. In both 2015 and 2014 we were recognized as Franchisee of the Year. Additionally, in 2016 our Chief Operating Officer was awarded the Franchise Advisory Council Excellence Award and in 2014 he received the Founders' Award.

The following organizational chart outlines the current corporate structure of DRH. A brief description of the entities follows the organizational chart. DRH is incorporated in Nevada.



AMC was formed on March 28, 2007, and serves as our operational and administrative center. AMC renders management, operational support, and advertising services to WINGS, REAL ESTATE and their subsidiaries. Services rendered by AMC include marketing, restaurant operations, restaurant management consultation, hiring and training of management and staff, and other management services required in the ordinary course of restaurant operations.

WINGS was formed on March 12, 2007, and serves as a holding company for our restaurants. We are economically dependent on retaining our franchise rights with BWW. The franchise agreements have specific initial term expiration dates ranging from December 2020 through June 2037 . The franchise agreements are renewable at the option of the franchisor and are generally renewable if the franchisee has complied with the terms of the franchise agreement. When factoring in any applicable renewals, the franchise agreements have specific expiration dates ranging from December 2025 through June 2052 . We believe we are in substantial compliance with the terms of these agreements.

REAL ESTATE was formed on March 18, 2013 and serves as the holding company for any real estate properties owned by DRH. Currently, DRH does not own any real estate.

Our headquarters are located at 27680 Franklin Road, Southfield, Michigan 48034. Our telephone number is (833) 374-7282 . We can also be found on the Internet at www.diversifiedrestaurantholdings.com.

As of December 30, 2018 , we had 2,549 employees of which 1,372 were full-time employees.

Background

Bagger Dave's Spin-Off

On December 25, 2016, DRH completed a tax-free spin-off (the "Spin-Off") of its Bagger Dave's business. Specifically, DRH contributed its 100.0% owned entity, AMC Burgers, LLC and certain real estate entities into Bagger Dave's Burger Tavern, Inc., a newly created Nevada corporation ("Bagger Dave's" or "Bagger"), which was then spun-off into a stand-alone, publicly-traded company on the over-the-counter exchange. In connection with the Spin-Off, DRH contributed to Bagger certain assets, liabilities, and employees related to its Bagger Dave's businesses. Intercompany balances due to/from DRH, which included amounts from sales, were contributed to equity. Additionally, DRH contributed \$2 million in cash to Bagger to provide working capital for Bagger's operations and remains a guarantor for certain of Bagger's lease obligations.

In conjunction with the Spin-Off, DRH entered into a transition services agreement (the "TSA") with Bagger Dave's pursuant to which DRH provided certain information technology and human resources support, limited accounting support, and other minor administrative functions at no charge. The TSA was intended to assist the discontinued component in efficiently and seamlessly transitioning to stand on its own. Certain provisions of the TSA terminated in December 2017 and the First Amendment to TSA (the "Amended TSA") was entered into effective January 1, 2018. Under the Amended TSA, DRH provides limited ongoing administrative support to Bagger in certain areas, including information technology, human resources and real estate, in exchange for a fee based on a rate-per-hour of service.

Restaurant Concept

With 64 BWW restaurants (20 in Michigan, 17 in Florida, 15 in Missouri, seven in Illinois and five in Indiana), including the nation's largest BWW, based on square footage, in downtown Detroit, Michigan, DRH is one of the largest BWW franchisees. As of December 30, 2018 , BWW reported over 1,270 restaurants worldwide that were either directly owned or franchised. The restaurants feature a variety of boldly-flavored, crave-able menu items, including Buffalo, New York-style chicken wings. BWW restaurants create a welcoming neighborhood atmosphere that includes an extensive multi-media system, a full bar and an open layout, which appeals to sports fans and families alike. The social environment created and the connections made with team members, guests and the local community help to differentiate BWW restaurants. Guests have the option of watching sporting events or other popular programs on various projector screens and televisions, competing in Buzztime ® Trivia or playing video games. The open layout of the restaurants offers dining and bar areas that provide distinct seating choices for sports fans and families. BWW restaurants offer flexibility and allow guests to customize their experience to meet their time demands, service preferences or the experience they are seeking for a workday lunch, a dine-in dinner, a take-out meal, an afternoon or evening enjoying a sporting event, or a late-night craving.

BWW restaurants have widespread appeal and have won dozens of "Best Wings" and "Best Sports Bar" awards across the country. The made-to-order menu items are enhanced by the bold flavor profile of 16 signature sauces and 5 signature seasonings, ranging from Sweet BBQ™ to Blazin'®. Restaurants offer 20 to 40 domestic and imported beers on tap, including craft brews, and a wide selection of bottled beers, wines, and liquor. The award-winning food and memorable experience drive guest visits and loyalty. For fiscal year 2018 , our average BWW restaurant derived 83% of its revenue from food, including non-alcoholic beverages, and 17% of its revenue from alcohol sales, primarily draft beer.

Growth Strategy

We are focused on driving sales growth in all of our locations through the execution of local, traffic-driving marketing and advertising strategies, continued support of the community through sponsorship programs and local charities, and delivery of quality food, drinks and service, all in a clean and modern environment. One of our guiding principles is that a happy team member translates to a happy guest. A happy guest drives repeat sales and word-of-mouth referrals, which are two key factors that directly support our local marketing strategy.

We also strive to improve our margins through a number of initiatives, including enhanced methods to manage cost of sales and hourly labor with use of technology and improved application of standards, and working with our service vendors to leverage our scale and obtain higher value at more competitive prices.

We currently own 64 BWW restaurants in five states. We may open a limited number of new BWW locations in our core markets over the long term. However, as capital resources become available, our growth strategy is more likely to consist of disciplined, strategic acquisitions of existing BWW or other franchised restaurants from other operators or franchisors.

[Table of Contents](#)

Since 2012 we have acquired 29 restaurants in several transactions and have developed a strong process to identify, evaluate and integrate acquisitions. We have been regularly recognized as one of the best operators in the BWW system, and we believe that we can apply our strong operating disciplines and management culture to acquired locations to achieve financial improvements and growth over the long term. On February 22, 2019 we entered into an Asset Purchase Agreement to acquire 9 BWW restaurants in the Chicago, Illinois market for a cash purchase price of approximately \$22.5 million, subject to customary closing conditions. Upon completion of the transaction, since 2012, we will have acquired a total of 38 restaurants and will own and operate a total of 73 BWW restaurants. The transaction remains subject to the franchisor waiving its right of first refusal and franchisor consent, among other things. The transaction also remains contingent upon the Company's completion of satisfactory financing.

Restaurant Operations

We believe retaining talented and passionate restaurant managers and providing our team members with the tools, skills and motivation to deliver our goal of the ultimate social experience, represent two key elements to our success. In order to retain our unique culture, we devote substantial resources to identifying, selecting, and training our restaurant-level team members. We typically have six in-restaurant trainers at each location who provide both front- and back-of-house training on site. We also have a seven-week training program for our restaurant managers, which consists of an average of four weeks of restaurant training and three weeks of cultural training. During this training, managers observe and have the opportunity to participate in our established restaurants' operations and guest interactions. We believe our focus on guest-centric training is a core strength of our Company and reinforces our mission to delight our guests.

Management and Staffing

The core values that define our culture are to be guest driven, team focused, community connected and dedicated to excellence. Our restaurants are generally staffed with one managing partner and up to five additional managers, depending on the sales volume of the restaurant. The managing partner is responsible for day-to-day operations and for maintaining the standards of quality and performance that define our corporate culture. We use regional directors to oversee our managing partners and supervise the operation of our restaurants, including the continuing development of each restaurant's management team. Through regular visits to the restaurants and constant communication with the management team, the regional directors ensure adherence to all aspects of our concept, strategy and standards of quality.

Training, Development, and Recruiting

We believe that successful restaurant operations, guest satisfaction, quality, and cleanliness begin with the team member - a key component of our strategy. Our training program, the Hospitality Excellence Academy ("HEA"), is a well-organized, thorough, hands-on training program designed to foster our culture of excellence by cultivating the leaders of tomorrow. We are also in the process of implementing a new learning management system which is expected to represent another step forward by introducing a fully digital platform.

We offer an incentive program that we believe is very competitive in the restaurant industry. In addition to competitive base salaries and benefits, management is incentivized with a performance-based bonus program. Our benefit offerings include group health, dental, and vision insurance, a company-sponsored Safe Harbor 401(k) plan with a non-discretionary company match, a tuition reimbursement program, a referral bonus program and opportunities for career advancement. We emphasize growth from within the organization, giving our team members the opportunity to develop and advance. We believe this philosophy helps build a strong, loyal management team with high team member retention rates, giving us an advantage over our competitors.

Restaurants

Our restaurants range in size from 5,300 to 13,500 square feet, with an average of about 6,400 square feet. We anticipate that future restaurants will range in size from 4,800 to 5,500 square feet with an average cash investment per restaurant ranging from approximately \$1.7 million to \$2.6 million for a leased site. From time to time, our restaurants may be smaller or larger or cost more or less than our targeted range, depending on the particular circumstances of the selected site. Also, from time to time, we may elect to purchase either the building or the land and the building for certain restaurants, which would require additional capital.

We have a continuous capital improvement plan for our restaurants and generally plan major renovations every seven to ten years. For a more detailed discussion of our capital improvement plans, see the section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations," and specifically, the subsection entitled "Liquidity and Capital Resources; Acquisition and Expansion Plans."

Quality Control and Purchasing

We strive to maintain high quality standards, protecting our food supply at all times. Purchasing for our restaurants is primarily through channels established by BWW corporate operations. We do, however, negotiate directly with many of these channels regarding price and delivery terms. When we purchase directly, we seek to obtain the highest quality ingredients, products, and supplies from reliable sources at competitive prices. To maximize our purchasing efficiencies, our corporate staff negotiates, when available, fixed-price contracts (usually for a one-year period) or, where appropriate, contracts based on commodity indexes.

Marketing and Advertising

We are required to pay an advertising fee to BWW equal to 3.00% - 3.15% of total net sales (the "National Ad Fund fee"), which supports national advertising designed to build brand awareness and drive traffic to our restaurants. Some examples include television commercials on major networks, particularly during certain regional and national key games for the NFL, NHL, MLB, NBA, NCAA football, NCAA basketball and the March Madness NCAA basketball tournament. In addition, we invest 0.25% - 0.5% of certain regional net sales in cooperatives of BWW restaurants for two metropolitan areas. We currently have co-ops for the Detroit, MI and Chicago, IL markets where we engage in coordinated local restaurant marketing efforts with other BWW restaurants.

In addition to the National Ad Fund fee, in fiscal year 2018, we spent approximately 1% of total net sales on local marketing efforts (including co-ops), before rebates. This includes charitable donations and local community sponsorships, which help develop local public relations and are a major component of our marketing efforts. We support programs that build traffic at the grass-roots level. We also participate in numerous local restaurant marketing events throughout the communities we serve.

Information Systems and Technology

Enhancing the security of our financial data and other personal information remains a high priority for us. We continue to innovate and modernize our technology infrastructure to provide improved efficiency, control and security. Our ability to accept credit cards as payment in our restaurants and for online orders depends on us remaining compliant with standards set by the Payment Card Industry Security Standards Council ("PCI"). The PCI standards include compliance guidelines and standards with regard to our security surrounding the physical and electronic storage, processing and transmission of individual cardholder data. We maintain security measures that are designed to protect and prevent unauthorized access to such information. We continue to assess new payment standards and have implemented EMV chip enabled devices to ensure the most secure interface available for in-restaurant transactions. We have also implemented a CCV-code requirement for online purchases.

We also believe that technology can provide a competitive advantage and enable our strategy for growth through efficient restaurant operations, information analysis and ease and speed of guest service. We have a standard point-of-sale system in our restaurants that is integrated to our corporate office through a web-based, above-store business intelligence reporting and analysis tool. Our systems are designed to improve operating efficiencies, enable rapid analysis of marketing and financial information and improve administrative productivity. We also integrated the online ordering function and leverage third-party vendors which allow guests to select the music played throughout the restaurant using their mobile devices. In-restaurant tablets have also been introduced to enhance the guest experience through arcade games, some of which are free and some of which are available for purchase. In 2018 we implemented a new operations execution technology platform to enforce compliance and streamline performance across our restaurants. Additionally, in 2017 we completed the roll-out of the BWW loyalty program, Blazin' Rewards®, which is a mobile-based loyalty program.

We are constantly assessing new technologies to improve operations, back-office processes and overall guest experience. This includes the implementation of mobile payment options, advanced programming of kitchen display units, tablet-based wait-listing applications, integration with delivery service providers, and server tablet ordering functionality.

Competition

The restaurant industry is highly competitive. We believe we compete primarily with local and regional sports bars and national casual dining and quick-casual establishments. Competition is expected to remain intense with respect to price, service, location, concept and type and quality of food. There is also competition for real estate sites, qualified management personnel and hourly restaurant staff. Many of our competitors have been in existence longer than we have and may be better established in markets where we are currently located or may, in the future, be located. Accordingly, we strive to continually improve our restaurants, maintain high quality standards and treat our guests in a manner that encourages them to return. We believe our pricing communicates value to guests in a comfortable, welcoming, full service atmosphere.

Trademarks, Service Marks, and Trade Secrets

The BWW registered service mark is owned by Buffalo Wild Wings, International, Inc.

Government Regulations

The restaurant industry is subject to numerous federal, state, and local governmental regulations, including those relating to the preparation and sale of food and alcoholic beverages, sanitation, public health, nutrition labeling requirements, fire codes, zoning, and building requirements and to periodic review by state and municipal authorities for areas in which the restaurants are located. Each restaurant requires appropriate licenses from regulatory authorities allowing it to sell beer, wine and liquor and each restaurant requires food service licenses from local health authorities. The majority of our licenses to sell alcoholic beverages must be renewed annually and may be suspended or revoked at any time for cause, including violation by us or our team members of any law or regulation pertaining to alcoholic beverage control, such as those regulating the minimum age of team members or patrons who may serve or be served alcoholic beverages, the serving of alcoholic beverages to visibly intoxicated patrons, advertising, wholesale purchasing and inventory control. In order to reduce this risk, restaurant team members are trained in standardized operating procedures designed to assure compliance with all applicable codes and regulations. We have not encountered any material problems relating to alcoholic beverage licenses or permits to date.

We are also subject to laws governing our relationship with team members. Our failure to comply with federal, state and local employment laws and regulations may subject us to losses and harm our brand. The laws and regulations govern such matters as: workers' compensation insurance; wage and hour requirements; unemployment and other taxes; working and safety conditions; overtime; and citizenship and immigration status. Significant additional government-imposed regulations under the Fair Labor Standards Act and similar laws related to minimum wages, overtime, rest breaks, paid leaves of absence, and mandated health benefits may also impact the performance of our operations. In addition, team member claims based on, among other things, discrimination, harassment, wrongful termination, wages, hour requirements and payments to team members who receive gratuities, may divert financial and management resources and adversely affect operations. The losses that may be incurred as a result of any violation of such governmental regulations by the Company are difficult to quantify. To our knowledge, we are in compliance in all material respects with all applicable federal, state and local laws affecting our business.

The federal Patient Protection and Affordable Care Act (the "ACA") applies to our business. Under the ACA, we are required to provide full-time employees with medical insurance that meets minimum value and affordability standards. We are also required to provide covered employees and the Internal Revenue Service with specific reportable benefit information. The Company's medical plans have been offered to all full-time employees and meet the minimum value and affordability requirements of the ACA, and the Company has complied with the informational reporting requirements of the ACA.

Compliance with these laws and regulations may lead to increased costs and operational complexity and may increase our exposure to governmental investigations or litigation. We may also be subject, in certain states, to "dram shop" statutes, which generally allow a person injured by an intoxicated person to recover damages from an establishment that wrongfully served alcoholic beverages to the intoxicated person. We carry liquor liability coverage as part of our existing comprehensive general liability insurance which we believe is consistent with coverage carried by other companies in the restaurant industry of similar size and scope of operations. Even though we carry liquor liability insurance, a judgment against us under a "dram shop" statute in excess of our liability coverage could have a material adverse effect on our business, financial condition and results of operations.

ITEM 1A. RISK FACTORS

Risks Related to Our Business and Industry

Our Independent Auditors Have Expressed Substantial Doubt About Our Ability to Continue as a Going Concern.

In the audit opinion for our consolidated financial statements as of and for the year ended December 30, 2018, BDO USA, LLP, our independent auditors, included an explanatory emphasis of matter paragraph expressing substantial doubt about the Company's ability to continue as a going concern. As further discussed in Note 1 and Note 7 to our consolidated financial statements, the Company has approximately \$102.4 million of debt outstanding under its \$155.0 million senior secured credit facility with a syndicate of lenders led by Citizens (the "Credit Facility") with a maturity date of June 29, 2020. The Credit Facility contains various customary financial covenants generally based on the earnings of the Company relative to its debt. The financial covenants consist of a quarterly minimum required debt service coverage ratio (the "DSCR") and a maximum permitted lease adjusted leverage ratio (the "LALR").

As of December 30, 2018 the Company was in compliance with its loan covenants. However, beginning in the third quarter of 2019, the Company is currently forecasting that it may not be in compliance with these financial covenants.

While the Company has successfully negotiated financial covenant amendments in the past and would seek to do so again should it be in default or near a default, there can be no assurance that it will be successful in obtaining a satisfactory amendment.

As a result of this uncertainty coupled with the June 2020 maturity of the Credit Facility, the Company has been in discussions with its current lenders and other sources of capital regarding a possible refinancing and/or replacement of the Credit Facility. The Company is also exploring various other alternatives, including, among other things, possible equity financing. There can be no assurance, however, that any such efforts will be successful.

Until such time as the Company has executed an agreement to amend, refinance or replace the Credit Facility, the Company cannot conclude that it is probable that it will do so, and accordingly, this raises substantial doubt about the Company's ability to continue as a going concern.

However, our financial statements have been prepared assuming the Company will continue to operate as a going concern, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. Our financial statements do not include adjustments that might result from the outcome of this uncertainty, including any adjustments to reflect the possible future effects of the recoverability and classification of recorded asset amounts or amounts and classifications of liabilities that might be necessary should the Company be unable to continue as a going concern.

Our Financial Results Depend Significantly Upon the Success of Our Existing and New Restaurants

Our ability to maintain and grow our revenue and profits will depend on our ability to successfully drive sales volumes and efficiently manage costs in our existing and new restaurants. Currently, we have 64 BWW restaurants. The results achieved by our current restaurants may not be indicative of longer-term performance or the potential market acceptance of our restaurant concept in other locations.

[Table of Contents](#)

The success of our restaurants depends principally upon generating and maintaining guest traffic, loyalty and achieving positive margins. Significant factors that might adversely affect guest traffic, loyalty and profit margins include:

- economic conditions, including housing market downturns, rising unemployment rates, lower disposable income, adverse credit conditions, rising fuel prices and decreasing consumer confidence and other events or factors that adversely affect consumer spending in the markets we serve;
- competition in the restaurant industry, particularly in the casual and fast-casual dining segments;
- changes in consumer preferences;
- our guests' failure to accept menu price increases that we may make to offset increases in certain operating costs;
- our reputation and consumer perception of our concepts' offerings in terms of quality, price, value, ambiance and service; and
- our guests' personal experiences from dining in our restaurants.

Our restaurants are also susceptible to increases in certain key operating expenses that are either wholly or partially beyond our control, including:

- food and other raw materials costs, many of which we cannot predict or effectively hedge against;
- compensation costs, including wage, workers' compensation, health care and other benefits expenses;
- rent expenses and construction, remodeling, maintenance and other costs under leases for our new and existing restaurants;
- compliance costs as a result of changes in regulatory or industry standards;
- energy, water and other utility costs;
- costs for insurance (including health, liability and workers' compensation);
- information technology and other logistical costs; and
- expenses due to litigation against us.

Competition in the Restaurant Industry May Affect Our Ability to Compete Effectively

The restaurant industry is intensely competitive. We believe we compete primarily with regional and local sports bars, casual dining concepts, and fast-casual establishments. Many of our direct and indirect competitors are well-established national, regional or local chains with a greater market presence than us. Further, some competitors have substantially greater financial, marketing and other resources than us. In addition, independent owners of local or regional establishments may enter the wing-based restaurant business without significant barriers to entry and such establishments may provide price competition for our restaurants. Competition in the casual dining, fast-casual and quick-service segments of the restaurant industry is expected to remain intense with respect to price, service, location, concept and the type and quality of food. We also face intense competition for real estate sites, qualified management personnel and hourly restaurant staff.

Our Ability to Raise Capital in the Future May Be Limited, Which Could Adversely Impact Our Business

Changes in our restaurant operations, lower than anticipated restaurant sales, increased food or compensation costs, increased property expenses, acceleration of our expansion plans or other events, including those described in this Annual Report, may cause us to seek additional debt or equity financing on an accelerated basis. Financing may not be available to us on acceptable terms, and our failure to raise capital when needed could negatively impact our ability to service our debt, our restaurant growth plans as well as our financial condition and the results of our operations. Additional equity financing, if available, may be dilutive to the holders of our common stock. Debt financing may involve significant cash payment obligations, covenants and financial ratios that may restrict our ability to operate and grow our business, if available at all.

There Can Be No Assurances That, in the Future, We Will Be in Compliance With All Covenants of Our Current or Future Debt Agreements or That Our Lenders Will Waive Any Violations of Such Covenants

Non-compliance with our debt covenants could have a material adverse effect on our business, results of operations, and financial condition. Non-compliance may result in us being in default under our debt agreements, which could cause a substantial financial burden by requiring us to repay our debt earlier than otherwise anticipated.

Actions by Our Franchisor Could Negatively Affect Our Business and Operating Results

We are economically dependent on retaining our franchise rights with BWW. Our restaurant operations depend, in part, on decisions made by our franchisor, including changes of distributors, food menu items and prices, policies and procedures, and advertising programs. Business decisions made by BWW could adversely impact our business, financial condition or results of operations.

Poor Operating Results at Any of Our Restaurants Could Cause us to Cease Operations Regardless of Ongoing Lease and Franchise Agreement Obligations

Factors such as intense competition, difficult labor market conditions and low levels of guest traffic could cause us to cease operations at any of our BWW restaurants. From time to time, we have elected to close underperforming restaurants, and may elect to do so in the future regardless of ongoing lease or franchise agreement terms. In the past we have experienced, and may in the future experience, reduced sales as a result of restaurant closures and could have ongoing liabilities beyond the date of the closure.

Our Success Depends Substantially on the Value of the BWW Brand and Unfavorable Publicity Could Harm Our Business

Multi-unit restaurant businesses such as ours can be adversely affected by publicity resulting from complaints, litigation or general publicity regarding poor food quality, food-borne illness, personal injury, food tampering, adverse health effects of consumption of various food products or high-calorie foods (including obesity) or other concerns. Negative publicity of the BWW brand from traditional media or online social network postings may also result from actual or alleged incidents or events taking place in our restaurants or any BWW restaurant not owned by us.

There has been a marked increase in the use of social media platforms, including weblogs (blogs), social media websites, and other forms of Internet-based communications which allow individuals access to a broad audience of consumers and other interested persons. Consumers value readily available information concerning goods and services that they have or plan to purchase, and may act on such information without further investigation or authentication. The availability of information on social media platforms is virtually immediate, as is its impact. Many social media platforms immediately publish the content their subscribers and participants post, often without filters or checks on accuracy of the content posted. The opportunity for dissemination of any sort of information or media, including inaccurate and prospectively harmful materials, is practically limitless and the technology through which such opportunities are afforded is ubiquitous. Information concerning our Company may be posted on such platforms at any time. Information posted may be adverse to our interests or may be inaccurate, each of which may harm our performance, prospects or business. The harm may be immediate without affording us an opportunity for redress or correction. Such platforms also could be used for dissemination of trade secret information, compromising valuable company assets. In summary, the dissemination of information online could harm our business, prospects, financial condition and results of operations, regardless of the information's accuracy.

Regardless of whether any public allegations or complaints are valid, unfavorable publicity relating to any BWW restaurant, whether owned by us or not, could adversely affect public perception of the entire brand. Adverse publicity and its effect on overall consumer perceptions of food safety, or our failure to respond effectively to adverse publicity, could have a material adverse effect on our business, financial condition or results of operations. We must protect and grow the value of our brand to continue to be successful in the future. Any incident that erodes consumer trust in or affinity for our brand could significantly reduce the value. If consumers perceive or experience a reduction in food quality, service and ambiance or in any way believe we failed to deliver a consistently positive experience, the value of our brand could suffer.

We May Not Be Able to Attract and Retain Qualified Team Members to Operate and Manage Our Restaurants

The success of our restaurants depends on our ability to attract, motivate, develop and retain a sufficient number of qualified restaurant team members, including managers and hourly team members. The inability to recruit, develop and retain these individuals may delay the planned openings of new restaurants or result in high team member turnover in existing restaurants, thus increasing the cost to efficiently operate our restaurants. This could inhibit our expansion strategy and business performance and negatively impact our operating results.

Fluctuations in the Cost of Food Could Impact Operating Results

Our primary food products are fresh bone-in chicken wings, frozen boneless chicken and potatoes. Our food, beverage and packaging costs could be significantly affected by increases in the cost of fresh chicken wings, which can result from a number of factors, including but not limited to, seasonality, cost of corn and grain, animal disease, drought and other weather phenomena, increase in demand domestically and internationally, and other factors that may affect availability. Additionally, if there is a significant rise in the price of chicken wings, and we are unable to successfully adjust menu prices or menu mix or otherwise make operational adjustments to account for the higher wing prices, our operating results could be adversely affected. We also depend on our franchisor, BWW, as it relates to chicken wings, to negotiate prices and deliver product to us at a competitive cost. BWW currently sources, negotiates and secures fresh bone-in chicken wings for its franchisees.

Shortages or Interruptions in the Availability and Delivery of Food and Other Supplies May Increase Costs or Reduce Revenue

Possible shortages or interruptions in the supply of food items and other supplies to our restaurants caused by inclement weather, terrorist attacks, natural disasters such as floods, drought, and hurricanes, pandemics, the inability of our vendors to obtain credit in a tightened credit market, food safety warnings or advisories, or the prospect of such pronouncements or other conditions beyond our control, could adversely affect the availability, quality and cost of items we buy and the operations of our restaurants. Our inability to effectively manage supply chain risk could increase our costs and limit the availability of products critical to our restaurant operations.

We May Face Guaranty Obligations or Other Potential Liabilities in Connection With the Spin-Off of Bagger Dave's

Following the Bagger Dave's Spin-Off, we continue to provide lease guaranties and certain transition services to Bagger. We remain as a guarantor on 10 lease agreements as of December 30, 2018, 3 of which now relate to an unaffiliated party which has taken over the Bagger Dave's lease. In the event Bagger Dave's or the unaffiliated party were unable to meet their lease obligations, we could be required to make the lease payments or suffer other financial liability. The maximum exposure from lease guaranties is approximately \$7.3 million. These or other liabilities and costs that may be incurred in connection with the Spin-Off, may exceed our estimates and could have an adverse impact on our business, financial condition and results of operations.

Board Overlap with Bagger Dave's May Give Rise to Conflicts of Interest

Our Executive Chairman currently serves on Bagger Dave's board of directors. Our Executive Chairman is also the Chairman of the Board, Chief Executive Officer and President of Bagger Dave's. We have certain business dealings with Bagger Dave's, including a sublease, a transition services agreement and lease guaranties. We may also have business dealings that extend beyond separation matters. In certain locations, our restaurants are located adjacent to or near a Bagger Dave's restaurant and may compete for guests. While we have procedures in place to consider related party transactions through independent committee members of our board, the overlap in directors with Bagger Dave's may give rise to conflicts of interest.

Increases in Our Compensation Costs, Including as a Result of Changes in Government Regulation, Could Slow Our Growth or Harm Our Business

We are subject to a wide range of compensation costs. Because our compensation costs are, as a percentage of revenue, higher than other industries, we may be significantly harmed by compensation cost increases. Unfavorable fluctuations in market conditions, availability of insurance, or changes in state and/or federal regulations could significantly increase our insurance premiums. In addition, we are subject to the risk of employment-related litigation at both the state and federal levels, including claims styled as class action lawsuits, which are costlier to defend. Also, some employment-related claims in the area of wage and hour disputes are not insurable risks.

Significant increases in health care costs may also continue to occur, and we can provide no assurance that we will be able to effectively contain those costs.

In addition, many of our restaurant personnel are hourly team members subject to various minimum wage requirements or changes to existing tip credit laws. Mandated increases in minimum wage levels and changes to the tip credit laws, which dictate the amounts an employer is permitted to assume a team member receives in tips when calculating the team member's hourly wage for minimum wage compliance purposes, have recently been and continue to be proposed and implemented at both federal and state government levels. Continued minimum wage increases or changes to allowable tip credits may further increase our compensation costs or effective tax rate.

Various states in which we operate are considering or have already adopted new immigration laws, and the U.S. Congress and Department of Homeland Security from time to time consider or implement changes to federal immigration laws, regulations, or enforcement programs as well. Some of these changes may increase our obligations for compliance and oversight, which could subject us to additional costs and make our hiring process cumbersome or reduce the availability of potential team members. Although we require all team members to provide us with government-specified documentation evidencing their employment eligibility, some of our team members may, without our knowledge, be unauthorized team members. Unauthorized team members are subject to deportation and may subject us to fines or penalties, and if any of our team members are found to be unauthorized, we could experience adverse publicity that negatively impacts our brand and may make it more difficult to hire and keep qualified team members. Termination of a significant number of team members that, unbeknownst to us, were unauthorized team members may disrupt our operations, cause temporary increases in our compensation costs as we train new team members and result in additional adverse publicity. Our financial performance could be materially harmed as a result of any of these factors.

Changes in Public Health Concerns and Legislation and Regulations Requiring the Provision of Nutritional Information May Impact Our Performance

Government regulation and consumer eating habits may impact our business as a result of changes in attitudes regarding diet and health or new information regarding the health effects of consuming our menu offerings. These changes have resulted in, and may continue to result in, the enactment of laws and regulations that impact the ingredients and nutritional content of our menu offerings, or laws and regulations requiring us to disclose the nutritional content of our food offerings. For example, a number of states, counties and cities have enacted menu labeling laws requiring multi-unit restaurant operators to disclose certain nutritional information available to guests or have enacted legislation restricting the use of certain types of ingredients in restaurants. The ACA included nationwide menu labeling and nutrition disclosure requirements as well, and our restaurants are now covered by these national requirements. The effect of such labeling requirements on consumer choices, if any, is unclear at this time. We cannot make any assurances regarding our ability to effectively respond to changes in consumer health perceptions and to adapt our menu offerings to trends in eating habits. The imposition of menu-labeling laws could have an adverse effect on our business, financial condition and results of operations, as well as the restaurant industry in general.

Multiple jurisdictions in which we operate could adopt recently enacted new requirements that require us to adopt and implement a Hazard Analysis and Critical Control Points ("HACCP") system for managing food safety and quality. HACCP refers to a management system in which food safety is addressed through the analysis and control of potential hazards from production, procurement and handling, to manufacturing, distribution and consumption of the finished product. We expect to incur certain costs to comply with these regulations, and these costs may be more than we anticipate. Failure to comply with these laws or regulations could materially adversely affect our business, financial condition and results of operations.

Further, growing movements to change laws relating to alcohol may result in a decline in alcohol consumption at our restaurants or increase the number of "dram shop" claims made against us, either of which may negatively impact operations or result in the loss of liquor licenses.

A Regional or Global Health Pandemic Could Severely Affect Our Business

A health pandemic is a disease outbreak that spreads rapidly and widely by infection and affects many individuals in an area or population at the same time. If a regional or global health pandemic were to occur, depending upon its duration and severity, our business could be severely affected. We have positioned our brand as a place where people can gather together. Customers might avoid public gathering places in the event of a health pandemic, and local, regional or national governments might limit or ban public gatherings to halt or delay the spread of disease. A regional or global health pandemic might also adversely impact our business by disrupting or delaying production and delivery of materials and products in our supply chain and by causing staffing shortages in our restaurants. The impact of a health pandemic on us might be disproportionately greater than on other companies that depend less on the gathering of people together for the sale or use of their products and services.

Changes in Consumer Preferences or Discretionary Consumer Spending Could Harm Our Performance

Our success depends, in part, upon the continued popularity of our chicken wings, other food and beverage items and the appeal of our restaurant concept. We also depend on trends toward consumers eating away from home. Shifts in these consumer preferences could negatively affect our future profitability. Such shifts could be based on health concerns related to the cholesterol, carbohydrate, fat, calorie or salt content of certain food items, including items featured on our menu. Negative publicity over the health aspects of such food items may adversely affect consumer demand for our menu items and could result in a decrease in guest traffic to our restaurants, which could materially harm our business. In addition, our success depends, to a significant extent, on numerous factors affecting discretionary consumer spending, general economic conditions, disposable consumer income, and consumer confidence. A decline in consumer spending or in economic conditions could reduce guest traffic or impose practical limits on pricing, either of which could harm our business, financial condition and results of operations.

Our Operating Results May Fluctuate Due to the Timing of Special Events

Our operating results depend, in part, on special events, such as the Super Bowl[®] and other sporting events viewed by our guests in our restaurants, including those sponsored by the National Football League, Major League Baseball, National Basketball Association, National Hockey League and National Collegiate Athletic Association. Interruptions in the viewing of these professional sporting league events due to strikes or lockouts may impact our business, financial condition and results of operations. Additionally, our results are subject to fluctuations based on the dates of sporting events, their availability for viewing through broadcast, satellite, Internet and cable networks, and the level of participation in these events by teams that are relevant to the markets in which we operate. Historically, sales in most of our restaurants have been higher during fall and winter months based on the relative popularity and extent of national, regional and local sporting and other events in the geographic regions in which we currently operate.

We May Not Be Successful When Entering New Markets

When expanding the BWW concept or potentially acquiring other franchise concepts, we may enter new markets in which we may have limited or no operating experience. There can be no assurance that we will be able to achieve success and/or profitability in our new markets or in our new restaurants. The success of these new restaurants will be affected by the different competitive conditions, consumer taste, and discretionary spending patterns within the new markets, as well as by our ability to generate market awareness of the BWW brand, or other brands. New restaurants typically require several months of operation before achieving normal levels of profitability. When we enter highly competitive new markets or territories in which we have not yet established a market presence, the realization of our revenue targets and desired profit margins may be more susceptible to volatility and/or more prolonged than anticipated.

Higher-Than-Anticipated Costs Associated With the Opening of New Restaurants or With the Closing, Relocating, or Remodeling of Existing Restaurants May Adversely Affect Our Business, Financial Condition or Results of Operations

Our revenue and expenses may be significantly impacted by the location, number and timing of the opening of new restaurants and the closing, relocating and remodeling of existing restaurants. We incur substantial pre-opening expenses each time we open a new restaurant and will incur other expenses if we close, relocate or remodel existing restaurants. These expenses are generally higher when we open restaurants in new markets, but the costs of opening, closing, relocating or remodeling any of our restaurants may be higher than anticipated. An increase in such expenses could have an adverse effect on our results of operations.

Future Acquisitions May Have Unanticipated Consequences That Could Harm Our Business and Our Financial Condition

We may seek to selectively acquire existing BWW or other restaurant concepts as a franchisee, for example, our recent entrance into an Asset Purchase Agreement to acquire 9 BWW restaurants in the Chicago, Illinois market. To do so, we would need to identify suitable acquisition candidates, negotiate acceptable acquisition terms and obtain appropriate financing as needed. Any acquisitions we pursue, whether successfully completed or not, may involve risks, including:

- material adverse effects on our operating results, particularly in the fiscal quarters immediately following the acquisition as the acquired restaurants are integrated into our operations;
- customary closing and indemnification risks associated with any acquisition;
- funds used pursuing acquisitions we are ultimately unable to consummate because the transaction is subject to a right of first refusal in favor of our franchisor, BWW; and
- diversion of management's attention from other business concerns.

Future acquisitions of existing restaurants, which may be accomplished through a cash purchase transaction, the issuance of our equity securities, or a combination of both, could result in potentially dilutive issuances of our equity securities, the incurrence of debt and contingent liabilities and impairment charges related to intangible assets, any of which could harm our business, financial condition and results of operations.

Our Inability to Renew Existing Leases or Enter Into New Leases For New or Relocated Restaurants on Favorable Terms May Adversely Affect Our Results of Operations

As of December 30, 2018, all of our restaurants are located on leased premises and are subject to varying lease-specific arrangements. For example, some of the leases require base rent that is subject to increase based on market factors, and other leases include base rent with specified periodic increases. Some leases are subject to renewals, which could involve substantial increases. Additionally, a few leases require contingent rent based on a percentage of gross sales. When our leases expire, we will evaluate the desirability of renewing such leases. While we currently expect to pursue all renewal options, no guarantee can be given that such leases will be renewed or, if renewed, that rents will not increase substantially. The success of our restaurants depends in large part on their leased locations. As demographic and economic patterns change, current leased locations may or may not continue to be attractive or profitable. Possible declines in trade areas where our restaurants are located or adverse economic conditions in surrounding areas could result in reduced revenue in those locations. In addition, desirable lease locations for new restaurant openings or for the relocation of existing restaurants may not be available at an acceptable cost when we identify a particular opportunity for a new restaurant or relocation.

Economic Conditions Could Have a Material Adverse Impact on Our Landlords in Retail Centers in Which We Are Located

Our landlords may be unable to obtain financing or remain in good standing under their existing financing arrangements, resulting in failures to pay required construction contributions or satisfy other lease covenants to us. If our landlords fail to satisfy required co-tenancies, such failures may result in us terminating leases or delaying openings in these locations. Also, decreases in total tenant occupancy in retail centers in which we are located may affect guest traffic at our restaurants. All of these factors could have a material adverse impact on our business, financial condition or results of operations.

A Decline in Visitors to Any of the Business Districts Near the Locations of Our Restaurants Could Negatively Affect Our Restaurant Sales

Some of our restaurants are located near high-activity areas such as retail centers, big-box shopping centers and entertainment centers. We depend on high visitor rates at these businesses to attract guests to our restaurants. If visitors to these centers decline due to economic conditions, closure of big-box retailers, road construction, changes in consumer preferences or shopping patterns, changes in discretionary consumer spending or otherwise, our restaurant sales in these areas could decline significantly and adversely affect our business, financial condition or results of operations.

Because Many of Our Restaurants are Concentrated in Local or Regional Areas, We are Susceptible to Economic and Other Trends and Developments, Including Adverse Weather Conditions, in These Areas

Our financial performance is highly dependent on restaurants located in Florida, Illinois, Indiana, Michigan, and Missouri. As a result, adverse economic conditions in any of these areas could have a material adverse effect on our overall results of operations. In addition, other regional occurrences such as local strikes, terrorist attacks, increases in energy prices, adverse weather conditions, hurricanes, droughts or other natural or man-made disasters have occurred. In particular, adverse weather conditions can impact guest traffic at our restaurants, cause the temporary underutilization of certain seating areas, and, in more severe cases, cause temporary restaurant closures, sometimes for prolonged periods. As of December 30, 2018, approximately 73.4% of our total restaurants are located in Illinois, Indiana, Michigan and Missouri, which are particularly susceptible to snowfall, and approximately 26.6% of our total restaurants are located in Florida, which is particularly susceptible to hurricanes.

Legal Actions Could Have an Adverse Effect on Us

We have faced in the past and could face in the future legal action from government agencies, team members, guests, or other parties. Many state and federal laws govern our industry, and if we fail to comply with these laws, we could be liable for damages or penalties. Further, we may face litigation from guests alleging that we were responsible for an illness or injury they suffered at or after a visit to our restaurants, or alleging that we are not complying with regulations governing our food quality or operations. We may also face employment-related litigation, including claims of age discrimination, sexual harassment, gender discrimination, immigration violations, or other local, state, and federal labor law violations. In light of the potential cost and uncertainty involved in litigation, we may settle matters even when we believe we have a meritorious defense. Litigation and its related costs may have a material adverse effect on our business, financial condition or results of operations.

We May Not Be Able to Obtain and Maintain Licenses and Permits Necessary to Operate Our Restaurants

The restaurant industry is subject to various federal, state and local government licensure and permitting requirements, including those relating to the sale of food and alcoholic beverages. The failure to obtain and maintain these licenses, permits and approvals, including food and liquor licenses, could adversely affect our operating results. Difficulties or failure to obtain any required licenses, permits or other government approvals could delay or result in our decision to cancel the opening of new restaurants. Local authorities may revoke, suspend or deny renewal of our food and liquor licenses if they determine that our conduct violates applicable regulations.

The Sale of Alcoholic Beverages at Our Restaurants Subjects Us to Additional Regulations and Potential Liability

For fiscal year 2018, approximately 17% of our consolidated restaurant sales were attributable to the sale of alcoholic beverages. We are required to comply with the alcohol licensing requirements of the federal government, states and municipalities where our restaurants are located. Alcoholic beverage control regulations require applications to state authorities and, in certain locations, county and municipal authorities for a license and permit to sell alcoholic beverages on the premises and to provide service for extended hours and on Sundays. Typically, the licenses are renewed annually and may be revoked or suspended for cause at any time. Alcoholic beverage control regulations relate to numerous aspects of the daily operations of our restaurants, including minimum age of guests and team members, hours of operation, advertising, wholesale purchasing, inventory control and handling, storage and dispensing of alcoholic beverages. If we fail to comply with federal, state or local regulations, our licenses may be revoked and we may be forced to terminate the sale of alcoholic beverages at one or more of our restaurants.

In certain states, we are subject to “dram shop” statutes, which generally allow a person injured by an intoxicated person the right to recover damages from an establishment that wrongfully served alcoholic beverages to the intoxicated person. Some dram shop litigation against restaurant companies has resulted in significant judgments, including punitive damages.

We Are Dependent on Information Technology and Any Material Failure or Breach in Security of That Technology Could Impair Our Ability to Efficiently Operate Our Business

We rely on information systems across our operations, including, for example, point-of-sale processing in our restaurants, management of our supply chain, collection of cash, payment of obligations, and various other processes and procedures. Our ability to efficiently manage our business depends significantly on the reliability and capacity of these systems. The failure of these systems to operate effectively, problems with maintenance, upgrading or transitioning to replacement systems, or a breach in security of these systems could cause delays in guest service and reduce efficiency in our operations. There have been a number of recent occurrences of cyber security breaches across many retail industries, and such a breach of our systems could represent a material risk to our operations. Significant capital investments might be required to remediate any problems.

An Impairment in the Carrying Value of Our Fixed Assets, Intangible Assets or Goodwill Could Adversely Affect Our Financial Condition and Consolidated Results of Operations

Goodwill represents the excess of cost over the fair value of identified net assets of businesses acquired. We review goodwill for impairment annually, or whenever circumstances change in a way which could indicate that impairment may have occurred. Goodwill is tested at the reporting unit level. We identify potential goodwill impairments by comparing the fair value of the reporting unit to its carrying amount, which includes goodwill and other intangible assets. If the carrying amount of the reporting unit exceeds the fair value, an impairment exists. The amount of the impairment is the amount by which the carrying amount exceeds the fair value. A significant amount of judgment is involved in determining if an indication of impairment exists. Factors may include, among others: a significant decline in our expected future cash flows; a sustained, significant decline in our stock price and market capitalization; a significant adverse change in legal factors or in the business climate; unanticipated competition; the testing for recoverability of a significant asset group within a reporting unit; and slower growth rates. Any adverse change in these factors would have a significant impact on the recoverability of these assets and negatively affect our financial condition and consolidated results of operations. We are required to record a non-cash impairment charge if the testing performed indicates that goodwill has been impaired.

We evaluate the useful lives of our fixed assets and intangible assets to determine if they are definite- or indefinite-lived. Reaching a determination on useful life requires significant judgments and assumptions regarding the lease term, future effects of obsolescence, demand, competition, other economic factors (such as the stability of the industry, legislative action that results in an uncertain or changing regulatory environment, and expected changes in distribution channels), the level of required maintenance expenditures and the expected lives of other related groups of assets. We cannot accurately predict the amount and timing of any impairment of assets. Should the value of fixed assets or intangible assets become impaired, there could be an adverse effect on our financial condition and consolidated results of operations.

We May Incur Costs Resulting From Security Risks We Face in Connection With Our Electronic Processing and Transmission of Confidential Guest Information

We accept electronic payment cards from our guests in our restaurants. For the fiscal year ended December 30, 2018, approximately 73% of our sales were attributable to credit/debit card transactions, and credit/debit card usage could continue to increase. A number of restaurant operators and retailers have experienced actual or potential security breaches in which credit/debit card information may have been stolen. While we carry cyber risk insurance and have taken reasonable steps to prevent the occurrence of security breaches in this respect, we may in the future become subject to claims for purportedly fraudulent transactions arising out of the actual or alleged theft of credit/debit card information, and we may also be subject to lawsuits or other proceedings in the future relating to these types of incidents. Proceedings related to theft of credit/debit card information may be brought by payment card providers, banks, and credit unions that issue cards, cardholders (either individually or as part of a class action lawsuit), and federal and state regulators. Any such proceedings could distract our management team members from running our business and cause us to incur significant unplanned losses and expenses.

We also receive and maintain certain personal information about our guests and team members. The use of this information by us is regulated at the federal and state levels. If our security and information systems are compromised or our team members fail to comply with these laws and regulations and this information is obtained by unauthorized persons or used inappropriately, it could adversely affect our reputation, as well as the results of operations, and could result in litigation against us or the imposition of penalties. In addition, our ability to accept credit/debit cards as payment in our restaurants and online depends on us maintaining our compliance status with standards set by the PCI Security Standards Council. These standards, set by a consortium of the major credit card companies, require certain levels of system security and procedures to protect our guests' credit/debit card information as well as other personal information. Privacy and information security laws and regulations change over time, and compliance with those changes may result in cost increases due to necessary system and process changes.

Failure to Establish and Maintain Our Internal Control Over Financial Reporting Could Harm Our Business and Financial Results

Our management team members are responsible for establishing and maintaining effective internal control over financial reporting. Internal control over financial reporting is a process to provide reasonable assurance regarding the reliability of financial reporting for external purposes in accordance with accounting principles generally accepted in the United States. Because of its inherent limitations, internal control over financial reporting is not intended to provide absolute assurance that we would prevent or detect a misstatement of our financial statements or fraud. Any failure to maintain an effective system of internal control over financial reporting could limit our ability to report our financial results accurately and timely or to detect and prevent fraud. The occurrence of material weaknesses in internal control over financial reporting could cause a loss of investor confidence and decline in the market price of our stock.

Our Inability or Failure to Effectively Manage Our Marketing Through Social Media Could Materially Adversely Impact Our Business

As part of our marketing efforts, we rely on BWW managed search engine marketing and social media platforms such as Facebook[®] and Twitter[®] to attract and retain guests. BWW is also initiating a multi-year effort to implement new technology platforms that should allow us to digitally engage with our guests and team members and strengthen our marketing and analytics capabilities. These initiatives may not be successful, resulting in expenses incurred without the benefit of higher revenues or increased employee engagement. In addition, a variety of risks are associated with the use of social media, including the improper disclosure of proprietary information, negative comments about our company, exposure of personally identifiable information, fraud, or out-of-date information. The inappropriate use of social media platforms by our guests or team members could increase our costs, lead to litigation or result in negative publicity that could damage our reputation.

There is Volatility in Our Stock Price

The market for our stock has, from time to time, experienced extreme price and volume fluctuations. Factors such as announcements of variations in our quarterly financial results and fluctuations in same-store sales could cause the market price of our stock to fluctuate significantly. In addition, the stock market in general, and the market prices for restaurant companies in particular, have experienced volatility that often has been unrelated to the operating performance of such companies. These broad market and industry fluctuations may adversely affect the price of our stock, regardless of our operating performance.

The market price of our stock can be influenced by shareholders' expectations about the ability of our business to grow and to achieve certain profitability targets. If our financial performance in a particular quarter does not meet the expectations of our shareholders, it may adversely affect their views concerning our growth potential and future financial performance. In addition, if the securities analysts who regularly follow our stock lower their ratings of our stock, the market price of our stock is likely to drop significantly.

If the Spin-Off Does Not Qualify as a Tax-free Transaction, the Company and its Shareholders Could be Subject to Additional Tax Liabilities

The Company, with the assistance of an opinion obtained from our tax advisors, structured the Spin-Off of Bagger Dave's as a 100% tax-free transaction under the applicable provisions of the U.S. Internal Revenue Code. This opinion is based on assumptions and other representations regarding factual matters made by the Company and Bagger Dave's. In the event these assumptions and representations were found to be inaccurate or incomplete, the tax-free status conclusion reached by our advisors could be in jeopardy. There is a risk that the IRS, upon examination of the facts and circumstances surrounding the transaction, could conclude that the Spin-Off is a taxable event. As a result, the Company and its shareholders could possibly incur additional tax liabilities, including penalties and interest.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

Our main office is located at 27680 Franklin Road, Southfield, Michigan 48034 and our telephone number is (833) 374-7282 . Our main office has approximately 5,340 square feet of office space. We occupy this facility under a lease that ends June 30, 2019. As of December 30, 2018 , we operated 64 Company-owned restaurants, all of which are leased properties. Typically, our operating leases contain renewal options under which we may extend the renewal lease terms for periods of five to 10 years. Most of our leases include "exclusive use" provisions prohibiting our landlords from leasing space to other restaurants that fall within certain specified criteria and incorporate incremental increases based on time passage and payment of certain occupancy-related expenses.

We own all of the equipment, furnishings, and fixtures in our restaurants. The Company also owns a significant amount of leasehold improvements in the leased facilities.

As of December 30, 2018 , we operated restaurant properties for 20 locations in Michigan, 17 locations in Florida, 15 locations in Missouri, seven locations in Illinois and five locations in Indiana. Our restaurants range in size from approximately 5,300 square feet to 13,500 square feet with the majority of our restaurants located in stand-alone buildings and/or end-cap positions in strip malls, with a few being in strip mall in-line positions.

ITEM 3. LEGAL PROCEEDINGS

The following information is incorporated by reference: the information set forth under the heading "Legal Proceedings" in Note 11 "Commitments and Contingencies" of the "Notes to the Consolidated Financial Statements" of Part II, Item 8 to this Report on Form 10-K.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Market Information

The Company's common stock is listed on the NASDAQ Capital Market under the symbol "SAUC". The development and maintenance of an active public trading market depends upon the existence of willing buyers and sellers, the presence of which is beyond our control. While we are a publicly-traded company, the volume of trading activity in our stock is relatively limited.

Holders

As of March 29, 2019, there were approximately 375 record holders of 33,182,875 shares of the Company's common stock, excluding shareholders whose stock is held either in nominee name and/or street name brokerage accounts.

Dividends

We have not declared or paid any cash dividends on our common stock. It is our policy to preserve cash for development and debt reduction. DRH does not have plans to pay any cash dividends. Our future dividend policy will be determined by our Board of Directors and will depend on various factors, including our results of operations, financial condition, anticipated cash needs, debt levels and plans for expansion.

ITEM 6. SELECTED FINANCIAL DATA

Not Applicable.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of our financial condition should be read in conjunction with our consolidated financial statements and the related notes to those statements included elsewhere in this document. The following discussion contains, in addition to historical information, forward-looking statements that include risks and uncertainties. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of certain factors, including those set forth under the heading "Risk Factors" and elsewhere in this document.

Overview

DRH is a single-concept restaurant company operating 64 BWW franchised restaurants. As one of the largest franchisees of BWW, we provide a unique guest experience in a casual and inviting environment. We are committed to providing value to our guests by offering generous portions of flavorful food in an upbeat and entertaining atmosphere. We believe BWW is a uniquely positioned restaurant brand designed to maximize guest appeal, offering competitive price points and a family-friendly atmosphere, which we believe enables strong long-term performance through varying economic cycles. We were incorporated in Nevada in 2006 and are headquartered in the Detroit metropolitan area. Our current 64 restaurants are located in Florida, Illinois, Indiana, Michigan, and Missouri.

Spin-Off of Bagger Dave's

On December 25, 2016, DRH completed the Spin-Off of Bagger Dave's into a new, independent publicly traded company. The Spin-Off was achieved through the distribution of 100 percent of the outstanding capital stock of Bagger Dave's pro rata to holders of DRH common stock on a one-for-one basis. DRH decided to spin-off Bagger Dave's after considering all reasonable strategic and structural alternatives because of the disparity between the operating models of its two brands, BWW as franchisee, and Bagger Dave's as an owned concept.

As part of the Spin-Off transaction, DRH funded a one-time \$2 million cash distribution to Bagger Dave's. The transaction was structured such that Bagger Dave's was released as a borrower under the DRH senior secured credit facility. Additionally, DRH retained substantially all of the tax benefits (net operating loss and tax credit carryforwards) generated prior to the date of the transaction. See "Spinoff of Bagger Dave's" in Note 2 to the consolidated financial statements for details on the Spin-Off of Bagger Dave's.

Our Growth Strategies and Outlook

Our strategy is comprised of the following key growth components:

- pursue disciplined restaurant growth through a combination of both organic expansion and strategic acquisitions;
- deliver comparable restaurant sales growth by providing our guest with an exceptional experience and executing effective marketing and promotional strategies; and
- leverage our infrastructure and operating expertise to grow profit margins.

We have a disciplined strategy for opening new restaurants. We also evaluate the potential for strategic acquisitions of Buffalo Wild Wings restaurants where we have an opportunity to leverage our infrastructure and operational expertise. We believe our historical track record of acquiring and integrating restaurants provides us with additional future growth opportunities and, as our capital resources permit, we will seek to take advantage of strategic acquisitions that may be available in the marketplace.

The Company closed one restaurant in 2018. Over the next five years, we may consider opening several new restaurants in our markets, but we have no obligation to do so. On February 22, 2019 we entered into an Asset Purchase Agreement to acquire 9 BWW restaurants in the Chicago, Illinois market for a cash purchase price of approximately \$22.5 million, subject to customary closing conditions. Upon completion of the transaction, since 2012, we will have acquired a total of 38 restaurants and will own and operate a total of 73 BWW restaurants. The transaction remains subject to the franchisor waiving its right of first refusal and franchisor consent, among other things. (for additional discussion of our growth strategies and outlook, see the section entitled "Business - Growth Strategy").

Performance Indicators

We use several metrics to evaluate and improve each restaurant's performance that include: sales trends, guest satisfaction, hourly compensation costs and food, beverage and packaging costs. We also use the following key performance indicators in evaluating restaurant performance:

- *Comparable Restaurant Sales* . We consider a restaurant to be comparable following the eighteenth month of operation. Changes in comparable restaurant sales reflect changes in sales for the comparable group of restaurants over a specified period of time. Changes in comparable sales can reflect changes in guest count trends, changes in average check size and changes in pricing. We exclude restaurants from comparable sales when they are closed for remodels, or occasionally for other reasons such as impact from significant road construction or other event.
- *Restaurant-Level Contribution*. Also referred to as Restaurant-Level EBITDA, this metric presents a restaurant's profit contribution and is defined as net revenue less costs of sales, labor, occupancy and operational expenses. It is representative of a restaurant's cash flow and is often times presented and measured as a percentage of sales in comparison to other restaurants.

Restaurant Openings

The following table outlines the restaurant unit information for each fiscal year from 2014 through 2018 , excluding Bagger Dave's restaurants.

	2018	2017	2016	2015	2014
Restaurants open at the beginning of fiscal year	65	64	62	42	36
Openings/(Closures):					
New Restaurant Openings	—	1	2	3	3
Restaurant Acquisitions	—	—	—	18	3
Restaurant Closures	(1)	—	—	(1)	—
Total restaurants open at the end of fiscal year	64	65	64	62	42

Our Fiscal Year

The Company utilizes a 52- or 53-week accounting period that ends on the last Sunday in December. Fiscal year 2018 , a 52 week year, ended on December 30, 2018 and fiscal year 2017 , a 53 week year, ended on December 31, 2017 .

Key Financial Definitions

Revenue. Revenue primarily consists of food and beverage sales, and merchandise sales, such as BWW sauce. Revenue is presented net of discounts associated with each sale. Revenue in a given period is directly influenced by the number of operating weeks in such period, the number of restaurants we operate and changes in restaurant sales.

Food, Beverage, Packaging and Merchandise Related Costs. The components of food, beverage, packaging and merchandise related costs are variable in nature, change with sales volume and are subject to increases or decreases based on fluctuations in market prices and commodity costs.

Compensation Costs. Compensation costs include restaurant management salaries, front- and back-of-house hourly wages, and restaurant-level manager bonuses, team member benefits and payroll taxes.

Occupancy Costs. Occupancy costs include rent charges, both fixed and variable, as well as common area maintenance costs, property insurance and taxes, the amortization of tenant allowances and the adjustment to straight-line rent. These expenses are generally fixed, but a portion may vary with an increase in sales if the lease contains a percentage rent provision.

Other Operating Costs. Other operating costs consist primarily of restaurant-related operating costs, such as supplies, utilities, repairs and maintenance, travel, insurance, credit card fees, recruiting and security. This expense category also includes franchise royalty fees and national advertising fund expenses. These costs generally increase with higher sales volume but, with the exception

of certain supplies, royalty fees, national advertising fund expenses and credit card fees, generally decline as a percentage of revenue.

General and Administrative Expenses. General and administrative expenses include costs associated with administrative and operational support functions including senior and supervisory management and staff compensation costs (including share-based compensation) and benefits, marketing and advertising expenses, travel, legal and professional fees, information systems, support office rent and other related support costs.

Pre-Opening Costs. Restaurant pre-opening costs consist of expenses incurred prior to opening a new restaurant, including manager salaries, relocation costs, supplies, recruiting expenses, initial new market public relations costs, pre-opening activities, team member payroll and related training costs for new team members. Restaurant pre-opening expenses also include rent recorded during the period between date of lease inception and the restaurant opening date. In addition, the Company includes restaurant labor costs that exceed the historical average for the first three months of restaurant operations that are attributable to training and initial staff turnover.

Depreciation and Amortization . Depreciation and amortization includes depreciation on fixed assets, including equipment and leasehold improvements, and amortization of certain intangible assets for restaurants.

Interest Expense . Interest expense consists primarily of interest on our outstanding indebtedness and the amortization of our debt issuance costs, reduced by capitalized interest.

Discontinued Operations. As a result of the Spin-Off of Bagger Dave's effective December 25, 2016, the results of operations and cash flows from operating and investing activities are presented as discontinued operations in 2017.

RESULTS OF OPERATIONS

The following table presents the consolidated statements of operations for the fiscal years ended December 30, 2018 and December 31, 2017 with each line item as a percentage of revenue.

	Fiscal Years-Ended	
	2018	2017
Revenue	100.0 %	100.0 %
Operating expenses		
Restaurant operating costs (exclusive of depreciation and amortization shown separately below):		
Food, beverage, and packaging	28.6 %	29.5 %
Compensation costs	26.8 %	25.2 %
Occupancy	7.6 %	7.1 %
Other operating costs	21.8 %	21.2 %
General and administrative expenses	5.4 %	5.5 %
Pre-opening costs	— %	0.2 %
Depreciation and amortization	7.5 %	7.9 %
Impairment and loss on asset disposals	2.5 %	0.2 %
Total operating expenses	100.2 %	96.8 %
Operating (loss) profit	(0.2)%	3.2 %
Interest expense	(4.2)%	(4.0)%
Other income, net	0.1 %	0.1 %
Loss from continuing operations before income taxes	(4.3)%	(0.7)%
Income tax benefit (expense) of continuing operations	1.1 %	(11.5)%
Loss from continuing operations	(3.2)%	(12.2)%
Discontinued operations		
Loss from discontinued operations before income taxes	— %	(0.1)%
Income tax benefit of discontinued operations	— %	— %
Loss from discontinued operations	— %	(0.1)%
Net loss	(3.2)%	(12.3)%

FISCAL YEAR 2018 COMPARED WITH FISCAL YEAR 2017

Revenue

Total revenue for fiscal year 2018 was \$153.1 million , a decrease of \$12.3 million , or 7.4% , over revenue generated during fiscal year 2017 . The decrease was driven by the 53rd week in fiscal year 2017, the closure of one restaurant in 2018 and lower traffic in our restaurants, partially offset by sales from a new restaurant opened in Second Quarter 2017 and an increase in delivery sales. Fiscal year 2018 same-store sales decreased by 4.6%.

Operating Expenses

Food, beverage, and packaging related costs decreased by \$5.0 million , or 10.3% , to \$43.8 million in fiscal year 2018 from \$48.8 million in fiscal year 2017 as a result of the 53rd week in fiscal year 2017 and lower volumes. Food, beverage, and packaging cost as a percentage of sales decreased from 29.5% in fiscal year 2017 to 28.6% in fiscal year 2018 primarily due to lower traditional chicken wing costs, partially offset by promotional activity in Fourth Quarter 2018. Average cost per pound for bone-in chicken wings decreased to \$1.76 in fiscal year 2018 from \$2.07 in fiscal year 2017 .

Compensation costs decreased by \$ 0.6 million , or 1.5% , to \$ 41.1 million in fiscal year 2018 from \$ 41.7 million in fiscal year 2017 , primarily due to the 53rd week in fiscal year 2017. Compensation cost as a percentage of sales increased to 26.8% in fiscal year 2018 from 25.2% in fiscal year 2017 primarily due to wage inflation and lower average unit volumes.

Occupancy costs decreased by \$0.1 million , or 1.0% , to \$ 11.6 million in fiscal year 2018 from \$ 11.7 million in fiscal year 2017 , primarily due to the decrease in the number of restaurants operating in 2018 . Occupancy cost as a percentage of sales increased to 7.6% in fiscal year 2018 from 7.1% in fiscal year 2017 primarily due to lower sales.

Other operating costs decreased by \$1.6 million , or 4.6% , to \$ 33.5 million in fiscal year 2018 from \$ 35.1 million in fiscal year 2017 primarily due to cost savings initiatives, reduced royalty and advertising fund contributions as a result of lower sales volumes and the 53rd week in fiscal year 2017. Other operating costs as a percentage of sales increased to 21.8% in fiscal year 2018 from 21.2% in fiscal year 2017 as a result of lower sales.

General and administrative expenses decreased by \$ 0.8 million , or 9.2% , to \$ 8.2 million in fiscal year 2018 from \$ 9.1 million in fiscal year 2017 . This decrease was primarily due to a decrease in corporate wages and other corporate expenses, partially offset by an increase in marketing expenses. General and administrative costs as a percentage of sales decreased to 5.4% in fiscal year 2018 from 5.5% in fiscal year 2017 as a result of reduced costs, despite lower sales.

Depreciation and amortization decreased by \$ 1.6 million , or 12.1% , to \$ 11.5 million in fiscal year 2018 from \$ 13.1 million in fiscal year 2017 . This decrease was primarily due to fixed asset disposals and fully depreciated assets. Depreciation and amortization as a percentage of sales decreased to 7.5% in fiscal year 2018 from 7.9% in fiscal year 2017 .

Impairment and loss on asset disposal increased by \$3.5 million or 1,114.8% to \$3.8 million in fiscal year 2018 from \$0.3 million in fiscal year 2017 . This increase was due to the impairment of five restaurant locations in Fiscal 2018. Impairment and loss on asset disposal as a percentage of sales increased to 2.5% in Fiscal 2018 from 0.2% in fiscal year 2017 .

Interest and Taxes

Interest expense was \$ 6.4 million and \$ 6.6 million during the years ended December 30, 2018 and December 31, 2017 , respectively.

In fiscal year 2018 we recorded an income tax benefit of \$1.7 million compared with an income tax expense of \$19.0 million in fiscal year 2017 . The decrease in the income tax expense is primarily related to the establishment of a full valuation allowance against the Company's deferred tax assets recorded in 2017.

Loss from Operations of the Discontinued Component

Loss from operations of the discontinued component was \$0 and \$0.2 million in 2018 and 2017 , respectively. The Spin-Off was completed as of December 25, 2016, and as a result, only minor expenses related to Bagger Dave's were incurred in 2017.

LIQUIDITY AND CAPITAL RESOURCES; ACQUISITION AND EXPANSION PLANS

On June 29, 2015, the Company entered into a five-year, \$155.0 million senior secured credit facility with a syndicate of lenders led by Citizens Bank, N.A. (the "Credit Facility") with a senior lien on all the Company's personal property and fixtures. The Credit Facility consists of a \$120.0 million term loan (the "Term Loan"), a \$30.0 million development line of credit (the "DLOC"), and a \$5.0 million revolving line of credit (the "RLOC").

On December 23, 2016, the Company entered into an amendment agreement for purposes of, among other things, releasing the Bagger Dave's entities as borrowers and releasing all related liens on the Bagger Dave's assets. In addition, the amendment (a) converted the amounts then outstanding under the DLOC to a development facility term loan (the "DF Term Loan" and, together with the Term Loan, the "Term Loans"), (b) canceled \$6.8 million previously available under the DLOC, and (c) extended the maturity date on the remaining \$5.0 million under the DLOC to June 29, 2018. Upon the maturity of the DLOC on June 29, 2018, the amount outstanding under the DLOC was added to the existing DF Term Loan.

Payments of principal are based upon a 12 -year straight-line amortization schedule, with monthly principal payments totaling \$980,906 on the Term Loans, plus accrued interest. As of December 30, 2018 , \$5.0 million was outstanding under the RLOC. The entire remaining outstanding principal and accrued interest on the Credit Facility is due and payable on the maturity date of June 29, 2020.

The interest rate for each of the loans, as selected by the borrower, is based upon either a LIBOR or base rate (generally Prime or Fed Funds) plus an applicable margin, which ranges from 2.25% to 3.5% for LIBOR loans and from 1.25% to 2.5% for base rate loans, depending on the lease adjusted leverage ratio as defined in the agreement.

Going Concern

The Credit Facility contains various customary financial covenants generally based on the performance of the Company. The financial covenants consist of a quarterly minimum required debt service coverage ratio (the "DSCR") and a maximum permitted lease adjusted leverage ratio (the "LALR") which were reset pursuant to an amendment dated February 28, 2018. This amendment also changed the definition of "consolidated EBITDA" used in the calculation of these financial covenants to permit the inclusion of a maximum of \$5 million of equity proceeds over the remaining term of the agreement.

On July 24, 2018 the Company completed an underwritten registered public offering of 6 million shares of common stock at a public offering price of \$1.00 per share, which included 700,000 shares offered by a certain selling stockholder, for total Company gross proceeds of \$5.3 million. The net proceeds from the offering were approximately \$4.6 million after deducting the underwriting discounts and commissions and offering expenses payable by us, and were included in "consolidated EBITDA" for purposes of computing financial covenants beginning in the third quarter of 2018. The net proceeds from the offering were intended for working capital and general corporate purposes, including repayment of debt.

As of December 30, 2018 the Company was in compliance with its loan covenants. However, beginning in the third quarter of 2019 the net proceeds from the registered public offering will no longer be included in "consolidated EBITDA" and, as a result, the Company is currently forecasting that it may not be in compliance with these financial covenants in the third quarter.

While the Company has successfully negotiated financial covenant amendments in the past and would seek to do so again should it be in default or near a default, there can be no assurance that it will be successful in obtaining a satisfactory amendment.

As a result of this uncertainty coupled with the June 2020 maturity of the Credit Facility, the Company has been in discussions with its current lenders and other sources of capital regarding a possible refinancing and/or replacement of the Credit Facility. The Company is also exploring various other alternatives, including, among other things, possible equity financing. There can be no assurance, however, that any such efforts will be successful.

Until such time as the Company has executed an agreement to amend, refinance or replace the Credit Facility, the Company cannot conclude that it is probable that it will do so and, accordingly, this raises substantial doubt about the Company's ability to continue as a going concern.

Acquisition and Expansion Plans

Also, on February 22, 2019 we entered in an Asset Purchase Agreement to acquire 9 BWW restaurants in the Chicago, Illinois market for a cash purchase price of approximately \$22.5 million, subject to customary closing conditions (the “Acquisition”). The Company's financing discussions referenced above include raising the capital necessary to finance the Acquisition.

Outside of funding our current operations, funding the Acquisition, and servicing our existing debt, our capital requirements are primarily dependent upon our restaurant remodel requirements and the pace of our new restaurant growth plan.

We believe that reinvesting in existing restaurants is an important factor and necessary to maintain the overall positive dining experience for our guests and, as a result, we have historically invested heavily in refreshes and upgrades. Depending on the age of the existing restaurants, upgrades have ranged from \$50,000 (for minor interior refreshes or audio/video upgrades) to \$1.3 million (for a full extensive remodel of the restaurant with addition of an enclosed patio). While BWW is in the process of developing a new building design standard and testing a variety of remodel options, they have communicated to franchisees that they are targeting a three-tier remodel program with cost ranging from \$250,000 to \$650,000, depending on the size and revenue profile of the restaurant. We've remodeled or built 27 of our restaurants in the most recent Stadia design standard, and our current plan is to remodel the remaining 37 BWW restaurants to the new design standard over the next 6 years.

We do not currently plan to complete any new restaurant development or any significant facility upgrades in 2019 .

Cash flow from continuing operations for fiscal 2018 and 2017 was \$9.6 million and \$12.7 million , respectively. Net cash provided by operating activities consisted primarily of net earnings adjusted for non-cash expenses.

For 2018 , our capital expenditures were \$1.6 million . Approximately 64% of the capital was used for maintenance type items and the remaining 36% for restaurant refreshes, upgrades and other general corporate purposes.

After the Spin-Off of Bagger Dave's, the Company retained certain tax benefits (net operating loss and tax credit carryforwards) and, since the Spin-Off, the Company has generated additional tax benefits which, together, will offset pre-tax income totaling over \$75 million at current estimated tax rates. We do not expect to incur significant federal and/or state income tax liabilities until our tax benefits have been fully utilized.

Mandatory Upgrades

We did not complete any remodels in 2018 and do not currently expect to complete, nor are we required by the franchisor to complete, any remodels in 2019 . Further, we are currently having discussions with the franchisor regarding requirements for remodels beyond 2019 as the details, specifications and timing of future remodels are being re-evaluated by new ownership after its acquisition of BWW.

Discretionary Upgrades and Relocations

In fiscal year 2018 , the Company invested additional capital to provide minor upgrades and refreshes to a number of its existing locations, funded by cash from operations. These improvements primarily consist of refreshing interior building finishes and audio/visual equipment upgrades. In fiscal 2018 , we did not have any relocations. The decision to relocate is typically driven by timing of our current lease agreements and the availability of real estate that we deem to be a better long-term investment.

2019 Capital Plan

In 2019 , we anticipate our capital expenditures will range between \$2.0 million and \$2.5 million and will be for minor facility upgrades and general maintenance-type investments in our restaurants. We do not expect to develop any new restaurants or complete any remodels of our existing restaurants.

Contractual Obligations

The following table presents a summary of our contractual obligations as of December 30, 2018 :

	Total	Less than one year	1 - 3 years	3 - 5 years	After 5 years
Long-term debt ¹	\$ 102,422,630	\$ 11,515,093	\$ 90,907,537	\$ —	\$ —
Operating lease obligations	72,626,347	9,114,525	17,558,761	14,502,409	31,450,652
	<u>\$ 175,048,977</u>	<u>\$ 20,629,618</u>	<u>\$ 108,466,298</u>	<u>\$ 14,502,409</u>	<u>\$ 31,450,652</u>

¹ Amount represents the expected principal cash payments relating to our long-term debt and does not include any fair value adjustments or discounts/premiums or interest rate payments due to the variability of the rates. See Note 7 for additional details.

Impact of Inflation

Our profitability is dependent on, among other things, our ability to anticipate and react to changes in the costs of key operating resources, including food and other raw materials, labor, energy, and other supplies and services. Substantial increases in costs and expenses could impact our operating results to the extent that such increases cannot be passed along to our restaurant guests. The impact of inflation on food, labor, energy and occupancy costs can significantly affect the profitability of our restaurant operations.

All of our restaurant staff members are paid hourly rates related to federal and state minimum wage and, in many cases, the federal or state tipped minimum wage. Certain operating costs, such as taxes, insurance and other outside services continue to increase with the general level of inflation or higher and may also be subject to other cost and supply fluctuations outside of our control.

While we have been able to partially offset inflation and other changes in the costs of key operating resources by gradually increasing prices for our menu items, more efficient purchasing practices, productivity improvements, and greater economies of scale, there can be no assurance that we will be able to continue to do so in the future. From time to time, competitive conditions could limit our menu pricing flexibility. In addition, macroeconomic conditions could make additional menu price increases imprudent. There can be no assurance that all future cost increases can be offset by increased menu prices or that increased menu prices will be fully absorbed by our restaurant guests without any resulting changes in their visit frequencies or purchasing patterns. There can be no assurance that we will continue to generate increases in comparable restaurant sales in amounts sufficient to offset inflationary or other cost pressures.

OFF-BALANCE SHEET ARRANGEMENTS

After the Spin-Off, the Company remains liable for guarantees of certain Bagger Dave's leases. These guarantees cover 10 separate leases, 3 of which relate to restaurants previously closed by Bagger Dave's and now being operated by a new tenant under either a sub-lease or a new lease.

The Company has determined that its maximum exposure resulting from the lease guarantees includes approximately \$7.3 million of future minimum lease payments plus potential additional payments to satisfy maintenance, property tax and insurance requirements under the leases as of December 30, 2018 . The terms and conditions of the guarantees vary, and each guarantee has an expiration date which may or may not correspond with the end of the underlying lease term. These expiration dates range from less than 1 month to 11 years as of December 30, 2018 . In the event that the Company is required to perform under any of its lease guarantees, we do not believe a liability to the Company would be material because it would first seek to minimize its exposure by finding a suitable tenant to sub-lease the space. In many cases, we expect that a replacement tenant would be found and the lessor may agree to release the Company from its future guarantee obligation. Since 2015, 15 Bagger Dave's locations with DRH lease guarantees were closed. New tenants were found to step into the Company's lease obligations for 9 of these locations in 3 to 14 months from the date of closure. Over this time, 12 guarantees expired or terminated, and 3 remain obligations of the Company.

In conjunction with the Spin-Off, DRH entered into a transition services agreement (the "TSA") with Bagger Dave's pursuant to which DRH provided certain information technology and human resources support, limited accounting support, and other minor administrative functions at no charge. The TSA was intended to assist the discontinued component in efficiently and seamlessly transitioning to stand on its own. Certain provisions of the TSA terminated in December 2017 and the First Amendment to TSA (the "Amended TSA") was entered into effective January 1, 2018. Under the Amended TSA, DRH provides limited ongoing administrative support to Bagger in certain areas, including information technology, human resources and real estate, in exchange for a fee based on a rate-per-hour of service.

Critical Accounting Policies and Estimates

The preparation of financial statements and related disclosures in conformity with generally accepted accounting principles in the United States of America (“GAAP”) and the Company’s discussion and analysis of its financial condition and operating results require the Company’s management to make judgments, assumptions and estimates that affect the amounts reported in its consolidated financial statements and accompanying notes. Note 1, “Nature of Business and Summary of Significant Accounting Policies,” of the Notes to Consolidated Financial Statements in Part II, Item 8 of this Form 10-K describes the significant accounting policies and methods used in the preparation of the Company’s consolidated financial statements. Management bases its estimates on historical experience and on various other assumptions it believes to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities. Actual results may differ from these estimates, and such differences may be material. We consider an accounting estimate to be critical if it requires assumptions to be made and changes in these assumptions could have a material impact on our consolidated financial condition or results of operations. Management considers these policies critical because they are both important to the portrayal of the Company’s financial condition and operating results, and they require management to make judgments and estimates about inherently uncertain matters. The Company’s management has reviewed these critical accounting policies and related disclosures with the Audit Committee of the Company’s Board of Directors.

Impairment or Disposal of Long-Lived Assets

We review long-lived assets quarterly to determine if triggering events have occurred which would require a test to determine if the carrying amount of these assets is recoverable based on estimated future cash flows. Assets are reviewed at the lowest level for which cash flows can be identified, which is at the individual restaurant level. In the absence of extraordinary circumstances, restaurants are included in the impairment analysis after they have been open for two years. We evaluate the recoverability of a restaurant’s long-lived assets, including intangibles, leasehold improvements, furniture, fixtures and equipment over the remaining life of the primary asset in the asset group, after considering the potential impact of planned operational improvements, marketing programs, and anticipated changes in the trade area. In determining future cash flows, significant estimates are made by management with respect to future operating results for each restaurant over the remaining life of the primary asset in the asset group. If assets are determined to be impaired, the impairment charge is measured by calculating the amount by which the asset carrying amount exceeds its fair value based on our estimate of discounted future cash flows. The determination of asset fair value is also subject to significant judgment. Based on management’s quantitative analysis, an impairment of \$3.7 million was recorded for five BWW locations for the fiscal year ended December 30, 2018 . For the fiscal year ended December 31, 2017 no impairment losses were recognized in continuing operations.

We account for exit or disposal activities, including restaurant closures, in accordance with Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) Topic 420, *Exit or Disposal Cost Obligations* . Such costs include the cost of disposing of the assets, as well as other facility-related expenses from previously closed restaurants. These costs are generally expensed as incurred.

Indefinite-Lived Intangible Assets

Liquor licenses, also a component of intangible assets, are deemed to have an indefinite life and, accordingly, are not amortized. Management reviews liquor license assets on an annual basis or more frequently if impairment indicators are present to determine whether carrying values have been impaired. We identify potential impairments for liquor licenses by comparing the fair value with its carrying amount. If the fair value exceeds the carrying amount, the liquor licenses are not impaired. If the carrying amount exceeds the fair value, an impairment loss is recorded for the difference. If the fair value of the asset is less than the carrying amount, an impairment is recorded. No impairments were recognized in fiscal 2018 or 2017 in continuing operations.

Goodwill

Goodwill is not amortized and represents the excess of cost over the fair value of identified net assets of businesses acquired. Goodwill is subject to an annual impairment analysis or more frequently if indicators of impairment exist. At both December 30, 2018 and December 31, 2017 , we had goodwill of \$50.1 million . The goodwill is assigned to the Company’s Buffalo Wild Wings reporting unit, which is the Company’s only reporting unit.

The Company assesses goodwill for impairment on an annual basis during the fourth quarter, or more frequently if an event occurs or circumstances change that would more likely than not reduce the fair value of the reporting unit below its carrying amount. The Company’s assessment first reviews relevant qualitative factors to determine whether it is more likely than not (a likelihood of more than 50%) that the fair value of a reporting unit is less than its carrying amount. In evaluating whether it is

more likely than not that the fair value of a reporting unit is less than its carrying amount, we assess relevant events and circumstances. If, after assessing the totality of events and circumstances, we determine that it is more likely than not that the fair value of the reporting unit is less than the carrying amount, the quantitative impairment test would be necessary. Conversely, if it is not more likely than not that the fair value of the reporting unit is less than the carrying amount, further action would not be required.

We adopted Accounting Standards Update ("ASU") 2017-04, Topic 350: Intangibles - Goodwill and Other: Simplifying the Test for Goodwill Impairment ("ASU 2017-04") as of September 25, 2017. ASU 2017-04 requires goodwill impairment to be measured as the excess of the carrying value over the fair value of the reporting unit, not to exceed the carrying amount of goodwill. The carrying value of our reporting unit as of October 1, 2018 and September 25, 2017 was negative, and therefore goodwill was not impaired as of December 30, 2018 and December 31, 2017 .

Income Taxes

Deferred income tax assets and liabilities are computed for differences between the financial statement and tax bases of assets and liabilities that will result in taxable or deductible amounts in the future, based on enacted tax laws and rates applicable to the periods in which the differences are expected to affect taxable income. Valuation allowances are established when necessary to reduce deferred tax assets to the amount expected to be realized. Income tax expense is the tax payable or refundable for the period plus or minus the change during the period in deferred tax assets and liabilities.

In accordance with the provisions of FASB ASC 740, *Income Taxes* , ("ASC 740") a valuation allowance is established when it is more likely than not that some portion of the deferred tax assets will not be realized. Realization is dependent upon the generation of future taxable income or the reversal of deferred tax liabilities during the periods in which those temporary differences become deductible. We consider the reversal of deferred tax liabilities, projected future taxable income and tax planning strategies. Management assesses the available positive and negative evidence to estimate whether sufficient future taxable income will be generated to permit use of the existing deferred tax assets. A significant piece of objective negative evidence evaluated was the cumulative loss incurred over the three-year period ended December 31, 2017, which continued through 2018 . Such objective evidence limits the ability to consider other subjective evidence, such as our projections for future growth. As a result of this evaluation, as of December 31, 2017, a valuation allowance of \$17.6 million was recorded because the company was unable to assert that realization of the deferred tax asset is more likely than not. As of December 30, 2018 , the valuation allowance is \$18.1 million . The amount of the deferred tax asset considered realizable, however, could be adjusted if estimates of future taxable income increase or if objective negative evidence in the form of cumulative losses is no longer present and additional weight is given to subjective evidence such as our projections for growth.

The Company applies the provisions of ASC 740, regarding the accounting for uncertainty in income taxes. The Company classifies all interest and penalties as income tax expense. There are no accrued interest amounts or penalties related to uncertain tax positions as of December 30, 2018 and December 31, 2017 .

Interest Rate Swap Agreements

The Company utilizes interest rate swap agreements with Citizens Bank, N.A. ("Citizens") and other banks to fix interest rates on a portion of the Company's variable rate debt, which reduces exposure to interest rate fluctuations. Our derivative financial instruments are recorded at fair value on the balance sheet. The effective portion of changes in the fair value of derivatives which qualify for hedge accounting is recorded in accumulated other comprehensive income (loss) and is recognized in the statement of operations when the hedged item affects earnings. Ineffective portion of the change in fair value of a hedge would be recognized in income immediately. The Company does not use any other types of derivative financial instruments to hedge such exposures, nor does it use derivatives for speculative purposes.

The interest rate swap agreements associated with the Company's current debt agreements qualify for hedge accounting. As such, the Company records the change in the fair value of its swap agreements as a component of accumulated other comprehensive income (loss), net of tax. The Company records the fair value of its interest swaps on the Consolidated Balance Sheet in other long-term assets or other liabilities depending on the fair value of the swaps. See Note 7 , Note 14 and Note 15 for additional information on the interest rate swap agreements.

Share-based Compensation

The fair value of restricted shares is equal to the number of restricted shares issued times the Company's stock price on the date of grant and is amortized as compensation expense on a straight-line basis over the service period of the award.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Not Applicable.

ITEM 8. CONSOLIDATED FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The Consolidated Financial Statements, Notes to Consolidated Financial Statements, and the Report of Independent Registered Accounting Firm are included in this Annual Report and are incorporated herein by reference.

DIVERSIFIED RESTAURANT HOLDINGS, INC.
Index to Consolidated Financial Statements

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM	36
CONSOLIDATED FINANCIAL STATEMENTS:	
CONSOLIDATED BALANCE SHEETS	37
CONSOLIDATED STATEMENTS OF OPERATIONS	38
CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS	39
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' DEFICIT	40
CONSOLIDATED STATEMENTS OF CASH FLOWS	41
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS	42

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Shareholders and Board of Directors
Diversified Restaurant Holdings, Inc.
Southfield, Michigan

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Diversified Restaurant Holdings, Inc. (the "Company") and subsidiaries as of December 30, 2018 and December 31, 2017, the related consolidated statements of operations and comprehensive loss, stockholders' deficit, and cash flows for each of the years then ended, and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company and subsidiaries at December 30, 2018 and December 31, 2017, and the results of their operations and their cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

Going Concern Uncertainty

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company is forecasting an insufficient amount of earnings before taxes, depreciation and amortization to meet the financial covenant ratios set forth in their Credit Facility which will result in the Company's debt becoming due upon demand which raises substantial doubt about its ability to continue as a going concern. Management's plans in regard to this matter is also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ BDO USA, LLP

We have served as the Company's auditor since 2011.

Troy, Michigan
April 3, 2019

DIVERSIFIED RESTAURANT HOLDINGS, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS

	December 30, 2018	December 31, 2017
ASSETS		
Current assets		
Cash and cash equivalents	\$ 5,364,014	\$ 4,371,156
Accounts receivable	654,322	653,102
Inventory	1,526,779	1,591,363
Prepaid and other current assets	511,835	408,982
Total current assets	8,056,950	7,024,603
Property and equipment, net	34,423,345	48,014,043
Intangible assets, net	2,198,685	2,438,187
Goodwill	50,097,081	50,097,081
Other long-term assets	408,761	185,322
Total assets	\$ 95,184,822	\$ 107,759,236
LIABILITIES AND STOCKHOLDERS' DEFICIT		
Current liabilities		
Accounts payable	\$ 4,273,133	\$ 4,561,939
Accrued compensation	1,830,415	1,854,127
Other accrued liabilities	2,946,738	2,404,942
Current portion of long-term debt	11,515,093	11,440,433
Current portion of deferred rent	427,479	411,660
Total current liabilities	20,992,858	20,673,101
Deferred rent, less current portion	2,385,961	2,208,238
Deferred income taxes	1,220,087	2,759,870
Unfavorable operating leases	438,944	510,941
Other liabilities	1,587,821	2,346,991
Long-term debt, less current portion	90,907,537	102,488,730
Total liabilities	117,533,208	130,987,871
Commitments and contingencies (Notes 3, 10 and 11)		
Stockholders' deficit :		
Common stock - \$0.0001 par value; 100,000,000 shares authorized; 33,200,708 and 26,859,125, respectively, issued and outstanding	3,182	2,625
Additional paid-in capital	27,021,517	21,776,402
Accumulated other comprehensive income (loss)	355,293	(283,208)
Accumulated deficit	(49,728,378)	(44,724,454)
Total stockholders' deficit	(22,348,386)	(23,228,635)
Total liabilities and stockholders' deficit	\$ 95,184,822	\$ 107,759,236

See accompanying notes to consolidated financial statements.

DIVERSIFIED RESTAURANT HOLDINGS, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS

	Fiscal Years Ended	
	December 30, 2018	December 31, 2017
Revenue	\$ 153,138,219	\$ 165,462,612
Operating expenses		
Restaurant operating costs (exclusive of depreciation and amortization shown separately below):		
Food, beverage, and packaging	43,795,044	48,799,718
Compensation costs	41,111,404	41,726,264
Occupancy	11,607,378	11,720,147
Other operating costs	33,455,134	35,062,833
General and administrative expenses	8,246,709	9,081,866
Pre-opening costs	—	405,448
Depreciation and amortization	11,532,662	13,115,072
Impairment and loss on asset disposals	3,772,431	310,536
Total operating expenses	153,520,762	160,221,884
Operating (loss) profit	(382,543)	5,240,728
Interest expense	(6,416,531)	(6,633,709)
Other income, net	112,155	106,586
Loss from continuing operations before income taxes	(6,686,919)	(1,286,395)
Income tax benefit (expense) of continuing operations	1,682,995	(18,997,756)
Loss from continuing operations	(5,003,924)	(20,284,151)
Discontinued operations		
Loss from discontinued operations before income taxes	—	(238,253)
Income tax benefit of discontinued operations	—	64,328
Loss from discontinued operations	—	(173,925)
Net loss	\$ (5,003,924)	\$ (20,458,076)
Basic and diluted loss per share from :		
Continuing operations	\$ (0.17)	\$ (0.76)
Discontinued operations	—	(0.01)
Basic and diluted loss per share:	\$ (0.17)	\$ (0.77)
Weighted average number of common shares outstanding		
Basic and diluted	28,969,221	26,717,910

See accompanying notes to consolidated financial statements.

DIVERSIFIED RESTAURANT HOLDINGS, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS

	Fiscal Years Ended	
	December 30, 2018	December 31, 2017
Net loss	\$ (5,003,924)	\$ (20,458,076)
Other comprehensive income		
Unrealized changes in fair value of interest rate swaps, net of tax of (\$169,728) and (\$335,371)	638,501	651,014
Comprehensive loss	\$ (4,365,423)	\$ (19,807,062)

See accompanying notes to consolidated financial statements.

DIVERSIFIED RESTAURANT HOLDINGS, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' DEFICIT

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount				
Balances - December 25, 2016	26,632,222	\$ 2,610	\$ 21,355,270	\$ (934,222)	\$ (24,534,378)	\$ (4,110,720)
Adoption of ASU 2016-09 (Note 1)	—	—	—	—	268,000	268,000
Issuance of restricted shares	263,332	—	—	—	—	—
Forfeitures of restricted shares	(50,850)	—	—	—	—	—
Shares effectively repurchased for required employee withholding taxes	(22,716)	(2)	(62,147)	—	—	(62,149)
Employee stock purchase plan	37,137	4	65,196	—	—	65,200
Share-based compensation	—	13	418,083	—	—	418,096
Other comprehensive income	—	—	—	651,014	—	651,014
Net loss from continuing operations	—	—	—	—	(20,284,151)	(20,284,151)
Net loss from discontinued operations	—	—	—	—	(173,925)	(173,925)
Balances - December 31, 2017	26,859,125	\$ 2,625	\$ 21,776,402	\$ (283,208)	\$ (44,724,454)	\$ (23,228,635)
Issuance of restricted shares	975,119	—	—	—	—	—
Forfeitures of restricted shares	(35,671)	—	—	—	—	—
Shares effectively repurchased for required withholding taxes	(50,163)	(5)	(70,345)	—	—	(70,350)
Issuance of common shares from offering, net of fees and expenses of \$0.7 million	5,300,000	530	4,579,251	—	—	4,579,781
Employee stock purchase plan	71,274	7	83,115	—	—	83,122
Share-based compensation	81,024	25	653,094	—	—	653,119
Other comprehensive income	—	—	—	638,501	—	638,501
Net loss from continuing operations	—	—	—	—	(5,003,924)	(5,003,924)
Balances - December 30, 2018	33,200,708	\$ 3,182	\$ 27,021,517	\$ 355,293	\$ (49,728,378)	\$ (22,348,386)

See accompanying notes to consolidated financial statements.

DIVERSIFIED RESTAURANT HOLDINGS, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS

	Fiscal Years Ended	
	December 30, 2018	December 31, 2017
Cash flows from operating activities		
Net loss	\$ (5,003,924)	\$ (20,458,076)
Loss from discontinued operations	—	173,925
Net loss from continuing operations	(5,003,924)	(20,284,151)
Adjustments to reconcile net loss from continuing operations to net cash provided by operating activities:		
Depreciation and amortization	11,532,662	13,115,072
Amortization of debt discount and loan fees	296,385	294,103
Amortization of gain on sale-leaseback	(199,834)	(131,617)
Impairment and loss on asset disposals	3,772,431	310,536
Share-based compensation	653,094	418,096
Deferred income taxes	(1,706,828)	18,943,427
Changes in operating assets and liabilities that provided (used) cash		
Accounts receivable	(1,220)	(376,864)
Inventory	64,584	109,241
Prepaid and other assets	50,847	896,954
Intangible assets	(20,000)	(48,806)
Other long-term assets	1,987	48,217
Accounts payable	(300,702)	555,089
Accrued liabilities	313,195	(1,357,970)
Deferred rent	193,542	182,477
Net cash provided by operating activities of continuing operations	9,646,219	12,673,804
Net cash used in operating activities of discontinued operations	—	(173,925)
Net cash provided by operating activities	9,646,219	12,499,879
Cash flows from investing activities		
Purchases of property and equipment	(1,623,355)	(4,687,242)
Net cash used in investing activities	(1,623,355)	(4,687,242)
Cash flows from financing activities		
Proceeds from issuance of long-term debt	—	4,650,965
Repayments of long-term debt	(11,622,559)	(12,116,623)
Proceeds from employee stock purchase plan	83,122	65,200
Proceeds from issuance of common stock, net of fees and expenses of \$0.7 million	4,579,781	—
Tax withholding for restricted stock	(70,350)	(62,149)
Net cash used in financing activities	(7,030,006)	(7,462,607)
Net increase in cash and cash equivalents	992,858	350,030
Cash and cash equivalents, beginning of period	4,371,156	4,021,126
Cash and cash equivalents, end of period	\$ 5,364,014	\$ 4,371,156

See accompanying notes to consolidated financial statements.

**DIVERSIFIED RESTAURANT HOLDINGS AND SUBSIDIARIES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

1 . NATURE OF BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Nature of Business

Diversified Restaurant Holdings, Inc. ("DRH") is a restaurant company operating a single concept, Buffalo Wild Wings[®] ("BWW"). As one of the largest franchisees of BWW, we provide a unique guest experience in a casual and inviting environment.

DRH currently operates 64 BWW restaurants (20 in Michigan, 17 in Florida, 15 in Missouri, 7 in Illinois and 5 in Indiana).

On December 25, 2016, the Company completed a spin-off of 19 Bagger Dave's entities and certain real estate entities which house the respective Bagger Dave's entities previously owned by DRH into a new independent publicly traded company, Bagger Dave's Burger Tavern, Inc. ("Bagger Dave's"). For additional details refer to Note 2 .

DRH and its wholly-owned subsidiaries AMC Group, Inc. ("AMC"), AMC Wings, Inc. ("WINGS"), and AMC Real Estate, Inc. ("REAL ESTATE" and, collectively, the "Company") own and operate BWW restaurants. DRH is incorporated in Nevada.

We are economically dependent on retaining our franchise rights with BWW. The franchise agreements have specific initial terms with expiration dates ranging from December 2020 through June 2037 . After consideration of renewal options, the franchise agreements have expiration dates ranging from December 2025 through June 2052 . The franchise agreements are renewable upon written request by the franchisee and upon approval of the franchisor. Franchise agreements are generally renewed if the franchisee has complied with the terms of the franchise agreement.

We follow accounting standards set by the Financial Accounting Standards Board ("FASB"). The FASB sets generally accepted accounting principles in the United States of America ("GAAP") that we follow to ensure we consistently report our financial condition, results of operations, and cash flows. References to GAAP issued by the FASB in these footnotes are to the FASB Accounting Standards Codification ("ASC").

Principles of Consolidation

The consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America and include the accounts of the Company and its wholly-owned subsidiaries. All inter-company accounts and transactions have been eliminated.

For Variable Interest Entities ("VIE(s)"), we assess whether we are the primary beneficiary as prescribed by the accounting guidance on the consolidation of a VIE. The primary beneficiary of a VIE is the party that has the power to direct the activities that most significantly impact the performance of the entity and the obligation to absorb losses or the right to receive benefits that could potentially be significant to the entity. See Note 3 to the accompanying notes to the consolidated financial statements for more details.

Segment Reporting

As of December 30, 2018 , the Company has one operating and reportable segment.

Fiscal Year

The Company utilizes a 52- or 53-week accounting period that ends on the last Sunday in December. Fiscal year 2018 ended on December 30, 2018 and was comprised of 52 weeks. Fiscal year 2017 ended on December 31, 2017 was comprised of 53 weeks.

**DIVERSIFIED RESTAURANT HOLDINGS AND SUBSIDIARIES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

Going Concern

As further discussed in Note 7, the Company has approximately \$102.4 million of debt outstanding under its \$155.0 million senior secured credit facility with a syndicate of lenders led by Citizens (the "Credit Facility") with a maturity date of June 29, 2020. The debt agreement contains various customary financial covenants generally based on the earnings of the Company relative to its debt. The financial covenants consist of a quarterly minimum required debt service coverage ratio (the "DSCR") and a maximum permitted lease adjusted leverage ratio (the "LALR") which were reset pursuant an amendment dated February 28, 2018. This amendment also changed the definition of "consolidated EBITDA" used in the calculation of these financial covenants to permit the inclusion of a maximum of \$5 million of equity proceeds over the remaining term of the agreement.

On July 24, 2018 the Company completed an underwritten registered public offering of 6 million shares of common stock at a public offering price of \$1.00 per share, which included 700,000 shares offered by a certain selling stockholder, for total Company gross proceeds of \$5.3 million. The net proceeds from the offering were approximately \$4.6 million after deducting the underwriting discounts and commissions and offering expenses payable by us, and were included in "consolidated EBITDA" for purposes of computing financial covenants beginning in the third quarter of 2018.

As of December 30, 2018, the Company was in compliance with its loan covenants. However, beginning in the third quarter of 2019, the net proceeds from the registered public offering will no longer be included in "consolidated EBITDA" and, as a result, the Company is currently forecasting that it may not be in compliance with these financial covenants in the third quarter.

While the Company has successfully negotiated financial covenant amendments in the past and would seek to do so again should it be in default or near a default, there can be no assurance that it will be successful in obtaining a satisfactory amendment.

As a result of this uncertainty coupled with the June 2020 maturity of the Credit Facility, the Company has been in discussions with its current lenders and other sources of capital regarding a possible refinancing and/or replacement of the Credit Facility. The Company is also exploring various other alternatives, including, among other things, possible equity financing. There can be no assurance, however, that any such efforts will be successful.

Until such time as the Company has executed an agreement to amend, refinance or replace the Credit Facility, the Company cannot conclude that it is probable that it will do so and, accordingly, this raises substantial doubt about the Company's ability to continue as a going concern.

However, the accompanying financial statements have been prepared assuming the Company will continue to operate as a going concern, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. The accompanying financial statements do not include adjustments that might result from the outcome of this uncertainty, including any adjustments to reflect the possible future effects of the recoverability and classification of recorded asset amounts or amounts and classifications of liabilities that might be necessary should the Company be unable to continue as a going concern.

Cash and Cash Equivalents

Cash and cash equivalents consist of cash on hand and demand deposits in banks. The Company considers all highly-liquid investments purchased with original maturities of three months or less to be cash and cash equivalents. The Company, at times throughout the year, may, in the ordinary course of business, maintain cash balances in excess of federally-insured limits. Management does not believe the Company is exposed to any unusual risks on such deposits.

Accounts Receivable

At December 30, 2018 and December 31, 2017, accounts receivable primarily consist of contractually determined receivables from BWW for gift card reimbursements. Accounts receivable are stated at the amount management expects to collect. Balances that are outstanding after management has used reasonable collection efforts are written off with a corresponding charge to bad debt expense. There was no allowance for doubtful accounts necessary at December 30, 2018 and December 31, 2017.

DIVERSIFIED RESTAURANT HOLDINGS AND SUBSIDIARIES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Gift Cards

The Company records gift cards under a BWB system-wide program. Gift cards sold are recorded as a gift card liability. When redeemed, the gift card liability account is offset by recording the transaction as revenue. At times, gift card redemptions can exceed amounts due to BWB for gift card purchases resulting in an asset balance. Under this centralized system the balance due to/from BWB is settled weekly and we are not responsible for breakage. The Company's gift card balance was an asset of \$0.4 million and liability of \$0.5 million as of December 30, 2018 and December 31, 2017, respectively.

Inventory

Inventory consists mainly of food and beverage products and is accounted for at the lower of cost or net realizable value using the first in, first out method of inventory valuation. Cash flows related to inventory sales are classified in net cash provided by operating activities in the Consolidated Statements of Cash Flows.

Prepays and Other Long-Term Assets

Prepaid assets consist principally of prepaid insurance and service contracts and are recognized ratably as operating expense over the period of future benefit. Other assets consist primarily of security deposits for operating leases and utilities.

Property and Equipment

Property and equipment are recorded at cost. Equipment and furniture and fixtures are depreciated using the straight-line method over the estimated useful lives of the assets, which range from three to seven years. Leasehold improvements, which include the cost of improvements funded by landlord incentives or allowances, are amortized using the straight-line method over the lesser of the term of the lease, or the estimated useful lives of the assets, which is typically five to 15 years. Maintenance and repairs are expensed as incurred. Upon retirement or disposal of assets, the cost and accumulated depreciation are eliminated from the respective accounts and the related gains or losses are credited or charged to earnings.

The Company capitalizes items associated with construction but not yet placed into service, known as construction in progress ("CIP"). Items capitalized include fees associated with the design, build out, furnishing of the restaurants, leasehold improvements, construction period interest (when applicable), equipment, and furniture and fixtures. Restaurant CIP is not amortized or depreciated until the related assets are placed into service. Items are placed into service according to their asset category when the restaurant is open for service.

Intangible Assets

Amortizable intangible assets consist of franchise fees, trademarks, non-compete agreements, and favorable and unfavorable operating leases, and are stated at cost, less accumulated amortization. Intangible assets are amortized on a straight-line basis over the estimated useful life, as follows: franchise fees - 10 – 20 years, trademarks - 15 years, non-compete - 3 years, and favorable and unfavorable leases - over the term of the respective leases.

Liquor licenses, if transferable, are deemed to have an indefinite life and are carried at the lower of fair value or cost. We identify potential impairments for liquor licenses by comparing the fair value with its carrying amount. If the fair value exceeds the carrying amount, the liquor licenses are not impaired. If the fair value of the asset is less than the carrying amount, an impairment charge is recorded. No impairments were recognized in fiscal years ended December 30, 2018 and December 31, 2017.

DIVERSIFIED RESTAURANT HOLDINGS AND SUBSIDIARIES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Impairment or Disposal of Long-Lived Assets

We review long-lived assets quarterly to determine if triggering events have occurred which would require a test to determine if the carrying amount of these assets may not be recoverable based on estimated future cash flows. Assets are reviewed at the lowest level for which cash flows can be identified, which is at the individual restaurant level. In the absence of extraordinary circumstances, restaurants are included in the impairment analysis after they have been open for two years. We evaluate the recoverability of a restaurant's long-lived assets, including intangibles, leasehold improvements, furniture, fixtures, and equipment over the remaining life of the primary asset in the asset group, after considering the potential impact of planned operational improvements, marketing programs, and anticipated changes in the trade area. In determining future cash flows, significant estimates are made by management with respect to future operating results for each restaurant over the remaining life of the primary asset in the asset group. If assets are determined to be impaired, the impairment charge is measured by calculating the amount by which the asset carrying amount exceeds its fair value based on our estimate of discounted future cash flows. The determination of asset fair value is also subject to significant judgment. Refer to Note 17 for additional information.

We account for exit or disposal activities, including restaurant closures, in accordance with ASC Topic 420, *Exit or Disposal Cost Obligations*. Such costs include the cost of disposing of the assets as well as other facility-related expenses from previously closed restaurants. These costs are generally expensed as incurred. Additionally, at the date we cease using a property under an operating lease, we record a liability for the net present value of any remaining lease obligations, net of estimated sublease income. Any subsequent adjustments to that liability as a result of lease termination or changes in estimates of sublease income are recorded in the period incurred.

Goodwill

Goodwill is not amortized and represents the excess of cost over the fair value of identified net assets of businesses acquired. Goodwill is subject to an annual impairment analysis or more frequently if indicators of impairment exist. At both December 30, 2018 and December 31, 2017, we had goodwill of \$50.1 million. The goodwill is assigned to the Company's Buffalo Wild Wings reporting unit, which, represents the Company's only reporting unit.

The Company assesses goodwill for impairment on an annual basis during the fourth quarter, or more frequently if an event occurs or circumstances change that would more likely than not reduce the fair value of the reporting unit below its carrying amount. The Company's assessment first reviews relevant qualitative factors to determine whether it is more likely than not (a likelihood of more than 50%) that the fair value of a reporting unit is less than its carrying amount. In evaluating whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount, we assess relevant events and circumstances. If, after assessing the totality of events and circumstances, we determine that it is more likely than not that the fair value of the reporting unit is less than the carrying amount, the quantitative impairment test would be necessary. Conversely, if it is not more likely than not that the fair value of the reporting unit is less than the carrying amount, further action would not be required.

We adopted Accounting Standards Update ("ASU") 2017-04, Topic 350: Intangibles - Goodwill and Other: Simplifying the Test for Goodwill Impairment ("ASU 2017-04") as of September 25, 2017. ASU 2017-04 requires goodwill impairment to be measured as the excess of the carrying value over the fair value of the reporting unit, not to exceed the carrying amount of goodwill. The carrying value of our reporting unit as of October 1, 2018 and September 25, 2017 was negative, and therefore goodwill was not impaired as of December 30, 2018 and December 31, 2017.

Deferred Rent

Certain operating leases provide for minimum annual payments that increase over the life of the lease. Typically, our operating leases contain renewal options under which we may extend the initial lease terms for periods of five to 10 years. The aggregate minimum annual payments are expensed on a straight-line basis commencing at the start of our construction period and extending over the term of the related lease. The amount by which straight-line rent exceeds actual lease payment requirements in the early years of the lease is accrued as deferred rent liability and reduced in later years when the actual cash payment requirements exceed the straight-line expense. The Company also accounts, in its straight-line computation, for the effect of any rental holidays, free rent periods, and landlord incentives or tenant improvement allowances.

DIVERSIFIED RESTAURANT HOLDINGS AND SUBSIDIARIES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Deferred Gains

Deferred gains from sale leaseback transactions are recognized into income over the life of the related operating lease agreements.

Revenue Recognition

Revenue is measured based on consideration specified in implied contracts with our customers and excludes amounts collected on behalf of third parties. The Company recognizes revenue when it satisfies a performance obligation (at the time of sale) by transferring control over a product to a customer. Payment is due at the time the food or merchandise is transferred to the customer. The portion of any sale that results in loyalty rewards being issued is deferred, net of estimated breakage, until redemption.

Disaggregation of Revenue

In the following table, revenue is disaggregated by product mix.

	Disaggregated Revenue	
Product	December 30, 2018	December 31, 2017
Food	\$ 127,808,443	\$ 138,112,003
Alcohol	25,329,776	27,350,609
Total	\$ 153,138,219	\$ 165,462,612

Blazin' Rewards® Loyalty Program

In 2017, the Company completed the implementation of a customer loyalty program, Blazin' Rewards®. The program allows members to earn points when they make purchases at our restaurants. The Company developed an estimate for the value of each point based on historical data. We record the fair value, net of estimated breakage, of the points as a reduction of restaurant sales and establish a liability within deferred revenue as the points are earned. Breakage is the percentage of points earned that are not expected to be redeemed. The revenue associated with the points is recognized upon the redemption of the points. Points generally expire after six months of inactivity.

Nature of Goods Sold

DRH earns revenue through sales of food, beverages, and merchandise to our customers. These sales occur through multiple channels, such as in-restaurant, call-in, online (web-based) and via third party delivery services.

BWW offers a system-wide loyalty program (Blazin' Rewards®) whereby enrolled customers earn points for each qualifying purchase. As a franchisee, DRH is required to participate in the program. DRH estimates the value of loyalty points earned (the value per point) by dividing the menu price of redeemable items by the loyalty reward points required to redeem that menu item. Points issued as part of the loyalty program expire after 6 months of member inactivity. DRH commissioned a study to determine a reasonable estimate of the breakage rate, which was approximately 32% .

DRH has two types of sales transactions, transactions without loyalty attachment and transactions with loyalty attachment. Transactions without loyalty attachment require no allocation of the transaction price, because the price is observable and fixed based on the menu. Transactions with loyalty attachment have two performance obligations: 1) providing the purchased food and/or merchandise to the customer and, 2) redeeming awarded loyalty points for food or merchandise in the future. In loyalty related transactions the price is allocated to the products sold and the points issued. Revenue related to loyalty points that may be redeemed in the future is deferred, net of estimated breakage, until such loyalty points are redeemed. For additional details refer to Note 6 .

The Company offers gift cards for purchase through a BWW system-wide program. Gift cards sold are recorded as a liability to BWW. When redeemed, the gift card liability is offset by recording the transaction as revenue. Net gift card activity is settled with BWW weekly. At times, gift card redemptions may exceed amounts due to BWW for gift card purchases, resulting in an asset balance. Because this is a system-wide program operated by BWW, the Company is not impacted by and does not record breakage.

DIVERSIFIED RESTAURANT HOLDINGS AND SUBSIDIARIES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Advertising

Advertising expenses associated with contributions to the BWW advertising fund and regional cooperatives (between 3.15% and 3.50% of total net sales) are recorded as operating expenses as contributed, while all other advertising expenses are recorded in general and administrative expenses as incurred. Advertising and co-op expenses of continuing operations of \$5.0 million and \$5.4 million are included in other operating costs in the Consolidated Statements of Operations and advertising expense of \$1.1 million and \$0.8 million are included in general and administrative expenses in the Consolidated Statements of Operations for the fiscal years ended December 30, 2018 and December 31, 2017, respectively.

Pre-opening Costs

Pre-opening costs are those costs associated with opening new restaurants and will vary based on the number of new locations opening and under construction. Pre-opening costs typically consist of manager salaries, relocation costs, supplies, recruiting expenses, certain marketing costs and costs associated with team member training. The Company also reclassifies labor costs that exceed the historical average for the first three months of restaurant operations that are attributable to training. These costs are expensed as incurred. Pre-opening costs in continuing operations were \$0 and \$0.4 million for the years ended December 30, 2018 and December 31, 2017, respectively. Excess labor cost incurred after restaurant opening and included in pre-opening cost were approximately \$0 and \$0.1 million for the fiscal years ended December 30, 2018 and December 31, 2017, respectively.

Income Taxes

Deferred income tax assets and liabilities are computed for differences between the financial statement and tax bases of assets and liabilities that will result in taxable or deductible amounts in the future, based on enacted tax laws and rates applicable to the periods in which the differences are expected to affect taxable income. Valuation allowances are established when necessary to reduce deferred tax assets to the amount expected to be realized. Income tax expense is the tax payable or refundable for the period plus or minus the change during the period in deferred tax assets and liabilities. A reclassification of the prior year deferred tax table was made to conform to the current year presentation.

The Company applies the provisions of ASC Topic 740, *Income Taxes*, regarding the accounting for uncertainty in income taxes. The Company classifies all interest and penalties as income tax expense. There are no accrued interest amounts or penalties related to uncertain tax positions as of December 30, 2018 and December 31, 2017.

Earnings Per Common Share

Earnings per share are calculated under the provisions of FASB ASC 260, *Earnings per Share*, which requires a dual presentation of "basic" and "diluted" earnings per share on the face of the Consolidated Statements of Operations. Basic earnings per common share excludes dilution and is computed by dividing the net earnings available to common stockholders by the weighted-average number of common shares outstanding during the period. Diluted earnings per common share include dilutive common stock equivalents consisting of stock options determined by the treasury stock method. Restricted stock awards contain non-forfeitable rights to dividends, making such awards participating securities. The calculation of basic and diluted earnings per share uses an earnings allocation method to consider the impact of restricted stock.

Share-based Compensation

The fair value of restricted shares is equal to the number of restricted shares issued times the Company's stock price on the date of grant and is amortized as compensation expense on a straight-line basis over the service period of the award.

Concentration Risks

Approximately 76.0% and 76.9% of the Company's continuing revenues for the fiscal years ended December 30, 2018 and December 31, 2017, respectively, were generated from food and beverage sales from restaurants located in the Midwest region. The remaining 24.0% and 23.1% of the Company's continuing revenues for the years ended December 30, 2018 and December 31, 2017, respectively, were generated from food and beverage sales from restaurants located in Florida.

**DIVERSIFIED RESTAURANT HOLDINGS AND SUBSIDIARIES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

Use of Estimates

The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of income and expenses during the reporting period. Actual results could differ from those estimates.

Interest Rate Swap Agreements

The Company utilizes interest rate swap agreements with Citizens Bank, N.A. ("Citizens") and other banks to fix interest rates on a portion of the Company's portfolio of variable rate debt, which reduces exposure to interest rate fluctuations. Our derivative financial instruments are recorded at fair value on the Consolidated Balance Sheets. The effective portion of changes in the fair value of derivatives which qualify for hedge accounting is recorded in other comprehensive income and is recognized in the Consolidated Statements of Operations when the hedged item affects earnings. Ineffective portion of the change in fair value of a hedge would be recognized in income immediately. The Company does not use any other types of derivative financial instruments to hedge such exposures, nor does it use derivatives for speculative purposes.

The interest rate swap agreements associated with the Company's current debt agreements qualify for hedge accounting. As such, the Company records the change in the fair value of its swap agreements as a component of accumulated other comprehensive income (loss), net of tax. The Company records the fair value of its interest swaps on the Consolidated Balance Sheets in other long-term assets or other liabilities depending on the fair value of the swaps. See Note 7 and Note 14 for additional information on the interest rate swap agreements.

Recent Accounting Pronouncements

In August 2017, the Financial Accounting Standards Board (FASB) issued ASU No. 2017-12, *Derivatives and Hedging: Targeted Improvements to Accounting for Hedging Activities (Topic 815)* ("ASU 2017-12"). The amendment expands an entity's ability to hedge accounting to non-financial and financial risk components and requires changes in fair value of hedging instruments to be presented in the same income statement line as the hedged item. The ASU also amends the presentation and disclosure requirements for the effect of hedge accounting. The ASU must be adopted using a modified retrospective approach with a cumulative effect adjustment recorded to the opening balance of retained earnings as of the initial application date. The ASU is effective for fiscal years beginning after December 15, 2018 and interim periods therein. Early adoption is permitted. The Company is in the process of assessing the impact of this ASU on its consolidated results of operations, cash flows, financial position and disclosures.

In February 2016, FASB issued ASU No. 2016-02, *Leases* ("ASU 2016-02"). ASU 2016-02 requires that lease arrangements longer than 12 months result in a lessee recognizing a lease asset and liability. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the income statement. The updated guidance is effective for interim and annual periods beginning after December 15, 2018, and early adoption is permitted. We have analyzed the impact of the new standard and concluded that the adoption of ASU 2016-02 will materially impact our consolidated financial statements by significantly increasing our non-current assets and liabilities on our consolidated balance sheets in order to record the right of use assets and related lease liabilities for our operating leases. We lease all of our restaurant properties, and operating leases comprise the majority of our current lease portfolio. With respect to implementation, we have substantially completed our review of the accounting standard, which will have a material impact on our consolidated financial statements and will expand our required disclosures. We will adjust comparative periods and have elected the package of practical expedients to not reassess whether a contract is or contains a lease, lease classification, and initial direct costs. We expect adoption of the standard will have the impact of increasing our consolidated assets and liabilities. The Company expects adoption of the standard will not have a material impact on its Consolidated Statements of Comprehensive Income (Loss) or Consolidated Statements of Cash Flows.

We reviewed all other significant newly-issued accounting pronouncements and concluded that they either are not applicable to our operations or that no material effect is expected on our consolidated financial statements as a result of future adoption.

DIVERSIFIED RESTAURANT HOLDINGS AND SUBSIDIARIES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Recently Adopted Accounting Pronouncements

In May 2014, the FASB issued ASU No. 2014-09, *Revenue with Contracts from Customers (Topic 606)* ("ASU 2014-09"). ASU 2014-09 supersedes the current revenue recognition guidance, including industry-specific guidance. This ASU and subsequently issued amendments, introduce a five-step model to achieve its core principal of the entity recognizing revenue to depict the transfer of goods or services to customers at an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. In August 2015, the FASB issued ASU No. 2015-14, *Revenue from Contracts with Customers (Topic 606): Deferral of the Effective Date*, which delayed the effective date of ASU 2014-09 for public companies to January 1, 2018. The FASB also agreed to allow entities to choose to adopt the standard as of the original effective date.

The requirements for these standards relating to Topic 606 are effective for interim and annual periods beginning after December 15, 2017. The Company adopted ASU 2014-09 effective as of January 1, 2018, using the modified retrospective transition method to all existing contracts that were not substantially completed at the adoption date. We finalized our analysis and the adoption of ASU 2014-09 which did not have, and is not expected to have, a material impact on the timing or amount of revenue recognized as compared to the Company's previous revenue recognition practices, or our internal controls over financial reporting.

In January 2017, the FASB issued Accounting Standards Update ("ASU") 2017-04, *Topic 350: Intangibles - Goodwill and Other: Simplifying the Test for Goodwill Impairment* ("ASU 2017-04"). ASU 2017-04 simplified wording and removes step 2 of the goodwill impairment test. A goodwill impairment will now be the amount by which a reporting units carrying value exceeds its fair value, not to exceed the carrying amount of goodwill. ASU 2017-04 is effective for annual or interim goodwill impairment tests in fiscal years beginning after December 15, 2020, with early adoption permitted for interim or annual goodwill impairment tests on testing dates after January 1, 2017. The Company adopted the standard as of September 25, 2017. The Company has one reporting unit with a negative carrying value, and as a result of the adoption of this standard, there has been no goodwill impairment recognized.

In March 2016, the FASB issued ASU 2016-09, *Topic 718: Compensation - Stock Compensation: Improvements to Employee Share-Based Payment Accounting* ("ASU 2016-09"). ASU 2016-09 simplifies several aspects of accounting for share-based payment award transactions, including income tax consequences, classification of awards as either equity or liabilities and classification on the statement of cash flows. ASU 2016-09 is effective for fiscal years, and interim periods within those years, beginning after December 15, 2016, with early adoption permitted. Beginning in fiscal 2017, the tax effects of awards will be recognized in the statement of operations. In addition, the Company will account for forfeitures as they occur.

Effective December 26, 2016, the Company adopted the accounting guidance contained within ASU 2016-09. As a result, the Company recorded a deferred tax asset and retained earnings increase of \$268,000 to recognize the Company's excess tax benefits that existed as of December 25, 2016, on the Consolidated Balance Sheet.

Significant Transaction

On July 24, 2018 the Company completed an underwritten registered public offering of 6 million shares of common stock at a price of \$1.00 per share, which included 700,000 shares offered by a certain selling stockholder, for total Company gross proceeds of \$5.3 million. The net proceeds from the Offering were approximately \$4.6 million, after deducting the underwriting discounts and commissions and offering expenses payable by us. We expect to use the net proceeds from the offering for working capital and general corporate purposes, which included repayment of debt.

2 . DISCONTINUED OPERATIONS

Spin-Off of Bagger Dave's

On August 4, 2016, DRH announced that its Board of Directors unanimously approved a plan to pursue a tax-free spin-off of its Bagger Dave's business. Pursuant to this plan, DRH contributed its 100.0% owned entity, AMC Burgers, LLC and certain real estate entities into Bagger Dave's Burger Tavern, Inc., a newly created Nevada company, which was then spun-off into a stand-alone company. AMC Burgers, Inc. owned and operated all of the Bagger Dave's Burger Tavern[®] restaurants and the real estate entities held certain real estate related to the restaurants before the real estate was sold in 2014 and 2015. In connection with the Spin-Off, DRH contributed certain assets, liabilities and employees related to its Bagger Dave's businesses. Intercompany balances due to/from DRH, which included amounts from sales, were contributed to equity of Bagger Dave's. The Spin-Off was effected

DIVERSIFIED RESTAURANT HOLDINGS AND SUBSIDIARIES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

on December 25, 2016 via a one-for-one distribution of common shares in Bagger Dave's to DRH holders of record on December 19, 2016. As part of the Spin-Off transaction, DRH agreed to fund a one-time \$2.0 million cash distribution to Bagger Dave's.

Prior to the Spin-Off, Bagger Dave's was a co-obligor on a joint and several basis with the Company on its Credit Facility. The Company's debt under this facility remained with the Company and Bagger Dave's was released as a borrower. As a result, this debt was not assigned to discontinued operations. Additionally, DRH retained substantially all of the tax benefits (net operating loss and tax credit carryforwards) generated by Bagger Dave's prior to the date of the transaction. See Note 9 for additional information related to income taxes.

DRH decided to spin-off Bagger Dave's after considering all reasonable strategic and structural alternatives because of the disparity between the operating models of its two brands, BWW as franchisee, and Bagger Dave's as an owned concept. The management teams of Bagger Dave's and DRH agreed that the nature of the two concepts varied greatly, and that each would be more valuable and operate more effectively independently of one another. Bagger Dave's is a concept developed by the management team of DRH. In contrast to operating a franchised concept like BWW it has no development restrictions and the flexibility to enhance brand attributes such as logos, trade dress and restaurant design, change its menu offering and improve its operational model in an effort to better align with guest expectations. To manage these functions effectively, specific resources are required that are not necessary for a franchisee. For example, menu development, purchasing and brand marketing are critical to the success of Bagger Dave's but not necessary for a BWW franchisee since these functions are managed by the franchisor. Additionally, as a less mature brand, Bagger Dave's has both higher risk and higher growth potential while BWW, being a mature brand and as a franchisee, has more limited organic growth potential due to the status of its existing market penetration and the need to obtain development rights from the franchisor.

In conjunction with the Spin-Off, DRH entered into a transition services agreement (the "TSA") with Bagger Dave's pursuant to which DRH provided certain information technology and human resources support, limited accounting support, and other minor administrative functions at no charge. The TSA was intended to assist the discontinued component in efficiently and seamlessly transitioning to stand on its own. Certain provisions of the TSA terminated in December 2017 and the First Amendment to TSA (the "Amended TSA") was entered into effective January 1, 2018. Under the Amended TSA, DRH provides ongoing administrative support to Bagger in certain areas, including information technology, human resources and real estate, in exchange for a fee based on a rate-per-hour of service. The amount charged to Bagger Dave's was \$0.1 million during the year ended December 30, 2018.

Information related to the Bagger Dave's Spin-Off has been reflected in the accompanying consolidated financial statements as follows:

- Consolidated Statements of Operations - Bagger Dave's results of operations for the year ended December 31, 2017 have been presented as discontinued operations. There was no gain or loss on the transaction recorded. There was no activity related to the discontinued operation at the Company for the year ended December 30, 2018.
- Consolidated Statements of Cash Flows - Bagger Dave's cash flows from operating activities for the year ended December 31, 2017 have been presented separately on the face of the cash flow statements. There was no activity related to the discontinued operation at the Company for the year ended December 30, 2018.

The following are major classes of line items constituting pre-tax loss from discontinued operations:

	Fiscal Years Ended	
	December 30, 2018	December 31, 2017
Restaurant operating costs (exclusive of depreciation and amortization)	\$ —	\$ 95,536
General and administrative expenses	—	(334,529)
Depreciation and amortization	—	740
Loss from discontinued operations before income taxes	—	(238,253)
Income tax benefit	—	64,328
Total loss from discontinued operations	\$ —	\$ (173,925)

The operating results of the discontinued operations include only direct expenses incurred by Bagger Dave's. Discontinued operations exclude certain corporate functions that were previously allocated to Bagger Dave's. Interest expense was not allocated to discontinued operations because the Company's debt under the Credit Facility remained with the Company.

DIVERSIFIED RESTAURANT HOLDINGS AND SUBSIDIARIES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

The following table summarizes the Company's accrual activity related to facility closures during the fiscal years ended December 30, 2018 and December 31, 2017 :

	Fiscal 2018	Fiscal 2017
Beginning of the year	\$ —	\$ 107,153
Charges	—	—
Payments/utilizations/other	—	(107,153)
End of the year	<u>\$ —</u>	<u>\$ —</u>

The closure liability of \$0.1 million was retained by the Company after the Spin-Off of Bagger Dave's, as it was responsible for certain ongoing lease payments associated with the closures.

Prior to the Spin-Off, Bagger Dave's was a reportable segment of the Company. Following the Spin-Off, there were no assets or liabilities remaining from the Bagger Dave's operations. See Note 3 for a discussion of involvement the Company will continue to have with Bagger Dave's after the Spin-Off.

3 . UNCONSOLIDATED VARIABLE INTEREST ENTITIES

After the Spin-Off of Bagger Dave's and the related discontinuation of its operations described in Note 2 , the Company remains involved with certain activities that result in Bagger Dave's being considered a VIE. This conclusion results primarily from the existence of guarantees by the Company of certain Bagger Dave's leases as described below under "Lease Guarantees". While the Company holds a variable interest in Bagger Dave's, it is not considered to be its primary beneficiary because it does not have the power to direct the activities of Bagger Dave's. Specifically, we considered the fact that, although our Executive Chairman is currently also on Bagger Dave's board, there are no agreements in place that require him to vote in the interests of the Company, as he does not represent the Company in his capacity as a Bagger Dave's director. As a result, the Company does not consolidate the VIE.

Lease Guarantees

At December 30, 2018 the Company is a guarantor for 10 leases, 3 of which have been re-leased to an unaffiliated party. In the event the respective lessees cannot make their lease payments, the Company may become responsible for the payments under its guarantee.

Upon Spin-Off of Bagger Dave's, in accordance with ASC 460, *Guarantees* , the Company evaluated its liability from the lease guarantees first by estimating the non-contingent component representing the estimated fair market value of the guarantees at inception, and recorded a liability in the amount of \$0.3 million , which is included in other liabilities on the Consolidated Balance Sheet as of December 30, 2018 and December 31, 2017 . No liability had previously been recorded before the Spin-Off, as a result of the affiliate relationship between the Company and Bagger Dave's.

Secondly, the Company considered the contingent component of the guarantees and concluded that, as of December 30, 2018 and December 31, 2017 , no loss under the guarantees was probable because all of the Bagger Dave's restaurants subject to the leases is either currently operating or the site has been leased to another tenant who is responsible for, and making, the lease payments.

DIVERSIFIED RESTAURANT HOLDINGS AND SUBSIDIARIES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

The Company has determined that its maximum exposure resulting from the lease guarantees includes approximately \$7.3 million of future minimum lease payments plus potential additional payments to satisfy maintenance, property tax and insurance requirements under the leases as of December 30, 2018. The terms and conditions of the guarantees vary, and each guarantee has an expiration date which may or may not correspond with the end of the underlying lease term. The guarantee expiration dates range from less than 1 month to 11 years as of December 30, 2018. In the event that the Company is required to perform under any of its lease guarantees, we do not believe the liability would be material because we would first seek to minimize the exposure by finding a suitable tenant to lease the space. In many cases, we expect that a replacement tenant would be found and the lessor would agree to release the Company from its future guarantee obligation. Since 2015, 15 Bagger Dave's locations with DRH lease guarantees were closed. New tenants were found to step into the Company's lease obligations for 9 of these locations in 3 to 14 months from the date of closure. Over this time, 12 guarantees expired or terminated, and 3 remain obligations of the Company. In reaching our conclusion, we also considered the following:

- the financial condition of Bagger Dave's, including its ability to service the lease payments on the locations it continues to operate;
- its history of incurring operating losses;
- its liquidity position and the actions available to it should its liquidity deteriorate to such a degree that its ability to service required lease payments is threatened; and
- the actions available to the Company to avoid or mitigate potential losses should Bagger Dave's become unable to service one or more of the leases that the Company guarantees.

The following table discloses the guarantee expiration of all Bagger Dave's leases that include a guarantee by the Company as of December 30, 2018 :

Guarantee Expiration	Future guaranteed lease payments
Less than six years	423,813
Six to ten years	5,034,624
11 to 15 years	1,843,013
Total	7,301,450

4 . PROPERTY AND EQUIPMENT, NET

Property and equipment are comprised of the following:

	December 30, 2018	December 31, 2017
Equipment	\$ 29,556,728	\$ 30,252,867
Furniture and fixtures	7,242,522	7,444,792
Leasehold improvements	61,044,840	64,936,413
Restaurant construction in progress	439,321	161,942
Total	98,283,411	102,796,014
Less accumulated depreciation	(63,860,066)	(54,781,971)
Property and equipment, net	\$ 34,423,345	\$ 48,014,043

Depreciation expense for the years ended December 30, 2018 and December 31, 2017 was \$11.5 million and \$13.0 million, all of which related to continuing operations.

DIVERSIFIED RESTAURANT HOLDINGS AND SUBSIDIARIES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

5 . INTANGIBLE ASSETS

Intangible assets are comprised of the following:

	December 30, 2018	December 31, 2017
Amortized intangible assets		
Franchise fees	\$ 1,305,642	\$ 1,290,642
Trademark	2,500	2,500
Non-compete	76,560	76,560
Favorable operating leases	148,799	351,344
Loan fees	—	368,083
Total	1,533,501	2,089,129
Less accumulated amortization	(591,143)	(907,269)
Amortized intangible assets, net	942,358	1,181,860
Unamortized intangible assets		
Liquor licenses	1,256,327	1,256,327
Total intangible assets, net	\$ 2,198,685	\$ 2,438,187

Amortization expense for both years ended December 30, 2018 and December 31, 2017 was \$ 0.1 million . Amortization of favorable/unfavorable leases and loan fees are reflected as part of occupancy and interest expense, respectively. Loan fees written off to interest expense during both years ended December 30, 2018 and December 31, 2017 was \$0.1 million.

Based on the current intangible assets and their estimated useful lives, future intangible-related expense for the next five years and thereafter is projected as follows:

Year	Amount
2019	\$ 100,869
2020	100,869
2021	89,388
2022	87,042
2023	85,480
Thereafter	478,710
Total	\$ 942,358

The aggregate weighted-average amortization period for intangible assets is 7.8 years .

6 . OTHER ACCRUED LIABILITES

	December 30, 2018	December 31, 2017
Sales tax payable	\$ 940,165	\$ 906,410
Accrued interest	484,535	481,431
Accrued royalty fees	173,189	179,114
Accrued property taxes	224,865	69,970
Accrued loyalty rewards	847,434	439,106
Other	276,550	328,911
Total other accrued liabilities	\$ 2,946,738	\$ 2,404,942

DIVERSIFIED RESTAURANT HOLDINGS AND SUBSIDIARIES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

7. DEBT

Debt consists of the following obligations:

	December 30, 2018	December 31, 2017
\$120.0 million term loan - the rate at December 30, 2018 and December 31, 2017 was 5.85% and 4.87%, respectively.	\$ 79,698,616	\$ 89,698,616
\$30.0 million development line of credit, converted to the DF Term Loan in December 2016 and June 2018. The rate at December 30, 2018 and December 31, 2017 was 5.85% and 4.87%, respectively.	18,111,259	16,682,853
\$5.0 million revolving line of credit - the rate at December 30, 2018 and December 31, 2017 was 6.01% and 5.11%, respectively.	5,000,000	5,000,000
\$5.0 million development line of credit - the rate at December 31, 2017 was 5.00%.	—	3,050,965
Unamortized discount and debt issuance costs	(387,245)	(503,271)
Total debt	102,422,630	113,929,163
Current portion of debt	(11,515,093)	(11,440,433)
Long-term debt	\$ 90,907,537	\$ 102,488,730

On June 29, 2015, the Company entered into a five year \$155.0 million senior secured Credit Facility with a syndicate of lenders led by Citizens with a senior lien on all the Company's personal property and fixtures. The Credit Facility consists of a \$120.0 million term loan (the "Term Loan"), a \$30.0 million , development line of credit (the "DLOC"), and a \$5.0 million (see amendment details immediately following this paragraph) revolving line of credit (the "RLOC").

On December 23, 2016, the Company entered into an amendment agreement for purposes of, among other things, releasing the Bagger Dave's entities as borrowers and releasing all related liens on the Bagger Dave's assets. In addition, the amendment (a) converted the amounts then outstanding under the DLOC to a development facility term loan (the "DF Term Loan" and, together with the Term Loan, the "Term Loans"), (b) canceled \$6.8 million previously available under the DLOC, and (c) extended the maturity date on the remaining \$5.0 million under the DLOC to June 29, 2018. Upon the maturity of the DLOC on June 29, 2018, the amount outstanding under the DLOC was added to the existing DF Term Loan.

Payments of principal are based upon a 12 -year straight-line amortization schedule, with monthly principal payments of \$980,906 on the Term Loans, plus accrued interest. As of December 30, 2018 , \$5.0 million and was outstanding under the RLOC. The entire remaining outstanding principal and accrued interest on the Credit Facility is due and payable on the maturity date of June 29, 2020.

The interest rate for each of the loans, as selected by the borrower, is based upon either a LIBOR or base rate (generally Prime or Fed Funds) plus an applicable margin, which ranges from 2.25% to 3.5% for LIBOR loans and from 1.25% to 2.5% for base rate loans, depending on the lease adjusted leverage ratio as defined in the agreement.

Fees related to the term debt are recorded as debt discount and fees related to the DLOC and RLOC are capitalized as intangible assets. Debt issuance costs represent legal, consulting and financial costs associated with debt financing. As a result of the December 2016 Amendment, the Company incurred \$197,889 of debt issuance costs recorded as a part of debt discount. Debt discount related to term debt, net of accumulated amortization, totaled \$387,245 and \$503,271 , at December 30, 2018 and December 31, 2017 , respectively. Debt discount and debt issuance cost are amortized over the life of the debt and are recorded in interest expense using the effective interest method.

DIVERSIFIED RESTAURANT HOLDINGS AND SUBSIDIARIES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Based on the long-term debt terms that existed at December 30, 2018, the scheduled principal maturities, net of unamortized discount, for the next five years and thereafter are summarized as follows:

	Amount
2019	\$ 11,515,093
2020	90,907,537
Thereafter	—
Total	\$ 102,422,630

Interest expense was \$6.4 million and \$6.6 million for the years ended December 30, 2018 and December 31, 2017, respectively.

The debt agreement contains various customary financial covenants generally based on the earnings of the Company relative to its debt. The financial covenants consist of a quarterly minimum required DSCR and a maximum permitted LALR which were reset pursuant to an amendment dated February 28, 2018. This amendment also changed the definition of "consolidated EBITDA" used in the calculation of these financial covenants to permit the inclusion of a maximum of \$5 million of equity proceeds over the remaining term of the agreement. As of December 30, 2018, the Company was in compliance with its loan covenants. However, beginning in the third quarter of 2019, the net proceeds from the registered public offering will no longer be included in "consolidated EBITDA" and, as a result, the Company is currently forecasting that it may not be in compliance with these financial covenants beginning in the third quarter. Unless, at that time, we obtain a waiver for or amendment of the financial covenants, which requires that lenders representing at least 50.1% of the outstanding principal amount are in agreement, failure to comply with the financial covenants would represent an event of default under the Credit Agreement and would allow the lenders to accelerate the debt.

On July 24, 2018, the Company completed an underwritten registered public offering of 6 million shares of common stock at a public offering price of \$1.00 per share, which included 700,000 shares offered by a certain selling stockholder, for total Company gross proceeds of \$5.3 million. The net proceeds from the offering were approximately \$4.6 million after deducting the underwriting discounts and commissions and offering expenses payable by us, and were included in "consolidated EBITDA" for purposes of computing financial covenants beginning in the third quarter of 2018.

At December 30, 2018, the Company has three interest rate swap agreements to fix a portion of the interest rates on its variable rate debt. The swap agreements all qualify for hedge accounting. Under the swap agreements, the Company receives interest at the one-month LIBOR and pays a fixed rate. Since these swap agreements qualify for hedge accounting, the changes in fair value are recorded in Other comprehensive income, net of tax. See Note 1 and Note 14 for additional information pertaining to interest rate swaps.

The following tables summarize the fair values of derivative instruments designated as cash flow hedges which were outstanding:

Interest rate swaps	Rate	Expires	December 30, 2018		
			Notional amounts	Derivative assets	Derivative liabilities
April 2012	1.4%	April 2019	\$ 761,905	\$ 1,689	\$ —
January 2015	1.8%	December 2019	25,809,524	152,011	—
August 2015	2.3%	June 2020	58,930,655	225,426	—
Total			\$ 85,502,084	\$ 379,126	\$ —

Interest rate swaps	Rate	Expires	December 31, 2017		
			Notional amounts	Derivative assets	Derivative liabilities
April 2012	1.4%	April 2019	\$ 3,047,619	\$ 6,028	\$ —
July 2013	1.4%	April 2018	2,833,333	778	—
May 2014	1.54%	April 2018	7,142,857	—	408
January 2015	1.8%	December 2019	21,690,476	25,953	—
August 2015	2.3%	June 2020	60,412,798	—	461,455
Total			\$ 95,127,083	\$ 32,759	\$ 461,863

DIVERSIFIED RESTAURANT HOLDINGS AND SUBSIDIARIES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

8 . SHARE-BASED COMPENSATION

The Company established a Stock Incentive Plan in 2011, and on July 13, 2017, the Company's shareholders approved a new stock incentive plan - the Stock Incentive Plan of 2017 ("Stock Incentive Plan") to attract and retain directors, consultants, and team members and to align their interests with the interests of the Company's shareholders through the opportunity for increased stock ownership. No further grants will be made under the Stock Incentive Plan of 2011.

The Stock Incentive Plan of 2017 authorized a total of 2,500,000 shares for issuance as incentive awards by way of stock options and/or restricted stock. Stock options must be awarded at exercise prices at least equal to or greater than 100.0% of the fair market value of the shares on the date of grant. The options will expire no later than 10 years from the date of grant, with vesting terms to be defined at grant date, ranging from a vesting schedule based on performance to a vesting schedule that extends over a period of time as selected by the Compensation Committee of the Board of Directors (the "Committee") or another committee as determined by the Board of Directors. The Committee also determines the grant, issuance, retention, and vesting timing and conditions of awards of restricted stock. The Committee may place limitations, such as continued employment, passage of time, and/or performance measures, on restricted stock. Awards of restricted stock may not provide for vesting or settlement in full of restricted stock based on a performance measure for a performance period of less than one year or based on continued employment or the passage of time over a period of less than one year from the date the award is made.

Restricted share awards

During fiscal years ended December 30, 2018 and December 31, 2017, restricted shares were issued to certain team members at a weighted-average grant date fair value of \$1.15 and \$2.31, respectively. Based on the Stock Award Agreement, shares typically vest ratably over either a one or three year period, or on the third anniversary of the grant date, as determined by the Committee. Unrecognized share-based compensation expense of \$1.0 million and \$0.8 million at December 30, 2018 and December 31, 2017, respectively, will be recognized over the remaining weighted-average vesting period of 2.6 years. The total fair value of shares vested during years ended December 30, 2018 and December 31, 2017 was \$0.6 million and \$0.4 million, respectively. Under the Stock Incentive Plan of 2017, there are 1.2 million shares available for future awards at December 30, 2018.

The following table presents the restricted stock transactions for fiscal 2018:

	Number of Restricted Stock Shares
Unvested, December 31, 2017	531,000
Granted	1,056,143
Vested	(226,470)
Vested shares tax portion	(50,163)
Forfeited	(35,671)
Unvested, December 30, 2018	1,274,839

The following table presents the restricted stock transactions for fiscal 2017:

	Number of Restricted Stock Shares
Unvested, December 25, 2016	473,391
Granted	263,332
Vested	(132,157)
Vested shares tax portion	(22,716)
Forfeited	(50,850)
Unvested, December 31, 2017	531,000

Stock Options

DIVERSIFIED RESTAURANT HOLDINGS AND SUBSIDIARIES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

On July 30, 2010, prior to the Stock Incentive Plan, DRH granted options for the purchase of 210,000 shares of common stock to the directors of the Company. These options are fully vested and originally expired six years from issuance. On August 13, 2015, 30,000 shares were exercised at a price of \$2.50 per share. The intrinsic value of the options exercised was \$6,300. On July 28, 2016, the Stock Option Agreement of 2010 was amended to extend the expiration date of these options to July 31, 2019. The options can be exercised at a price of \$2.50 per share. On August 30, 2018, 30,000 options were forfeited. At December 30, 2018, 150,000 shares of authorized common stock are reserved for issuance to provide for the exercise of the remaining options. The intrinsic value of outstanding options was negligible as of both December 30, 2018 and December 31, 2017.

Employee stock purchase plan

The Company also reserved 250,000 shares of common stock for issuance under the Employee Stock Purchase Plan (“ESPP”). The ESPP is available to team members subject to employment eligibility requirements. Participants may purchase common stock at 85.0% of the lesser of the start or end price for the offering period. The plan has four offering periods, each start/end date approximates the fiscal quarter and are awarded on the last day of the offering period. During the years ended December 30, 2018 and December 31, 2017 we issued 71,274 and 37,137 shares, respectively. Under the ESPP, there are 75,914 shares available for future purchase at December 30, 2018.

Share-based compensation

Share-based compensation of \$0.7 million and \$0.4 million was recognized during the years ended December 30, 2018 and December 31, 2017, respectively, as compensation costs in the Consolidated Statements of Operations and as additional paid-in capital on the Consolidated Statements of Stockholders' Equity (Deficit) to reflect the fair value of shares vested.

Preferred stock

The Company has authorized 10,000,000 shares of preferred stock at a par value of \$0.0001. No preferred shares are issued or outstanding as of December 30, 2018. Any preferences, rights, voting powers, restrictions, dividend limitations, qualifications, and terms and conditions of redemption shall be set forth and adopted by a Board of Directors' resolution prior to issuance of any series of preferred stock.

9. INCOME TAXES

The Tax Cuts and Jobs Act (the "Tax Act") was signed into law on December 22, 2017. The Tax Act includes a number of changes to existing U.S. tax laws that impact the Company, most notably a reduction of the U.S. corporate tax rate from 35% to 21% for tax years beginning after December 31, 2017. Additionally, in December 2017, the Securities and Exchange Commission staff issued Staff Accounting Bulletin No. 118 (“SAB 118”), which addresses how a company recognizes provisional amounts when a company does not have the necessary information available, prepared or analyzed (including computations) in reasonable detail to complete its accounting for the effect of the changes in the Tax Act. The measurement period, as defined in SAB 118, ends when a company has obtained, prepared and analyzed the information necessary to finalize its accounting, but cannot extend beyond one year. As of December 31, 2017, the Company provided a provisional provision of \$3.1 million in the re-measurement of U.S. deferred tax assets. During 2018, the Company finalized its provisional amounts related to U.S. deferred tax assets resulting in a tax benefit of \$0.3 million.

The income tax provision (benefit) from continuing operations consists of the following components for the fiscal years ended December 30, 2018 and December 31, 2017:

	Fiscal Years Ended	
	December 30, 2018	December 31, 2017
Federal:		
Current	\$ —	\$ —
Deferred	(1,762,866)	17,346,134
State:		
Current	26,517	(10,000)
Deferred	53,354	1,661,622
Income tax provision (benefit)	\$ (1,682,995)	\$ 18,997,756

DIVERSIFIED RESTAURANT HOLDINGS AND SUBSIDIARIES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

The provision (benefit) for income taxes is different from that which would be obtained by applying the statutory federal income tax rate to loss before income taxes. The items causing this difference are as follows:

	Fiscal Years Ended	
	December 30, 2018	December 31, 2017
Income tax benefit at federal statutory rate	\$ (1,404,253)	\$ (437,374)
State income tax	91,951	1,651,622
Permanent differences	347,084	506,867
Tax credits	(1,642,618)	(1,807,523)
Tax Reform	(348,237)	3,135,891
Other	477,739	—
Change in valuation allowance	795,339	15,948,273
Income tax provision (benefit)	\$ (1,682,995)	\$ 18,997,756

In accordance with the provisions of ASC 740, a valuation allowance is established when it is more likely than not that some portion of the deferred tax assets will not be realized. Realization is dependent upon the generation of future taxable income or the reversal of deferred tax liabilities during the periods in which those temporary differences become deductible. We consider the reversal of deferred tax liabilities, projected future taxable income and tax planning strategies. Management assesses the available positive and negative evidence to estimate whether sufficient future taxable income will be generated to permit use of the existing deferred tax assets. A significant piece of objective negative evidence evaluated was the cumulative loss incurred over the three-year period ended December 31, 2017. Such objective evidence limits the ability to consider other subjective evidence, such as our projections for future growth. As a result of this evaluation, as of December 31, 2017, a valuation allowance of \$17.6 million was established because the Company was unable to assert that realization of the deferred tax asset is more likely than not. We maintain that assertion as of December 30, 2018, therefore the valuation allowance remains in place. We recorded an increase to the valuation allowance of \$0.5 million for the fiscal year ended December 30, 2018. The amount of the deferred tax asset considered realizable, however, could be adjusted if estimates of future taxable income increase or if objective negative evidence in the form of cumulative losses is no longer present and additional weight is given to subjective evidence such as our projections for growth.

DIVERSIFIED RESTAURANT HOLDINGS AND SUBSIDIARIES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company's deferred income tax assets and liabilities are summarized as follows:

	December 30, 2018	December 31, 2017
Deferred tax assets:		
Net operating loss carry-forwards	\$ 7,578,965	\$ 8,467,300
Deferred rent expense	743,778	549,540
Start-up costs	5,174	81,962
Tax credit carry-forwards	9,393,552	8,366,915
Interest rate swaps	—	90,112
Sale leaseback deferred gain	344,236	314,598
Share-based compensation	239,016	218,853
Tax depreciation in excess of book	1,727,234	—
Other	486,588	296,721
Total deferred tax assets	20,518,543	18,386,001
Deferred tax liabilities:		
Tax depreciation in excess of book	—	881,810
Interest rate swaps	79,616	—
Goodwill amortization in excess of book	3,524,692	2,647,173
Total deferred tax liabilities	3,604,308	3,528,983
Net deferred income tax asset, before valuation allowance	16,914,235	14,857,018
Valuation allowance on net deferred income tax assets	(18,134,322)	(17,616,888)
Net deferred income tax assets (liabilities)	\$ (1,220,087)	\$ (2,759,870)

As of December 30, 2018 and December 31, 2017, the Company has available federal net operating loss carryforwards ("NOLs") of approximately \$30.8 million and \$33.3 million, respectively. These NOLs expire between 2034 and 2036. As of December 30, 2018 and December 31, 2017, the Company has available state NOLs of approximately \$22.2 million and \$24.2 million, respectively. These NOLs expire between 2026 and 2036. General business tax credits of \$9.4 million will expire between 2028 and 2037.

The Company applies the provisions of ASC 740 regarding the accounting for uncertainty in income taxes. There are no amounts recorded on the Company's consolidated financial statements for uncertain positions. The Company classifies all interest and penalties as income tax expense. There are no accrued interest amounts or penalties related to uncertain tax positions as of December 30, 2018.

The Company files income tax returns in the United States federal jurisdiction and various state jurisdictions, and is subject to U.S. Federal, state, and local income tax examinations for tax years 2015 through 2017. The Company is not currently under IRS exam for the any fiscal year.

10 . OPERATING LEASES

The Company's lease terms generally include renewal options, and frequently require us to pay a proportionate share of real estate taxes, insurance, common area maintenance, and other operating costs. Some restaurant leases provide for contingent rental payments based on sales thresholds.

Total rent expense was \$8.9 million and \$8.8 million for the fiscal years ended December 30, 2018 and December 31, 2017, respectively.

DIVERSIFIED RESTAURANT HOLDINGS AND SUBSIDIARIES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Scheduled future minimum lease payments for each of the five years and thereafter for non-cancelable operating leases for existing restaurants with initial or remaining lease terms in excess of one year at December 30, 2018 are summarized as follows:

Year	Amount
2019	\$ 9,114,525
2020	9,079,957
2021	8,478,804
2022	7,710,003
2023	6,792,406
Thereafter	31,450,652
Total	\$ 72,626,347

11 . COMMITMENTS AND CONTINGENCIES

Refer to Note 3 for a discussion of lease guarantees provided by the Company.

Franchise Related

The Company is required to pay BWB royalties (5.0% of net sales) and advertising fund contributions (3.00% - 3.15% of net sales). In addition, the Company is required to contribute an additional 0.25% - 0.5% of regional net sales related to advertising cooperatives for certain metropolitan markets for the term of the individual franchise agreements. The Company incurred \$7.7 million and \$8.3 million in royalty expense for the fiscal years ended December 30, 2018 and December 31, 2017 , respectively. Advertising fund and co-op contribution expenses were \$5.0 million and \$5.4 million for the fiscal years ended December 30, 2018 and December 31, 2017 , respectively. Amounts are recorded in other operating costs on the Consolidated Statement of Operations.

The Company is required by its various BWB franchise agreements to modernize the restaurants during the term of the agreements. The individual agreements generally require improvements between the fifth and tenth year to meet the most current design model that BWB has approved. In the past the modernization costs for a restaurant ranged from \$0.3 million to \$0.8 million depending on an individual restaurant's needs.

401(k) Plan

In 2018 and 2017 , the Company had a defined contribution 401(k) plan whereby eligible team members could contribute wages in accordance with the provisions of the plan. For 2018, the plan was converted to a safe harbor plan and, as a result, the Company will make a safe harbor matching contribution equal to 100% of employee salary deferrals that up to 3% of compensation plus 50% of employee salary deferrals between 3% and 5% of compensation. This safe harbor matching contribution is 100% vested. For fiscal 2018 , the match amount is \$0.3 million . In 2017 , the Company determined that no discretionary match would be made.

Legal Proceedings

The Company is subject to ordinary and routine legal proceedings, as well as demands, claims and threatened litigation, which arise in the ordinary course of our business. These claims arise from personal injuries, contract claims, dram shop claims, employment-related claims, and claims from guests or team members alleging injury, illness, or other food quality, health, or operational concerns. The ultimate outcome of any litigation is uncertain. We have insured and continue to insure against most of these types of claims. A judgment on any claim not covered by or in excess of our insurance coverage could materially adversely affect our business, financial condition or results of operations.

DIVERSIFIED RESTAURANT HOLDINGS AND SUBSIDIARIES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

12 . EARNINGS PER COMMON SHARE

The following is a reconciliation of basic and fully diluted earnings per common share for the fiscal years ended December 30, 2018 and December 31, 2017 :

	December 30, 2018	December 31, 2017
Loss from continuing operations	\$ (5,003,924)	\$ (20,284,151)
Loss from discontinued operations	—	(173,925)
Net loss	\$ (5,003,924)	\$ (20,458,076)
Weighted-average shares outstanding	\$ 28,969,221	\$ 26,717,910
Effect of dilutive securities	—	—
Weighted-average shares outstanding - assuming dilution	\$ 28,969,221	\$ 26,717,910
Basic and diluted earnings per common share from continuing operations	\$ (0.17)	\$ (0.76)
Basic and diluted earnings per common share from discontinued operations	—	(0.01)
Basic and diluted earnings per common share	\$ (0.17)	\$ (0.77)

For the fiscal years ended December 30, 2018 and December 31, 2017 , 1,274,839 and 531,000 shares, respectively, of unvested restricted stock were excluded from the calculation of diluted earnings per share because such shares were anti-dilutive.

13 . SUPPLEMENTAL CASH FLOWS INFORMATION**Other Cash Flows Information**

Cash paid for interest was \$6.1 million and \$6.3 million during the years ended December 30, 2018 and December 31, 2017 , respectively. Cash paid for income taxes was \$0 and \$0 during the years ended December 30, 2018 and December 31, 2017 , respectively.

Supplemental Schedule of Non-Cash Operating, Investing, and Financing Activities

Noncash investing activities for property and equipment not yet paid as of December 30, 2018 and December 31, 2017 , was \$0.2 million and \$0.1 million , respectively.

14 . FAIR VALUE OF FINANCIAL INSTRUMENTS

The guidance for fair value measurements, FASB ASC 820, *Fair Value Measurements and Disclosures* , establishes the authoritative definition of fair value, sets out a framework for measuring fair value, and outlines the required disclosures regarding fair value measurements. Fair value is the price that would be received to sell an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants at the measurement date. We use a three-tier fair value hierarchy based upon observable and non-observable inputs as follows:

- Level 1 Quoted market prices in active markets for identical assets and liabilities;
- Level 2 Inputs, other than level 1 inputs, either directly or indirectly observable; and
- Level 3 Unobservable inputs developed using internal estimates and assumptions (there is little or no market data) which reflect those that market participants would use.

As of December 30, 2018 and December 31, 2017 , respectively, our financial instruments consisted of cash and cash equivalents; including accounts receivable, accounts payable, interest rate swaps, lease guarantee liability, and debt. The fair value of cash and cash equivalents, accounts receivable, and accounts payable approximate carrying value, due to their short-term nature.

The fair value of our interest rate swaps is determined based on valuation models, which utilize quoted interest rate curves to calculate the forward value and then discount the forward values to the present period. The Company measures the fair value using broker quotes which are generally based on market observable inputs including yield curves and the value associated with counterparty credit risk. Our interest rate swaps are classified as a Level 2 measurement as these securities are not actively traded in the market, but are observable based on transactions associated with bank loans with similar terms and maturities. See Note 1 and Note 7 for additional information pertaining to interest rates swaps.

DIVERSIFIED RESTAURANT HOLDINGS AND SUBSIDIARIES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

The fair value of our lease guarantee liability is determined by calculating the present value of the difference between the estimated rate at which the Company and Bagger Dave's could borrow money in a duration similar to the underlying lease guarantees. Our lease guarantees are classified as a Level 2 measurement as there is no actively traded market for such instruments.

In connection with our impairment review of long-lived assets described in Note 17, we measured the fair value of our asset groups that were not deemed recoverable, based on Level 2 and Level 3 inputs consisting of the fair market value or discounted future cash flows associated with the use and eventual disposition of the asset group. The discounted cash flow method is based on Level 3 inputs consisting primarily of our restaurant forecasts and utilizes forward-looking assumptions and projections, as well as factors impacting long-range plans such as pricing, discount rates and commodity prices.

As of December 30, 2018 and December 31, 2017, our total debt was approximately \$102.4 million and \$113.9 million, respectively, which approximated fair value because the applicable interest rates are adjusted frequently based on short-term market rates (Level 2).

There were no transfers between levels of the fair value hierarchy during the fiscal years ended December 30, 2018 and December 31, 2017, respectively.

The following table presents the fair values for those assets and liabilities measured on a recurring basis as of December 30, 2018:

FAIR VALUE MEASUREMENTS				
Description	Level 1	Level 2	Level 3	Asset/(Liability) Total
Interest rate swaps	\$ —	\$ 379,126	\$ —	\$ 379,126
Lease guarantee liability	—	(282,084)	—	(282,084)
Total	\$ —	\$ 97,042	\$ —	\$ 97,042

The following table presents the fair values for those assets and liabilities measured on a recurring basis as of December 31, 2017:

FAIR VALUE MEASUREMENTS				
Description	Level 1	Level 2	Level 3	Asset / (Liability) Total
Interest rate swaps	\$ —	\$ (429,104)	\$ —	\$ (429,104)
Lease guarantee liability	—	(303,006)	—	(303,006)
Total	\$ —	\$ (732,110)	\$ —	\$ (732,110)

DIVERSIFIED RESTAURANT HOLDINGS AND SUBSIDIARIES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

15 . ACCUMULATED OTHER COMPREHENSIVE INCOME (LOSS)

The following table summarizes each component of Accumulated Other Comprehensive Income (Loss) ("AOCI"):

Year to Date December 30, 2018

	Interest Rate Swaps
Beginning balance	\$ (283,208)
Gain recorded to other comprehensive income	808,250
Tax expense	(169,728)
Other comprehensive income	638,522
Accumulated AOCI	\$ 355,314

Year to Date December 31, 2017

	Interest Rate Swaps
Beginning balance	\$ (934,222)
Gain recorded to other comprehensive loss	986,385
Tax expense	(335,371)
Other comprehensive income	651,014
Accumulated AOCI	\$ (283,208)

DIVERSIFIED RESTAURANT HOLDINGS AND SUBSIDIARIES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

16 . SUMMARY QUARTERLY FINANCIAL DATA (unaudited)

	Fiscal Quarters			
	April 1, 2018	July 1, 2018	September 30, 2018	December 30, 2018
Revenue	\$ 39,532,957	\$ 37,039,073	\$ 37,491,751	\$ 39,074,438
Operating profit (loss)	1,503,810	294,733	(682,517) ¹	(1,498,569) ¹
Loss from continuing operations before income taxes	(109,594)	(1,294,678)	(2,267,016)	(3,015,631)
Net income (loss) from continuing operations	191,829	(1,140,210)	(1,761,372)	(2,294,171)
Basic and diluted earnings (lo ss) per share from:				
Continuing operations	\$ 0.01	\$ (0.04)	\$ (0.06)	\$ (0.07)
Weighted average number of common shares outstanding				
Basic and diluted	26,853,724	26,474,297	30,643,240	31,905,623

¹ The results for the third and fourth quarter were impacted by an impairment charge \$0.9 million and \$2.8 million , respectively. See Note 17 for for additional details.

	Fiscal Quarters			
	March 26, 2017	June 25, 2017	September 24, 2017	December 31, 2017
Revenue	\$ 44,337,964	\$ 39,934,602	\$ 39,262,940	\$ 41,927,106
Operating profit	2,366,631	721,263	320,479	1,832,355
Income (loss) from continuing operations before income taxes	817,844	(895,903)	(1,476,397)	268,061
Income (loss) from continuing operations	795,580	(291,343)	(543,240)	(20,245,148) ²
Income (loss) from discontinued operations	35,540	(117,747)	(15,154)	(76,564)
Net income (loss)	\$ 831,120	\$ (409,090)	\$ (558,394)	\$ (20,321,712)
Basic and diluted earnings (loss) per share from:				
Continuing operations	\$ 0.03	\$ (0.01)	\$ (0.02)	\$ (0.76)
Discontinued operations	—	(0.01)	—	—
Basic and diluted earnings (loss) per share	\$ 0.03	\$ (0.02)	\$ (0.02)	\$ (0.76)
Weighted average number of common shares outstanding				
Basic and diluted	26,629,974	26,621,421	26,764,776	26,845,643

² The results for the quarter ended December 31, 2017 were impacted by a charge of \$3.1 million as a result of the enactment of the Tax Act and the recording of a valuation allowance of \$15.9 million . See Note 9 for for additional details.

17 . IMPAIRMENT

We review the carrying value of our long-lived assets on a restaurant-by-restaurant basis when indicators of potential impairment exist. Such indicators include, but are not limited to, significant underperformance relative to expected, historical or projected future operating results; significant negative industry or economic trends; and significant changes in laws and regulations. Given the continued underperformance of certain restaurants we determined impairment indicators existed at December 30, 2018 . As such, the Company performed an impairment analysis on its long-lived assets subject to amortization and recorded a fixed asset impairment of \$2.8 million related to four underperforming locations. The Company also recorded a fixed asset impairment of \$0.9 million related to one underperforming location as of September 30, 2018. The impairment charges were recorded to the extent that the carrying amount of the assets were not considered recoverable based on the estimated discounted cash flows and the underlying fair value of the assets. These charges are reflected in Impairment and loss on asset disposals on the Consolidated Statements of Operations for 2018 . The fair values of each of the related assets to determine the impairment were measured using

**DIVERSIFIED RESTAURANT HOLDINGS AND SUBSIDIARIES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

Level 2 and Level 3 inputs as described in Note 14. For the fiscal year ended December 31, 2017, no impairment losses were recognized.

We have not closed any of these underperforming restaurants at this time, however, we will continue to evaluate each of these restaurants on a case-by-case basis. Additionally, while we believe that our estimates of fair value are appropriate, we will continue to monitor the asset values of each individual restaurant, and should actual values differ materially from our estimates, we may be required to record impairment charges in the future.

18 . SUBSEQUENT EVENTS

On February 22, 2019 we entered in an Asset Purchase Agreement to acquire 9 BWW restaurants in the Chicago, Illinois market for a cash purchase price of approximately \$22.5 million. The transaction remains subject to the franchisor waiving its right of first refusal and franchisor consent, among other things. The transaction also remains contingent upon the Company's completion of satisfactory financing.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

REPORT BY DIVERSIFIED RESTAURANT HOLDINGS, INC.'S MANAGEMENT ON INTERNAL CONTROL OVER FINANCIAL REPORTING

Management is responsible for establishing and maintaining an effective system of internal control over financial reporting that is designed to produce reliable financial statements presented in conformity with generally accepted accounting principles. There are inherent limitations in the effectiveness of any system of internal control. Accordingly, even an effective system of internal control can provide only reasonable assurance with respect to financial statement preparation.

Management assessed the Company's system of internal control over financial reporting that is designed to produce reliable financial statements presented in conformity with generally accepted accounting principles as of December 30, 2018 . This assessment was based on criteria for effective internal control over financial reporting described in *Internal Control — Integrated Framework* (2013 Framework) issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this assessment, management believes that, as of December 30, 2018 , Diversified Restaurant Holdings, Inc. maintained an effective system of internal control over financial reporting that is designed to produce reliable financial statements presented in conformity with generally accepted accounting principles based on those criteria.

This Annual Report does not include an attestation report of the Company's independent registered public accounting firm regarding internal control over financial reporting. We were not required to have, nor have we engaged our independent registered public accounting firm to perform an audit of our internal control over financial reporting pursuant to the rules of the Securities and Exchange Commission that permit us to provide only management's report in this Annual Report. Management's report was not subject to attestation by the Company's registered public accounting firm pursuant to Section 404(c) of the Sarbanes-Oxley Act.

Diversified Restaurant Holdings, Inc.

/s/ David G. Burke

Dated: April 3, 2019

David G. Burke

Chairman of the Board, President, Chief Executive Officer,
and Principal Executive Officer

/s/ Phyllis Knight

Dated: April 3, 2019

Phyllis Knight

Chief Financial Officer, Treasurer, Principal Financial
Officer, and Principal Accounting Officer

Evaluation of Disclosure Controls and Procedures

As of December 30, 2018 , an evaluation was performed under the supervision of and with the participation of our management, including our principal executive and principal financial officers, of the effectiveness of the design and operation of our disclosure controls and procedures. Based on that evaluation, our management, including our principal executive and principal financial and accounting officers, concluded that our disclosure controls and procedures were effective as of December 30, 2018 .

Evaluation of Internal Control and Procedures

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rules 13a-15(f). There are inherent limitations in the effectiveness of any system of internal control.

Accordingly, even an effective system of internal control can provide only reasonable assurance with respect to financial statement preparation.

Under the supervision and with the participation of our management, including our principal executive and principal financial and accounting officers, we conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 30, 2018. This evaluation was based on criteria for effective internal control over financial reporting described in Internal Control — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 Framework). Based on our evaluation under the framework in Internal Control — Integrated Framework, our management concluded that our internal control over financial reporting was effective as of December 30, 2018. Refer to the management's report in Item 8 "Consolidated Financial Statements" of this Annual Report.

The Company is not required to have an audit of its internal control over financial reporting. As such, this annual report does not include an attestation report of the Company's registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the Company's registered public accounting firm pursuant to Section 404(c) of the Sarbanes-Oxley Act.

Changes in Internal Control Over Financial Reporting

There have been no changes in the Company's internal control over financial reporting that occurred during the year ended December 30, 2018 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

Our process for evaluating controls and procedures is continuous and encompasses constant improvement of the design and effectiveness of established controls and procedures and the remediation of any deficiencies that may be identified during this process.

ITEM 9B. OTHER INFORMATION

Not applicable.

PART III**ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE****STOCK OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

The following table presents information regarding the beneficial ownership of our common stock by each person known to us to own beneficially more than 5.0% of our outstanding shares of common stock as of March 22, 2019. The title of the class of shares for all owners is \$0.0001 par value common stock.

Name and Address of Beneficial Owner	Amount and Nature of Beneficial Ownership	Percent of Class Beneficially Owned ⁽¹⁾
T. Michael Ansley 807 W. Front Street Suite B Traverse City, MI 49684	10,253,557 ⁽²⁾	30.9%

(1) The percentages shown are based on the 33,182,875 shares of our common stock outstanding as of March 22, 2019, plus the number of shares that the named person or group has the right to acquire within 60 days of March 22, 2019. For purposes of computing the percentage of outstanding shares of common stock held by each person or group, any shares that the person or group has the right to acquire within 60 days after March 22, 2019 are deemed to be outstanding with respect to such person or group but are not deemed to be outstanding for the purpose of computing the percentage of ownership of any other person or group.

(2) This includes 2,214,557 shares owned directly by Mr. Ansley, 8,000,000 shares held jointly with his spouse through a family limited liability company, 9,000 shares indirectly owned as custodian for his children's UGMA accounts (the beneficial ownership of which he disclaims), and options exercisable within 60 days of March 20, 2017 to purchase 30,000 shares at an exercise price of \$2.50 per share.

[Table of Contents](#)

The following table presents information regarding the beneficial ownership of our common stock, as of March 22, 2019, by each of our directors, each of whom is also a nominee for re-election as a director, our executive officers named in the Summary Compensation Table, and all of our directors and executive officers as a group.

Name of Beneficial Owner	Amount and Nature of Beneficial Ownership	Percent of Class Beneficially Owned (1)
T. Michael Ansley °	10,253,557 (2)	30.9%
David G. Burke °	656,939 (3)	2.0%
Jason T. Curtis	1,177,511 (4)	3.5%
Jay A. Dusenberry °	128,730 (5)	*
Philip Friedman °	106,862 (6)	*
Phyllis A. Knight	496,466 (7)	1.5%
David Ligotti °	342,307 (8)	1.0%
Joseph M. Nowicki °	122,651 (9)	*
Roger Lipton °	20,689 (10)	*
Officers and All Directors As a Group (9 persons)	13,305,712 (11)	39.9%

* Less than one percent

° Existing member of the Board

- (1) The percentages shown are based on the 33,182,875 shares of our common stock outstanding as of March 22, 2019, plus the number of shares that the named person or group has the right to acquire within 60 days of March 22, 2019. For purposes of computing the percentage of outstanding shares of common stock held by each person or group, any shares that the person or group has the right to acquire within 60 days after March 22, 2019 are deemed to be outstanding with respect to such person or group but are not deemed to be outstanding for the purpose of computing the percentage of ownership of any other person or group.
- (2) This includes 2,214,557 shares owned directly by Mr. Ansley, 8,000,000 shares held jointly with his spouse through a family limited liability company, 9,000 shares indirectly owned as custodian for his children's UGMA accounts (the beneficial ownership of which he disclaims), and options exercisable within 60 days of March 22, 2019 to purchase 30,000 shares at an exercise price of \$2.50 per share.
- (3) This includes 218,071 shares owned directly by Mr. Burke, 366,667 shares of restricted stock, options exercisable within 60 days of March 22, 2019 to purchase 30,000 shares at an exercise price of \$2.50 per share, and 42,201 shares held in his IRA. Shares owned directly include shares acquired pursuant to the issuer's Employee Stock Purchase Plan since last report of common stock ownership.
- (4) This includes 888,956 shares owned directly by Mr. Curtis and 288,555 shares of restricted stock.
- (5) This includes 71,144 shares owned directly by Mr. Dusenberry, 27,586 shares of restricted stock and options exercisable within 60 days of March 22, 2019 to purchase 30,000 shares at an exercise price of \$2.50 per share.
- (6) This includes 49,276 shares owned directly by Mr. Friedman, 27,586 shares of restricted stock and options exercisable within 60 days of March 22, 2019 to purchase 30,000 shares at an exercise price of \$2.50 per share.
- (7) This includes 215,132 shares currently owned directly by Ms. Knight and 281,334 shares of restricted stock.
- (8) This includes 314,721 shares currently owned directly by Mr. Ligotti and 27,586 shares of restricted stock.
- (9) This includes 43,165 shares currently directly owned by Mr. Nowicki, 27,586 shares of restricted stock, 21,900 shares held jointly with his spouse, and options exercisable within 60 days of March 22, 2019 to purchase 30,000 shares at an exercise price of \$2.50 per share.
- (10) This includes 20,689 shares of restricted stock currently owned directly by Mr. Lipton.
- (11) This includes 150,000 shares that such persons have the right to acquire within 60 days of March 22, 2019 pursuant to stock options.

Audit Committee

Our Audit Committee is solely responsible for appointing and reviewing fee arrangements with our independent accountants and approving any non-audit services by our independent accountants. Our Audit Committee reviews and monitors our internal accounting procedures and reviews the scope and results of the annual audit and other services provided by our independent accountants. The Audit Committee is also responsible for overseeing our compliance with legal and regulatory requirements, including our disclosure controls and procedures. Our Audit Committee currently consists of Messrs. Joseph M. Nowicki, Jay Alan Dusenberry, Philip Friedman and Roger Lipton. Our Board has determined that each of the members of the Audit Committee meets the criteria for independence under the standards of the NASDAQ Stock Market.

We believe that each of the members of the Audit Committee is financially sophisticated and is able to read and understand our consolidated financial statements. The Audit Committee met seven times during 2018. Our Board has determined that Mr. Nowicki is an audit committee financial expert as defined in Item 401 of Regulation S-K.

Code of Business Conduct and Ethics

We have adopted a corporate code of ethics that applies to all of our employees, directors and executive officers, including our chief executive officer, chief financial officer and principal accounting officer. We believe our code of ethics is reasonably designed to deter wrongdoing and promote honest and ethical conduct; provide full, fair, accurate, timely and understandable disclosure in public reports; comply with applicable laws; ensure prompt internal reporting of code violations; and provide accountability for adherence to the code. A copy of our corporate code of ethics may be obtained, without charge, upon written request to: Secretary, 27680 Franklin Road, Southfield, Michigan 48034. The code of ethics may be reviewed on our website at <http://www.diversifiedrestaurantholdings.com/about-us/governance-documents>. In addition, we intend to post on our website all disclosures that are required by law or NASDAQ listing standards concerning any amendments to, or waivers from, any provision of the code.

SECTION 16(A) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

Section 16(a) of the Exchange Act requires our directors, executive officers, and persons who own more than 10.0% of our outstanding common stock to file with the Securities and Exchange Commission reports of changes in ownership of our common stock held by such persons. Executive officers, directors and greater than 10.0% stockholders are also required to furnish us with copies of all forms they file under this section. To our knowledge, based solely on a review of the copies of such reports furnished to us and representations received from our directors and officers, we believe that all reports required to be filed under Section 16(a) for fiscal year 2018 were timely filed.

ITEM 11. EXECUTIVE COMPENSATION

COMPENSATION OF EXECUTIVE OFFICERS AND DIRECTORS

Summary Compensation Table

The following table summarizes compensation earned by our principal executive officer and our other executive officers for our last two completed fiscal years.

Name and Principal Position	Year	Salary (\$)	Bonus (\$)⁽¹⁾	Stock Awards (\$)⁽²⁾	Option Awards (\$)	Non Equity Incentive Plan Compensation (\$)⁽⁴⁾	Nonqualified Deferred Compensation Earnings (\$)	All Other Compensation (\$)	Total (\$)
T. Michael Ansley	2018	250,000	—	—	—	—	—	9,000	259,000
Executive Chairman of the Board	2017	250,000	—	—	—	—	—	9,000	259,000
David G. Burke	2018	450,000	—	276,500	—	58,500	—	9,100	794,100
Chief Executive Officer	2017	405,000	35,640	202,500 ⁽³⁾	—	—	—	9,135	652,275
Jason T. Curtis	2018	261,000	—	253,550	—	23,490	—	9,100	547,140
Chief Operating Officer	2017	261,000	18,792	50,000	—	—	—	9,135	338,927
Phyllis A. Knight	2018	340,000	—	253,550	—	34,000	—	9,100	636,650
Chief Financial Officer	2017	340,000	24,480	183,750	—	—	—	9,135	557,365

(1) Bonuses paid for 2017 pursuant to the terms of the Performance Bonus Plan and the 2017 Short Term Plan. Bonuses in 2017 were paid in a combination of cash (50%) and DRH stock (50%) valued based upon the closing share price on March 29, 2018 of \$1.35 per share. There was no vesting requirement for the shares granted in connection with the 2017 bonus.

(2) Refer to Note 8 "Share-Based Compensation", in the Notes to our Consolidated Financial Statements, for the relevant assumptions used to determine the valuation of the stock awards.

(3) Refer to *Treatment of Certain Incentive Grants under the Stock Incentive Plan of 2011* below for further details on Mr. Burke's stock awards for 2017.

(4) The amounts in this column include cash awards paid for 2018 performance pursuant to the terms of the Performance Bonus Plan and the 2018 Short Term Plan.

Employment Agreements

David G. Burke

On May 19, 2016, the Company and Mr. Burke entered into a written employment agreement for an initial three-year term. Pursuant to the employment agreement, Mr. Burke's base salary for the fiscal years ending in 2017 and 2018 was \$405,000 and \$450,000, respectively. His base salary for the fiscal year ending in 2019 will be determined by the Board of Directors.

During his term of employment, Mr. Burke is eligible to participate in the Company's annual cash bonus plan. In fiscal years 2016, 2017, and 2018, his target bonus opportunity is 40%, 55% and 65% of base salary, respectively. Actual payments will be determined based upon a combination of Company results and individual performance against the applicable performance goals established by the Board.

Mr. Burke was paid a one-time signing bonus in the amount of \$100,000 and was granted 100,000 shares of the Company's common stock within two weeks following the signing date of the employment agreement. The stock award is subject to the terms and conditions of the Company's Stock Incentive Plan of 2011 and vested and will vest ratably on January 1, 2018, January 1, 2019, and January 1, 2020.

During each year of the initial three-year term of the employment agreement, the Company will recommend to the Compensation Committee that it grant Mr. Burke an equity award of 50,000 shares of restricted stock. The Compensation Committee granted 50,000 shares of restricted stock to Mr. Burke in 2017 and 2018. Each future award will be subject to the terms and conditions of the Company's Stock Incentive Plan of 2017 or a successor plan, and will vest three years following the date of grant.

Mr. Burke is eligible to participate in the employee benefit plans and programs generally available to the Company's senior executives, including group medical, dental, vision and life insurance, and disability benefits, subject to the terms and conditions of such plans and programs. Mr. Burke is also entitled to the fringe benefits and perquisites that are made available to other similarly situated executives of the Company, including a car allowance, each in accordance with and subject to the eligibility and other provisions of such plans and programs.

In addition, the employment agreement also provides for certain payments and benefits in the event of a termination of Mr. Burke's employment under specific circumstances. If, during the term of the employment agreement, his employment is terminated by the Company other than for "cause," or by Mr. Burke for "good reason" (each as defined in his agreement), he would be entitled to (1) continuation of his base salary at the rate in effect immediately prior to the termination date for 12 months following the termination date, (2) a lump sum payment equal to a pro-rata portion of his annual bonus and (3) continuation of coverage of medical insurance benefits that he would otherwise be eligible to receive as an active employee of the Company for six months following the termination date. In the event of a change in control followed by termination by the Company without "cause" or by Mr. Burke for "good reason" within 12 months of the change of control, Mr. Burke would be entitled to (1) a lump sum payment equal to 1.5 times his annual base salary and target annual bonus for the year in which the termination occurs, and (2) continuation of coverage of medical insurance benefits that he would otherwise be eligible to receive as an active employee of the Company for six months following the termination date.

Mr. Burke's receipt of the termination payments and benefits described above is contingent upon execution of a general release of any and all claims arising out of or related to his employment with the Company and the termination of his employment, and compliance with the restrictive covenants described below.

Pursuant to his employment agreement, Mr. Burke has also agreed to customary restrictions with respect to the disclosure and use of the Company's confidential information, and has agreed that work product or inventions developed or conceived by him while employed with the Company relating to its business is the Company's property. In addition, during the term of his employment and for the 18 month period following his termination of employment for any reason, Mr. Burke has agreed not to (1) compete with the Company, or (2) solicit or induce any of the Company's employees or independent contractors to terminate their employment with the Company.

Phyllis A. Knight

The Company and Ms. Knight entered into a written employment agreement on October 20, 2016, for an initial three-year term. Pursuant to the employment agreement, Ms. Knight receives a base salary of \$340,000 per year.

During her term of employment, Ms. Knight is eligible to participate in the Company's annual cash bonus plan. In fiscal years 2017 and 2018, her target bonus opportunity was 45% and 50%, respectively, of base salary. Actual payments will be determined based upon a combination of Company results and individual performance against the applicable performance goals established by the Board.

As a signing bonus, Ms. Knight received a grant of 100,000 shares of the Company's common stock. The stock award is subject to the terms and conditions of the Company's Stock Incentive Plan and vested and will vest ratably on January 1, 2018, January 1, 2019, and January 1, 2020.

During each year of the initial three-year term of the employment agreement, Ms. Knight will be eligible to receive an annual long-term incentive award of stock, options, or a combination thereof, as determined by the Compensation Committee. Each such award will be subject to the terms and conditions of the Company's Stock Incentive Plan of 2017 or a successor plan, and will vest three years following the date of grant.

Ms. Knight will be eligible to participate in the employee benefit plans and programs generally available to the Company's senior executives, including group medical, dental, vision and life insurance, and disability benefits, subject to the terms and conditions of such plans and programs. Ms. Knight will also be entitled to the fringe benefits and perquisites that are made available to other similarly situated executives of the Company, including a car allowance, each in accordance with and subject to the eligibility and other provisions of such plans and programs.

In addition, the employment agreement also provides for certain payments and benefits in the event of a termination of Ms. Knight's employment under specific circumstances. If, during the term of the employment agreement, her employment is terminated by the Company other than for "cause," or by Ms. Knight for "good reason" (each as defined in her agreement), she would be entitled to (1) continuation of her base salary at the rate in effect immediately prior to the termination date for 12 months following the termination date, (2) a lump sum payment equal to a pro-rata portion of her annual bonus and (3) continuation of coverage of medical insurance benefits that she would otherwise be eligible to receive as an active employee of the Company for twelve months following the termination date. In the event of a change in control followed by termination by the Company without "cause" or by Ms. Knight for "good reason" within 12 months of the change of control, Ms. Knight would be entitled to (1) a lump sum payment equal to 1.0 times her annual base salary and target annual bonus for the year in which the termination occurs, and (2) continuation of coverage of medical insurance benefits that she would otherwise be eligible to receive as an active employee of the Company for six months following the termination date.

Ms. Knight's receipt of the termination payments and benefits described above is contingent upon execution of a general release of any and all claims arising out of or related to her employment with the Company and the termination of her employment, and compliance with the restrictive covenants described below.

Pursuant to her employment agreement, Ms. Knight has also agreed to customary restrictions with respect to the disclosure and use of the Company's confidential information, and has agreed that work product or inventions developed or conceived by her while employed with the Company relating to its business is the Company's property. In addition, during the term of her employment and for the 24 month period following her termination of employment for any reason, Ms. Knight has agreed not to (1) compete with the Company, or (2) solicit or induce any of the Company's employees or independent contractors to terminate their employment with the Company.

Treatment of Certain Incentive Grants under the Stock Incentive Plan of 2011

The Company's Stock Incentive Plan of 2011 (the "2011 Plan") provides that no participant may be awarded incentive awards with respect to more than 100,000 shares of common stock in any calendar year. The 2011 Plan states that the purpose of this provision is to ensure that the 2011 Plan provides performance-based compensation and the provision is to be interpreted, administered and amended if necessary to achieve that purpose.

During 2016, the Board of Directors, upon recommendation of the Compensation Committee, granted 133,333 shares of restricted stock to Mr. Burke. 33,333 shares were granted to Mr. Burke as an annual long-term incentive grant and 100,000 shares were granted to Mr. Burke pursuant to the terms of his Employment Agreement.

The Board of Directors interpreted the 2011 Plan to mean that the annual limit of 100,000 shares applied only if the applicable grant was intended to qualify as performance-based compensation under Section 162(m) of the Internal Revenue Code. The grant of restricted stock to Mr. Burke was not subject to any performance conditions, but was subject to time-based vesting. The grant of time-vested restricted stock does not qualify as performance-based compensation under Section 162(m) and the Board of Directors understood that grants of time-vested restricted stock could be made in excess of the annual limit of 100,000 shares set forth in the 2011 Plan.

The Board received a demand letter from counsel on behalf of two stockholders alleging that the grants to Mr. Burke in 2016 violated Section 4.2 of the 2011 Plan, among other claims. The Board formed a Special Committee to review the stockholder demand, conduct a thorough investigation into the legal and factual issues implicated by the demand and recommend a course of action. The Special Committee concluded that the demand was without merit. However, solely in the interests of avoiding litigation that the Board determined in its business judgment would not be in the interests of the Company or its shareholders, the Board elected to rescind, and Mr. Burke simultaneously agreed to surrender, the grant of 33,333 shares so that the aggregate number of restricted shares issued to him in 2016 is 100,000.

The Board also determined that the total compensation package approved by the Board, including the stock grant under Mr. Burke's employment agreement and the 2016 annual stock grant, was appropriate and aligned with stockholders' interests. Accordingly, based on a recommendation by the Compensation Committee, the Board determined that it was appropriate to return Mr. Burke's equity compensation to the level it was prior to the action to void and rescind the 33,333 shares of restricted stock and, therefore, effective June 23, 2017, the Board granted Mr. Burke a restricted stock grant with respect to 33,333 shares of restricted stock, which will vest in a single installment on June 23, 2019.

Executive Officer Bonus Compensation

Beginning in 2013, it has been our policy to provide cash bonus awards for eligible executive officers and employees based on predetermined performance goals. We believe that paying such cash awards:

- promotes the growth, profitability and expense control necessary to accomplish corporate strategic long-term plans;
- encourages superior results by providing a meaningful incentive; and
- supports teamwork among employees.

In furtherance of this goal and to provide a structure for awarding cash bonuses, on March 7, 2013, the Board approved a Performance Bonus Plan (the "Bonus Plan") which is administered by the Compensation Committee. The Bonus Plan is designed to provide an incentive in the form of a cash bonus award to certain key executives of the Company. Under the terms of the Bonus Plan, each calendar year the Compensation Committee (or its designees) will determine within 90 days of January 1 the employees who will participate in the Bonus Plan and the performance goals that those employees must satisfy to earn the target award established by the Compensation Committee.

Performance goals are to be selected by the Compensation Committee based upon one or more of the following performance criteria: (i) financial results for the Company as a whole or as a business unit, such as net earnings or net income (before or after taxes), earnings per share, net revenues, gross revenues, net operating profit (before or after taxes), and earnings before or after taxes, interest, depreciation and/or amortization (EBITDA); and (ii) criteria related to restaurant growth (either in the aggregate or by type of restaurant). The Compensation Committee may also establish individual goals for an employee relating to his or her individual performance or individual/strategic goals for the executive team as a whole. The Compensation Committee has discretion in assessing whether the individual/strategic goals have been met.

Target awards payable under the Bonus Plan are expressed as either a percentage of base salary or a fixed dollar amount. The Compensation Committee must establish in writing a formula for determining the percentage of the target award that may be payable based upon the level of attainment of the performance goals for the year. In establishing the formula, the Compensation Committee may assign different weights to the various performance criteria, and such weights may also differ from employee to employee.

Bonus Plan for Fiscal 2018

On June 12, 2018, the Board, upon recommendation of the Compensation Committee, adopted a Short-Term Incentive Program for the 2018 fiscal year (the “2018 Short Term Plan”), which set out the performance goals for fiscal 2018 under the Bonus Plan. The 2018 Short Term Plan was designed to pay an annual cash bonus to members of the Company’s executive team, with such bonus to be based upon a combination of corporate financial goals (Adjusted EBITDA) and strategic/individual goals. Three named executive officers participated in the 2018 Short Term Plan: Mr. Burke, Mr. Curtis and Ms. Knight. The 2018 target bonus for each of these named executive officers was: Mr. Burke - \$292,500, Mr. Curtis - \$117,450 and Ms. Knight - \$170,000, representing 60.0%, 45.0% and 50.0%, respectively, of each officer’s base salary.

80.0% of the performance metrics under the 2018 Short Term Plan were related to the achievement of corporate financial performance (Adjusted EBITDA) and 20.0% of the performance metrics were related to individual/strategic goals. Any performance below the threshold resulted in a payout of 0.0% for the metric and all amounts were capped at 150.0% of target. On February 14, 2019, the Compensation Committee certified that no portion of the Adjusted EBITDA target was achieved, resulting in no payout for the executive team.

With respect to the remaining 20.0% of the performance metrics, the Committee determined that the executive team substantially satisfied the following individual/strategic goals for fiscal 2018 and this component of the performance metrics would be paid at 100% (for a percentage payout of 20%):

- corporate cost improvement through cost controls;
- SEC compliance;
- control of operations - maintaining effective restaurant operations; and
- a successful equity raise.

Based on the attainment of the performance metrics established in the 2018 Short Term Plan, bonus amounts were paid to our executive officers as follows: Mr. Burke, \$58,500 , Mr. Curtis, \$23,490 , and Ms. Knight, \$34,000 .

Outstanding Equity Awards at Fiscal Year-End

The following table sets forth certain information for our executive officers concerning unexercised options, stock that has not vested, and equity incentive plan awards as of December 30, 2018 .

Name	Number of Securities Underlying Unexercised Options (#) Exercisable ⁽¹⁾	Number of Securities Underlying Unexercised Options (#) Unexercisable	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Options (#)	Option Exercise Price (\$)	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested (\$)	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested (#)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested (\$)
T. Michael Ansley	30,000	—	—	\$ 2.50	7/31/2019	—	\$ —	—	—
David G. Burke	30,000	—	—	\$ 2.50	7/31/2019	33,333 ⁽³⁾	\$ 33,000	—	—
	—	—	—			66,667 ⁽⁴⁾	\$ 66,000	—	—
	—	—	—			50,000 ⁽⁵⁾	\$ 49,500	—	—
	—	—	—			50,000 ⁽²⁾	\$ 49,500	—	—
	—	—	—			100,000 ⁽⁶⁾	\$ 99,000	—	—
	—	—	—			100,000 ⁽⁹⁾	\$ 99,000	—	—
Jason Curtis	—	—	—			33,333 ⁽⁷⁾	\$ 33,000	—	—
	—	—	—			22,222 ⁽⁵⁾	\$ 22,000	—	—
	—	—	—			33,000 ⁽²⁾	\$ 32,670	—	—
	—	—	—			100,000 ⁽⁶⁾	\$ 99,000	—	—
	—	—	—			100,000 ⁽⁹⁾	\$ 99,000	—	—
Phyllis A. Knight	—	—	—			66,667 ⁽⁸⁾	\$ 66,000	—	—
	—	—	—			15,000 ⁽⁵⁾	\$ 14,850	—	—
	—	—	—			33,000 ⁽²⁾	\$ 32,670	—	—
	—	—	—			100,000 ⁽⁶⁾	\$ 99,000	—	—
	—	—	—			100,000 ⁽⁹⁾	\$ 99,000	—	—

- (1) These options became fully vested on July 31, 2013. The Company entered into a Second Amendment to the Stock Option Agreement of 2010 on July 28, 2016 which extended the expiration date of the options from July 31, 2016 to July 31, 2019.
- (2) The shares of restricted stock cliff vest on March 30, 2021. The shares are subject to additional restrictions on transferability and conditions of forfeiture in accordance with the Stock Incentive Plan of 2017.
- (3) The shares of restricted stock cliff vest on June 23, 2019. The shares are subject to additional restrictions on transferability and conditions of forfeiture in accordance with the Stock Incentive Plan of 2011.
- (4) The shares of restricted stock vest ratably on January 1, 2019, and January 1, 2020. The shares are subject to additional restrictions on transferability and conditions of forfeiture in accordance with the Stock Incentive Plan of 2011.
- (5) The shares of restricted stock cliff vest on July 28, 2020. The shares are subject to additional restrictions on transferability and conditions of forfeiture in accordance with the Stock Incentive Plan of 2017.
- (6) The shares of restricted stock vested on November 29, 2021 in accordance with the Stock Incentive Plan of 2017.
- (7) The shares of restricted stock cliff vest on June 2, 2019. The shares are subject to additional restrictions on transferability and conditions of forfeiture in accordance with the Stock Incentive Plan of 2011.
- (8) The shares of restricted stock vest ratably on January 1, 2019 and January 1, 2020. The shares are subject to additional restrictions on transferability and conditions of forfeiture in accordance with the Stock Incentive Plan of 2017.
- (9) The shares of restricted stock cliff vest on November 30, 2021. The shares are subject to additional restrictions on transferability and conditions of forfeiture in accordance with the Stock Incentive Plan of 2017.

Payments in the Event of Termination of Employment or Change in Control

Employment Agreements

For amounts payable to Mr. Burke and Ms. Knight following a termination of employment (including in the event of a change in control), please see "Employment Agreements" above.

Termination of Employment Due to Death or Disability

Rights under the Stock Incentive Plan of 2011

If an executive officer terminates employment due to death or disability, then restricted stock granted to the officer under the Stock Incentive Plan of 2011 will be partially vested. Also, if we terminate an officer's employment other than for cause, then restricted stock granted to the officer under the plan will be partially vested. The number of shares that will be vested is equal to the number of shares granted to the executive officer multiplied by the number of months that have elapsed since the grant date divided by the number of months in the vesting period. Our Compensation Committee also has discretion to accelerate the vesting of restricted stock.

Rights under the Stock Incentive Plan of 2017

If an executive officer terminates employment due to death or disability, then restricted stock granted to the officer under the Stock Incentive Plan of 2017 will be 100% vested. Our Compensation Committee also has discretion to accelerate the vesting of restricted stock.

If an executive officer had terminated employment due to death or disability, or if we had terminated their employment without cause on December 30, 2018, each officer would have become vested in the following number of shares of restricted stock with a value shown below.

Executive Officer	Number of Shares Vested	Value
David G. Burke	114,729	\$ 113,581
Jason Curtis	44,753	44,306
Phyllis A. Knight	59,970	59,371
Total	219,452	\$ 217,258

These amounts assume that the termination occurred on December 30, 2018, the last business day of our 2018 fiscal year, and is an estimate of the value of restricted stock that would be vested upon a termination. The actual amount would only be determined upon a termination of employment.

Change in Control

According to their terms when awarded, shares of restricted stock awarded under the Stock Incentive Plan of 2011 or the Stock Incentive Plan of 2017 become fully vested upon a change in control. A "change in control" is defined in each of the Stock Incentive Plan of 2011 and the Stock Incentive Plan of 2017 as (a) the failure of the continuing directors to constitute a majority of the Board of Directors; (b) the acquisition by any person of ownership of 50.0% or more of our outstanding common stock; (c) a reorganization, merger or consolidation after which our stockholders do not own at least 50.0% of the value and voting power of the outstanding capital stock of the entity surviving the transaction; (d) a liquidation or dissolution, or a sale of all or substantially all of our assets; or (e) any other change in control transaction that is reportable to the SEC under Item 6(e) of Schedule 14A of Regulation 14A issued under the Securities Exchange Act of 1934.

Retirement Benefits

We do not provide a defined benefit pension plan or post-retirement health insurance coverage for our executive officers or other employees. Our executive officers and many of our other employees are eligible to participate in our 401(k) plan. Effective January 1, 2018, to comply with the IRS Safe Harbor Rules, we implemented a matching contribution to our 401(k) plan. For fiscal 2017, there was no discretionary match. For fiscal 2018, the Company will make a safe harbor matching contribution equal to 100% of employee salary deferrals that do not exceed 3% of compensation plus 50% of employee salary deferrals between 3% and 5% of

compensation. Mr. Burke participated in our 401(k) plan during 2017 and 2018 . Ms. Knight participated in our 401(k) plan during 2018 .

Director Compensation for Fiscal 2018

The table below provides information regarding the compensation of our directors for our fiscal year ending December 30, 2018 .

Name ⁽¹⁾⁽²⁾	Fees Earned or Paid in Cash (\$)	Stock Awards (\$) ⁽³⁾	Option Awards (\$)	Non-Equity Incentive Plan Compensation (\$)	Nonqualified Deferred Compensation Earnings (\$)	All Other Compensation (\$)	Total (\$)
Jay Alan Dusenberry	\$ 42,000	\$ 32,000	—	—	—	—	\$ 74,000
Philip Friedman	\$ 32,000	\$ 32,000	—	—	—	—	\$ 64,000
David Ligotti	\$ 32,000	\$ 32,000	—	—	—	—	\$ 64,000
Joseph M. Nowicki	\$ 47,000	\$ 32,000	—	—	—	—	\$ 79,000
Roger Lipton	\$ 10,667	\$ 28,344	—	—	—	—	\$ 39,011
Gregory J. Stevens	\$ 21,333	\$ —	—	—	—	—	\$ 21,333

- (1) Compensation information for T. Michael Ansley and David G. Burke is fully reflected in the Summary Compensation Table above and, as such, is not repeated here.
- (2) As of December 30, 2018 , each of Messrs. Dusenberry, Friedman, and Nowicki had outstanding options to purchase 30,000 shares of the Company's common stock.
- (3) Each non-employee director received a restricted stock award of 27,586 shares (prorated for Mr. Lipton) in 2018 following the annual election of directors, to assist the directors in meeting stock ownership guidelines for non-employee directors. The shares will vest on May 24, 2019. Mr. Stevens forfeited his award upon resignation from the board.

On July 31, 2010, each member of the Board then serving was granted options to purchase up to 30,000 shares of our common stock in return for their services as directors at an exercise price of \$2.50 per share. The options are fully vested and expire on July 31, 2019. On March 10, 2011, in connection with his appointment to the Board, Philip Friedman was granted options to purchase 30,000 shares on the same terms as the options issued in July 2010.

We review the compensation of our non-employee directors annually and may engage an independent compensation consultant to advise us on appropriate levels of cash and non-cash compensation for our directors. Our Compensation Committee engaged Lockton in 2015 to perform benchmarking of our director compensation program and to provide us with recommendations for cash compensation to be paid to our directors and to the Chairs of our Audit and Compensation Committees, for appropriate levels and types of stock-based compensation and as to appropriate stock ownership guidelines.

The material provisions of the Board's compensation program are as follows:

- Cash retainer fee of \$32,000, paid in quarterly amounts of \$8,000 on the last business day of each calendar quarter;
- A grant of restricted stock with a value of \$32,000, to be granted on the date of the annual election of directors, with a one-year vesting period such that the director would be 100% vested on the first anniversary of the grant date;
- Additional cash payment to the Chair of the Audit Committee in the amount of \$15,000, payable in equal quarterly installments on the last business day of each calendar quarter; and
- Additional cash payment to the Chair of the Compensation Committee in the amount of \$10,000, to be payable in equal quarterly installments on the last business day of each calendar quarter.

The Board, has adopted stock ownership guidelines for non-employee directors, equal to three times the amount of the annual cash retainer, which is intended to be met by three annual restricted stock grants.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

Information About Director Nominees and Executive Officers

Information about our director nominees and executive officers is set forth below. There are no family relationships among any of our directors, nominees for director and executive officers.

Name, Age, and Position with the Company	Has Served As Director Since
Directors Who Are Both Currently Serving and Nominees for Election	
T. Michael Ansley , 48, Director, Executive Chairman of the Board	2006
David G. Burke , 47, Director, President and Chief Executive Officer	2006
Jay Alan Dusenberry , 47, Director	2006
Philip Friedman , 72 , Director	2011
David Ligotti , 61, Director	2006
Joseph M. Nowicki , 57, Director	2010
Roger Lipton , 78, Director	2018
Executive Officers (Who Are Not Also Directors)	
Jason Curtis , 38, Chief Operating Officer, Secretary	
Phyllis A. Knight , 56, Chief Financial Officer, Treasurer	

Our executive officers are generally appointed each year at the annual meeting of our Board. Their terms of office are at the discretion of our Board.

The factual information below for each director, nominee for election as a director and for each executive officer has been provided by that person. The particular experience, qualifications, attributes or skills that led our Board to conclude that each should serve on our Board, in light of our business and structure, was determined by our Board or independent members of the Board.

T. Michael Ansley currently serves as the Executive Chairman of our Board of Directors. He served as our President, Chief Executive Officer, and Chairman of the Board since our inception in 2006 through October of 2016. The Company's roots can be traced back to 1999 when Mr. Ansley opened his first Buffalo Wild Wings ("BWW") franchise in Sterling Heights, Michigan. Mr. Ansley received a Bachelor of Science degree in business administration from the University of Dayton and currently serves on the Board of Directors of the Michigan Restaurant Association. Mr. Ansley also serves as Chairman, President and Chief Executive Officer of Bagger Dave's Burger Tavern, Inc.

We believe Mr. Ansley is qualified to serve as a director of the Company due to his extensive experience in restaurant management, operations and development as well as his demonstrated business leadership abilities and long history with the Company as its founder.

David G. Burke currently serves as our President and Chief Executive Officer, positions he assumed in October of 2016. Mr. Burke had previously served as Chief Financial Officer and Treasurer of the Company since March 22, 2010, and has been a member of the Board since our inception. Prior to joining the Company, Mr. Burke was employed by Federal-Mogul Corporation, a leading global supplier of powertrain and safety technologies serving the world's foremost original equipment manufacturers and the worldwide aftermarket, where he held roles of increasing responsibility in finance, marketing, and corporate development. Mr. Burke earned a Bachelor of Science degree in mechanical engineering from the University of Dayton and a Master of Business Administration, with a concentration in finance, from the University of Michigan - Ross School of Business.

We believe Mr. Burke is qualified to serve as a director due to his leadership position as President and Chief Executive Officer of the Company, business acumen, and analytical skills, including a unique proficiency with regard to financial modeling and market analysis.

Jay Alan Dusenberry has been a member of the Board since our inception. Mr. Dusenberry served as our Treasurer from our inception to March 22, 2010. Currently, Mr. Dusenberry is a Vice President of Michigan Metal Coatings. From 2013 to 2017, he

[Table of Contents](#)

served as Vice President of KAMAX, a fastener technology company for the automotive industry. From 2009 to 2013, he served as a Vice President at Cold Heading Company, a manufacturer of cold-formed fasteners. He received a Bachelor of Science degree in finance from the University of Dayton and a Master of Business Administration degree from the University of Detroit Mercy.

We believe Mr. Dusenberry is qualified to serve as a director due to his 20 years of experience in business leadership positions, including experience as a financial analyst for a health care system and senior administrative roles as a plant manager, director, and vice president in the automotive manufacturing industry.

Philip Friedman was appointed to the Board on March 10, 2011. Mr. Friedman served as Chairman, Chief Executive Officer, and President of McAlister's Corporation, a quick-casual restaurant concept, from 1999 through July 2010. Currently, Mr. Friedman is Chief Executive Officer of Salsarita's Fresh Cantina restaurant chain. Mr. Friedman is also President of P Friedman & Associates Inc., a strategic planning and management consulting company he founded in 1986. Mr. Friedman formerly served on the Boards of the National Restaurant Association and the Mississippi Restaurant Association. He is currently a member of the North Carolina Restaurant and Lodging Association and a former member of the International Franchise Association, the Culinary Institute of America's Society of Fellows and the National Association of Corporate Directors.

We believe Mr. Friedman is qualified to serve as a director because of his extensive franchise and chain restaurant expertise. This expertise is particularly relevant to our business as a franchisee of BWW.

David Ligotti has been a member of the Board since our inception. Mr. Ligotti owns and operates Oakwood Business Services, LLC ("Oakwood"), an accounting, tax, and consulting firm located in Ann Arbor, Michigan. Mr. Ligotti received a Bachelor of Arts degree in political science from Kalamazoo College, a Masters of Business Administration degree, with a major in accounting, from the University of Michigan, and a Master of Science in Taxation degree from Walsh College.

We believe Mr. Ligotti is qualified to serve as a director, as he has been a CPA for more than 30 years and has nearly 30 years of experience in restaurant finance, technology, operation, administration, and accounting.

Joseph M. Nowicki was elected to the Board at the 2010 annual meeting of stockholders. Mr. Nowicki is the Executive Vice President and Chief Financial Officer of Beacon Roofing Supply ("BECN"), a NASDAQ-listed company, a position he assumed on March 25, 2013. At BECN, Mr. Nowicki is responsible for the oversight of finance, credit and investor relations. Mr. Nowicki served as the Chief Financial Officer of Spartan Motors, Inc. ("SPAR"), a NASDAQ-listed specialty vehicle manufacturer based in Charlotte, Michigan from June 30, 2009 to March 22, 2013. Previously, Mr. Nowicki spent approximately 17 years with the Michigan-based furniture manufacturer, Herman Miller, Inc., where he held progressive financial roles, lastly as Vice President, Investor Relations and Treasurer. Before joining Herman Miller, he held several operations and finance positions, including working for IBM and General Motors, and spent several years in public accounting. Mr. Nowicki received a Master of Business Administration from the University of Michigan - Ross School of Business.

We believe Mr. Nowicki is qualified to serve as a director of the Company due to his extensive public company experience and specialized accounting, finance and capital markets expertise.

Roger Lipton joined the Board in September 2018. Mr. Lipton is an investment professional with more than four decades of experience specializing in restaurants and retailers. He earned a B.S. in Mechanical Engineering at Rensselaer Polytechnic Institute and an MBA at Harvard. After working as an auditor with PricewaterhouseCoopers for two years, he began a career on Wall Street, where he focused on the restaurant and franchising industries. He then moved on to build and operate a chain of fast casual restaurants in Canada. He subsequently spent 13 years at Ladenburg, Thalmann & Co., Inc., where he managed the Lipton Research Division, specializing in the restaurant industry. While at Ladenburg, he sponsored an annual restaurant conference for investment professionals. He formed his own firm, Lipton Financial Services, Inc. in 1993 to invest in restaurant and retail companies. Mr. Lipton also serves on the board of Barfly Ventures, operator of the HopCat chain of casual dining restaurants.

We believe Mr. Lipton is qualified to serve as a director of the Company due to his extensive financial and restaurant industry experience.

Executive Officers Who Are Not Also Directors

Mr. Ansley and Mr. Burke are also members of our Board of Directors, and information regarding their business experience is described above. The business experience for Mr. Curtis and Ms. Knight for at least the past five years is summarized below. Our executive officers are generally elected each year at the annual meeting of our Board of Directors that follows the annual meeting of the shareholders. Their terms of office are at the discretion of our Board of Directors.

Jason Curtis is our Chief Operating Officer, a position he assumed at our inception in 2006. Mr. Curtis also serves as our Corporate Secretary. Beginning in 2000, Mr. Curtis worked in positions of increasing responsibility in the restaurant industry, starting at the ground level in the kitchen of a BWW restaurant that is now owned by the Company. In 2002, he became Chief Operating Officer of AMC Group, LLC, the predecessor to AMC Group, Inc. AMC Group, Inc. is now a wholly-owned subsidiary of DRH. Mr. Curtis provides leadership in all aspects of our sports bars and oversees the day to day operations, training and restaurant support. He aligns our operations team on company strategy and continuous improvement initiatives. He also works with support office department heads to foster a culture of community and excellence.

Phyllis A. Knight was appointed Chief Financial Officer and Treasurer in October 2016. Ms. Knight brings more than 30 years of finance, accounting and leadership experience. She has served in several senior executive positions in the manufacturing, home building and mortgage services industries. Ms. Knight most recently served as EVP and CFO of Polar Corporation, the largest tank trailer manufacturing, parts, and service organization in North America. Prior to that Ms. Knight spent eleven years at Champion Enterprises, Inc. and Champion Enterprises Holdings, LLC, the bulk of which as EVP and CFO. At Champion, she directed all finance functions, including strategic planning, Securities and Exchange Commission reporting, treasury, capital markets, investor relations, cash management, risk management, mergers and acquisitions, and IT. A Certified Public Accountant (inactive license), Ms. Knight began her career at KPMG after earning a Bachelor of Arts degree in Accounting from Michigan State University.

Equity Compensation Plan Information

The following table sets forth information, as of December 30, 2018, with respect to compensation plans (including individual compensation arrangements) under which our equity securities are authorized for issuance, aggregated as follows:

Plan Category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
Equity compensation plans approved by security holders ¹	—	N/A	1,241,444
Equity compensation plans not approved by security holders ²	150,000	\$ 2.50	N/A

¹ In 2011, our Board of Directors and Stockholders approved the Stock Incentive Plan of 2011 (the “2011 Incentive Plan”) authorizing the grant of equity-based incentives to employees. On July 13, 2017, the Company's shareholders approved a new stock incentive plan - the Stock Incentive Plan of 2017 (“Stock Incentive Plan”). No further grants will be made under the 2011 Incentive Plan. The Stock Incentive Plan of 2017 authorized a total of 2,500,000 shares for issuance as incentive awards by way of stock options and/or restricted stock.

² On July 31, 2010, the Company granted options for the purchase of 210,000 shares of common stock to the directors of the Company. These options vested ratably over a three-year period and were originally for a term of six years from issuance. On July 28, 2016, the agreement was amended to extend the expiration date of the remaining 180,000 shares to July 31, 2019. During 2018, 30,000 options were forfeited. The options can be exercised at a price of \$2.50 per share.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

TRANSACTIONS WITH RELATED PERSONS

Certain Transactions

We have a written policy requiring that our Audit Committee review and approve related person transactions that involve us and are of the type that are required to be disclosed in our proxy statement by SEC rules. A transaction may be a related person transaction if any of our directors, executive officers, owners of more than 5.0% of our common stock, or their immediate family have a material interest in the transaction and the amount involved exceeds \$120,000. The policy authorizes the Audit Committee

to approve a related person transaction if it determines that the transaction is at least as favorable to us as would have been expected if the transaction had been with a person who is not related to us, or is in our best interest.

On December 25, 2016, DRH completed a tax-free spin-off (the "Spin-Off") of its Bagger Dave's business. Specifically, DRH contributed its 100.0% owned entity, AMC Burgers, LLC and certain real estate entities into Bagger Dave's Burger Tavern, Inc., a newly created Nevada corporation ("Bagger Dave's" or "Bagger"), which was then spun-off into a stand-alone, publicly-traded company on the over-the-counter exchange. In connection with the Spin-Off, DRH contributed to Bagger certain assets, liabilities, and employees related to its Bagger Dave's businesses. Intercompany balances due to/from DRH, which included amounts from sales, were contributed to equity. Additionally, DRH contributed \$2 million in cash to Bagger to provide working capital for Bagger's operations and is a guarantor for certain of Bagger's lease obligations.

Further, in conjunction with the Spin-Off, DRH entered into a transition services agreement (the "TSA") with Bagger Dave's pursuant to which DRH provided certain information technology and human resources support, limited accounting support, and other minor administrative functions at no charge. The TSA was intended to assist the discontinued component in efficiently and seamlessly transitioning to stand on its own. Certain provisions of the TSA terminated in December 2017 and the First Amendment to TSA (the "Amended TSA") was entered into effective January 1, 2018. Under the Amended TSA, DRH provides ongoing administrative support to Bagger Dave's in certain areas, including information technology, human resources and real estate, in exchange for a fee based on a rate-per-hour of service. From January 1, 2018 through March 22, 2019, the total amount billed by DRH to Bagger Dave's for administrative services under the TSA was \$58,965 and the total payments received and credits applied from Bagger by DRH were \$0.

Our Executive Chairman (who is also a member of our board of directors) is also the Chairman of the Board, Chief Executive Officer and President of Bagger Dave's.

Indemnification Agreements

We expect to enter into indemnification agreements with each of our directors and executive officers. Each indemnification agreement will provide that, subject to limited exceptions, and among other things, we will indemnify the director or executive officer to the fullest extent permitted by law for claims arising in his or her capacity as our director or officer.

Director Independence

We employ the NASDAQ Stock Market's standards for determining the independence of directors. Under these standards, an independent director means a person other than an executive officer or one of our team members or any other individual having a relationship which, in the opinion of the Board, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

For purposes of the NASDAQ Stock Market's independence standards, the term "family member" means a person's spouse, parents, children, and siblings, whether by blood, marriage, or adoption, or anyone residing in such person's home.

The Board has assessed the independence of each non-employee director under the NASDAQ Stock Market's independence standards set forth above and believes that Messrs. Jay Alan Dusenberry, Philip Friedman, Joseph M. Nowicki and Roger Lipton qualify as independent directors. In making this determination, our Board has concluded that none of the independent directors has a relationship that, in the opinion of our Board, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. The other directors would not qualify as independent due to their employment by us or due to their receipt of certain fees or compensation from us.

Disclosure Controls, Governance, and Nominating Functions

The Board has determined that the governance and disclosure control functions are best suited to participation of the full Board. These functions are to: (i) ensure that all disclosures made by the Company to its stockholders or the investment community fairly present the Company's financial condition and the results of operations in all material respects and such disclosures are accurate, complete, and timely made as required by applicable laws and any applicable stock exchange requirements; and (ii) advise and make recommendations to the Board with respect to corporate governance principles and practices.

The Board has also adopted resolutions authorizing and directing the independent members of the Board, to recommend qualified candidates to the Board for election as directors of the Company, including the slate of directors that the Board proposes for election by stockholders at the annual meetings and candidates to fill vacancies occurring between annual meetings.

The independent directors use an informal process to identify potential candidates for nomination as directors. Candidates for nomination have been recommended by an executive officer or director and considered by the independent directors and the Board. Generally, candidates have been persons who have been known to one or more of our Board members. The independent directors have not adopted specific minimum qualifications that they believe must be met by a person they recommend for nomination as a director. In evaluating candidates for nomination, the independent directors will consider the factors they believe to be appropriate. These factors would generally include the candidate's personal and professional integrity, business judgment, relevant experience and skills, and potential to be an effective director in conjunction with the rest of our Board in collectively serving the long-term interests of our stockholders. We do not have a specific policy relating to the consideration of diversity in identifying director candidates. However, the independent directors consider the diversity of our Board when identifying director candidates. The amount of consideration given to diversity varies with the independent directors' determination of whether we would benefit from expanding the Board's diversity in a particular area. We believe this policy has been effective in identifying candidates with the diverse business experience necessary to lead our Company.

Although the independent directors have the authority to retain a search firm to assist it in identifying director candidates, there has, to date, been no need to employ a search firm. The Board does not evaluate potential nominees for director differently based on whether they are recommended by a stockholder.

To nominate a candidate for election to the Board of Directors, a stockholder of record must (i) provide a written notice of nomination to the Secretary of the Company, not less than 90 days nor more than 120 days prior to the first anniversary of the date of the prior year's annual meeting of stockholders, or (ii) in the case of the nomination of a person for election to the Board of Directors at a special meeting of stockholders, no earlier than 120 days prior to and no less than the later of (a) 90 days prior to such special meeting or (b) the tenth day following the day on which the notice of such special meeting, with certain limited exceptions spelled out in the bylaws. The notice of nomination must set forth (i) the name and record address of the stockholder proposing to make nominations, as they appear on the Company's books, (ii) the class and number of shares of stock held of record and beneficially owned by such stockholder and/or such beneficial owner, (iii) a representation that the stockholder is a holder of record of stock of the Company entitled to vote at the meeting and intends to appear in person or by proxy at the meeting to propose such nomination, (iv) all information regarding each stockholder nominee that would be required to be set forth in a definitive proxy statement filed with the Securities and Exchange Commission pursuant to Section 14 of the Exchange Act, and the written consent of each stockholder nominee to being named in a proxy statement as a nominee and to serve if elected, and (v) all other information that would be required to be filed with the Securities and Exchange Commission if the person proposing such nominations were a participant in a solicitation subject to Section 14 of the Exchange Act. The Company may require any stockholder nominee to furnish such other information as it may reasonably require in order to determine the eligibility of the stockholder nominee to serve as a director of the Company. The person presiding over the meeting may, if the facts warrant, disregard any proposed nomination of a stockholder nominee that was not made in accordance with the foregoing procedures.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES**Principal Accountant Fees and Services**

The following table shows the fees for audit and other professional services provided to us by BDO in 2018 and 2017 .

Services	December 30, 2018	December 31, 2017
Audit Fees ⁽¹⁾	\$ 265,000	\$ 228,000
Audit-Related Fees ⁽²⁾	—	—
Tax Fees ⁽³⁾	78,870	139,630
All Other Fees ⁽⁴⁾	—	—
Total audit and non-audit fees	<u>\$ 343,870</u>	<u>\$ 367,630</u>

- (1) “Audit Fees” include the aggregate fees billed for professional services rendered for the audit of our annual financial statements and for review of financial statements included in our quarterly reports on Form 10-Q. These fees also cover other services that are normally provided by the independent accountants in connection with documents to be filed with the SEC.
- (2) “Audit-Related Fees” consist of fees billed for professional services rendered related to the performance of the audit or review that are not otherwise reported under Audit Fees.
- (3) “Tax Fees” consist of fees billed for professional services rendered in connection with tax compliance, tax advice and tax planning.
- (4) “All Other Fees” consist of fees billed for professional services rendered that are not otherwise reported above.

Policy on Pre-Approval of Audit and Permissible Non-Audit Services of Independent Auditors

The Company’s Audit Committee pre-approves all audit and non-audit services provided by the independent auditor prior to the engagement of the independent auditor with respect to such services. The Company’s independent auditor may be engaged to provide non-audit services only after the appointed auditor has first considered the proposed engagement and has determined, in each instance, that the proposed services are not prohibited by applicable regulations and that the auditor’s independence will not be materially impaired as a result of having provided these services. In making this determination, the Audit Committee takes into consideration whether a reasonable investor, knowing all relevant facts and circumstances, would conclude that the auditor’s exercise of objective and impartial judgment on all issues encompassed within the auditor’s engagement would be materially impaired. All services provided by the Company’s independent auditor in 2018 and 2017 were pre-approved by the Audit Committee or its Chairman in accordance with the Company’s policy.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) (1) Financial Statements. The following financial statements and reports of independent registered public accounting firms of Diversified Restaurant Holdings and its subsidiaries are filed as part of this report:

- Report of Independent Registered Public Accounting Firm — BDO USA, LLP
- Report by Diversified Restaurant Holdings, Inc.'s Management on Internal Control Over Financial Reporting
- Consolidated Balance Sheets as of December 30, 2018 and December 31, 2017
- Consolidated Statements of Operations for the Fiscal Years Ended December 30, 2018 and December 31, 2017
- Consolidated Statements of Comprehensive Loss for the Fiscal Years Ended December 30, 2018 and December 31, 2017
- Consolidated Statements of Stockholders' Equity (Deficit) for the Fiscal Years Ended December 30, 2018, and December 31, 2017
- Consolidated Statements of Cash Flows for the Fiscal Years Ended December 30, 2018 and December 31, 2017
- Notes to Consolidated Financial Statements

The consolidated financial statements, the notes to the consolidated financial statements, and the report of independent registered public accounting firm listed above are contained in Item 8 of this report.

(2) Financial Statement Schedules

Not applicable

(b) Index to Exhibits required by Item 601 of Regulation S-K:

The Exhibit Index preceding the Signatures Page hereto is incorporated by reference under this item.

ITEM 16. SUMMARY

None.

EXHIBIT NO.	EXHIBIT DESCRIPTION
3.1	Certificate of Incorporation (filed as an exhibit to the Company's Registration Statement on Form S-1, as filed with the Securities and Exchange Commission on August 10, 2007, and incorporated herein by this reference)
3.2	Amended and Restated Bylaws (filed as an exhibit to the Company's Form 8-K, as filed with the Securities and Exchange Commission on August 29, 2012, and incorporated herein by this reference)
3.3	First Amendment to the Amended and Restated Bylaws (filed as an exhibit to the Company's Form 8-K, as filed with the Securities and Exchange Commission on October 31, 2012, and incorporated herein by this reference)
3.4	Second Amendment to the Amended and Restated Bylaws (filed as an exhibit to the Company's Form 8-K, as filed with the Securities and Exchange Commission on July 29, 2016, and incorporated herein by this reference)
4.1	Specimen Stock Certificate (incorporated by reference to Exhibit 4.1 of our registration statement on Form SB-2 (SEC File Number 333-145316) filed on August 10, 2007)
4.2	Stock Incentive Plan of 2017 (filed as an exhibit to the Company's S-8, as filed with the Securities and Exchange Commission on July 13, 2017, and incorporated herein by reference) *
4.3	Form of Restricted Stock Award Agreement for restricted stock granted under the Stock Incentive Plan of 2017 (filed as an exhibit to the Company's S-8, as filed with the Securities and Exchange Commission on July 13, 2017, and incorporated herein by reference) *
10.1	Buffalo Wild Wings Area Development Agreement dated July 18, 2003, by and between Buffalo Wild Wings International, Inc. and MCA Enterprises, Inc. (subsequently assigned to AMC Wings, Inc., a wholly-owned subsidiary of the Company) (incorporated by reference to Exhibit 10.3 of our Form 10-Q filed November 12, 2010)
10.2	Amendment to Buffalo Wild Wings Area Development Agreement dated December 27, 2003 (incorporated by reference to Exhibit 10.12 of our Form 10-Q filed November 12, 2010)
10.3	Amendment to Buffalo Wild Wings Area Development Agreement dated March 20, 2007 (incorporated by reference to Exhibit 10.5 of our Form 10-Q filed November 12, 2010)
10.4	Amendment to Buffalo Wild Wings Area Development Agreement dated November 5, 2007 (incorporated by reference to Exhibit 10.6 of our Form 10-Q filed November 12, 2010)
10.5	Form of Stock Option Agreement (incorporated by reference to Exhibit 10.1 of our Form 8-K filed August 5, 2010)*
10.6	Diversified Restaurant Holdings, Inc. Performance Bonus Plan (incorporated by reference to Exhibit 10.1 of our Form 8-K filed March 11, 2013)*
10.7	2013 Diversified Restaurant Holdings, Inc. Short-Term Incentive Program (incorporated by reference to Exhibit 10.2 of our Form 8-K filed March 11, 2013)*
10.8	\$77.0M Senior Secured Credit Facility with RBS Citizens, N.A., as administrative agent, dated December 16, 2014 (incorporated by reference to Exhibit 10.13 of our Form 10-K, filed March 13, 2015)
10.9	Amendment to Area Development Agreement, dated August 13, 2015 (incorporated by reference to Exhibit 10.1 of our Form 8-K filed August 19, 2015)
10.10	Second Amended and Restated Credit Agreement dated June 29, 2015 (incorporated by reference to Exhibit 10.1 of our Form 8-K filed July 1, 2015)

[Table of Contents](#)

10.11	Employment Agreement between Diversified Restaurant Holdings, Inc. and David G. Burke, dated May 19, 2016 (incorporated by reference to Exhibit 10.1 of our Form 8-K filed May 24, 2016) *
10.12	Form of Second Amendment to the Diversified Restaurant Holdings, Inc. Stock Option Agreement of 2010 (incorporated by reference to Exhibit 10.1 of our Form 8-K filed July 29, 2016)
10.13	Employment Agreement between Diversified Restaurant Holdings, Inc. and Phyllis A. Knight, dated October 20, 2016 (incorporated by reference to Exhibit 10.1 of our Form 8-K filed October 24, 2016) *
10.14	Transitional Services Agreement, dated as of December 23, 2016 (incorporated by reference to Exhibit 10.1 of our Form 8-K filed December 29, 2016)
10.15	Amendment No. 4 to Credit Agreement and Limited Consent, dated as of December 23, 2016 (incorporated by reference to Exhibit 10.2 of our Form 8-K filed December 29, 2016)
10.16	Amendment No. 6 to Credit Agreement, dated as of June 30, 2017 (incorporated by reference to Exhibit 10.1 of our Form 8-K, filed July 7, 2017)
10.17	Amendment No. 7 to Credit Agreement and Limited Consent, dated as of February 28, 2018 (incorporated by reference to Exhibit 10.1 of our Form 8-K filed March 5, 2018)
10.18	Asset Purchase Agreement, dated as of February 23, 2019
21.0	Subsidiaries of Diversified Restaurant Holdings, Inc.
23	Consent of BDO USA, LLP
31.1	Certification of Chief Executive Officer pursuant to Rule 13a-14(a)
31.2	Certification of Chief Financial Officer pursuant to Rule 13a-14(a)
32.1	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350
32.2	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Document
101.DEF	XBRL Taxonomy Extension Definition Document
101.LAB	XBRL Taxonomy Extension Labels Document
101.PRE	XBRL Taxonomy Extension Presentation Document
*	Management contract or compensatory plan

[Table of Contents](#)

In accordance with the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

/s/ David G. Burke Dated: April 3, 2019
David G. Burke
President, Chief Executive Officer, Director (Principal Executive Officer)

/s/ Phyllis A. Knight Dated: April 3, 2019
Phyllis A. Knight
Treasurer, Chief Financial Officer
(Principal Financial and Accounting Officer)

/s/ T. Michael Ansley Dated: April 3, 2019
T. Michael Ansley
Executive Chairman of the Board of Directors

/s/ Jay Alan Dusenberry Dated: April 3, 2019
Jay Alan Dusenberry
Director

/s/ David Ligotti Dated: April 3, 2019
David Ligotti
Director

/s/ Roger Lipton Dated: April 3, 2019
Roger Lipton
Director

/s/ Joseph M. Nowicki Dated: April 3, 2019
Joseph M. Nowicki
Director

/s/ Philip Friedman Dated: April 3, 2019
Philip Friedman
Director

ASSET PURCHASE AGREEMENT

among

Here's Wings, LLC,

B-Dubs CL, LLC,

Here's Wings Real Estate, LLC and

**Seller Subsidiaries
(as Sellers)**

and

Principal Members

and

**AMC Wings, Inc.
(as Buyer)**

dated as of

February 23, 2019

TABLE OF CONTENTS

ARTICLE I	DEFINITIONS	<u>5</u>
ARTICLE II	PURCHASE AND SALE	<u>14</u>
	<u>Section 2.01 Purchase and Sale of Assets.</u>	<u>14</u>
	<u>Section 2.02 Excluded Assets.</u>	<u>15</u>
	<u>Section 2.03 Assumed Liabilities.</u>	<u>16</u>
	<u>Section 2.04 Excluded Liabilities.</u>	<u>16</u>
	<u>Section 2.05 Purchase Price.</u>	<u>17</u>
	<u>Section 2.06 Purchase Price Adjustment.</u>	<u>19</u>
	<u>Section 2.07 Allocation of Purchase Price.</u>	<u>19</u>
	<u>Section 2.08 Third Party Consents.</u>	<u>19</u>
ARTICLE III	CLOSING	<u>21</u>
	<u>Section 3.01 Closing.</u>	<u>21</u>
	<u>Section 3.02 Closing Deliverables.</u>	<u>21</u>
ARTICLE IV	REPRESENTATIONS AND WARRANTIES OF SELLERS AND PRINCIPAL MEMBER(S)	<u>23</u>
	<u>Section 4.01 Organization and Qualification of Sellers.</u>	<u>23</u>
	<u>Section 4.02 Authority of Sellers.</u>	<u>23</u>
	<u>Section 4.03 No Conflicts; Consents.</u>	<u>23</u>
	<u>Section 4.04 Financial Statements.</u>	<u>24</u>
	<u>Section 4.05 Undisclosed Liabilities.</u>	<u>24</u>
	<u>Section 4.06 Absence of Certain Changes, Events and Conditions.</u>	<u>24</u>
	<u>Section 4.07 Material Contracts.</u>	<u>26</u>
	<u>Section 4.08 Title or License to Purchased Assets.</u>	<u>27</u>
	<u>Section 4.09 Condition and Sufficiency of Assets.</u>	<u>27</u>
	<u>Section 4.10 Real Property</u>	<u>28</u>
	<u>Section 4.11 Intellectual Property.</u>	<u>29</u>
	<u>Section 4.12 Suppliers.</u>	<u>29</u>
	<u>Section 4.13 Insurance.</u>	<u>29</u>
	<u>Section 4.14 Legal Proceedings; Governmental Orders.</u>	<u>29</u>
	<u>Section 4.15 Compliance With Laws; Permits.</u>	<u>30</u>
	<u>Section 4.16 Environmental Matters.</u>	<u>30</u>
	<u>Section 4.17 Employee Benefit Matters.</u>	<u>31</u>
	<u>Section 4.18 Employment Matters.</u>	<u>32</u>
	<u>Section 4.19 Taxes.</u>	<u>33</u>
	<u>Section 4.20 Brokers.</u>	<u>33</u>
	<u>Section 4.21 Full Disclosure.</u>	<u>33</u>
ARTICLE V	REPRESENTATIONS AND WARRANTIES OF BUYER	<u>34</u>

<u>Section 5.01 Organization of Buyer.</u>	<u>34</u>
<u>Section 5.02 Authority of Buyer.</u>	<u>34</u>
<u>Section 5.03 No Conflicts; Consents.</u>	<u>34</u>
<u>Section 5.04 Brokers.</u>	<u>35</u>
<u>Section 5.05 Legal Proceedings.</u>	<u>35</u>
<u>SECTION 5.06 FULL DISCLOSURE.</u>	<u>35</u>
ARTICLE VI COVENANTS	<u>36</u>
<u>Section 6.01 Conduct of Business Prior to the Closing.</u>	<u>36</u>
<u>Section 6.02 Access to Information.</u>	<u>36</u>
<u>Section 6.03 No Solicitation of Other Bids.</u>	<u>37</u>
<u>Section 6.04 Notice of Certain Events.</u>	<u>37</u>
<u>Section 6.05 Employees and Employee Benefits.</u>	<u>38</u>
<u>Section 6.06 Confidentiality.</u>	<u>39</u>
<u>Section 6.07 Non-competition; Non-solicitation</u>	<u>39</u>
<u>Section 6.08 Governmental Approvals and Consents</u>	<u>40</u>
<u>Section 6.09 Books and Records.</u>	<u>41</u>
<u>Section 6.10 Closing Conditions</u>	<u>42</u>
<u>Section 6.11 Public Announcements.</u>	<u>42</u>
<u>Section 6.12 Bulk Sales Laws.</u>	<u>42</u>
<u>Section 6.13 Transfer Taxes.</u>	<u>42</u>
<u>Section 6.14 Tax Clearance Certificates.</u>	<u>43</u>
<u>Section 6.15 Further Assurances.</u>	<u>43</u>
<u>Section 6.16 Management Agreement.</u>	<u>43</u>
<u>SECTION 6.17 UPDATES TO DISCLOSURE SCHEDULES.</u>	<u>43</u>
ARTICLE VII CONDITIONS TO CLOSING	<u>44</u>
<u>Section 7.01 Conditions to Obligations of All Parties.</u>	<u>44</u>
<u>Section 7.02 Conditions to Obligations of Buyer.</u>	<u>44</u>
<u>Section 7.03 Conditions to Obligations of Sellers.</u>	<u>46</u>
<u>Section 7.04 Casualty and Condemnation.</u>	<u>47</u>
ARTICLE VIII INDEMNIFICATION	<u>47</u>
<u>Section 8.01 Survival.</u>	<u>47</u>
<u>Section 8.02 Indemnification By Sellers.</u>	<u>48</u>
<u>Section 8.03 Indemnification By Buyer.</u>	<u>48</u>
<u>Section 8.04 Certain Limitations.</u>	<u>49</u>
<u>Section 8.05 Indemnification Procedures.</u>	<u>50</u>
<u>Section 8.06 Payments.</u>	<u>52</u>
<u>Section 8.07 Tax Treatment of Indemnification Payments.</u>	<u>52</u>

Section 8.08 Exclusive Remedies.	54
Section 8.09 Assignment of Claims.	52
Section 8.10 Insurance and Tax Benefits.	52
SECTION 8.11 MITIGATION.	53
Section 8.12 Recovery from Escrow.	53
ARTICLE IX TERMINATION	53
Section 9.01 Termination.	53
Section 9.02 Effect of Termination.	54
ARTICLE X MISCELLANEOUS	54
Section 10.01 Expenses.	54
Section 10.02 Notices.	54
Section 10.03 Interpretation.	56
Section 10.04 Headings.	57
Section 10.05 Severability.	57
Section 10.06 Entire Agreement.	57
Section 10.07 Successors and Assigns.	57
Section 10.08 No Third-party Beneficiaries.	57
Section 10.09 Amendment and Modification; Waiver.	57
Section 10.10 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.	58
Section 10.11 Specific Performance.	58
Section 10.12 Counterparts.	58

Mutual Disclosure Schedules:

Section 2.01(b)	- Assigned Contracts
Section 2.02	- Excluded Assets
Section 2.06	- Schedule A - Inventory Unit Cost Schedule
Section 2.07	- Allocation Schedule

Sellers' Disclosure Schedules:

Section 4.01	- Organization and Qualification
Section 4.03	- No Conflicts; Consents
Section 4.04	- Financial Statements
Section 4.05	- Undisclosed Liabilities
Section 4.06	- Absence of Certain Changes, Events and Conditions
Section 4.07(a)	- Material Contracts
Section 4.08	- Title or Licenses to Purchased Assets
Section 4.09	- Condition and Sufficiency of Assets
Section 4.10(b)	- Leased Real Property

- Section 4.11(a) - Intellectual Property Registrations
- Section 4.11(b) - Intellectual Property Assets
- Section 4.11(c) - Intellectual Property Licenses
- Section 4.12 - Suppliers
- Section 4.13 - Insurance
- Section 4.14(a) - Legal Proceedings
- Section 4.14(b) - Governmental Orders
- Section 4.15(a) - Compliance with Laws
- Section 4.15(b) - Permits
- Section 4.16(b) - Environmental Permits
- Section 4.16(c) - Release of Hazardous Materials
- Section 4.16(e) - Environmental Reports
- Section 4.17(a) - Benefit Plans
- Section 4.17(c) - ERISA Compliance
- Section 4.18(a) - Employees
- Section 4.18(b) - Collective Bargaining
- Section 4.18(c) - Compliance with Employment Laws
- Section 4.19 - Taxes
- Section 4.20 - Seller Brokers

Buyer's Disclosure Schedules:

- Section 5.03 - No Conflicts; Consents

Exhibits

- Exhibits** :
- Exhibit A - Restaurants
- Exhibit B - Escrow Agreement
- Exhibit C - Bill of Sale
- Exhibit D - Assignment and Assumption Agreement
- Exhibit E - Seller Closing Certificate
- Exhibit F - Buyer Closing Certificate

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “ **Agreement** ”), dated as of February 23, 2019, (“ **Effective Date** ”) is entered into among **Here’s Wings, LLC**, an Illinois limited liability company, **B-Dubs CL, LLC**, an Illinois limited liability company, **Here’s Wings Real Estate, LLC**, an Illinois limited liability company and Seller Subsidiaries, as defined herein, (hereinafter collectively referred to as “ **Sellers** ” and each individually as “ **Seller** ”), the Principal Members (as defined herein) and AMC Wings, Inc. a Michigan corporation (“ **Buyer** ”).

RECITALS

WHEREAS, Sellers are engaged in the business (the “ **Business** ”) of owning, developing and operating multiple Buffalo Wild Wings franchise restaurants in Illinois, as more specifically identified on Exhibit A attached hereto (the “ **Restaurants** ”);

WHEREAS, Sellers wish to sell and assign to Buyer, and Buyer wishes to purchase and assume from Sellers, the Business, the Restaurants and substantially all the assets used or usable by Sellers in the Business, and certain specified liabilities of the Business, subject to the terms and conditions set forth herein; and

WHEREAS, the Principal Members are the beneficial owners of a majority of the membership interests of Sellers and join this Agreement for the limited purposes set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

The following terms have the meanings specified or referred to in this **Article I**:

“ **Accrued Vacation** ” means the value of vacation accrued by each employee based upon the number of working days worked by such employee between January 1, 2019 and the Closing Date. 2019 Accrued Vacation shall accrue on a prorata basis based upon the number of days worked prior to the Closing Date as compared to the total number of working days in Calendar Year 2019. The value of 2018 Earned Vacation and 2019 Accrued Vacation shall be calculated by multiplying the number of hours earned or accrued, as applicable, by such employee’s base hourly rate.

“ **Acquisition Proposal** ” has the meaning set forth in **Section 6.03(a)** .

“ **Action** ” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation by a Governmental Authority of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

“ **Actual Inventory** ” means the value of actual Inventory per Restaurant on average across all Restaurants as of the Pre-Closing Inventory Inspection as defined in Section 2.

“**Additional Disclosures**” has the meaning set forth in **Section 6.17**.

“ **Affiliate** ” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract (excluding the Franchise Agreements with Buffalo Wild Wings International, Inc.), or otherwise.

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

“ **Allocation Schedule** ” has the meaning set forth in **Section 2.07** .

“ **Assigned Contracts** ” has the meaning set forth in **Section 2.01(b)** .

“ **Assigned Permits** ” has the meaning set forth in **Section 2.01(f)** .

“ **Assignment and Assumption Agreement** ” has the meaning set forth in **Section 3.02(a)(ii)** .

“ **Assignment and Assumption of Lease** ” has the meaning set forth in **Section 2.05(c)** .

“ **Assumed Liabilities** ” has the meaning set forth in **Section 2.03** .

“ **Benefit Plan** ” has the meaning set forth in **Section 4.17(a)** .

“ **Bill of Sale** ” has the meaning set forth in **Section 3.02(a)(ii)** .

“ **Books and Records** ” has the meaning set forth in **Section 2.01(j)** .

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

“ **Business Day** ” means any day except Saturday, Sunday or any other day on which commercial banks located in Detroit, Michigan, are authorized or required by Law to be closed for business.

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

“ **Buyer Basket Exclusions** ” has the meaning set forth in **Section 8.04(a)** .

“ **Buyer Closing Certificate** ” has the meaning set forth in **Section 7.03(f)** .

“ **Buyer Indemnitees** ” has the meaning set forth in **Section 8.02** .

“ **Buyer’s Accountants** ” means BDO USA, LLP.

“ **BWW** ” means Buffalo Wild Wings International, Inc.

“ **BWW Transfer Fees** ” means the transfer fee payable to BWW, associated with or arising from the request for consent to transfer the Franchise Agreements and the actual transfer of store franchises, pursuant to this Agreement.

“ **Cash Bank** ” means an amount of cash necessary to conduct the Business at the Effective Time that shall be left in the registers or safes located at the Restaurants.

“ **Casualty Loss** ” has the meaning set forth in **Section 7.04** .

“ **Closing** ” has the meaning set forth in **Section 3.01** .

“ **Closing Date** ” has the meaning set forth in **Section 3.01** .

“ **Closing Inventory** ” means the Inventory amount(s) set forth on the Closing Inventory Statement.

“ **Closing Inventory Statement** ” means a statement of Inventory, determined as of the Effective Time using Seller’s cost of such Inventory as set forth on **Schedule A** .

“ **Closing Payment** ” has the meaning set forth in **Section 2.05(b)(ii)** .

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

“ **Commercially Reasonable Efforts** ” means, with respect to a given goal, the efforts that a reasonable person in the position of the promisor would use so as to achieve that goal within the required time period, provided, however, that an obligation to use Commercially Reasonable Efforts under this Agreement does not require the promisor to take any action or expenditure that is disproportionate or unduly burdensome.

“ **Contracts** ” means all contracts, leases, deeds, mortgages, licenses, instruments, promissory notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral.

“ **Direct Claim** ” has the meaning set forth in **Section 8.05(c)** .

“ **Disclosure Schedules** ” means the Disclosure Schedules delivered by Sellers and Buyer concurrently with the execution and delivery of this Agreement.

“ **Dollars** ” or “ **\$** ” means the lawful currency of the United States.

“ **Earned Vacation** ” means the value of vacation earned by each employee as a result of remaining employed by Seller as of the end of December 31, 2018 in accordance with Sellers existing policies and procedures, that is not used by the Employee or otherwise paid by the Sellers prior to the Closing. 2018 Earned Vacation shall be reduced by the amount of time off taken by the Employee between January 1, 2019 and the date of Closing.

“ **Effective Time** ” means the opening of business on the Closing Date.

“ **Encumbrance** ” means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

“ **Environmental Claim** ” means any Action, Governmental Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

“ **Environmental Law** ” means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term “Environmental Law” includes, without limitation, the following (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; and the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.

“ **Environmental Notice** ” means any written directive, written notice of violation or infraction, or written notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit.

“ **Environmental Permit** ” means any Permit, letter, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

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

“ **ERISA Affiliate** ” means, with respect to any Person, any other Person that, together with such first Person, would be treated as a single employer within the meaning of Section 414(b), (c), (m) or (o) of the Code.

“ **Escrow Agent** ” means the entity designated to serve as escrow agent under the Escrow Agreement.

“ **Escrow Agreement** ” means the Escrow Agreement among Buyer, Sellers and the Escrow Agent, to be executed and delivered at the Closing in the form attached hereto as Exhibit B.

“ **Escrow Amount** ” means the sum of \$500,000 to be deposited with the Escrow Agent and held in escrow pursuant to the Escrow Agreement.

“ **Excluded Assets** ” has the meaning set forth in **Section 2.02** .

“ **Excluded Liabilities** ” has the meaning set forth in **Section 2.04** .

“ **Financial Statements** ” has the meaning set forth in **Section 4.04** .

“ **Financial Statements Date** ” has the meaning set forth in **Section 4.04** .

“ **FIRPTA Certificate** ” has the meaning set forth in **Section 7.02(l)** .

“**Franchise Agreement(s)**” means those various franchise agreements entered into between Sellers, or Affiliates of Sellers, and BWB in connection with the Business.

“ **GAAP** ” means United States generally accepted accounting principles in effect from time to time.

“ **Governmental Authority** ” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

“ **Governmental Order** ” means any order, writ, judgment, injunction, decree, stipulation, assessment, decision or award entered by or with any Governmental Authority.

“ **Hazardous Materials** ” means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation and polychlorinated biphenyls.

“ **Indemnified Party** ” has the meaning set forth in **Section 8.05** .

“ **Indemnifying Party** ” has the meaning set forth in **Section 8.05** .

“ **Insurance Policies** ” has the meaning set forth in **Section 4.13** .

“ **Intellectual Property** ” means all of the following and similar intangible property and related proprietary rights, interests and protections, however arising, pursuant to Laws: (a) trademarks, service marks, trade names, brand names, logos, trade dress and other proprietary indicia of goods and services, whether registered, unregistered or arising by Law, and all registrations and applications for registration of such trademarks, including intent-to-use applications, and all issuances, extensions and renewals of such registrations and applications; (b) internet domain names, whether or not trademarks, registered in any generic top level domain by any authorized private registrar or Governmental Authority; (c) original works of authorship in any medium of expression, whether or not published, all copyrights (whether registered, unregistered or arising by Law), all registrations and applications for registration of such copyrights, and all issuances, extensions and renewals of such registrations and applications; (d) confidential information, formulas, designs, devices, technology, know-how, research and development, inventions, methods, processes, compositions and other trade secrets, whether or not patentable; and (e) patented and patentable

designs and inventions, all design, plant and utility patents, letters patent, utility models, pending patent applications and provisional applications and all issuances, divisions, continuations, continuations-in-part, reissues, extensions, re-examinations and renewals of such patents and applications.

“ **Intellectual Property Assets** ” means all Intellectual Property that is owned or licensed by Sellers and used in the Business as currently conducted.

“ **Intellectual Property Licenses** ” means all licenses, sublicenses and other agreements by or through which other Persons, including Sellers’ Affiliates, grant Sellers exclusive or non-exclusive rights or interests in or to any Intellectual Property that is used in or necessary for the conduct of the Business as currently conducted.

“ **Intellectual Property Registrations** ” means all Intellectual Property Assets that are subject to any issuance, registration, application or other filing by, to or with any Governmental Authority or authorized private registrar in any jurisdiction, including registered trademarks, domain names and copyrights, issued and reissued patents and pending applications for any of the foregoing.

“ **Inventory** ” has the meaning set forth in **Section 2.01(a)** .

“ **Knowledge of Buyer**” or “**Buyer’s Knowledge**” or any other similar knowledge qualification shall mean the actual or constructive knowledge of David Burke, Phyllis Knight and Jason Curtis after due inquiry of the individuals who would be reasonably expected to have knowledge of the relevant matters as part of their job responsibilities.

“**Knowledge of Sellers**” or “**Sellers’ Knowledge**” or any other similar knowledge qualification shall mean the actual or constructive knowledge of John A. Weiler, Adrian Ramirez, Tom Turschman, and Eric Hedrich after due inquiry of the individuals who would be reasonably expected to have knowledge of the relevant matters as part of their job responsibilities.

“**KPW**” means KPW Management, Inc., an Illinois corporation.

“ **KPW Bifurcated HW Contracts** ” shall mean new contracts to be negotiated after execution of this Agreement with each third party to the KPW Contracts, substantially in the form of the KPW Contracts, but which solely support and obligate the Sellers and the Sellers’ Business and do not in any way relate to, or provide services or products to the business of, or otherwise obligate, Wings Across America, LLC (“WAA”) or WAA’s subsidiaries.

“ **KPW Contracts** ” shall mean those contracts entered into by KPW, Sellers or another affiliated entity of Sellers that support both the business of Sellers and the separate business of Wings Across America which is not being sold pursuant to this Agreement.

“ **Law** ” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

“ **Leased Real Property** ” has the meaning set forth in **Section 4.10(a)** .

“ **Leases** ” has the meaning set forth in **Section 4.10(a)** .

“ **Liabilities** ” means liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise.

“ **Losses** ” means direct losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; *provided, however* , that “Losses” shall not include any consequential, indirect, punitive or special damages, whether foreseeable or not, except in the case of fraud or to the extent actually awarded to a Governmental Authority or other third party.

“ **Management Agreement** ” has the meaning set forth in **Section 6.16** .

“ **Material Adverse Effect** ” means any event, occurrence, fact, condition or change that is, or would reasonably be expected to be, individually or in the aggregate, materially adverse to (a) the business, results of operations, condition (financial or otherwise) or assets of the Business, considered as a whole, or the Purchased Assets, considered as a whole, or (b) the ability of Sellers to consummate the transactions contemplated hereby on a timely basis; *provided, however*, that “Material Adverse Effect” shall not include any such event, occurrence, fact, condition, or change, directly or indirectly, arising out of or attributable to: (i) any changes, conditions or effects in the United States economy or securities or financial markets in general; (ii) changes, conditions or effects that generally affect the industries in which the Business operates; (iii) any change, effect or circumstance resulting from an action required or permitted by this Agreement; (iv) conditions caused by acts of terrorism or war (whether or not declared); and (v) the announcement of this Agreement; and (vi) any change in applicable law or interpretation thereof; *provided* that any event, occurrence, fact, condition, or change referred to in clauses (i), (ii) or (iv) above shall not have a disproportionate effect on the Business compared to other participants in the industries in which the Business operates.

“ **Material Contracts** ” has the meaning set forth in **Section 4.07(a)** .

“ **Material Suppliers** ” has the meaning set forth in **Section 4.12** .

“ **Multi-employer Plan** ” has the meaning set forth in **Section 4.17(c)** .

“ **Permits** ” means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

“ **Ordinary Course** ” means an action will be deemed to be taken in the ordinary course of Seller's business if: (i) such action is consistent with the past customs and practices of Seller; and (ii) such action is similar in nature and magnitude to actions customarily taken.

“ **Owners** ” has the meaning set forth in **Section 2.02(p)** .

“ **Permitted Encumbrances** ” has the meaning set forth in **Section 4.08** .

“ **Person** ” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

“ **Post-Closing Adjustment** ” has the meaning set forth in **Section 2.06(a)(iii)** .

“ **Pre-Closing Tax Period** ” means any taxable period ending before the Effective Time and, with respect to any taxable period beginning before and ending after the Effective Time, the portion of such taxable period ending immediately prior to the Effective Time.

“ **Preliminary Closing Inventory** ” has the meaning set forth in **Section 2.05(b)** .

“ **Preliminary Purchase Price** ” has the meaning set forth in **Section 2.05(a)** .

“ **Principal Member(s)** ” means John A Weiler, James Dixon and Terry Winkler.

“ **Proposed Closing Inventory Statement** ” has the meaning set forth in **Section 2.06(a)(i)** .

“ **Purchase Price** ” has the meaning set forth in **Section 2.05(a)** .

“ **Purchased Assets** ” has the meaning set forth in **Section 2.01** .

“ **Real Property** ” means the Leased Real Property.

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

“ **Representative** ” means, with respect to any Person, any and all directors, members, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

“ **Resolution Period** ” has the meaning set forth in **Section 2.06(a)(ii)** .

“ **Restricted Business** ” means the operation of a casual or fast casual restaurant that sells or offers to dispense prepared food products that are the same as, or similar to, the type sold in Buffalo Wild Wings Restaurants, other than any Restaurant excluded from this Agreement pursuant to **Section 7.04** .

“ **Restricted Period** ” has the meaning set forth in **Section 6.07(a)** .

“ **Review Period** ” has the meaning set forth in **Section 2.06(a)(ii)** .

“ **Restaurants** ” has the meaning set forth in the preambles.

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

“ **Seller Basket Exclusions** ” has the meaning set forth in **Section 8.04(b)** .

“ **Seller Closing Certificate** ” has the meaning set forth in **Section 7.02(i)** .

“ **Seller Indemnitees** ” has the meaning set forth in **Section 8.03** .

“**Seller Subsidiaries**” shall mean Here's Wings Hoffman Estates, LLC, an Illinois limited liability company; Here's Wings Mt. Prospect, LLC, an Illinois limited liability company; Here's Wings Round Lake

Beach, LLC, an Illinois limited liability company; Here's Wings Skokie, LLC, an Illinois limited liability company; Here's Wings Vernon Hills, LLC, an Illinois limited liability company; Here's Wings II - Northbrook, LLC, a Illinois limited liability company, Here's Wings Old Orchard, LLC, an Illinois limited liability company; and B-Dubs RE, LLC, an Illinois limited liability company.

“ **Statement of Objections** ” has the meaning set forth in **Section 2.06(a)(ii)** .

“ **Statements of Operations** ” has the meaning set forth in **Section 4.04** .

“ **Survival Period** ” has the meaning set forth in **Section 8.01** .

“ **Surviving Obligations** ” has the meaning set forth in **Section 9.02(b)** .

“ **Tangible Personal Property** ” has the meaning set forth in **Section 2.01(e)** .

“ **Target Inventory** ” means Inventory valued at \$30,000 per Restaurant on average across all Restaurants.

“ **Taxes** ” means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, documentary, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties imposed, assessed or collected by or under the authority of any Governmental Authority.

“ **Tax Return** ” means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof filed with or submitted to or required to be filed with or submitted to any Governmental Authority.

“ **Termination Date** ” has the meaning set forth in **Section 9.01(b)(ii)** .

“ **Territory** ” means Illinois.

“ **Third Party Claim** ” has the meaning set forth in **Section 8.05(a)** .

“ **Third Party Landlord Consents** ” has the meaning set forth in **Section 2.05(c)(i)** .

“ **Transaction Documents** ” means this Agreement, the Escrow Agreement, the Bill of Sale, the Assignment and Assumption Agreement, the Assignment and Assumption of Leases, the Management Agreement, and the other agreements, instruments and documents required to be delivered at the Closing.

“ **Union** ” has the meaning set forth in **Section 4.18(b)** .

“ **WARN Act** ” means the federal Worker Adjustment and Retraining Notification Act of 1988, and similar state, local and foreign laws related to plant closings, relocations, mass layoffs and employment losses, including Illinois statute 820 ILCS 65.

ARTICLE II PURCHASE AND SALE

Section 2.01 Purchase and Sale of Assets. Subject to the terms and conditions set forth herein, at the Closing, and upon the terms and subject to the conditions set forth in this Agreement, Sellers shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Sellers, free and clear of any Encumbrances other than Permitted Encumbrances the Business and all right, title and interest of Sellers in, to and under all of the assets, properties and rights of every kind and nature, whether real, personal or mixed, tangible or intangible (including goodwill), wherever located and whether now existing or hereafter acquired, but specifically excluding the Excluded Assets, which are used or held for use by Sellers or their Affiliates in connection with, the Business (collectively, the “**Purchased Assets**”), including, the following:

- (a) all food, beverage, operating supplies, paper goods, uniforms, and other similar inventory items used or held for use in connection with the Business in each Restaurant as of the Closing Date (“**Inventory**”);
- (b) all Contracts set forth on Section **2.01(b)** of the Disclosure Schedules, including but not limited to Franchise Agreements, Leases, KPW Bifurcated HW Contracts, and Intellectual Property Licenses (the “**Assigned Contracts**”), provided Buyer acknowledges that Buyer may be obligated by Franchisor to enter into the Franchisor’s then current form of Franchise Agreement for each Restaurant;
- (c) all Intellectual Property Assets;
- (d) all furniture, fixtures, equipment, office equipment, supplies, computers, telephones and other tangible personal property in each Restaurant as of the Closing Date (the “**Tangible Personal Property**”);
- (e) the Leased Real Property, including all leasehold improvements including those listed on **Section 4.10** of the Disclosure Schedules;
- (f) to the extent assignable, all Permits, including liquor licenses and Environmental Permits, which are held by any Seller or any Affiliate of Sellers and required for the conduct of the Business as currently conducted or for the ownership or use of the Purchased Assets, including, those listed on **Section 4.15(b)** and **Section 4.16(b)** of the Disclosure Schedules (the “**Assigned Permits**”);
- (g) all rights to any Actions of any nature available to or being pursued by Sellers to the extent related to the Business, the Purchased Assets or the Assumed Liabilities, whether arising by way of counterclaim or otherwise attributable to the period on or after the Closing Date;
- (h) all prepaid expenses, credits, advance payments, claims, security, refunds, rights of recovery, rights of set-off, rights of recoupment, deposits, charges, sums and fees associated with the Assigned Contracts or Assigned Permits, prorated in all cases as provided in **Section 2.05(d)** and **Section 3.02(b)(vi)** of this Agreement;
- (i) to the extent assignable all of Sellers’ rights under warranties, indemnities and all similar rights against third parties to the extent related to any Purchased Assets;
- (j) originals or authentic copies of all books and records, including, books of account, ledgers and general, financial and accounting records, equipment maintenance files, price lists, supplier lists,

customer complaints and inquiry files, records and data (including all correspondence with any Governmental Authority), sales material and records, marketing and promotional surveys, and files relating to the Intellectual Property Assets and the Intellectual Property Licenses (“**Books and Records**”);

(k) all Cash Banks; and

(l) all goodwill and the going concern value of the Business.

Section 2.02 Excluded Assets. Notwithstanding the foregoing, the Purchased Assets shall not include the following assets (collectively, the “**Excluded Assets**”):

(a) other than the Cash Banks, all cash or cash equivalents (including deposits and cash in transfer from credit card sales and all cash in any automated teller machines or games at the Restaurants) except as set forth in **Section 2.01(a)** and all securities, bank and investment accounts;

(b) all accounts or notes receivable held by Sellers, and any security, claim, remedy or other right related to any of such accounts or notes receivable ;

(c) all bank accounts, bank and credit card deposits in transit, investment accounts, credit cards and debit cards;

(d) the corporate seals, organizational documents, minute books, stock books, Tax Returns, books of account or other records having to do with the corporate organization of Sellers;

(e) all Benefit Plans and assets attributable thereto;

(f) subject to **Section 7.04** , all insurance policies and proceeds therefrom;

(g) all rights to any Actions relating to the period prior to the Closing Date;

(h) the other assets, properties and rights specifically set forth on **Section 2.02** of the Disclosure Schedules;

(i) the rights which accrue or will accrue to Sellers and any Affiliates of Sellers under the Transaction Documents;

(j) all deposits and rebates related to the Business for the period prior to the Closing Date except as set forth in **Section 2.01(i)** ;

(k) all accounts receivable or notes receivable held by Sellers, and any security, claim, remedy or other right related to any of such accounts receivable or notes receivable (“**Accounts Receivable**”);

(l) all of Seller’s federal, state, local, and other tax returns, reports, declarations, and applications related to Taxes (“**Tax Returns**”) and other records which are not directly related to or reasonably necessary to the conduct of the Business;

(m) any tax credits, tax refunds, tax benefits, or other benefits relating to periods prior to the Closing Date;

(n) employment records and personnel files of employees (provided that, with respect to certain employees designated by Buyer, such files and records shall be made available to Buyer for Buyer's review prior to Closing in accordance with the applicable law in connection with decisions by Buyer whether or not to employ such employees);

(o) any related party loans listed as an asset on the books and records of any Seller;

(p) personal computers and printers located at Owners' homes, either corporate office, cellular telephones, email addresses and telephone numbers used by the Owners and each Owners' spouse. For purposes of this subsection, " **Owners** " shall mean John Weiler and Larry Guzik;

(q) Artwork and personal effects of all employees in any of the corporate offices;

(r) any ownership or beneficial interest in life insurance policies insuring the lives of any Owner or any Owners' spouse; and

(s) all assets owned by KPW, John Weiler or Larry Guzik, including all property at the corporate offices.

Section 2.03 Assumed Liabilities. Subject to the terms and conditions set forth in this Agreement, as of the Effective Time, Buyer shall assume and agree to pay, perform and discharge only the following Liabilities of Sellers or their Affiliates, respectively (collectively, the " **Assumed Liabilities** "), and no other Liabilities:

(a) all Liabilities in respect of the Assigned Contracts but only to the extent that such Liabilities thereunder are required to be performed at or after the Effective Time and do not relate to any failure to perform, improper performance, warranty or other breach, default or violation by Sellers prior to the Effective Time;

(b) all Liabilities in respect of the Assigned Permits but only to the extent that such Liabilities thereunder are required to be performed at or after the Effective Time;

(c) all obligations and requirements of Sellers to remodel, upgrade or redecorate the Restaurants as required under the Franchise Agreements or as otherwise required by BWB; and

(d) all other Liabilities expressly assumed by Buyer under the Transaction Documents.

Section 2.04 Excluded Liabilities. Notwithstanding the provisions of **Section 2.03** or any other provision in this Agreement to the contrary, Buyer shall not assume and shall not be responsible to pay, perform or discharge any Liabilities of Sellers or any of their Affiliates of any kind or nature whatsoever other than the Assumed Liabilities (the " **Excluded Liabilities** "). Sellers shall, and shall cause each of their Affiliates to, pay and satisfy in due course all Excluded Liabilities which they are obligated to pay and satisfy. Without limiting the generality of the foregoing and notwithstanding anything to the contrary contained elsewhere in this Agreement, Excluded Liabilities shall include, but are not limited to, the following:

(a) All Earned Vacation and all Accrued Vacation;

(b) The Actions listed on **Section 4.14(a)** of the Disclosure Schedules;

(c) Any Liabilities of Sellers or their respective Affiliates for any past or present employees, agents or independent contractors of Sellers arising out of events occurring prior to the Closing Date, including but not limited to any worker's compensation claims, employee severance claims, or immigration claims;

(d) Any Liabilities of Sellers for any Taxes of Sellers; and

(e) Any Liability of Sellers of any kind or nature, whether now in existence or hereafter arising, not constituting Assumed Liabilities.

Section 2.05 Purchase Price.

(a) **Purchase Price** . The aggregate purchase price (the "Purchase Price") for the Purchased Assets shall be the Preliminary Purchase Price (defined below), as adjusted for Post-Closing Adjustment determined in accordance with the procedures set forth in Section 2.06(a) below. For purposes hereof, the “ **Preliminary Purchase Price** ” for the Purchased Assets, shall be an amount equal to: (i) \$22,540,000 [comprised of \$21,530,000 for the Purchased Assets within Here's Wings, LLC and \$1,010,000 for the Purchased Assets within B-Dubs CL, LLC], (ii) minus the amount by which Actual Inventory is less than the Target Inventory, and (iii) minus the amount of any repair credit required in accordance with **Section 6.18** .

(b) **Payment of Purchase Price** . Subject to applicable reimbursement credits to Buyer and Sellers for pro-rations identified in **Section 2.05(d)** below, Buyer agrees to pay or deliver the Purchase Price as follows:

(i) No later than the third Business Day immediately preceding the Closing Date, Sellers shall deliver to Buyer a written closing statement certified by a Principal Member, setting forth in detail Sellers' good faith estimate of the Closing Inventory as of the Closing Date (the “ **Preliminary Closing Inventory** ”). If Buyer reasonably believes the Preliminary Closing Inventory delivered by Sellers is unreasonable, Buyer and Sellers shall cooperate in good faith to resolve such dispute. If any disputed matter cannot be resolved, the Preliminary Closing Inventory will be calculated based upon Sellers' position concerning such disputed matter without prejudice to the right of Buyer to raise such disputed matter again in accordance with the determination of the Closing Inventory pursuant to **Section 2.06(a)** .

(ii) At the Closing, Buyer shall pay to Sellers a cash closing payment (the “ **Closing Payment** ”) in an amount equal to (A) the Preliminary Purchase Price, minus (B) the Escrow Amount. The Closing Payment shall be made to Sellers, by wire transfer of immediately available funds to the account or accounts designated in writing by Sellers.

(iii) The Escrow Amount shall be deposited by wire transfer of immediately available funds into an account designated by the Escrow Agent and shall be held for a period up to fifteen (15) months and distributed in accordance with the terms of the Escrow Agreement to satisfy any and all Losses incurred or sustained by, or imposed upon, the Buyer Indemnitees that are recoverable by the Buyer Indemnitees against Sellers pursuant to **Article VIII** .

(c) **Additional Agreements** . As a material inducement to Sellers and Buyer to enter into this Agreement and to consummate the transactions provided for in this Agreement, at the Closing, Sellers and Buyer agree that with respect to each Lease for a Restaurant, to enter into an Assignment and Assumption of Lease in a form mutually agreed to by the parties (each, an “ **Assignment and Assumption of Lease** ”) and where required by the terms of such Lease, Sellers and Buyers will each use Commercially Reasonable

Efforts to cause each of the landlords to execute and deliver a consent to such assignment (the “ **Third Party Landlord Consents** ”); *provided, however*, Sellers shall not be required to pay any fee or consideration to such landlords in connection therewith other than nominal administrative or transfer fees and expenses to the extent required by the terms of such Leases. Buyer agrees to use Commercially Reasonable Efforts necessary or required to obtain releases of the Principal Member (and, if applicable, his spouse), KPW, and any other guarantors from any guarantees granted or given with respect to any of the Leases set forth in **Section 2.01(b)** of the Disclosure Schedules and all Franchise Agreements with BWW as Franchisor and to the extent such releases are not obtained by the Closing Date, Buyer shall indemnify such guarantors as provided in **Section 8.03(e)**.

(d) **Pro-rations.** At the Closing, Buyer and Sellers shall reimburse each other, as appropriate, for the following expenses applicable to the Business, all of which shall be prorated such that Sellers are responsible for their pro-rata share (determined on a per diem basis) of the expenses accrued prior to the Effective Time except as provided below, and Buyer is responsible for its pro-rata share (determined on a per diem basis) of the expenses accrued on and after the Effective Time except as provided below, provided, however, that the amount of the Cash Banks shall be credited against Sellers’ obligation to reimburse Buyer for such expenses:

(i) real estate taxes and personal property taxes accrued in connection with the Leases assigned to Buyer (or its Affiliate) or otherwise accrued with respect to the Purchased Assets, based upon the number of days in the applicable taxable period owned by each party taking into account that such taxes are paid in arrears;

(ii) utility expenses associated with operation of the Restaurants, based upon actual amounts billed by the utilities. In connection therewith, Sellers or their Affiliates shall cause the meters for the utilities to be read as close as possible to the Closing Date and shall, to the extent meter readings are available, pay such utility expenses on the basis of such readings. For those utility expenses that meter readings as of the Closing Date are not available, the parties will pro-rate such utility expenses on the basis of the most recently issued bills therefor which are based on meter readings no earlier than thirty (30) days before the Closing Date, and such pro-ration shall be promptly recalculated by the parties after the Closing Date upon the receipt of the next utility bills;

(iii) rent payments and any common area charges or other similarly pro-rated charges due under the Leases assigned to Buyer (or its Affiliate) (including any percentage rent on an annualized basis, as may be adjusted for recaptured landlord allowances);

(iv) all payments (if any) due to BWW or to any cooperative marketing group under the Franchise Agreements assigned to Buyer (or its Affiliate) (excluding any BWW Transfer Fees) which accrue during the month of the Closing; provided, however, that to the extent such payments can be calculated as a percentage of gross sales or other operating accounts that can be segregated between Sellers and Buyer under their respective accounting systems, such payments shall be excluded from the pro-rations required by this **Section 2.05(d)(iv)** and be paid directly by Sellers and Buyer, as the case may be;

(v) liquor license fees paid by any Seller or any Affiliate of Sellers prior to the Effective Time to the extent that all or any portion of such fees related to a liquor Permit assigned to Buyer (or its Affiliate) or subject to the Management Agreement with a post-Closing expiration date and are not refunded by the applicable Governmental Authority to Sellers or any Affiliate of Sellers; and

(vi) any other items customarily prorated, as mutually agreed upon by the parties.

Not later than ninety (90) days after the later to occur of: (x) the Closing Date and (y) Sellers receive 2019 real estate tax bills for Cook county locations, Buyer and Sellers shall cooperate with each other to confirm whether any of the parties' Closing estimates of the expenses pro-rated pursuant to this **Section 2.05(d)** should be adjusted to reflect the actual amounts of such expenses and Buyer and Sellers shall reimburse each other accordingly to properly reflect the pro-rations contemplated by this **Section 2.05(d)**, including with respect to the actual amount of the Cash Banks on the Closing Date.

(e) **Advance Rebates; Rebates**. In the event Sellers have received an advance rebate from a supplier which covers both a period prior to and on or after the Effective Time, such rebate shall be prorated between Sellers and Buyer in a manner consistent with the formula utilized by the particular supplier. With respect to any other rebates, Sellers and Buyer agree that to the extent such rebate relates to the period prior to the Effective Time, such rebate shall be paid to Sellers and to the extent such rebate relates to the period on and after the Effective Date, such rebate shall be paid to Buyer.

Section 2.06 Inventory Purchase Price Adjustment. Within 2 days prior to Closing, representatives of both Sellers and Buyer shall conduct a joint inspection of the Inventory on hand at each store to determine the value of the Actual Inventory in the stores and confirm the value of the Actual Inventory is equal to or greater than the Target Inventory (the "**Pre-Closing Inventory Inspection**"). If Actual Inventory on hand as of the date of such Pre-Closing Inventory Inspection is less than the Target Inventory, then the Purchase price shall be reduced by the amount by which the Actual Inventory is less than the Target Inventory. If the Actual Inventory on hand as of the date of such Pre-Closing Inventory Inspection is equal to or greater than the Target Inventory, then no adjustment to the Purchase price shall be made. Notwithstanding any provisions in this Agreement to the contrary, Target Inventory and Actual Inventory shall be valued in accordance with average cost per unit paid by Sellers as of the Closing Date to be set forth on the form of **Schedule A** ("**Inventory Unit Cost Schedule**") attached hereto and incorporated herein by reference.

Section 2.07 Allocation of Purchase Price. Prior to Closing, Sellers and Buyer shall mutually agree on the allocation of the Purchase Price among the Sellers and among the Purchased Assets for income Tax purposes to be shown on **Section 2.07** of the Disclosure Schedules and completed prior to the Closing Date (the "**Allocation Schedule**"). Any adjustments to the Purchase Price pursuant to **Section 2.06** herein shall be allocated in a manner consistent with the Allocation Schedule. None of the parties shall take any position in any Tax Returns that is inconsistent with the allocations in the Allocation Schedule unless required to do so by applicable Law. If any Governmental Authority shall challenge such allocations, Buyer and Sellers shall cooperate in good faith in responding to such challenge. Sellers and Buyer shall give prompt written notice to the other upon their receipt of any such challenge.

Section 2.08 Third Party Consents. To the extent that Sellers' rights under any Contract or Permit constituting a Purchased Asset, or any other Purchased Asset, may not be assigned to Buyer without the consent of another Person which has not been obtained as of the Closing, this Agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful, and Sellers, at their expense, shall use Commercially Reasonable Efforts to obtain any such required consent(s) as promptly as possible; provided Sellers shall not be required to pay any costs, fees or expenses to obtain any such consent other than nominal administrative or expense reimbursement fees. If any such consent shall not be obtained or if any attempted assignment would be ineffective or would impair Buyer's rights under the Purchased Asset in question so that Buyer would not in effect acquire the benefit of all such rights at the Closing, Sellers, to the maximum extent permitted by Law and the Purchased Asset, shall act after the Closing as Buyer's agent in order to obtain for it the benefits thereunder and shall cooperate, to the maximum extent permitted by Law and the Purchased Asset, with Buyer in any other reasonable

arrangement designed to provide such benefits to Buyer. Notwithstanding any provision in this **Section 2.08** to the contrary, Buyer shall not be deemed to have waived its rights under **Section 7.02(d)** hereof unless and until Buyer provides written waivers thereof. Notwithstanding the foregoing provisions of this **Section 2.08**, the provisions of **Section 6.17** shall govern the respective rights and obligations of the parties related to approvals or consents of Governmental Authorities to the transfer or issuance of Permits.

Section 2.09 Title Insurance; Surveys; Closing Fees . Buyer shall pay all title insurance costs, including (a) title insurance commitments, (b) premiums for any title insurance policies with respect to the Restaurants (including owner's policies and lender's policies); and (c) costs associated with any endorsements required by Buyer or its lender(s). Any closing escrow fees of the Title Company will be shared equally between Buyer and Seller. Buyer will be responsible for any deed taxes associated with the transfer of the Assets and fees to transfer titles to personal property to name of Buyer. To the extent that Buyer or its lenders require any surveys or environmental site assessments, Buyer shall be solely responsible for all costs associated with obtaining such surveys and environmental site assessments or any other due diligence expenses.

ARTICLE III CLOSING

Section 3.01 Closing. Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated by this Agreement (the “**Closing**”) shall take place at the offices of KPW at 22285 Pepper Road, Suite 307, Lake Barrington, IL 60010, or electronically if feasible, at 10:00 a.m., Central time, on the second Business Day after all of the conditions to Closing set forth in **Article VII** are either satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date), or at such other time, date or place as Sellers and Buyer may mutually agree upon in writing. The date on which the Closing is to occur is herein referred to as the “**Closing Date**” and for all purposes the Closing will be deemed effective as of the Effective Time. Notwithstanding the foregoing, Buyer agrees to schedule the Closing on a permitted prepayment date under the terms of Sellers’ loan agreements with GE Capital Bank in order to avoid the imposition of any interest or premium charges accrued between the Closing Date (if other than a permitted prepayment date) and a permitted prepayment date.

Section 3.02 Closing Deliverables.

- (a) At the Closing, Sellers shall deliver to Buyer the following:
- (i) the Escrow Agreement duly executed by Sellers;
 - (ii) a bill of sale in the form of Exhibit C hereto (the “**Bill of Sale**”) and duly executed by Sellers, and Affiliates of Sellers, as applicable, transferring the tangible personal property included in the Purchased Assets to Buyer (or designated Affiliate of Buyer);
 - (iii) an assignment and assumption agreement in the form of Exhibit D hereto (the “**Assignment and Assumption Agreement**”) and duly executed by Sellers and the Affiliates of Sellers, as applicable, effecting the assignment to and assumption by Buyer (or designated Affiliate of Buyer) of the Purchased Assets and the Assumed Liabilities;
 - (iv) with respect to each Lease, an Assignment and Assumption of Lease, duly executed by a Seller or an Affiliate of Sellers, as applicable;
 - (v) the Third Party Landlord Consents, which shall include an estoppel certificate with respect to each of the Leased Real Properties dated no more than 30 days prior to the Closing Date in form and substance satisfactory to Buyer;
 - (vi) the Seller Closing Certificate;
 - (vii) the FIRPTA Certificate;
 - (viii) releases for the Guarantees as provided for in **Section 2.05(c)(1)**;
 - (ix) the Management Agreement(s) associated with Permits to the extent applicable under the terms of **Section 6.16**, duly executed by a Seller or Affiliate of Seller, as applicable;
 - (x) the certificates required by **Section 7.02(j)** and **Section 7.02(k)**;
 - (xi) copies of the KPW Bifurcated HW Contracts; and

(xii) such other customary instruments, filings or documents, in form and substance reasonably satisfactory to Buyer, as may be required to give effect to the transactions, the Closing and any post-closing obligations of Sellers in accordance with the terms of this Agreement.

(b) At the Closing, Buyer shall deliver, or cause its designated Affiliate to deliver, to Sellers the following:

(i) the Closing Payment;

(ii) the Escrow Agreement duly executed by Buyer;

(iii) the Assignment and Assumption Agreement duly executed by Buyer or a designated Affiliate of Buyer;

(iv) with respect to each Lease, an Assignment and Assumption of Lease, duly executed by Buyer or a designated Affiliate of Buyer;

(v) the Buyer Closing Certificate;

(vi) the amount of any security deposits under the Leases and other deposits transferred to Buyer pursuant to this Agreement (e.g., utility deposits, liquor license deposits, etc.);

(vii) the certificate required by **Section 7.03(f)** ;

(viii) the Management Agreement, to the extent applicable under the terms of **Section 6.16** , duly executed by Buyer or a designated Affiliate of Buyer; and

(ix) a certified copy of Buyer's Articles of Incorporation issued by the Secretary of State of the State of Michigan and Bylaws;

(x) a certificate of good standing of Buyer, issued not earlier than ten (10) days prior to the Closing Date by the Secretary of State of the State of Michigan;

(xi) a certified copy of the resolutions of the governing body of Buyer, authorizing the execution and delivery of this Agreement and the Transaction Documents to which Buyer is a party and the consummation of the transactions contemplated hereby and thereby;

(xii) such other customary instruments, filings or documents, in form and substance reasonably acceptable to Sellers, as may be required to give effect to the transactions, and the Closing, and any post-closing obligations of Buyer in accordance with the terms of this Agreement.

(c) At the Closing, Buyer shall deliver the Escrow Amount to the Escrow Agent pursuant to the Escrow Agreement, duly executed by Buyer, Sellers and the Escrow Agent. Buyer and Seller shall each pay one-half (1/2) of the fees and costs of the Escrow Agent.

(d) Notwithstanding the order of the deliveries by the parties set forth above, all actions and deliveries are deemed to have occurred simultaneously, and none shall be deemed to have been completed

until each of the Actions and deliveries set forth in this **Section 3.02** have been completed or have been waived by the party entitled to make such waiver.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLERS AND PRINCIPAL MEMBER(S)

Except as set forth in the correspondingly numbered Sections of the Disclosure Schedules, each Seller and each Principal Member jointly and severally represents and warrants to Buyer that the statements contained in this **Article IV** are true and correct as of the date hereof.

Section 4.01 Organization and Qualification of Sellers. Each Seller is duly organized, validly existing and in good standing under the Laws of the state of its organization and has full limited liability company power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its portion of the Business as currently conducted. **Section 4.01** of the Disclosure Schedules sets forth each jurisdiction in which Sellers are licensed or qualified to do business, and each Seller is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the ownership of the Purchased Assets or the operation of its portion of the Business as currently conducted makes such licensing or qualification necessary.

Section 4.02 Authority of Sellers. Subject to the consents set forth in **Section 4.03** of the Disclosure Schedules, each Seller has full limited liability company power and authority to enter into this Agreement and the other Transaction Documents to which such Seller is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by a Seller of this Agreement and any other Transaction Document to which such Seller is a party, the performance by a Seller of its obligations hereunder and thereunder and the consummation by a Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite limited liability company action on the part of such Seller. This Agreement has been duly executed and delivered by each Seller and each Principal Member, and (assuming due authorization, execution and delivery by Buyer) this Agreement constitutes a legal, valid and binding obligation of Sellers and Principal Members enforceable against Sellers and Principal Members in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws of general application affecting enforcement of creditors' rights generally and by general equitable principles. When each Transaction Document to which a Seller or a Principal Member is or will be party to has been duly executed and delivered by such Seller or Principal Member (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of such Seller or such Principal Member enforceable against it or him in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws of general application affecting enforcement of creditors' rights generally and by general equitable principles.

Section 4.03 No Conflicts; Consents. Except as set forth in Section 4.03 of the Disclosure Schedules, the execution, delivery and performance by Sellers of this Agreement and the other Transaction Documents to which any Seller is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the articles of organization, by-laws or other organizational documents of any Seller; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to any Seller, the Business or the Purchased Assets; (c) except as set forth in **Section 4.03** of the Disclosure Schedules, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would

constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Material Contract or Permit to which Sellers are, or any Seller is, a party or by which Sellers are, or any Seller or the Business is bound, or to which any of the Purchased Assets are subject (including any Assigned Contract); or (d) result in the creation or imposition of any Encumbrance other than Permitted Encumbrances on the Purchased Assets. Except as set forth in **Section 4.03** of the Disclosure Schedules or with respect to the transfer of the Assigned Permits, no consent, approval, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Sellers in connection with the execution and delivery of this Agreement or any of the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby.

Section 4.04 Financial Statements. Complete copies of the unaudited financial statements of Sellers, consisting of the balance sheet, income statement and statement of cash flows of the Business as of and for the twelve month period ending December 31st for the years 2016, 2017 and 2018 (the “**Financial Statements**”) have been delivered to Buyer, a copy of which are included in Section 4.04 of the Disclosure Schedules. The Financial Statements are based on the Books and Records of the Business, operated by Sellers, and fairly present in all material respects the financial condition of Sellers taken as a whole as of the respective dates they were prepared and the results of operations of Sellers for the periods indicated. The date of the Financial Statements of Sellers for year ending December 31, 2018 is referred to herein as the “**Financial Statements Date.**”

Section 4.05 Undisclosed Liabilities. Except as set forth on **Section 4.05** of the Disclosure Schedules, Sellers have no Liabilities with respect to the Business, except: (a) those which are adequately reflected or reserved against in the Financial Statements as of the Financial Statements Date; (b) Liabilities arising out of or related to the transactions contemplated in this Agreement; (c) Liabilities stated in, or disclosed in connection with, any other representation or warranty contained in this Article IV or the applicable Disclosure Schedules thereto, stated with specificity; and (d) those which have been incurred in the Ordinary Course of business consistent with past practice since the Financial Statements Date and which are not, individually or in the aggregate, material in amount.

Section 4.06 Absence of Certain Changes, Events and Conditions. Except for the transactions contemplated by this Agreement, and except as set forth on **Section 4.06** of the Disclosure Schedules, since December 31, 2018 there has not been any:

(a) event, occurrence or development that has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(b) declaration or payment of any non-cash dividends or non-cash distributions on or in respect of any of Sellers’ capital stock or membership interests except in accordance with past practices;

(c) material change in any method of accounting or accounting practice for the Business, except as required by GAAP or as disclosed in the notes to the Financial Statement;

(d) material change in cash management practices and policies, practices and procedures with respect to inventory control, prepayment of expenses, payment of trade accounts payable, accrual of other expenses, and deferral of revenue;

(e) except in the Ordinary Course of business consistent with past practices, entry into any Contract that would constitute a Material Contract without the prior consent of Buyer;

(f) incurrence, assumption or guarantee of any indebtedness for borrowed money in connection with the Business except: (i) unsecured current obligations and Liabilities incurred in the Ordinary Course of business consistent with past practice; and (ii) additional indebtedness under lines of credit with Wintrust Bank in connection with distributions to members including tax distributions;

(g) transfer, assignment, sale or other disposition of any of the Purchased Assets shown or reflected in the Financial Statements, except for the sale of Inventory in the Ordinary Course of business or Tangible Personal Property in the Ordinary Course of business due to the replacement thereof;

(h) cancellation of any debts or claims or amendment, termination or waiver of any rights, respecting Purchased Assets;

(i) transfer, assignment or grant of any license or sublicense of any material rights under or with respect to any Intellectual Property Assets or Intellectual Property Licenses;

(j) material damage, destruction or loss, or any material interruption in use, of any Purchased Assets, whether or not covered by insurance;

(k) acceleration, termination, material modification to or cancellation of any Material Contract or Assigned Permit;

(l) material capital expenditures which would constitute an Assumed Liability;

(m) imposition of any Encumbrance (other than Permitted Encumbrances) upon any of the Purchased Assets;

(n) except for bonuses and salary increases in Ordinary Course of Business (i) change in the terms of employment for any employee of the Business or any termination of any employees for which the aggregate costs and expenses related to such change or termination exceed \$10,000, or (ii) action to accelerate the vesting or payment of any compensation or benefit for any employee, officer, director, consultant or independent contractor of the Business;

(o) adoption, modification or termination of any: (i) employment, severance, retention or other agreement with any current or former employee, officer, director, independent contractor or consultant of the Business, except in the Ordinary Course of business consistent with past practice or in connection with severance payments to Restaurant level employees made in connection with terminations for other than good cause to provide consideration for release in accordance with past practice, (ii) Benefit Plan except to the extent required by Law or in the Ordinary Course of business, or (iii) collective bargaining or other agreement with a Union, in each case whether written or oral;

(p) any loan to (or forgiveness of any loan to), or entry into any other transaction with, any directors, officers or employees of the Business;

(q) adoption of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law;

(r) purchase, lease or other acquisition of the right to own, use or lease any property or assets in connection with the Restaurants for an amount in excess of \$50,000, individually (in the case of a lease,

per annum) or \$75,000 in the aggregate (in the case of a lease, for the entire term of the lease, not including any option term), except for purchases of Inventory or supplies in the Ordinary Course of business consistent with past practice; or

- (s) any Contract to do any of the foregoing, or any action or omission that would result in any of the foregoing.

Section 4.07 Material Contracts.

(a) **Section 4.07(a)** of the Disclosure Schedules lists each of the following Contracts (x) by which any of the Purchased Assets are bound or affected or (y) to which any Seller is a party or by which it is bound in connection with the Business or the Purchased Assets (such Contracts, together with all Leases and Intellectual Property Licenses, being “**Material Contracts**”):

- (i) all Contracts involving aggregate consideration in excess of \$50,000 and which, in each case, cannot be cancelled without penalty or without more than 90 days’ notice;
- (ii) all Contracts that provide for the indemnification of any Person or the assumption of any Tax, environmental or other Liability of any Person;
- (iii) all Contracts that relate to the acquisition or disposition of any business, a material amount of stock or assets of any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise);
- (iv) all employment agreements and Contracts with independent contractors or consultants (or similar arrangements) and which are not cancellable without material penalty or without more than 90 days’ notice;
- (v) all Contracts relating to indebtedness (including, guarantees) involving amounts in excess of **\$10,000**;
- (vi) all Contracts with any Governmental Authority;
- (vii) all Contracts that limit or purport to limit the ability of Sellers, or any Seller, to compete in any line of business or with any Person or in any geographic area or during any period of time;
- (viii) all joint venture, partnership or similar Contracts;
- (ix) all Contracts for the sale of any of the Purchased Assets (other than Inventory in the Ordinary Course of business) or for the grant to any Person of any option, right of first refusal or preferential or similar right to purchase any of the Purchased Assets;
- (x) all powers of attorney with respect to the Business or any Purchased Asset; and
- (xi) the existing KPW Contracts and the KPW Bifurcated HW Contracts to be executed prior to Closing.

(xii) all other Contracts that are material to the Purchased Assets or the operation of the Business and not previously disclosed pursuant to this **Section 4.07** and that provide for the annual receipt or expenditure of more than \$10,000.

(b) Except for the KPW Contracts which the Sellers may not be a party to and the KPW Bifurcated HW Contracts which will not have been executed as of the Effective Date, each Material Contract is valid and binding on the applicable Seller in accordance with its terms and is in full force and effect. No Seller nor, to Sellers' Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under) in any material respect, or has provided or received any notice of any intention to terminate, any Material Contract. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. Complete and correct copies of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) have been made available to Buyer. There are no material disputes pending or threatened under any Assigned Contract.

Section 4.08 Title or License to Purchased Assets. Sellers have good and valid title to, or a valid leasehold interest in, all of the Purchased Assets. Except as set forth in **Section 4.08** of the Disclosure Schedules, all such Purchased Assets (including leasehold interests) are free and clear of Encumbrances except for the following (collectively referred to as "**Permitted Encumbrances**"):

(a) those items set forth in **Section 4.08(a)** of the Disclosure Schedules;

(b) liens for Taxes not yet due and payable or liens for Taxes being contested in good faith by appropriate procedures and for which there are adequate accruals or reserves on the Financial Statements;

(c) mechanics', carriers', workmen's, repairmen's or other like liens arising or incurred in the Ordinary Course of business consistent with past practice or amounts that are not delinquent and which are not, individually or in the aggregate, material to the Business or the Purchased Assets;

(d) easements, rights of way, zoning ordinances and other similar encumbrances (including covenants, conditions and restrictions of record) affecting Leased Real Property which do not, individually or in the aggregate, prohibit or materially interfere with the current operation of any Real Property and which do not render title to any Real Property unmarketable;

(e) liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the Ordinary Course of business consistent with past practice which are not, individually or in the aggregate, material to the Business or the Purchased Assets;

(f) leasehold mortgages on Leased Real Property to be satisfied and removed in connection with the Closing; or

(g) restrictions arising under the Franchise Agreements or restrictions on use of Leased Real Property contained in the Leases or any other restrictions imposed by any other Assigned Contracts or Assigned Permits.

Section 4.09 Condition and Sufficiency of Assets. To Sellers' Knowledge, except as set forth in **Section 4.09** of the Disclosure Schedules, the buildings, furniture, fixtures, equipment and other items of tangible personal property included in the Purchased Assets are in working operating condition and repair,

normal wear and tear excepted. Except as set forth in **Section 4.09** of the Disclosure Schedules, the Purchased Assets are sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, property and assets necessary to conduct the Business as currently operated by the Sellers.

Section 4.10 Real Property. Except as provided in Section 4.10 of the Disclosure Schedules, no Seller owns any real property or holds any rights to acquire real property.

(a) **Section 4.10(a)** of the Disclosure Schedules sets forth each parcel of real property leased by any Seller or its applicable Affiliate and used in or necessary for the conduct of the Business as currently conducted (together with all rights, title and interest of Sellers or their applicable Affiliates in and to leasehold improvements relating thereto, collectively, the “**Leased Real Property**”), and a true and complete list of all leases, subleases, licenses, concessions and other written agreements, and to Sellers’ Knowledge any oral agreements, including all amendments, extensions renewals, guaranties and other agreements with respect thereto, pursuant to which Sellers hold any Leased Real Property (collectively, the “**Leases**”). Sellers or their applicable Affiliate have delivered to Buyer a true and complete copy of each Lease. With respect to each Lease, except as set forth on **Section 4.10(a)** of the Disclosure Schedules:

(i) To such Seller’s Knowledge, such Lease is valid, binding, enforceable and in full force and effect, and such Seller or its applicable Affiliates enjoys peaceful and undisturbed possession of the Leased Real Property;

(ii) To such Seller’s Knowledge, such Seller is not in breach or default under such Lease, and no event has occurred or circumstance exists which, with the delivery of notice, passage of time or both, would constitute such a breach or default, and such Seller, to its Knowledge, has paid all rent due and payable under such Lease;

(iii) Such Seller or its applicable Affiliate has not received nor given any notice of any default or event that with notice or lapse of time, or both, would constitute a default by such Seller or its applicable Affiliate under such Lease and, to the Knowledge of such Seller, no other party is in default thereof, and no party to such Lease has exercised any termination rights with respect thereto;

(iv) Except for subleases between Sellers and Sellers’ Affiliates, Sellers have not subleased, assigned or otherwise granted to any Person the right to use or occupy such Leased Real Property or any portion thereof; and

(v) Except as set forth on **Section 4.10(a)(v)** the Disclosure Schedules, Sellers have not pledged, mortgaged or otherwise granted an Encumbrance on its leasehold interest in any Leased Real Property.

(b) Sellers have not received any written notice of (i) material violations of building codes and/or zoning ordinances or other governmental or regulatory Laws affecting the Leased Real Property, (ii) existing, pending or threatened condemnation proceedings affecting the Leased Real Property, or (iii) existing, pending or threatened zoning, building code or other moratorium proceedings, or similar matters which could reasonably be expected to materially and adversely affect the ability to operate the Leased Real Property as currently operated. Since January 1, 2018, neither the whole nor any material portion of any Leased Real Property has been damaged or destroyed by fire or other casualty.

(c) To Sellers' Knowledge, the Real Property is sufficient for the continued operation of the Business after the Closing in substantially the same manner as conducted prior to the Closing and constitutes all of the real property necessary to operate the Restaurants as currently conducted.

Section 4.11 Intellectual Property.

(a) Except as set forth in **Section 4.11(a)** of the Disclosure Schedules, Sellers have no Intellectual Property Registrations and do not own Intellectual Property Assets that are material to the operation of the Business that are not registered.

(b) Except as set forth in **Section 4.11(b)** of the Disclosure Schedules, Sellers or their applicable Affiliates are the owner, exclusively or jointly with other Persons, or the licensee of all right, title and interest in and to the Intellectual Property Assets, free and clear of Encumbrances except Permitted Encumbrances.

(c) Except for Intellectual Property Licenses given to Sellers or their applicable Affiliate by BWW and affiliates of BWW pursuant to the Franchise Agreements, **Section 4.11(c)** of the Disclosure Schedules lists all other Intellectual Property Licenses material to the operation of the Business. Sellers or their applicable Affiliates have provided Buyer with true and complete copies of all such Intellectual Property Licenses. All such Intellectual Property Licenses are valid, binding and enforceable between Sellers and the other parties thereto, and Sellers and to Sellers' Knowledge, such other parties, are in compliance in all material respects with the terms and conditions of such Intellectual Property Licenses.

Section 4.12 Suppliers. **Section 4.12** of the Disclosure Schedules sets forth with respect to the Business the top fifteen (by dollar amount) distributors and suppliers to whom Sellers have paid consideration for goods or services (collectively, the "**Material Suppliers**") for the periods covered by the Statements of Operations. Except as set forth in **Section 4.12** of the Disclosure Schedules, Sellers have not received any notice that any of the Material Suppliers has ceased, or intends to cease, to supply goods or services material to the Business or to otherwise terminate or materially reduce its relationship with the Business.

Section 4.13 Insurance. **Section 4.13** of the Disclosure Schedules sets forth (a) a true and complete list of all current policies or binders of fire, liability, "dramshop" and similar liability, umbrella liability, real and personal property, workers' compensation, vehicular, fiduciary liability and other casualty and property insurance maintained by Sellers and relating to the Business, the Purchased Assets or the Assumed Liabilities (collectively, the "**Insurance Policies**"); and (b) with respect to the Business, the Purchased Assets or the Assumed Liabilities, a list of all pending claims and the claims history for Sellers since January 1, 2013. Except as set forth on **Section 4.13** of the Disclosure Schedules, there are no claims related to the Business, the Purchased Assets or the Assumed Liabilities pending under any such Insurance Policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights. No Seller has received any written notice of cancellation of, premium increase with respect to, or alteration of coverage under, any of such Insurance Policies. All premiums due on such Insurance Policies have either been paid or, if not yet due, accrued. All such Insurance Policies (a) are in full force and effect and enforceable in accordance with their terms; (b) are provided by carriers who, to Seller's Knowledge, are financially solvent; and (c) have not been subject to any lapse in coverage. No Seller is in default under, or has otherwise failed to comply with, in any material respect, any provision contained in any such Insurance Policy. The Insurance Policies are sufficient for material compliance with all applicable Laws and Material Contracts to which any Seller is a party or by which any Seller is bound. True and complete copies of the Insurance Policies have been made available to Buyer.

Section 4.14 Legal Proceedings; Governmental Orders.

(a) Except as set forth in **Section 4.14(a)** of the Disclosure Schedules, there are no Actions pending or, to Sellers' Knowledge, threatened against or by Sellers (a) relating to or affecting the Business, the Purchased Assets or the Assumed Liabilities or (b) that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or, to Sellers' Knowledge, circumstances exist, that may give rise to, or serve as a basis for, any such Action.

(b) Except as set forth in **Section 4.14(b)** of the Disclosure Schedules, there are no outstanding (i) Governmental Orders and (ii) no unsatisfied judgments, penalties or awards against, relating to or affecting the Business. Sellers are in compliance with the terms of each Governmental Order set forth in **Section 4.14(b)** of the Disclosure Schedules. To Seller's Knowledge, no event has occurred or, circumstances exist, that may constitute or result in (with or without notice or lapse of time) a violation of any such Governmental Order.

Section 4.15 Compliance With Laws; Permits.

(a) Except as set forth in **Section 4.15(a)** of the Disclosure Schedules, Sellers have been and are in compliance with all material Laws applicable to the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets.

(b) All Permits required for Sellers to conduct the Business as currently conducted or for the ownership and use of the Purchased Assets have been obtained by Sellers and are valid and in full force and effect. To Sellers' Knowledge, all fees and charges with respect to such Permits as of the date hereof have been paid in full. **Section 4.15(b)** of the Disclosure Schedules lists all current Permits issued to Sellers which are related to the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets, including the names of the Permits and their respective dates of issuance and expiration. To Sellers' knowledge, no event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Permit set forth in **Section 4.15(b)** of the Disclosure Schedules.

Section 4.16 Environmental Matters.

(a) Except as may be set forth in environmental related reports and studies set forth in Disclosure Schedule 4.16(e), o Sellers' Knowledge, the operations of Sellers with respect to the Business and the Purchased Assets are and have been in compliance with all Environmental Laws. Sellers have not received from any Person, with respect to the Business or the Purchased Assets, any: (i) Environmental Notice or Environmental Claim; or (ii) written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Closing Date.

(b) To Sellers' Knowledge, Sellers have obtained and are in material compliance with all material Environmental Permits (each of which is disclosed in **Section 4.16(b)** of the Disclosure Schedules) necessary for the conduct of the Business as currently conducted for the ownership, lease, operation or use of the Purchased Assets and all such Environmental Permits are in full force and effect and shall be maintained in full force and effect by Sellers through the Closing Date in accordance with Environmental Law, and to Sellers' Knowledge, there are no conditions, events or circumstances related to Environmental Permits that might prevent or impede, after the Effective Time, the conduct of the Business as currently conducted or the ownership, lease, operation or use of the Purchased Assets. With respect to any such Environmental Permits, Sellers will undertake prior to the Closing Date, Commercially Reasonable Efforts necessary to facilitate

transferability of the same, and Sellers are not aware of any condition, event or circumstance that might prevent or impede the transferability of the same, and have not received any Environmental Notice or written communication regarding any material adverse change in the status or terms and conditions of the same.

(c) To Sellers' Knowledge, there has been no Release of Hazardous Materials in contravention of Environmental Law with respect to the Business or the Purchased Assets or any real property currently or formerly owned, leased or operated by Sellers in connection with the Business, and Sellers has not received an Environmental Notice that any of the Business or the Purchased Assets or real property currently or formerly owned, leased or operated by Sellers in connection with the Business (including soils, groundwater, surface water, buildings and other structure located thereon) has been contaminated with any Hazardous Material which could reasonably be expected to result in an Environmental Claim against, or a violation of Environmental Law or term of any Environmental Permit by, Sellers.

(d) Sellers have not retained or assumed, by contract or operation of law, any liabilities or obligations of third parties under Environmental Law.

(e) Sellers have provided or otherwise made available to Buyer and listed in **Section 4.16(e)** of the Disclosure Schedules any and all environmental reports, studies, audits, records, sampling data, site assessments and risk assessments with respect to the Leased Real Property which are in the possession or control of Sellers related to compliance with Environmental Laws, Environmental Claims or an Environmental Notice.

Section 4.17 Employee Benefit Matters.

(a) **Section 4.17(a)** of the Disclosure Schedules contains a true and complete list of each pension, benefit, retirement, compensation, profit-sharing, deferred compensation, incentive, performance award, phantom equity, stock or stock-based, change in control, retention, severance, vacation, paid time off, fringe-benefit and other similar agreement, plan, policy, program or arrangement (and any amendments thereto), in each case whether or not reduced to writing and whether funded or unfunded, including each "employee benefit plan" within the meaning of Section 3(3) of ERISA, whether or not tax-qualified and whether or not subject to ERISA, which is or has been maintained, sponsored, contributed to, or required to be contributed to by Sellers for the benefit of any current or former employee, officer, director, retiree, independent contractor or consultant of the Business or any spouse or dependent of such individual, or under which Sellers have or may have any Liability, or with respect to which Buyer or any of its Affiliates would reasonably be expected to have any Liability, contingent or otherwise (as listed on **Section 4.17(a)** of the Disclosure Schedules, each, a "**Benefit Plan**").

(b) With respect to each Benefit Plan, Sellers have made available to Buyer accurate, current and complete copies of each of the following: (i) where the Benefit Plan has been reduced to writing, the plan document together with all amendments; (ii) where the Benefit Plan has not been reduced to writing, a written summary of all material plan terms; (iii) where applicable, copies of any trust agreements or other funding arrangements, custodial agreements, insurance policies and contracts, administration agreements and similar agreements, and investment management or investment advisory agreements, now in effect or required in the future as a result of the transactions contemplated by this Agreement or otherwise; (iv) copies of any summary plan descriptions, summaries of material modifications, employee handbooks and any other written communications (or a description of any oral communications) relating to any Benefit Plan; (v) in the case of any Benefit Plan that is intended to be qualified under Section 401(a) of the Code, a copy of the most recent determination, opinion or advisory letter from the Internal Revenue Service; (vi) in the case of any Benefit Plan for which a Form 5500 is required to be filed, a copy of the most recently filed Form 5500,

with schedules attached; (vii) actuarial valuations and reports related to any Benefit Plans with respect to the most recently completed plan years; and (viii) copies of material notices, letters or other correspondence from the Internal Revenue Service, Department of Labor or Pension Benefit Guaranty Corporation relating to the Benefit Plan.

(c) Except as set forth in **Section 4.17(c)** of the Disclosure Schedules, each Benefit Plan (other than any multi-employer plan within the meaning of Section 3(37) of ERISA (each a “ **Multi-employer Plan** ”)) has been established, administered and maintained in accordance with its terms and in compliance with all applicable Laws (including ERISA and the Code).

Section 4.18 Employment Matters.

(a) Sellers have made available a list of all persons who are employees, independent contractors or consultants of the Business as of the date hereof, and sets forth for each such individual the following: (i) name; (ii) title or position; and (iii) hire date. Except as set forth in **Section 4.18(a)** of the Disclosure Schedules, as of the date hereof, all compensation, including wages, commissions and bonuses payable to employees, independent contractors or consultants of the Business for services performed on or prior to the date hereof have been paid in full or are adequately reflected on Seller’s Financial Statements and there are no outstanding agreements, understandings or commitments of Seller with respect to any compensation, commissions or bonuses. Notwithstanding any provisions in this Agreement to the contrary, Seller will pay employees the value of all Earned Vacation and Accrued Vacation upon, and in consideration for, such employee executing a full and complete release of Sellers and Sellers’ Affiliates.

(b) Sellers are not, and have not been for the past five (5) years, a party to, bound by, or negotiating any collective bargaining agreement or other Contract with a union, works council or labor organization (collectively, “ **Union** ”), and there is not, and has not been for the past five (5) years, any Union representing or purporting to represent any employee of Sellers, and, to Sellers’ Knowledge, no Union or group of employees is seeking or has sought to organize employees for the purpose of collective bargaining. Except as set forth in **Section 4.18(b)** of the Disclosure Schedules, there has never been, nor has there been any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor disruption or dispute affecting Sellers or any employees of the Business. To Seller’s Knowledge, Sellers have no duty to bargain with any Union.

(c) Except as set forth in **Section 4.18(c)** of the Disclosure Schedules, Sellers are and have been since January 1, 2016 in compliance in all material respects with all applicable Laws pertaining to employment and employment practices to the extent they relate to employees of the Business, including all Laws relating to labor relations, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, health and safety, workers’ compensation, leaves of absence and unemployment insurance. To Sellers’ Knowledge, all individuals characterized and treated by Sellers as consultants or independent contractors of the Business are properly treated as independent contractors under all applicable Laws. To Sellers’ Knowledge, all employees of the Business classified as exempt under the Fair Labor Standards Act and state and local wage and hour laws are properly classified in all material respects. Except as set forth in **Section 4.18(c)**, there are no Actions against Sellers pending, or to the Sellers’ Knowledge, threatened to be brought or filed, by or with any Governmental Authority or arbitrator in connection with the employment of any current or former applicant, employee, consultant, volunteer, intern or independent contractor of the Business, including, any claim relating to unfair labor practices, employment discrimination, harassment, retaliation, equal pay, wages and hours or any other employment related matter arising under applicable Laws.

(d) To Sellers' Knowledge, Sellers are and have been in compliance in all material respects with all applicable immigration Laws, including Form I-9 requirements and any applicable mandatory E-Verify obligations. For the past four years, Sellers have not been subject to or received any notice of any audit, investigations or, to Seller's Knowledge, any other inquiries from any Governmental Authority with respect to compliance with applicable immigrations Laws. Sellers have not received any "No-Match" letters from the Social Security Administration regarding any of Seller's current employees and Sellers have no Knowledge of any of Seller's current employees using a Social Security number that was not issued to the employee using it.

Section 4.19 Taxes. Except as set forth in **Section 4.19** of the Disclosure Schedules:

(a) All Tax Returns with respect to the Business required to be filed by Sellers for any Pre-Closing Tax Period have been, or will be, timely filed after giving effect to any applicable extensions. Such Tax Returns are, or will be, true, complete and correct in all material respects. To Sellers' Knowledge, all Taxes due and owing by Sellers (whether or not shown on any Tax Return) have been, or will be, timely paid.

(b) To Sellers' Knowledge, Sellers have withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, customer, shareholder or other party, and complied with all information reporting and backup withholding provisions of applicable Law.

(c) No waivers of statutes of limitations have been given or requested with respect to any Taxes of Sellers.

(d) All deficiencies asserted, or assessments made, against Sellers as a result of any examinations by any taxing authority have been fully paid, unless they are being validly contested.

(e) No Seller is a party to any Action by any taxing authority. There are no pending or threatened Actions by any taxing authority against Sellers.

(f) There are no Encumbrances for Taxes upon any of the Purchased Assets nor, to Sellers' Knowledge, is any taxing authority in the process of imposing any Encumbrances for Taxes on any of the Purchased Assets (other than for current Taxes not yet due and payable).

Section 4.20 Brokers. Except as set forth in **Section 4.20** of the Disclosure Schedules, for which Sellers shall be solely responsible, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Sellers.

Section 4.21 Full Disclosure. To Sellers' Knowledge, no representation or warranty by Sellers in this Agreement and no statement contained in the Disclosure Schedules to this Agreement or any certificate or other document furnished or to be furnished to Buyer pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

Section 4.22 No Other Representations and Warranties. Buyer acknowledges and agrees that, except for the representations and warranties contained in this Article IV (as modified by the Disclosure

Schedules), neither Sellers nor any other Person has made or makes any other express or implied representation or warranty as to the accuracy or completeness of any information regarding the Sellers furnished or made available to Buyer and its Representatives and any information documents or material delivered or made available to Buyer and its Representatives in any virtual data room, management presentations, due diligence site visits or in any other form in expectation of the transactions under this Agreement or as to the future revenue, profitability or success of the Business, or any representation or warranty arising from statute or law. Notwithstanding anything to the contrary contained herein, nothing in this **Section 4.22** will in any way limit the liability of any Person for fraud, criminal activity or intentional misrepresentation.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Sellers that the statements contained in this **Article V** are true and correct as of the date hereof and will be true and correct as of the Closing Date.

Section 5.01 Organization of Buyer. Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the State of Michigan and has all requisite power and authority to own, lease and operate its properties and assets and to conduct its business as now being conducted.

Section 5.02 Authority of Buyer. Buyer has full corporate power and authority to enter into this Agreement and the other Transaction Documents to which Buyer is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and any other Transaction Document to which Buyer is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Sellers) this Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms. When each other Transaction Document to which Buyer or its applicable Affiliates, is or will be a party has been duly executed and delivered by Buyer or its applicable Affiliates, (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Buyer or its applicable Affiliates, enforceable against them in accordance with their terms.

Section 5.03 No Conflicts; Consents. Except as set forth on Section 5.03 of the Disclosure Schedules, the execution, delivery and performance by Buyer, and its applicable Affiliates of this Agreement and the other Transaction Documents to which each is a party, and the consummation of the transactions contemplated hereby and thereby, including, but not limited to the payment of the Purchase Price, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of Buyer or its applicable Affiliates; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer or its applicable Affiliates; or (c) require the consent, notice or other action by any Person under any Contract to which Buyer or its applicable Affiliates are a party. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer or its applicable Affiliates in connection with the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby.

Section 5.04 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Buyer or its applicable Affiliates.

Section 5.05 Legal Proceedings. There are no Actions pending or, to Buyer's Knowledge, threatened against or by Buyer or any Affiliate of Buyer that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise or serve as a basis for any such Action.

Section 5.06 Full Disclosure. To Buyer's Knowledge, no representation or warranty by Buyer in this Agreement or any certificate or other document furnished or to be furnished to Seller pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

ARTICLE VI COVENANTS

Section 6.01 Conduct of Business Prior to the Closing. From the date hereof until the earlier of Closing or termination of this Agreement, except as otherwise provided in this Agreement or consented to in writing by Buyer (which consent shall not be unreasonably withheld or delayed), Sellers shall (x) conduct the Business in the Ordinary Course of business consistent with past practice; and (y) use Commercially Reasonable Efforts to maintain and preserve intact their current Business organization, operations and franchise and to preserve the rights, franchises, goodwill and relationships of their employees, customers, lenders, suppliers, regulators and others having relationships with the Business. Without limiting the foregoing, from the date hereof until the Closing Date (or the earlier termination of this Agreement in accordance with its terms), Sellers shall:

- (a) preserve and maintain all Permits required for the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets;
- (b) except as being validly contested, pay the debts, Taxes and other obligations of the Business when due;
- (c) continue repair and maintenance schedules in the Ordinary Course of Sellers' Business and take such additional action as necessary to maintain the properties and assets included in working operating condition and repair, subject to normal wear and tear;
- (d) continue in full force and effect without material modification all Insurance Policies, except as required by applicable Law;
- (e) perform in all material respects all of their obligations under all Assigned Contracts;
- (f) maintain the Books and Records in accordance with past practice;
- (g) comply in all material respects with all Laws applicable to the conduct of the Business or the ownership and use of the Purchased Assets;
- (h) be permitted to terminate the KPW Contracts and enter into KPW Bifurcated HW Contracts; and
- (i) not take or permit any action that would cause any of the changes, events or conditions described in **Section 4.06** to occur.

Section 6.02 Access to Information. From the date hereof until the Closing (or the earlier termination of this Agreement in accordance with its terms), Sellers shall (a) afford Buyer and its Representatives full and free access to and the right to inspect all of the Leased Real Property, properties, assets, premises, Books and Records, Contracts and other documents and data related to the Business; (b) furnish Buyer and its Representatives with such financial, operating and other data and information related to the Business as Buyer or any of its Representatives may reasonably request; and (c) instruct Representatives of Sellers to reasonably cooperate with Buyer in its investigation of the Business. Any investigation pursuant to this **Section 6.02** shall be conducted in such manner as not to interfere unreasonably with the conduct of the Business or any other businesses of Sellers. Notwithstanding the foregoing, Buyer shall (y) provide Sellers with reasonable notice prior to the inspection of any Restaurant or Leased Real

Property and Sellers shall have the right to be present at any such inspection and (z) not do any invasive or subsurface testing of any Leased Real Property or discuss the contemplated transaction, the fact that a transaction is contemplated, or any issues related thereto with any Restaurant level employee, without the express written consent of Sellers (which consent shall not be unreasonably withheld, delayed or conditioned) or, if required by the terms of the Leases, consent of the applicable landlord. Buyer shall be solely responsible for all costs and expenses incurred by Buyer and its Representatives in connection with any investigation by Buyer pursuant to this Agreement.

Section 6.03 No Solicitation of Other Bids.

(a) Sellers shall not, and shall not authorize or permit any of their Affiliates or any of their respective Representatives to, directly or indirectly, (i) encourage, solicit, initiate, facilitate or continue inquiries regarding an Acquisition Proposal; (ii) enter into discussions or negotiations with, or provide any information to, any Person concerning a possible Acquisition Proposal; or (iii) enter into any agreements or other instruments (whether or not binding) regarding an Acquisition Proposal. Sellers shall immediately cease and cause to be terminated, and shall cause their Affiliates and all of their Representatives to immediately cease and cause to be terminated, all existing discussions or negotiations with any Persons conducted heretofore with respect to an Acquisition Proposal. For purposes hereof, “ **Acquisition Proposal** ” means any inquiry, proposal or offer from any Person (other than BWB or Affiliates of BWB, or Buyer or any of its Affiliates) relating to the direct or indirect disposition, whether by sale, merger or otherwise, of all or any portion of the Business or the Purchased Assets; provided, Sellers should not be limited by anything in this Section, or any other term in this Agreement, from fulfilling its obligations under the Franchise Agreements to BWB, including its obligations to afford BWB a right of first refusal to acquire the Purchased Assets and Business thereunder.

(b) In addition to the other obligations under this **Section 6.03** , Sellers shall promptly (and in any event within three (3) Business Days after receipt thereof by Sellers or their Representatives) advise Buyer orally and in writing of any Acquisition Proposal, any request for information with respect to any Acquisition Proposal, or any inquiry with respect to or which could reasonably be expected to result in an Acquisition Proposal, the material terms and conditions of such request, Acquisition Proposal or inquiry, and the identity of the Person making the same.

(c) Sellers agree that the rights and remedies for noncompliance with this **Section 6.03** shall include having such provision specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to Buyer and that money damages would not provide an adequate remedy to Buyer.

Section 6.04 Notice of Certain Events. From the date hereof until the Closing (or the earlier termination of this Agreement in accordance with its terms), each party shall promptly notify the other party in writing of:

(a) any fact, circumstance, event or action the existence, occurrence or taking of which (A) has had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on such party, (B) has resulted in, or could reasonably be expected to result in, any representation or warranty made by such party hereunder not being materially true and correct or (C) has resulted in, or could reasonably be expected to result in, the failure of any of the conditions set forth in **Section 7.02** or **Section 7.03** , as applicable, to be satisfied;

(b) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(c) any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; and

(d) any Actions commenced or, to the applicable party's Knowledge, threatened against, relating to or involving or otherwise affecting the Business, the Purchased Assets or the Assumed Liabilities that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to the terms of this Agreement or that relates to the consummation of the transactions contemplated by this Agreement.

Section 6.05 Employees and Employee Benefits.

(a) Commencing on the Closing Date, Sellers shall effectively terminate all employees of the Business who are actively at work at the Effective Time, and, Buyer shall (directly or through its applicable Affiliate) offer employment, on an "at will" basis, to substantially all of the Restaurant level employees and, at Buyer's sole discretion, offer employment to such other employees of the Business as necessary not to trigger any obligation of Sellers of any nature under the WARN Act. Notwithstanding any provisions in this Agreement to the contrary, Buyer agrees to offer employment, on an "at will" basis to such number of employees so as not to trigger any obligation of Sellers of any nature under the WARN Act. Buyer acknowledges that Sellers will not send any notices that may be required under any WARN Act in reliance upon Buyer's agreement to hire sufficient number of employees to ensure that no liability will arise under any WARN Act. If Buyer does not intend to offer employment to any employee of Sellers who works in the corporate office, then it will notify Sellers at least thirty (30) days prior to Closing of the identities of the individuals who will not be offered employment.

(b) Sellers shall be solely responsible, and Buyer shall have no obligations whatsoever for, any compensation or other amounts payable to any current or former employee, officer, director, independent contractor or consultant of the Business, including hourly pay, commission, bonus, salary, accrued vacation, fringe, pension or profit sharing benefits or severance pay for any period relating to the service with Sellers or their applicable Affiliates at any time prior to the Effective Time and Sellers shall pay all such amounts to all entitled persons prior to the Effective Time. Buyer shall be solely responsible for all compensation or other amounts payable to any employee, officer, director, independent contractor or consultant of the Business hired or retained by Buyer on or after the Effective Time, including hourly pay, commission, bonus, salary, accrued vacation, fringe, pension or profit sharing benefits or severance pay for any period on or after the Effective Time.

(c) Sellers shall remain solely responsible for the satisfaction of all claims for medical, dental, life insurance, health accident or disability benefits brought by or in respect of current or former employees, officers, directors, independent contractors or consultants of the Business or the spouses, dependents or beneficiaries thereof, which claims relate to events occurring prior to the Effective Time. Sellers also shall remain solely responsible for all workers' compensation claims of any current or former employees, officers, directors, independent contractors or consultants of the Business which relate to events occurring prior to the Effective Time. Sellers shall pay, or cause to be paid, all such amounts to the appropriate persons as and when due.

(d) Each employee of the Business who becomes employed by Buyer (or its applicable Affiliate) in connection with the transactions contemplated by this Agreement shall be eligible to receive the salary

and benefits maintained for employees of Buyer on substantially similar terms and conditions in the aggregate as are provided to similarly situated employees of Buyer.

(e) Each employee of the Business who becomes employed by Buyer (or its applicable Affiliate) in connection with the transaction shall be given service credit for the purpose of eligibility under the group health plan and eligibility and vesting only under the defined contribution retirement plan for his or her period of service with the Sellers prior to the Effective Time; *provided, however*, that (i) such credit shall be given pursuant to payroll or plan records, at the election of Buyer, in its sole and absolute discretion; and (ii) such service crediting shall be permitted and consistent with Buyer's defined contribution retirement plan.

Section 6.06 Confidentiality. The Confidentiality and Non-Disclosure between the Buyer and Company dated August 21, 2018 shall remain in full force and effect. Sellers and the Principal Members will hold and treat, and will cause their respective officers, directors, employees, auditors and other representatives to hold and treat, in strict confidence and not use in any manner any information concerning the execution of this Agreement until such time that a press release concerning the execution of this Agreement has been issued by Buyer or its affiliates. From and after the Closing, Buyer and Sellers shall, and shall cause their Affiliates to, hold, and shall use their reasonable best efforts to cause their respective Representatives to hold, in confidence any and all information, whether written or oral, concerning the Business, except to the extent that such information (a) is generally available to and known by the public through no fault of Buyer or Sellers, as applicable, any of their Affiliates or their respective Representatives; or (b) is lawfully acquired by Buyer or Sellers, any of their Affiliates or their respective Representatives from and after the Closing from sources which are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation. If any Party or any of their Affiliates or their respective Representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Law, such party shall promptly notify the other party in writing and shall disclose only that portion of such information which such party is advised by its counsel in writing is legally required to be disclosed, *provided that* such party shall use reasonable best efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information.

Section 6.07 Non-competition; Non-solicitation

(a) For a period of two (2) years commencing on the Closing Date (the “**Restricted Period**”), Sellers and the Principal Members each shall not, and shall not permit any of their respective Affiliates to, directly or indirectly, (i) engage in or assist others in engaging in the Restricted Business in the Territory; (ii) have an interest in any Person that engages directly or indirectly in the Restricted Business in the Territory in any capacity, including as a partner, shareholder, member, employee, principal, agent, trustee or consultant; or (iii) cause, induce or encourage any material actual or prospective supplier or licensor of the Business, or any other Person who has a material business relationship with the Business, to terminate or modify any such actual or prospective relationship. Notwithstanding the foregoing, Sellers and the Principal Members each may own, directly or indirectly, solely as an investment, securities of any Restricted Business traded on any national securities exchange if Sellers are not a controlling Person of, or a member of a group which controls, such Person and does not, directly or indirectly, own 5% or more of any class of securities of such Person.

(b) During the Restricted Period, Sellers and the Principal Members each shall not, and shall not permit any of their respective Affiliates to, directly or indirectly, hire or solicit any person who is offered employment by Buyer pursuant to **Section 6.05**, or is or was employed in the Business during the Restricted Period, or encourage any such employee to leave such employment or hire any such employee who has left

such employment, except pursuant to a general solicitation which is not directed specifically to any such employees; *provided, that* nothing in this **Section 6.07(b)** shall prevent Sellers, the Principal Members or any of their respective Affiliates from retaining the services of (i) any employee whose employment has been terminated by Buyer (or its applicable Affiliate) or (ii) after 180 days from the date of termination of employment, any employee whose employment has been terminated by the employee; or (iii) any corporate level employee of KPW as contemplated in the Management Agreement, that does not accept employment with Buyer or on a part-time basis to assist with operation of Wings Across America in Maryland.

(c) Sellers and the Principal Members each acknowledge that a breach or threatened breach of this **Section 6.07** would give rise to irreparable harm to Buyer, for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by Sellers or the Principal Members of any such obligations, Buyer shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

(d) Sellers and the Principal Members each acknowledge that the restrictions contained in this **Section 6.07** are reasonable and necessary to protect the legitimate interests of Buyer and constitute a material inducement to Buyer to enter into this Agreement and consummate the transactions contemplated by this Agreement. In the event that any covenant contained in this **Section 6.07** should ever be adjudicated to exceed the time, geographic, product or service or other limitations permitted by applicable Law in any jurisdiction, then any court is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic, product or service or other limitations permitted by applicable Law. The covenants contained in this **Section 6.07** and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

(e) The obligations of Sellers and the Principal Members under this **Section 6.07** are joint and several; provided however, that no Principal Member shall be liable for the breach of this **Section 6.07** by any other Principal Member.

Section 6.08 Governmental Approvals and Consents

(a) Each party hereto shall, as promptly as possible, (i) make, or cause to be made, all filings and submissions required under any Law applicable to such party or any of its Affiliates; and (ii) use Commercially Reasonable Efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement and the other Transaction Documents. Each party shall cooperate fully with the other party and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals. The parties hereto shall not wilfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.

(b) Sellers and Buyer shall use Commercially Reasonable Efforts to give all notices to, and obtain all consents from, all third parties with respect to the Franchise Agreements and Leases that are described in **Section 4.03** of the Disclosure Schedules and the release of the guaranty by any lease guarantor and any guarantor of any Franchise Agreements described in **Section 2.05(c)** of the Disclosure Schedules.

Notwithstanding any provisions in this Agreement to the contrary (including but not limited to this Section 6.08 and Section 6.10), except with respect to notice to BWW in connection with its right of first refusal to purchase the Restaurants, Sellers shall not be required to contact, and Buyer shall be prohibited from contacting, any third parties to request any consents or to provide any notices relating to the contemplated transactions until each of the following has occurred: (i) Buyer waives the conditions to closing set forth in Section 7.02(m), and (ii) BWW has waived its right of first refusal to purchase the Restaurants.

(c) Without limiting the generality of the parties' undertakings pursuant to subsections (a) and (b) above, each of the parties hereto shall use Commercially Reasonable Efforts to:

(i) respond to any inquiries by any Governmental Authority regarding antitrust or other matters with respect to the transactions contemplated by this Agreement or any other Transaction Document;

(ii) avoid the imposition of any order or the taking of any action that would restrain, alter or enjoin the transactions contemplated by this Agreement or any other Transaction Document; and

(iii) in the event any Governmental Order adversely affecting the ability of the parties to consummate the transactions contemplated by this Agreement or any other Transaction Document has been issued, to have such Governmental Order vacated or lifted.

(d) All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of either party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between Sellers or Buyer with Governmental Authorities in the Ordinary Course of business), shall be disclosed to the other party hereunder in advance of any filing, submission or attendance, it being the intent that the parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each party shall give notice to the other party with respect to any meeting, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other party with the opportunity to attend and participate in such meeting, discussion, appearance or contact.

(e) Buyer shall use Commercially Reasonable Efforts to obtain the release of Sellers or any Affiliate(s) of Sellers, KPW and Principal Member(s) from any corporate guarantees, on-going obligations under the BWW Franchise Agreements, post-closing Lease Obligations, personal guaranties, letters of credit, or other credit enhancements of Sellers or any Affiliates of Sellers, including, but not limited to, releases by any landlord, BWW, and any third-party under any Assigned Contracts.

(f) Notwithstanding the foregoing, nothing in this **Section 6.08** shall require, or be construed to require, Buyer or any of its Affiliates to agree to (i) sell, hold, divest, discontinue or limit, before or after the Closing Date, any assets, businesses or interests of Buyer or any of its Affiliates; (ii) any conditions relating to, or changes or restrictions in, the operations of any such assets, businesses or interests which, in either case, could reasonably be expected to result in a Material Adverse Effect or materially and adversely impact the economic or business benefits to Buyer of the transactions contemplated by this Agreement and the other Transaction Documents; or (iii) any material modification or waiver of the terms and conditions of this Agreement.

Section 6.09 Books and Records.

(a) In order to facilitate the resolution of any claims made against or incurred by Sellers prior to the Effective Time, or for any other reasonable purpose, for a period of four (4) years after the Effective Time, Buyer shall:

(i) retain the Books and Records (including personnel files) relating to periods prior to the Effective Time in a manner reasonably consistent with the prior practices of Sellers; and

(ii) upon reasonable notice, afford the Sellers' Representatives reasonable access (including the right to make, at Sellers' expense, photocopies), during normal business hours, to such Books and Records.

(b) In order to facilitate the resolution of any claims made by or against or incurred by Buyer after the Effective Time, or for any other reasonable purpose, for a period of two (2) years following the Effective Time, Sellers shall:

(i) retain the Books and Records (including personnel files) of Sellers which relate to the Business and their operations for periods prior to the Effective Time; and

(ii) upon reasonable notice, afford the Buyer's Representatives reasonable access (including the right to make, at Buyer's expense, photocopies), during normal business hours, to such Books and Records.

(c) Neither Buyer nor Sellers shall be obligated to provide the other party with access to any books or records (including personnel files) pursuant to this **Section 6.09** where such access would violate any Law or be protected by attorney-client privilege.

Section 6.10 Closing Conditions From the date hereof until the Closing (or the earlier termination of the Agreement in accordance with its terms), each party hereto shall use Commercially Reasonable Efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in **Article VII** hereof.

Section 6.11 Public Announcements. Unless otherwise required by applicable Law or Securities and Exchange Commission requirements (based upon the reasonable advice of counsel), neither Buyer or Sellers shall make any public announcements in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of other (which consent shall not be unreasonably withheld or delayed), and the parties shall cooperate as to the timing and contents of any such announcement.

Section 6.12 Bulk Sales Laws. The parties hereby waive compliance with the provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Buyer. In accordance with **Section 8.02**, Sellers and the Principal Members agree to indemnify and hold harmless Buyer from and against any and all Losses that may be asserted by third parties against Buyer as a result of noncompliance by Sellers with any such bulk transfer or similar Laws.

Section 6.13 Transfer Taxes. Except as otherwise specifically provided for herein, all transfer, documentary, sales, use, stamp, registration, value added and other similar Taxes and fees (including any penalties and interest) incurred in connection with the operation of the Business or this Agreement and the other Transaction Documents shall be borne and paid by the party designated in any ordinance or statute

mandating any such Taxes and fees and, if no party is so designated, to be split equally between Buyer and Sellers and paid when due, and Sellers and Buyer shall, at their own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and each shall cooperate with respect thereto as necessary).

Section 6.14 Tax Clearance Certificates. Buyer hereby waives any requirement that Sellers shall notify all of the taxing authorities in the jurisdictions that impose Taxes on Sellers or where Sellers have a duty to file Tax Returns of the transactions contemplated by this Agreement in the form and manner required by such taxing authorities (a “ **Tax Clearance Certificate** ”). If any taxing authority asserts that Sellers are liable for any Tax related to a Pre-Closing Tax Period, Sellers shall promptly pay any and all such amounts, or otherwise provide permitted security to such tax authorities, and shall provide evidence to the Buyer that such liabilities have been paid in full or otherwise satisfied. In accordance with **Section 8.02** , Sellers and the Principal Members agree to indemnify and hold harmless Buyer from and against any and all Losses that may be asserted by third parties against Buyer as a result of noncompliance with any such requirements.

Section 6.15 Further Assurances. Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the other Transaction Documents, including, but not limited to, cooperating with each other with respect to the completion of an audit of the Business and obtaining the transfer of all Assigned Permits to Buyer; provided that such audit shall be at Buyer’s sole cost and expense and Buyer shall reimburse Sellers for all Sellers’ external third party costs and expenses related to such audit.

Section 6.16 Management Agreement. If, as of the Closing Date, all of the conditions set forth in **Article VII** have been satisfied or waived by the parties except for the requirement that Buyer receive all Permits necessary to conduct the Business, as indicated by Sellers prior to the Closing, Buyer and Sellers shall execute, or shall cause their designated Affiliates to execute, a Management Agreement in a form to be agreed upon by the parties (“ **Management Agreement** ”), pursuant to which Buyer shall operate the Business under Sellers’ existing Permits until such time as the applicable Governmental Authorities approve the transfer of such Permits to Buyer or issue new Permits to Buyer, as applicable. During such period, Buyer shall be responsible for all fees and charges to maintain any such Permits and Buyer shall indemnify, defend and hold Sellers harmless from and against any Liabilities or Losses arising from or in connection with Buyer’s operation of the Business under Sellers’ permits.

Section 6.17 Updates to Disclosure Schedules . Sellers shall have the right, at any time before Closing, to deliver to Buyer written updates to the Disclosure Schedules disclosing any events or developments that occurred or information learned between the date of this Agreement and the Closing Date (the “Additional Disclosures”). If Sellers update the Disclosure Schedules after the date of this Agreement and such disclosures contain information that, absent such disclosures, would have the effect of causing the condition in **Section 7.02(a)** not to be satisfied, Buyer shall have the right to terminate this Agreement pursuant to **Section 9.01(b)(ii)**.

Section 6.18 Inspection and Repair of Tangible Assets . Within 5 days prior to Closing, Sellers and Buyer shall inspect all fixtures, equipment and tangible personal property to confirm that such assets are in working operating condition and repair, normal wear and tear excepted (the “ **Pre-Closing Inspection** ”). Any fixtures, equipment or tangible personal property which is not in working operating condition at the time of the Pre-Closing Inspection, shall be included on the failed inspection report (“ **Failed Inspection Report** ”), including a detailed description of the asset and the issue to be repaired, and disclosed in **Section**

4.09 of the Disclosure Schedules. Sellers shall use Commercially Reasonable Efforts to repair, prior to Closing, any assets listed on the Failed Inspection Report in order to cause such assets to be in working operating condition, normal wear and tear excepted. If Sellers are unable to repair any assets on the Failed Inspection Report prior to Closing, then, there shall be an equitable reduction in the Purchase Price to the extent sufficient to repair such remaining items on the Failed Inspection Report to bring them to working operating condition, normal wear and tear accepted.

ARTICLE VII CONDITIONS TO CLOSING

Section 7.01 Conditions to Obligations of All Parties. The obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or the parties' waiver, at or prior to the Closing, of each of the following conditions:

(a) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

(b) Subject in each case to **Section 6.16** above, all any consents, authorizations, orders and approvals referred to in **Section 4.03** shall have been received in form and substance reasonably satisfactory to Sellers and Buyer and no such consent, authorization, order and approval shall have been revoked.

(c) The waiver or expiration of any periods applicable to BWV's right of first refusal.

Section 7.02 Conditions to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of Sellers contained in **Section 4.01** , **Section 4.02** , and **Section 4.20** , the representations and warranties of Sellers contained in this Agreement, the other Transaction Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and as of the Effective Time with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of Sellers contained in **Section 4.01** , **Section 4.02** , and **Section 4.20** shall be true and correct in all respects on and as of the date hereof and on and as of the Effective Time with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

(b) Sellers shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by them prior to the Effective Time; *provided, that* , with respect to agreements, covenants and conditions that are qualified by materiality, Sellers shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) No Action shall have been commenced by any Person not a party to this Agreement against Buyer or Sellers, which would prevent the Closing. No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any transaction contemplated hereby.

(d) All approvals, consents and waivers with respect to the Franchise Agreements and Leases that are listed on **Section 4.03** of the Disclosure Schedules shall have been received, and executed counterparts thereof shall have been delivered to Buyer at or prior to the Closing.

(e) All deliverables of Sellers required under **Section 3.02(a)**.

(f) From the date of this Agreement, there shall not have occurred any Material Adverse Effect, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Effect.

(g) Subject to **Section 6.16**, Buyer shall have received all Permits that are necessary for it to conduct the Business as conducted by Sellers as of the Closing Date; provided, however, if such Permits cannot be obtained prior to Closing, the parties shall enter into a Management Agreement as contemplated, provided that the applicable law with respect to such Permits allows Buyer or Buyer's designee to conduct the Business as conducted by Sellers as of the Closing Date, and Buyer shall not have a right to terminate this Agreement as a result of failure to satisfy this subsection (g).

(h) All Encumbrances relating to the Purchased Assets shall have been released in full, other than Permitted Encumbrances, and Sellers shall have delivered to Buyer written evidence, in form satisfactory to Buyer in its reasonable discretion, of the release of such Encumbrances.

(i) Buyer shall have received a certificate, dated as of the Closing Date and signed by a duly authorized representative of Sellers in substantially the form attached hereto as **Exhibit E**, which among other things shall certify that each of the conditions set forth in **Section 7.02(a)** and **Section 7.02(b)** have been satisfied (the "**Seller Closing Certificate**").

(j) Buyer shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Sellers certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors, managers, or members of each authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby by the Sellers, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.

(k) Buyer shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Sellers certifying the names and signatures of the officers of Sellers authorized to sign this Agreement, the Transaction Documents and the other documents to be delivered hereunder and thereunder.

(l) Buyer shall have received a certificate pursuant to Treasury Regulations Section 1.1445-2(b) (the "**FIRPTA Certificate**") that the applicable Seller is not a foreign person within the meaning of Section 1445 of the Code duly executed by the applicable Seller.

(m) Buyer shall have completed the financing necessary to consummate the transactions contemplated by this Agreement.

(n) Buyer shall have received assurances that are satisfactory to Buyer in its reasonable discretion from key employees designated by Buyer that such employees intend to continue employment with Buyer following the Closing.

(o) Sellers shall have delivered to Buyer such other documents or instruments as Buyer reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

Section 7.03 Conditions to Obligations of Sellers. The obligations of Sellers to consummate the transactions contemplated by this Agreement shall be subject to the fulfilment or Sellers' waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of Buyer contained in **Section 5.01** , **Section 5.02** , and **Section 5.04**, the representations and warranties of Buyer contained in this Agreement, the other Transaction Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and as of the Effective Time with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of Buyer contained in **Section 5.01** , **Section 5.02** and **Section 5.04** shall be true and correct in all respects on and as of the date hereof and on and as of the Effective Time with the same effect as though made at and as of such date.

(b) Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date; *provided, that* , with respect to agreements, covenants and conditions that are qualified by materiality, Buyer shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) No Action shall have been commenced by any Person not a party to this Agreement against Buyer or Sellers, which would prevent the Closing. No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any material transaction contemplated hereby.

(d) All deliverables of Buyer required pursuant to **Section 3.02(b)**.

(e) Buyer shall have delivered the Escrow Amount to the Escrow Agent pursuant to **Section 3.02(c)** .

(f) Sellers shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Buyer, in substantially the form attached hereto as **Exhibit F**, that each of the conditions set forth in **Section 7.03(a)** and **Section 7.03(b)** have been satisfied (the "**Buyer Closing Certificate**").

(g) Sellers shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying that attached thereto are true and complete copies of all resolutions

adopted by the board of directors authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby by the Buyer, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.

(h) Sellers shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying the names and signatures of the officers of Buyer authorized to sign this Agreement, the Transaction Documents and the other documents to be delivered hereunder and thereunder.

(i) Sellers shall have entered into KPW Bifurcated HW Contracts and terminated the KPW Contracts.

(j) Buyer shall have delivered to Sellers such other documents or instruments as Sellers reasonably request and are reasonably necessary to consummate the transactions contemplated by this Agreement.

Section 7.04 Casualty or Condemnation.

(a) Seller shall retain all risks and liability for damage to any of the Restaurants or any parcel of real property on which a Restaurant is located, by fire, storm, accident, or any other casualty or cause (a "Casualty Loss") until the Effective Time. If, prior to the Effective Time, any of the Restaurants suffers a Casualty Loss which Seller and Buyer do not reasonably expect to be repaired or replaced prior to the Closing Date, then Buyer shall have the option of either (a) proceeding with the purchase of the affected Restaurant and obtaining from Seller all insurance proceeds with respect to such Casualty Loss (other than amounts arising from lost cash or inventory) and there shall be an equitable reduction in the Purchase Price to the extent that such insurance proceeds are insufficient to repair or replace the damage caused by the Casualty Loss, or (b) terminating this Agreement.

(b) In the event of an eminent domain or condemnation proceeding which prevents a Restaurant from operating in the Ordinary Course of business, at Buyer's election (a) Buyer may terminate this Agreement with respect to such Restaurant, as applicable, and the applicable Seller shall retain title thereto (including the rights from BWW solely with respect to such Restaurant) and the right to operate such Restaurant and there shall be an equitable reduction in the Purchase Price; or (b) Buyer may proceed to close and assume the rights of the applicable Seller as tenant with regard to such Restaurant.

ARTICLE VIII INDEMNIFICATION

Section 8.01 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect until the date that is fifteen (15) months from the Closing Date; *provided, that* the representations and warranties in **Section 4.01**, **Section 4.02**, **Section 4.08**, **Section 4.20**, **Section 5.01**, **Section 5.02** and **Section 5.04** shall survive indefinitely and the representations and warranties in **Section 4.16**, **Section 4.17** and **Section 4.19** shall survive for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof). No party shall be subject to any indemnification or hold harmless obligations pursuant to this **Article VIII** unless a claim for Losses is made by the Indemnified Party in a detailed written notice to the Indemnifying Party setting forth the estimated amount of (if reasonably practicable) and the basis for the claim delivered to the Indemnifying Party within fifteen (15) months

following the Closing Date (the “ **Survival Period** ”); provided, that the Survival Period shall be extended for those representations and warranties set forth above in this **Section 8.01** for the periods of survival set forth herein above corresponding to such representations and warranties; provided further, that the Survival Period for any claim for breach of a covenant required to be performed subsequent to the Effective Time shall be indefinite. Notwithstanding the foregoing, any claims for indemnification or to be held harmless hereunder that are asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable Survival Period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

Section 8.02 Indemnification By Sellers and Principal Members. Subject to the other terms and conditions of this **Article VIII** , each Seller and each Principal Member, jointly and severally, shall indemnify and defend each of Buyer and its Affiliates and their respective Representatives (collectively, the “ **Buyer Indemnitees** ”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Buyer Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Sellers or Principal Members contained in this Agreement, the other Transaction Documents or in any certificate or instrument delivered by or on behalf of Sellers or Principal Members pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date;

(b) any breach or non-fulfilment of any covenant, agreement or obligation to be performed by Sellers or their applicable Affiliates or Principal Members pursuant to this Agreement, the other Transaction Documents or any certificate or instrument delivered by or on behalf of Sellers or their applicable Affiliates or Principal Members pursuant to this Agreement or the other Transaction Documents;

(c) any Excluded Asset or any Excluded Liability;

(d) any Third Party Claim based upon, resulting from or arising out of the business, operations or obligations of Sellers or any of their Affiliates (other than Assumed Liabilities) conducted, existing or arising prior to the Closing Date;

(e) Any Taxes with respect to the Business, Purchased Assets or Restaurants which is due, or will become due, for any period prior to the Closing Date; or

(f) The noncompliance by Sellers with any bulk sales, bulk transfer or similar Laws.

Section 8.03 Indemnification By Buyer. Subject to the other terms and conditions of this **Article VIII** , Buyer shall indemnify and defend each of Sellers and their Affiliates and their respective Representatives (collectively, the “ **Seller Indemnitees** ”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Seller Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement, the other Transaction Documents or in any certificate or instrument delivered by or on behalf of Buyer pursuant to this Agreement, as of the date such representation or warranty was made or as

if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);

(b) any breach or non-fulfilment of any covenant, agreement or obligation to be performed by Buyer or its applicable Affiliates pursuant to this Agreement, the other Transaction Documents or any certificate or instrument delivered by or on behalf of Buyer or its applicable Affiliates pursuant to this Agreement or the other Transaction Documents;

(c) the operations of Buyer (or its applicable Affiliate) under Sellers' Permits pursuant to the Management Agreement;

(d) any Assumed Liability;

(e) any liability arising under a guaranty of any lease, franchise agreement or other Assigned Contract that has not been released in accordance with the provisions of **Section 2.05 (c)** hereof; or

(f) any Third Party Claim based upon, resulting from or arising out of the business operations or obligations of Buyer or any Affiliate conducted, existed or arising on or after the Closing Date; or

(g) Any Taxes with respect to the Business, Purchased Assets or Restaurants which is due, or will become due, for any period on or after the Closing Date.

Section 8.04 Certain Limitations. The indemnification provided for in **Section 8.02** and **Section 8.03** shall be subject to the following limitations:

(a) Sellers and Principal Members shall not be liable to the Buyer Indemnitees for indemnification under **Section 8.02(a)** (other than with respect to a claim for indemnification based upon, arising out of, with respect to or by reason of any inaccuracy in or breach of any representation or warranty in **Section 4.01**, **Section 4.02**, **Section 4.08**, **Section 4.17**, **Section 4.18(c)**, **Section 4.19** and **Section 4.20** (the "**Buyer Basket Exclusions**")), until the aggregate amount of all Losses in respect of indemnification under **Section 8.02(a)** (other than those based upon, arising out of, with respect to or by reason of the Buyer Basket Exclusions) exceeds \$100,000, in which event Sellers and the Principal Members shall be required to pay or be liable for all such Losses from the first dollar.

(b) Buyer shall not be liable to the Seller Indemnitees for indemnification under **Section 8.03(a)** (other than with respect to a claim for indemnification based upon, arising out of, with respect to or by reason of any inaccuracy in or breach of any representation or warranty in **Section 5.01**, **Section 5.02**, and **Section 5.04** (the "**Seller Basket Exclusions**")) until the aggregate amount of all Losses in respect of indemnification under **Section 8.03(a)** (other than those based upon, arising out of, with respect to or by reason of the Seller Basket Exclusions) exceeds \$100,000, in which event Buyer shall be required to pay or be liable for all such Losses from the first dollar.

(c) Sellers' and Principal Members' maximum liability to the Buyer Indemnitees for indemnification under **Section 8.02(a)** shall not exceed twenty percent (20%) of the Purchase Price, other than with respect to a claim for indemnification based upon, arising out of, with respect to or by reason of any inaccuracy in or breach of any representation or warranty in **Section 4.01**, **Section 4.02**, **Section 4.08**, **Section 4.17**, **Section 4.19** and **Section 4.20**, which shall not be subject to such cap. Without limiting the foregoing, the maximum aggregate liability of Sellers and Principal Members under **Section 8.02** (including claims under **Section 8.02(a)**) shall not exceed the Purchase Price actually received by such Seller or such Principal Member.

(d) Buyer liability to the Seller Indemnitees for indemnification under **Section 8.03(a)** shall not exceed twenty percent (20%) of the Purchase Price, other than with respect to a claim for indemnification based upon, arising out of, with respect to or by reason of any inaccuracy in or breach of any representation or warranty in **Section 5.01** , **Section 5.02** and **Section 5.04** which shall not be subject to such cap.

(e) For purposes of this **Article VIII** , the amount of any Losses related to any inaccuracy in or breach of any representation or warranty shall be determined without regard to any standard of materiality, Material Adverse Effect or other similar qualification contained in or otherwise applicable to such representation or warranty.

(f) Notwithstanding any representation or warranty of Sellers herein, Sellers and Principal Members shall have no liability or obligation under this Agreement with respect to any Losses on account of any liability or obligation to the extent accounted for in the Post-Closing Adjustment for which a payment was made pursuant to **Section 2.06(a)**.

(g) No Indemnified Party may recover Losses more than once for any specific facts, omissions, or circumstances notwithstanding the fact that such facts, omissions or circumstances may constitute a breach of more than one (1) representation or warranty.

Section 8.05 Indemnification Procedures. The party making a claim under this **Article VIII** is referred to as the “ **Indemnified Party** ”, and the party against whom such claims are asserted under this **Article VIII** is referred to as the “ **Indemnifying Party** .”

(a) **Third Party Claims.** If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a “ **Third Party Claim** ”) against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) calendar days after receipt of such notice of such Third Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party’s expense and by the Indemnifying Party’s own counsel, and the Indemnified Party shall cooperate in good faith in such defense. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to **Section 8.05(b)** , it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party’s right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to **Section 8.05(b)** , pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. Sellers and Buyer shall cooperate with each other in all

reasonable respects in connection with the defense of any Third Party Claim, including making available (subject to the provisions of **Section 6.06**) records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) **Settlement of Third Party Claims.** Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld, conditioned or delayed), except as provided in this **Section 8.05(b)** . If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within three (3) days after its receipt of such notice, the Indemnified Party may elect to thereafter defend or, as applicable, may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to **Section 8.05(a)** , it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) **Direct Claims.** Any Action by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a “**Direct Claim**”) shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party’s investigation by giving such information and assistance (including reasonable access to the Indemnified Party’s premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such thirty (30) day period, the Indemnifying Party shall be deemed to have rejected such claim. In the event any Direct Claim is rejected or deemed to be rejected, or the parties are not otherwise able to settle such Direct Claim, each of the parties shall be free to pursue such rights and remedies available to them at law or in equity subject to the provisions of this Article VIII.

(d) **Cooperation.** Upon a reasonable request by the Indemnifying Party, each Indemnified Party seeking indemnification hereunder in respect of any Direct Claim, hereby agrees to consult with the Indemnifying Party and act reasonably to take actions not adverse to the Indemnified Party’s financial or business interests and otherwise reasonably requested by the Indemnifying Party in order to attempt to reduce

the amount of Losses in respect of such Direct Claim. Any costs or expenses associated with taking such actions shall be included as Losses hereunder.

Section 8.06 Payments. Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this **Article VIII**, the Indemnifying Party shall satisfy its obligations within ten (10) Business Days of such agreement or final, non-appealable adjudication by wire transfer of immediately available funds. The parties hereto agree that should an Indemnifying Party not make full payment of any such obligations within such ten (10) Business Day period, any amount payable shall accrue interest from and including the date of agreement of the Indemnifying Party or final, non-appealable adjudication to and including the date such payment has been made at a rate per annum equal to 30-day LIBOR plus 4.00%. Such interest shall be calculated daily on the basis of a 365 day year and the actual number of days elapsed, without compounding.

Section 8.07 Tax Treatment of Indemnification Payments. All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

Section 8.08 Exclusive Remedies. Subject to **Section 6.07** and **Section 10.11**, the parties acknowledge and agree that their sole and exclusive remedy after the Closing with respect to any and all claims (other than claims arising from fraud, criminal activity or wilful misrepresentation on the part of a party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this **Article VIII**. In furtherance of the foregoing, each party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law following the Closing, except pursuant to the indemnification provisions set forth in this **Article VIII**. Nothing in this **Section 8.08** shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any Person's fraudulent conduct, criminal activity or intentional misrepresentation.

Section 8.09 Assignment of Claims. If any Indemnified Party receives any payment from an Indemnifying Party in respect of any Losses pursuant to this **Article VIII** and such Indemnified Party could have recovered all or a part of such Losses from a third party (" **Potential Contributor** ") based on the underlying claim asserted against the Indemnifying Party, such Indemnified Party shall assign, on a non-recourse basis and without any representation or warranty, all of its rights to proceed against the Potential Contributor as are necessary or appropriate to permit the Indemnifying Party to recover from the Potential Contributor the amount of such payment. Any payment received in respect of such claim shall be distributed, (i) first to Indemnifying Party in an amount equal to the aggregate payments made by such Indemnifying Party to the Indemnified Party in respect of such claim, plus costs and expenses incurred in investigating, defending or otherwise incurred in connection with addressing such claim or in pursuing a recovery from the Potential Contributor, and (ii) the balance, if any, to the Indemnified Party.

Section 8.10 Insurance and Tax Benefits. Notwithstanding anything herein to the contrary, an Indemnifying Party shall have no liability under this **Article VIII** to any Indemnified Party with respect to any claim to the extent Indemnified Party (i) receives any insurance proceeds relating to such claim, (ii) receives payment or indemnification from any third party respecting the matter covered by such claim, or (iii) receives any Tax benefit in respect of the subject matter of such claim.

Section 8.11 Mitigation. Indemnified Parties shall, and shall cause their Affiliates to take commercially reasonable steps to mitigate any Losses incurred or sustained by Indemnified Parties that may give rise to any claims for indemnification hereunder upon becoming aware of any event that would reasonably be expected to, or does, give rise thereto, including by incurring costs only to the extent reasonably necessary to remedy the breach that gives rise to such Losses.

Section 8.12 Recovery from Escrow . Notwithstanding anything to the contrary contained in this Agreement, Buyer Indemnitees shall recover any Losses pursuant to this **Article VIII** first from the Escrow Fund, and second, to the extent the Escrow Fund is insufficient, from Sellers and the Principal Members (subject to the other limitations set forth in this **Article VIII**).

Article VIII TERMINATION

Section 9.01 Termination. This Agreement may be terminated at any time prior to the Closing:

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

(b) by Buyer by written notice to Sellers if:

(i) Buyer is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Sellers pursuant to this Agreement that would give rise to the failure of any of the conditions specified in **Article VII** and such breach, inaccuracy or failure has not been cured by Sellers within thirty (30) days of Sellers' receipt of written notice of such breach from Buyer; or

(ii) any of the conditions set forth in **Section 7.01** or **Section 7.02** shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by August 15, 2019 (the "**Termination Date**"), unless such failure of any such condition shall be due to the failure of Buyer to perform or comply with any material covenant, agreement or other obligations of Buyer in this Agreement to be performed or complied with by it prior to the Closing;

(c) by Sellers by written notice to Buyer if:

(i) Sellers are not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer pursuant to this Agreement that would give rise to the failure of any of the conditions specified in **Article VII** and such breach, inaccuracy or failure has not been cured by Buyer within thirty (30) days of Buyer's receipt of written notice of such breach from Sellers;

(ii) any of the conditions set forth in **Section 7.01** or **Section 7.03** shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by the Termination Date, unless such failure of any such conditions shall be due to the failure of Sellers to perform or comply with any material covenant, agreement or other obligations of Sellers in this Agreement to be performed or complied with by Sellers prior to the Closing; or

(iii) BWV, in the exercise of its right of first refusal under its Franchise Agreements with Seller, attempts to reduce the Purchase Price; or compel Sellers to incur additional costs and expenses

not contemplated by this Agreement; or otherwise reduce or diminish the benefits of this Agreement in any material way, in which event Sellers shall have the unqualified right to terminate this Agreement with no further liability or obligation to Buyer.

(d) by Buyer, on the one hand, or Sellers on the other hand, by written notice to the other party if:

(i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited and remains in effect through the Termination Date; or

(ii) any Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions contemplated by this Agreement, and such Governmental Order shall have become final and non-appealable or shall remain in effect through the Termination Date.

(e) by Buyer, on the one hand, or Sellers on the other hand, by written notice to the other party if BWB provides notification to Sellers that BWB has elected to exercise its right of first refusal to acquire the Restaurants in accordance with the terms of the Franchise Agreements except in the event BWB, as part of the exercise of its right of first refusal, agrees to assume this Agreement in its entirety in which case Buyer shall be fully and completely released from all obligations under this Agreement.

Section 9.02 Effect of Termination. In the event of the termination of this Agreement in accordance with this **Article IX**, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except the provisions of **Section 6.06** and **Article X** which are by their express terms to survive termination of this Agreement, and this **Article IX**, shall survive termination of this Agreement (the “**Surviving Obligations**”) and provided further, if the transactions contemplated by this Agreement are not closed as a result of Buyer’s failure to obtain financing as contemplated by **Section 7.02(m)**, then Buyer agrees to pay Sellers a termination fee equal to the actual out-of-pocket expenses incurred by Sellers in connection with the execution, performance or termination of this Agreement, including all legal and accounting and any transfer fees payable to any third parties, in an amount not to exceed \$100,000.

ARTICLE X MISCELLANEOUS

Section 10.01 Expenses. Except as otherwise expressly provided herein, all costs and expenses, including, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred. Upon submission of this Agreement to BWB in connection with its approval and right of first refusal, Sellers and Buyer shall each submit one-half (1/2) of the required BWB Transfer Fee to BWB. Without limiting the foregoing, Buyer shall be solely responsible for (a) any fees or costs (other than Sellers’ and Buyer’s attorney’s fees) required to be paid in connection with Buyer’s financing, including any costs or expenses in connection with any agreements, consents or documents required by Buyer’s lender related to the Leases; (b) any fees or costs (other than Sellers’ and Buyer’s attorney’s fees) required to be paid for the transfer of or obtaining any new Permits (including any liquor licenses); and (c) any fees, costs or expenses (other than the BWB Transfer Fee) imposed by BWB as part of its approval of Buyer as the transferee of the Franchise Agreements.

Section 10.02 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally

recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this **Section 10.02**):

If to Sellers:

Here's Wings, LLC
Here's Wings Real Estate, LLC
B-Dubs LLC
22285 Pepper Rd.
Suite 307
Lake Barrington, IL 60010
Facsimile: (847) 381-3866
Telephone: (847) 381-3864
E-mail: john-weiler@sbcglobal.net
Attention: John A. Weiler, Manager

with a copy to:

Lawrence Guzik, Esq.
Attorney at Law
22285 Pepper Rd
Suite 308
Lake Barrington, IL 60010
Facsimile: (847) 381-3866
Telephone: (847) 842-8881
E-mail: lguzik1015@aol.com

with a copy to:

Blitz, Bardgett & Deutsch
120 South Central Avenue - Suite 1500
St. Louis, Missouri 63105
Facsimile: (314) 881-4844
Telephone: (314) 881-4833
E-mail: rbrandt@bbdlc.com
Attention: Robert Brandt, Esq.

If to Buyer:

AMC Wings, Inc.
27680 Franklin Road
Southfield, Michigan 48034
Facsimile: (248) 223-9165
Telephone: (833) 374-7282 ext. 718
E-mail: dgburke@drh-inc.com
Attention: David G. Burke, President

with a copy to:

Dykema Gossett PLLC
39577 Woodward Avenue - Suite 300
Bloomfield Hills, Michigan 48304-2820
Facsimile: 855-245-0196
Telephone: (248) 203-0859
E-mail: drmcdonald@dykema.com .
Attention: D. Richard McDonald, Esq.

Section 10.03 Interpretation. For purposes of this Agreement, (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement

as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

Section 10.04 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 10.05 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Except as provided in **Section 6.07(d)**, upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 10.06 Entire Agreement. This Agreement and the other Transaction Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the other Transaction Documents, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

Section 10.07 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. No party may assign its rights or obligations hereunder without the prior written consent of the other parties, which consent shall not be unreasonably withheld or delayed; *provided, however*, that prior to the Closing Date, Buyer may, without the prior written consent of Sellers but with notice to Sellers, assign all or any portion of its rights under this Agreement to one or more of its direct or indirect wholly-owned subsidiaries. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 10.08 No Third-party Beneficiaries. Except as provided in **Article VIII**, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 10.09 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. The failure of any party at any time to require performance of any provisions hereof shall, in no manner, affect the right at a later date to enforce the same. No waiver by any party of any condition, or

breach of any provision, term, covenant, representation or warranty contained in this Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

Section 10.10 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois without giving effect to any choice or conflict of law provision or rule (whether of the State of Illinois or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of Illinois.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF ILLINOIS IN EACH CASE LOCATED IN THE COUNTY OF COOK, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.10(c).

Section 10.11 Specific Performance. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

Section 10.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A

signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

SELLERS:

**Here's Wings, LLC,
Here's Wings Real Estate, LLC,
Here's Wings Hoffman Estates, LLC
Here's Wings Mt. Prospect, LLC
Here's Wings Round Lake Beach, LLC
Here's Wings Skokie, LLC
Here's Wings Vernon Hills, LLC
Here's Wings II – Northbrook, LLC
Here's Wings Old Orchard, LLC
B-Dubs RE, LLC
B-Dubs CL, LLC,**
each an Illinois limited liability company

By: _____
Name: John A. Weiler
Title: Manager

PRINCIPAL MEMBERS:

John A. Weiler

James Dixon

Terry Winkler

BUYER:

AMC Wings, Inc.
a Michigan corporation.

By: _____
Name: _____
Title: _____

DIVERSIFIED RESTAURANT HOLDINGS, INC. LEGAL STRUCTURE

Legal Entity	State Organized	Purpose of Company	Ownership Structure
Diversified Restaurant Holdings, Inc.	Nevada	Parent Company	Public Entity: SAUC (NASDAQ) (Parent Company)
AMC Group, Inc.	Michigan	Management Company	Diversified Restaurant Holdings, Inc.
AMC Real Estate, Inc.	Michigan	Management Company	Diversified Restaurant Holdings, Inc.
AMC Wings, Inc. d/b/a Buffalo Wild Wings Grill & Bar	Michigan	Owns all BWW restaurants	Diversified Restaurant Holdings, Inc.

Exhibit 23

Consent of Independent Registered Public Accounting Firm

We hereby consent to the incorporation by reference in the Registration Statements on Form S3 (No. 333-225457) and Form S8 (No. 333-219273) of Diversified Restaurant Holdings, Inc. of our report dated April 3, 2019 , relating to the consolidated financial statements which appears in this Form 10-K. Our report contains an explanatory paragraph regarding the Company's ability to continue as a going concern.

/ s/ BDO USA, LLP
Troy, Michigan
April 3, 2019

Exhibit 31.1

RULE 13a-14(a) CERTIFICATION OF CHIEF EXECUTIVE OFFICER

I, David G. Burke, certify that:

1. I have reviewed this Annual Report on Form 10-K for the fiscal year ended December 30, 2018 of Diversified Restaurant Holdings, Inc. (the "Company");
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13-a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonable likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: April 3, 2019

DIVERSIFIED RESTAURANT HOLDINGS, INC.

By: /s/ David G. Burke
David G. Burke
President and Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

RULE 13a-14(a) CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, Phyllis A. Knight, certify that:

1. I have reviewed this Annual Report on Form 10-K for the fiscal year ended December 30, 2018 of Diversified Restaurant Holdings, Inc. (the "Company");
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13-a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financing reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonable likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: April 3, 2019

DIVERSIFIED RESTAURANT HOLDINGS, INC.

By: /s/ Phyllis A. Knight

Phyllis A. Knight
Treasurer and Chief Financial Officer
(Principal Financial Officer)

