

ALSTON & BIRD LLP

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*Counsel to the Debtors and
Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	CHAPTER 11
)	
K.G. WINDDOWN, LLC, <i>et al.</i> , ¹)	
)	CASE NO. 20-11723 (MG)
Debtors.)	
)	(Jointly Administered)
)	

**NOTICE OF FIRST AMENDMENT TO
AMENDED AND RESTATED ASSET PURCHASE AGREEMENT**

PLEASE TAKE NOTICE THAT the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) each filed a voluntary petition for relief under chapter 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”) on July 28, 2020 and July 31, 2020 (the “**Petition Date**”).

PLEASE TAKE FURTHER NOTICE THAT on December 22, 2020, the Bankruptcy Court entered the *Order (I) Approving Asset Purchase Agreement Among Sellers and Buyer, (II) Authorizing Sale of Substantially All of the Debtors’ Assts Free and Clear of Liens, Claims, Interest, and Encumbrances, (III) Authorizing Assumption and Assignment of Certain Executory Contracts and Leases in Connection Therewith, and (IV) Granting Related Relief* (the “**Sale Order**”) [Dkt. No. 392].

PLEASE TAKE FURTHER NOTICE THAT the Sellers and Buyer executed the Closing Memorandum dated December 24, 2020 [Dkt. No. 396].

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number (if any), include: KG Winddown, LLC (8556); KG USA Winddown, LLC (1682); KG III Winddown, LLC (2613); KG LV Winddown, LLC (9805); KG Florida Winddown, LLC (9385); KG Puerto Rico Winddown, LLC (0901); KG AC Winddown, LLC (5082); KG Products Winddown, LLC (0303); KG LI Restaurant Group Winddown, LLC (1623); KG LI Winddown, LLC (1488); KG Franchise Winddown, LLC (0565); KG 60th St Holdings Winddown, LLC (9997); KG Broadway Winddown, LLC (4335); KG Hamptons Winddown, LLC (0423) and KG Payroll Winddown, LLC (0807). For the purpose of these chapter 11 cases, the service address for the Debtors is: 12 Penns Trail, Suite 125, Newton, PA 18940.
LEGAL02/40530036v1

PLEASE TAKE FURTHER NOTICE THAT that, pursuant to the terms and conditions of the Sale Order, the Stalking Horse APA, and the Closing Memorandum, the Closing occurred on December 24, 2020.

PLEASE TAKE FURTHER NOTICE THAT on December 24, 2020, Asset Purchase Agreement was executed. *See* Closing Memorandum Ex. B.

PLEASE TAKE FURTHER NOTICE THAT attached hereto as **Exhibit A** is a true and correct copy of the First Amendment to Amended and Restated Asset Purchase Agreement.

PLEASE TAKE FURTHER NOTICE that copies of the pleadings can be viewed and/or obtained by (i) accessing the Court's website at <http://www.nysb.uscourts.gov/>, (ii) contacting the Office of the Clerk of the Clerk, (iii) or from the Debtors' claims and noticing agent, Omni Agent Solutions, at <https://omniagentsolutions.com/ilmulino>. Note that a PACER password is needed to access documents on the Court's website.

Dated: March 24, 2021

ALSTON & BIRD LLP

By: /s/William Hao
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*Counsel to the Debtors and
Debtors in Possession*

Exhibit A

First Amendment to Amended and Restated Asset Purchase Agreement

**FIRST AMENDMENT TO AMENDED AND
RESTATED ASSET PURCHASE AGREEMENT**

This **FIRST AMENDMENT TO AMENDED AND RESTATED ASSET PURCHASE AGREEMENT**, dated as of March 24, 2021 (this “**Amendment**”) is entered into by and among K.G. IM, LLC; IM LLC-III; IL Mulino USA, LLC; IMNYLV, LLC; IM NY Florida, LLC; IM NY Puerto Rico, LLC; IMNY AC, LLC; IM Products, LLC; IM Long Island Restaurant Group, LLC; IM Long Island, LLC; IM Franchise, LLC; IM 60th Street Holdings, LLC; IM Broadway, LLC; IMNY Hamptons, LLC; and IM Payroll, LLC (each a “**Seller**” and collectively, the “**Sellers**”), and BSP Agency LLC, Providence Debt Fund III L.P., Benefit Street Partners SMA-C L.P., Benefit Street Partners SMA LM L.P., Providence Debt Fund III Master (Non-US) Fund L.P., and Benefit Street Partners SMA-C SPV L.P. (together with their permitted successors, designees and assigns, collectively, the “**Buyer**”).

RECITALS

WHEREAS, Sellers and Buyer entered into that certain Amended and Restated Asset Purchase Agreement dated October 21, 2020, as amended as of December 24, 2020 (the “**Asset Purchase Agreement**”). Capitalized terms used but not otherwise defined herein shall have the meaning given to them in the Asset Purchase Agreement.

WHEREAS, on December 22, 2020, the United States Bankruptcy Court for the Southern District of New York entered the *Order (I) Approving Asset Purchase Agreement Among Sellers and Buyer, (II) Authorizing Sale of Substantially All of the Debtors’ Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (III) Authorizing Assumption and Assignment of Certain Executory Contracts and Leases in Connection Therewith, and (IV) Granting Related Relief* (the “**Sale Order**”).¹

WHEREAS, the Sellers and Buyer executed the Closing Memorandum dated December 24, 2020.²

WHEREAS, pursuant to the terms and conditions of the Sale Order, Asset Purchase Agreement and the Closing Memorandum, the Closing occurred on December 24, 2020.

WHEREAS, Sellers and Buyer have agreed, subject to the terms and conditions set forth herein, to amend **Section 2.10** of the Asset Purchase Agreement.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

SECTION 1. AMENDMENT TO THE ASSET PURCHASE AGREEMENT

1.1 Section 2.10 of the Asset Purchase Agreement shall be amended and restated in its entirety to read as follows:

¹ *In re K.G. Winddown, LLC et al.*, No. 20-11723 (MG) (Bankr. S.D.N.Y. Dec. 22, 2020), ECF No. 392.

² *Id.* ECF NO. 396.

Allocation. Within one hundred fifty (150) calendar days after the Closing Date, Buyer shall in good faith prepare an allocation of the Purchase Price (and all capitalized costs and other amounts treated as purchase price for U.S. federal income Tax purposes) among the Purchased Assets in accordance with Section 1060 of the IRC and the Treasury Regulations thereunder (and any similar provision of United States state or local or non-United States Law, as appropriate). Sellers shall have thirty (30) calendar days following receipt of Buyer's proposed allocation to review and comment on such proposed allocation and Buyer shall consider such comments in good faith. Thereafter, Buyer shall provide Sellers with Buyer's final allocation schedule, and Buyer and Sellers shall report, act and file Tax Returns (including Internal Revenue Service Form 8594) in all respects and for all purposes consistent with such allocation. Neither Buyer nor Sellers shall take any position (whether in audits, Tax Returns or otherwise) which is inconsistent with such allocation; provided that nothing contained herein shall prevent Buyer or Sellers from settling any proposed deficiency or adjustment by any Governmental Entity based upon or arising out of such allocation, and neither Buyer nor Sellers shall be required to litigate before any court any proposed deficiency or adjustment by any Governmental Entity challenging the allocation.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to Asset Purchase Agreement to be duly executed and delivered by their proper and duly Authorized Signatories as of the day and year first above written.

IL MULINO USA, LLC

By: K.G. IM, LLC, its Manager



By: _____

Name: Craig M. Boucher

Title: Chief Restructuring Officer

By: Chief Restructuring Officer



By: _____

Name: Craig M. Boucher

IMNY AC, LLC

By: K.G. IM, LLC, its Manager



By: _____

Name: Craig M. Boucher

Title: Chief Restructuring Officer

By: Chief Restructuring Officer




By: _____


Name: Craig M. Boucher

IMNYLV, LLC

By: K.G. IM, LLC, its Manager


By: 
Name: Craig M. Boucher
Title: Chief Restructuring Officer

By: Chief Restructuring Officer


By: 
Name: Craig M. Boucher

IM LONG ISLAND RESTAURANT GROUP, LLC

By: K.G. IM, LLC, its Manager


By: 
Name: Craig M. Boucher
Title: Chief Restructuring Officer

By: Chief Restructuring Officer


By: 
Name: Craig M. Boucher

IM LONG ISLAND, LLC

By: K.G. IM, LLC, its Manager


By: 
Name: Craig M. Boucher
Title: Chief Restructuring Officer

By: Chief Restructuring Officer


By: 
Name: Craig M. Boucher

IM FLORIDA, LLC

By: K.G. IM, LLC, its Manager


By: 
Name: Craig M. Boucher
Title: Chief Restructuring Officer

By: Chief Restructuring Officer

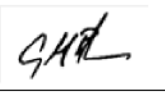
By: 
Name: Craig M. Boucher

IMNY HAMPTONS, LLC

By: K.G. IM, LLC, its Manager


By: 
Name: Craig M. Boucher
Title: Chief Restructuring Officer

By: Chief Restructuring Officer


By: 
Name: Craig M. Boucher

IM NY PUERTO RICO, LLC

By: K.G. IM, LLC, its Manager

By: 
Name: Craig M. Boucher
Title: Chief Restructuring Officer

By: Chief Restructuring Officer

By: 
Name: Craig M. Boucher

IM PRODUCTS, LLC

By: K.G. IM, LLC, its Manager



By: _____

Name: Craig M. Boucher
Title: Chief Restructuring Officer

By: Chief Restructuring Officer



By: _____

Name: Craig M. Boucher

IM FRANCHISE, LLC

By: K.G. IM, LLC, its Manager



By: _____

Name: Craig M. Boucher
Title: Chief Restructuring Officer

By: Chief Restructuring Officer



By: _____

Name: Craig M. Boucher

IM LLC-III LLC

By: K.G. IM, LLC, its Manager



By: _____

Name: Craig M. Boucher
Title: Chief Restructuring Officer

By: Chief Restructuring Officer



By: _____

Name: Craig M. Boucher

K.G. IM, LLC

By: Mackinac Partners LLC, its Manager



By: _____

Name: Craig M. Boucher

Title: Chief Restructuring Officer


By: Chief Restructuring Officer




By: _____

Name: Craig M. Boucher


BSP AGENCY LLC, as Buyer
By: Benefit Street Partners L.L.C., its sole
Member

By: 
Name: Michael Frick
Title: Authorized Signatory


PROVIDENCE DEBT FUND III L.P., as Buyer
By: Providence Debt Fund III GP L.P., its general
partner
By: Providence Debt Fund III Ultimate GP Ltd., its
general partner

By: 
Name: Michael Frick
Title: Authorized Signatory


BENEFIT STREET PARTNERS SMA-C L.P., as
Buyer
By: Benefit Street Partners L.L.C., its investment advisor

By: 
Name: Michael Frick
Title: Authorized Signatory

BENEFIT STREET PARTNERS SMA LM L.P., as
Buyer
By: Benefit Street Partners SMA LM GP L.P., its general
partner
By: Benefit Street Partners SMA LM Ultimate GP LLC,
its general partner

By: 
Name: Michael Frick
Title: Authorized Signatory

**PROVIDENCE DEBT FUND III MASTER (NON-
US) FUND L.P.**, as Buyer
By: Providence Debt Fund III GP L.P., its general
partner
By: Providence Debt Fund III Ultimate GP Ltd., its
general partner

By: 
Name: Michael Frick
Title: Authorized Signatory

BENEFIT STREET PARTNERS SMA-C SPV L.P.,

as Buyer

By: Providence Debt Fund III GP L.P., its general partner

By: Providence Debt Fund III Ultimate GP Ltd., its general partner

By:  _____

Name: Michael Frick

Title: Authorized Signatory