

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:

(Chapter 11)

PREMIER KINGS, INC., *et al.*,¹

Case No. 23-02871-TOM

Debtors.

(Jointly Administered)

**DEBTORS' MOTION FOR AN ORDER PURSUANT TO SECTION 363 OF THE
BANKRUPTCY CODE AUTHORIZING AND APPROVING THE SALE OF
CERTAIN REAL PROPERTY LOCATED IN LAWRENCEBURG, TENNESSEE AND
CERTAIN RELATED PERSONAL PROPERTY FREE AND CLEAR OF LIENS,
CLAIMS, INTERESTS AND ENCUMBRANCES**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) in these chapter 11 cases (the “Chapter 11 Cases”), by their undersigned counsel, hereby move (the “Motion”) pursuant to sections 105(a) and 363 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 6004 and 2002(a)(2) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for authorization to sell the Real Property and Purchased Assets (both as defined below) on the terms and conditions set forth in that certain *Real Estate Sale and Purchase Agreement* dated January 24, 2024 (the “Purchase Agreement”) by and between debtor Premier Kings of North Alabama, LLC (“Seller”) and Newell-Berg Holdings TN, LLC (“Purchaser”), a copy of which is attached hereto as **Exhibit A**, free and clear of all liens, claims, interests and encumbrances (collectively, the “Encumbrances”). In support of the Motion, the Debtors respectfully represent as follows:

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification numbers, are: Premier Kings, Inc. (3932); Premier Kings of Georgia, Inc. (9797); and Premier Kings of North Alabama, LLC (9282). The Debtors’ address is 7078 Peachtree Industrial Blvd., Suite #800, Peachtree Corners, GA 30071.



JURISDICTION AND VENUE

1. This Court has jurisdiction over these Chapter 11 Cases, the Debtors, property of the Debtors' estates and the subject matter of this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *General Order of Reference* from the United States District Court for the Northern District of Alabama, dated July 16, 1984, as amended July 17, 1984. This is a core proceeding under 28 U.S.C. § 157(b)(2)(N).

2. Venue of the Chapter 11 Cases in this district is proper under 28 U.S.C. §§ 1408 and 1409.

3. The statutory and legal predicates for the relief sought herein are sections 105(a) and 363 of the Bankruptcy Code and Bankruptcy Rules 2002(a)(2) and 6004.

BACKGROUND

I. Introduction

4. On October 25, 2023 (the "Petition Date"), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code, thus commencing these Chapter 11 Cases. The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. On November 6, 2023, the Bankruptcy Administrator for the Northern District of Alabama appointed the Official Committee of Unsecured Creditors in these Chapter 11 Cases (the "Committee"). [Doc. No. 135]. No request for a trustee or examiner has been made in these Chapter 11 Cases.

6. Detailed information addressing the Debtors' businesses, their finances and the circumstances leading to the filing of these Chapter 11 Cases is contained in the *Declaration of David M. Baker in Support of First-Day Motions* (the "First Day Declaration") [Doc. No. 20]. Those facts are incorporated herein by reference.

II. Sale of Substantially All of the Debtors' Assets as Going Concerns

7. In consultation with their professionals, the Debtors determined that a sale of substantially all of the Debtors' assets was necessary to preserve the go-forward value of the Debtors' businesses and maximize the return to creditors. The Debtors crafted a strategy to sell the Debtors' restaurants (the "Restaurants") either as a complete package or by geographical region. The proposed transaction contemplated that the buyers would continue operations at most or all of the purchased Restaurants after assuming the applicable real property leases from the Debtors, except at those Restaurants the purchasers chose not to include in the sale, pursuant to the applicable procedures and sale agreements.

8. To effectuate this strategy, the Debtors filed their bidding procedures motion on October 26, 2023 [Doc. No 42], which the Court granted by Order dated November 20, 2023 [Doc. No. 232] (the "Bidding Procedures Order"). The Debtors simultaneously filed a motion seeking the approval of the sale of the Debtors' assets following an auction (the "Auction") to be conducted in accordance with the Bidding Procedures Order [Doc. No. 43] (the "Sale Motion").

9. The Debtors and their professionals conducted the Auction on December 4, 2023, after which four "Successful Bidders" and two "Back-Up Bidders" were selected to purchase most of the Restaurants comprising the Debtors' portfolio, divided by region. Following the Auction, the Debtors finalized and executed asset purchase agreements with each of the Successful Bidders and Back-Up Bidders.

10. The asset purchase agreements executed by the Debtors and the Successful Bidders were approved by the Court following a hearing on the Sale Motion held on December 11, 2023 [Doc. No. 335] (the "Sale Order"). During the past few weeks, the Debtors have successfully completed all four of the closings of the sales to the Successful Bidders.

III. The Real Property and Purchased Assets to Be Sold

11. Seller owns certain real property in Lawrence County, Tennessee Parcel Number 078E D 010.00, a/k/a 1214 N. Locust Avenue, Lawrenceburg, Tennessee 38464, which property is described on Exhibit A to the Purchase Agreement, together with all improvements thereon, and easements and appurtenances thereto (the “Real Property”). See Purchase Agmt. § 1. The Real Property consists of 0.66 acres improved with a 2,800 square foot building that historically operated as a Burger King Restaurant, although the restaurant is currently closed. The Real Property was not included in the above-described sale transactions.

12. In order to market the Real Property effectively, prior to the Petition Date, Premier Kings of North Alabama LLC entered into that certain Representation Agreement dated as of August 1, 2023 with Marcus & Millichap Real Estate Investment Services, Inc. (“Marcus & Millichap”) pursuant to which Marcus & Millichap had the exclusive and irrevocable right and authority to sell the Real Property for a certain period of time. Contemporaneously herewith, the Debtors are filing a motion to retain Marcus & Millichap as their real estate broker and assume the Listing Agreement.

13. Since its engagement, Marcus & Millichap has actively and aggressively marketed the Real Property, including through listings and direct outreach to its commercial real estate database. Pursuant to that certain offering memorandum, Marcus and Millichap listed the Real Property for \$1,440,000 and received three offers from interested parties in the amounts of \$1,194,771, \$1.2 million and \$1.3 million prior to the Petition Date. Marcus and Millichap negotiated with the potential purchasers to increase the amount of the offers. Of the three offers received, and after further negotiations with the potential purchasers, the ultimate offer submitted by Purchaser was, in the Debtors’ business judgment, the highest and best offer. The Debtors

and their professionals have assessed the offer from Purchaser and have determined that it is not only the highest and best offer received, but it is also reflective of the market value of the Real Property as determined by an independent appraisal.

14. Accordingly, the Debtors and Purchaser have negotiated and executed the Purchase Agreement, which sets forth the material terms of the parties' agreement for the sale of the Real Property to Purchaser. The Purchase Agreement also contemplates that Purchaser will also purchase and receive from Seller, free of all Encumbrances, the assets listed on Exhibit B to the Purchase Agreement (the "Purchased Assets") that are used or useful in the operation of the Burger King Franchise. See Purchase Agmt. § 7. The Purchased Assets consist of personal property located inside the Burger King Restaurant, including all signs and signage located on the Real Property. See id. Ex. B.

15. The Purchase Agreement provides that Purchaser will purchase the Real Property for \$1,310,000 (the "Purchase Price") to be paid by Purchaser to Seller at closing by wire transfer in cash or other readily available funds, as adjusted pursuant to the Purchase Agreement. See id. § 2. At the time the Purchase Agreement was signed, Purchaser delivered \$15,000 as earnest money, which is being held in escrow by Kolarich & Moore (as escrow agent) and shall be applied against the Purchase Price at closing. See id. § 3. The earnest money shall be immediately refunded to Purchaser only if Purchaser terminates the Purchase Agreement prior to the expiration of the due diligence period or Seller breaches its obligations under the Purchase Agreement and such breach is not cured by any applicable notice or cure periods. See id.

16. Purchaser has sixty (60) days from January 24, 2024 to conduct due diligence, and the sale is expected to close within thirty (30) days of the expiration of the due diligence

period, unless extended by Purchaser in accordance with the Purchase Agreement. See id. §§ 4, 5, 6.

RELIEF REQUESTED

17. By this Motion, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit B** (the “Proposed Order”), authorizing the Debtors to sell the Real Property and Purchased Assets to Purchaser on the terms set forth in the Purchase Agreement free and clear of all Encumbrances, with any such Encumbrances attaching to the proceeds of the sale in the order of their priority, with the same validity, force and effect which they now have as against the Real Property or Purchased Assets, subject to any claims and defenses the Debtors may possess with respect thereto.

BASIS FOR RELIEF REQUESTED

18. Section 363(b)(1) of the Bankruptcy Code empowers the Court to allow a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1).

19. In considering a proposed sale of assets outside of the ordinary course of business, deference should be paid to a debtor’s business judgment. *See In re Diplomat Const. Inc.*, 481 B.R. 215, 218 (Bankr. N.D. Ga. 2012) (“The business judgment test is the prevailing rubric to evaluate the proposed transaction under § 363(b)(1) . . .”).

20. Under the business judgment standard adopted by courts in this Circuit, the Debtors must establish “sound business reasons” for the proposed sale. *In re Gulf States Steel, Inc. of Alabama*, 285 B.R. 497, 514 (Bankr. N.D. Ala. 2002) (“Gulf States”). In considering whether to approve a sale, courts consider the following factors: “(1) any improper or bad faith motive, (2) price is fair and the negotiations or bidding occurred at arm’s length, (3) adequate procedure, including proper exposure to the market and accurate and reasonable notice to all

parties in interest.” Id. Importantly, any section 363 sale “is entitled to respect and deference from the Court, so long as the burden of giving sound business reasons is met.” Id.

21. The business judgment rule is not an onerous standard and may be satisfied “as long as [the proposed action] *appears* to enhance [the] debtor’s estate.” *Crystalin, L.L.C. v. Selma Props. Inc. (In re Crystalin, L.L.C.)*, 293 B.R. 455, 463-64 (B.A.P. 8th Cir. 2003) (internal quotation marks omitted) (alterations and emphasis in original). Courts require only that the debtors “show that a sound business purpose justifies such actions.” *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (citations omitted). “Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d. Cir. 2005) (recognizing that “[o]vercoming the presumptions of the business judgment rule on the merits is a near-Herculean task”).

A. The Sale Should be Approved as a Proper Exercise of the Debtors’ Sound Business Judgment

22. There are substantial business justifications for selling the Real Property and Purchased Assets to Purchaser on the terms set forth in the Purchase Agreement. The Burger King Restaurant located on the Real Property has closed. The Debtors have ceased all business operations at the Real Property and the sale of the Real Property is a necessary part of the liquidation of substantially all of the Debtors’ assets.

23. Bankruptcy Rule 6004(f)(1) provides that “sales not in the ordinary course of business may be by private sale or by public auction.” FED. R. BANKR. P. 6004(f). The Debtors respectfully submit that approval of the sale of the Real Property and Purchased Assets as a private sale is appropriate under the circumstances.

24. The Debtors have actively marketed the property for six months. Marcus & Millichap reached out to potential purchasers and ultimately received offers from two other interested parties, each of which was below the Purchase Price offered by Purchaser. The Real Property remained on the market until the Purchaser signed its letter of intent, and the Debtors have not received any further offers or expressions of interest. Thus, the Debtors believe that further marketing efforts for public sale are unlikely to result in higher or better offers for the Real Property. Indeed, the Purchase Price to be paid by Purchaser is reflective of the market value of the Real Property as determined by an independent appraisal. Given the value of the Real Property and the robust marketing efforts that have already occurred both before and during these Chapter 11 Cases, the Debtors submit that selling the Real Property and Purchased Assets on the terms set forth in the Purchase Agreement will reduce costs and other administrative expenses that otherwise would be incurred seeking authority to sell such assets at an auction.

25. The Purchase Agreement is the product of good faith, arms'-length negotiations among the parties. Purchaser is not affiliated with, nor is Purchaser an insider of, the Debtors. In addition, the proposed sale of the Real Property and Purchased Assets to Purchaser has been arrived at only after months of open and aggressive marketing. As discussed above, the consideration to be paid by Purchaser is fair and reasonable under the circumstances. Accordingly, the Debtors request that this Court find that Purchaser is a good faith purchaser under section 363(m) of the Bankruptcy Code and that the sale is not subject to avoidance under section 363(n) of the Bankruptcy Code.

26. In light of the foregoing, the Debtors respectfully submit that selling the Real Property and Purchased Assets to Purchaser on the terms set forth in the Purchase Agreement is

supported by the Debtors' sound business judgment and is in the best interests of the Debtors' estates and creditors.

B. The Sale Should be Approved Free and Clear of All Encumbrances

27. Section 363(f) of the Bankruptcy Code provides that a debtor may sell assets free and clear of liens, claims and other encumbrances or interests of an entity if “(1) applicable non-bankruptcy law permits sale of such property free and clear of such interest; (2) such entity consents; (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; or (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.” 11 U.S.C. § 363(f). Since the five conditions listed in section 363(f) of the Bankruptcy Code “are phrased in the disjunctive, property may be sold free and clear of interests if any one of the five conditions is satisfied.” *Gulf States*, 285 B.R. at 506.

28. The Debtors seek approval to sell the Real Property and Purchased Assets to Purchaser free and clear of all existing Encumbrances that are not expressly assumed by Purchaser in the Purchase Agreement. The only known holder of any Encumbrance on the assets to be sold is Wells Fargo Bank, National Association, as prepetition agent for the lender group (“Wells Fargo”), which has senior liens on substantially all of the Debtors' assets. The Debtors believe that the Purchase Price is in excess of the value of any such liens, thereby satisfying the conditions for a sale free and clear under section 363(f)(3) of the Bankruptcy Code. The Debtors have requested that Wells Fargo consent to the proposed sale and anticipate that Wells Fargo will consent to the proposed sale, provided that their lien attaches to the net proceeds. Upon closing, existing Encumbrances (if any) will attach to the net proceeds of the sale in the order of their priority, with the same validity, force and effect which they now have against the Real Property or Purchased Assets. Accordingly, the Debtors submit that the Real Property and Purchased

Assets may be sold free and clear of all Encumbrances pursuant to section 363(f) of the Bankruptcy Code.

WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h)

29. The Debtors request that, to the extent applicable to the relief requested in this Motion, the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” FED. R. BANKR. P. 6004(h).

NOTICE

30. The Debtors will provide notice of this Motion to: (a) the Office of the Bankruptcy Administrator for the Northern District of Alabama; (b) counsel for the Creditors’ Committee; (c) counsel to BKCI; (d) counsel to Wells Fargo Bank; (e) counsel to Purchaser; (f) all other parties that submitted an offer to purchase the Real Property; and (g) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order attached hereto as **Exhibit B** granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: February 14, 2024

By: /s/ Jesse S. Vogtle, Jr.

Jesse S. Vogtle, Jr.
Eric T. Ray
HOLLAND & KNIGHT LLP
1901 Sixth Avenue North, Suite 1400
Birmingham, Alabama 35203
Telephone: (205) 226-5700
Facsimile: (205) 214-8787
jesse.vogtle@hklaw.com
etray@hklaw.com

-and-

COLE SCHOTZ P.C.

Gary H. Leibowitz*
Irving E. Walker*
H.C. Jones III*
J. Michael Pardoe*
1201 Wills Street, Suite 230
Baltimore, MD 21231
(410) 230-0660
(410) 230-0667
gleibowitz@coleschotz.com
iwalker@coleschotz.com
hjones@coleschotz.com
mpardoe@coleschotz.com

Attorneys for the Debtors and Debtors in Possession

**Admitted Pro Hac Vice*

Exhibit A
Purchase Agreement

REAL ESTATE SALE AND PURCHASE AGREEMENT

THIS REAL ESTATE SALE AND PURCHASE AGREEMENT (the “Agreement”) made and executed on this 24th day of January, 2024, (the “Effective Date”) between Premier Kings of North Alabama, LLC an Alabama limited liability company with its principal place of business 5529 Carmichael Road, Montgomery, Alabama 36117 (hereinafter, “Seller”); and Newell-Berg Holdings TN, LLC, a Tennessee limited liability company, with its principal place of business 115 N. Eighth Street, Mayfield, Kentucky 42066 (hereinafter, “Purchaser”).

WITNESSETH:

WHEREAS, Seller is the owner of real property as described in Section 1 hereof; and

WHEREAS, upon satisfaction of, and subject to the terms and conditions set forth in this Agreement, Seller has agreed to sell the real property to Purchaser, and Purchaser has agreed to purchase the real property from Seller;

NOW THEREFORE, in consideration of the foregoing recitals, the mutual covenants set forth in this Agreement, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller hereby agree as follows:

1. **Property.** For the purchase price specified in this Agreement and subject to the terms and conditions specified herein, Seller agrees to sell and deliver to Purchaser, and Purchaser agrees to purchase and receive from Seller, the following described piece of real property:

Lawrence County, Tennessee Parcel Number 078E D 010.00 a/k/a 1214 N Locust Avenue, Lawrenceburg, Tennessee 38464, which property is depicted on EXHIBIT A hereto, together with all improvements thereon, and easements and appurtenances thereto (the “Property”).

2. **Purchase Price.** The purchase price for the Property will be the sum of One Million Three Hundred Ten Thousand and 00/100 Dollars (\$1,310,000.00) (the “Purchase Price”) to be paid by Purchaser to Seller at Closing by wire transfer in cash or other readily available funds, subject to the terms and conditions of this Agreement and as adjusted pursuant to the other terms of this Agreement.

3. **Earnest Money.** On the Effective Date, Purchaser shall deliver earnest money in the sum of Fifteen Thousand and 00/100 Dollars (\$15,000.00) (the “Earnest Money”) to Price, Hill, Kolarich & Moore, Attorneys at Law, 214 Second Avenue, North, Suite 205, Nashville, Tennessee 37201 (the “Escrow Agent”), which sum shall be applied against the Purchase Price at Closing. The Earnest Money shall be immediately refunded to Purchaser only in the event that (i) Purchaser terminates this Agreement prior to the expiration of the Due Diligence Period or (ii) Seller breaches its obligations under this Agreement and same is not cured by any applicable notice and/or cure periods. In any other event the Earnest Money shall be retained by Seller.

4. Due Diligence Period.

(a) Purchaser shall have a period of sixty (60) days from the Effective Date during which to inspect the Property (the "Due Diligence Period"). During the Due Diligence Period, Purchaser will be entitled to complete a full and complete "due diligence" of the Property, including, without limitation, a title examination, economic, structural, survey, environmental and zoning inspections, soil analysis and other investigations of the Property. More specifically, and without limiting the generality of the foregoing, during the Due Diligence Period, Purchaser may, at its option, perform or have performed a Phase I environmental audit for the Property in form and substance satisfactory to the Purchaser (the "Environmental Audit"). Purchaser and/or its agents may enter upon the Property for purposes of completing the Environmental Audit, the Land Survey and other such related testing and examination of the Property; provided, however, that (i) Purchaser shall give Seller a minimum of twenty-four (24) hours' notice of any on-site tour or inspection and (ii) Purchaser shall not disturb the peaceful possession and occupancy of the tenants. Prior to performing any inspections, Purchaser shall furnish to Seller a certificate of insurance demonstrating that Purchaser maintains public liability insurance with limits of at least One Million Dollars (\$1,000,000.00) for bodily or personal injury or death, and property damage insurance in the amount of at least Five Hundred Thousand Dollars (\$500,000.00). Notwithstanding the foregoing to the contrary, in no event shall Purchaser change the character of the Property (such as rezone or subdivide it) or conduct any invasive environmental testing (including soil borings) without Seller's prior written consent.

(b) All Due Diligence shall be completed within the Due Diligence Period and the cost of all such Due Diligence shall be at Purchaser's expense.

(c) Seller shall provide Purchaser and its agents and representatives with prompt and reasonable access to the Property during the Due Diligence Period to enable Purchaser to complete Due Diligence, subject to the conditions set forth in subparagraph (a) above.

(d) Within five (5) business days of the Effective Date, Seller will deliver to Purchaser, to the extent in Seller's possession or control, complete and true copies of (i) any existing survey of the Property in Seller's possession; (ii) any existing environmental reports in Seller's possession or prepared for Seller regarding the Property, including without limitation, any Phase I or Phase II environmental report; (iii) any existing geotechnical reports in Seller's possession or prepared for Seller regarding the Property; and (iv) Seller's owner's title policy.

(e) If for any reason Purchaser is not satisfied in its sole and absolute discretion with the results or findings of its Due Diligence including, without limitation, the results or findings of any Environmental Audit or survey, or otherwise determines that the Property is not suitable for its intended use, Purchaser shall notify Seller in writing prior to 5:00 p.m. EST on the last day of the Due Diligence Period that it elects to terminate this Agreement. Upon receipt of such notification by Seller during the Due Diligence Period, this Agreement shall become null and void and of no further force or effect and the Earnest Money will be returned to Purchaser.

(f) Purchaser agrees to restore the Property to its condition as near as possible to the conditions of the Property before the tests and inspections conducted by Purchaser,

including but not limited to the Environmental Audit and Land Survey, with such restoration to occur within ten (10) days of the testing, inspection or survey. Purchaser shall indemnify and hold Seller harmless against any and all claims, demands, loss, expense (including reasonable attorneys' fees) and damage to persons or property arising from Purchaser's conduct during its inspection of the Property prior to the Closing Date, which obligation on the part of Purchaser shall survive termination of this Agreement for a period of six (6) months.

(g) Within five (5) business days after the Effective Date, Buyer shall order at its sole cost and expense, and on receipt provide to Seller, a commitment for a standard owner's policy of title insurance (the "Title Commitment"; the policy to be issued pursuant thereto, the "Title Policy") from such title company of Buyer's choice ("Title Company") insuring Buyer's marketable fee simple title and interest in the Property, to the extent of the Purchase Price, together with copies of all documents referred to therein. The Title Commitment will contain exceptions for real estate taxes and assessments for the year of Closing that are not yet due and payable. The standard printed title exceptions shall be removed from the Title Policy by Seller's execution of an owner's affidavit reasonably acceptable to the Title Company. All matters shown on or disclosed by the Title Commitment (or any update, revision or supplement to either the Title Commitment or Survey) shall be deemed to be Permitted Exceptions (as hereinafter defined); provided, however, Seller shall cure at or before Closing any tax liens, other than the lien for taxes not yet due and payable, mechanic's and materialmen's liens, judgment liens, deeds of trust or mortgage liens and any other monetary liens, but only to the extent any such monetary lien was created by Seller, shown on the Title Commitment. Buyer shall notify Seller of any defect, exception or other matter affecting the Property (other than exceptions for real estate taxes and assessments and for the standard printed exceptions as set forth above) that is unacceptable to Buyer (the "Title Defects") in writing (the "Title Objection Letter"), and such noted Title Defects shall not automatically become Permitted Encumbrances. Seller may, but is not obligated to, use its reasonable efforts to remove or cure the Title Defects, but shall not be required to incur any costs or to institute litigation in doing so. Within ten (10) days of receipt of the Title Objection Letter, Seller may notify Buyer whether it intends to remove or cure any items set forth therein; provided however that any failure by Seller to timely provide the foregoing notice shall be deemed Seller's notice that it does not intend to remove or cure such items. If Seller does not agree to cure any or all of the Title Defects prior to the end of the Due Diligence Period (as defined herein), then, Buyer, in its sole and absolute discretion may terminate this Agreement by giving written termination notice to Seller and receive a full refund of all earnest money, or Buyer may proceed to Closing, in which case the Title Defects will be deemed Permitted Encumbrances.

5. Closing. The Closing of the purchase transaction shall occur within thirty (30) days of the expiration of the Due Diligence Period at a date and time to be agreed upon by the parties (the "Closing Date") at the offices of Price, Hill & Kolarich, 214 Second Avenue, North, Suite 205, Nashville, Tennessee 37201 or at such other place as the parties agree in writing. Closing by mail shall be permitted. Following Closing, Purchaser shall have the right to take immediate possession of the Property.

6. Extended Closing Date. Purchaser may extend the Closing Date for one (1) additional period of thirty (30) days (the "Extended Closing Date") by delivering to the Seller written notice of its intent to exercise its option for the Extended Closing Date and by depositing an additional sum of Fifteen Thousand and 00/100 Dollars (\$15,000.00) with the Escrow Agent at least three (3) business days prior to the initial Closing Date, which shall be non-refundable and applicable to the Purchase Price.

7. **Purchase and Sale of Assets.** Subject to the terms and conditions set forth in this Agreement and on the basis of and in reliance upon the representations, warranties, obligations and agreements set forth in this Agreement, the Seller agrees to sell, assign, transfer, convey and deliver to Purchaser and Purchaser agrees to purchase and receive from the Seller, free and clear of all liens, charges and encumbrances, the assets listed on EXHIBIT B, hereto and incorporated herein by reference (the "Purchased Assets") that are used or useful in the operation of a Burger King franchise.

8. **Items and Documents to be Delivered at Closing by Seller.** At the Closing, Seller shall execute and/or deliver or cause to be delivered to Purchaser each of the following:

(a) A Quit Claim Deed, subject to Title Company Approval, duly executed and acknowledged by Seller conveying marketable, fee simple title to the Property;

(b) Closing Statement executed by Seller;

(c) Non-foreign person Affidavit executed by Seller;

(d) Form 1099S in such form as may be prescribed by the Internal Revenue Service executed by Seller;

(e) Bill of Sale in the form attached as EXHIBIT C;

(f) Such affidavits or certificates as may be reasonably required by Purchaser's title insurance company for purpose of issuing the policy of title insurance to be provided to Purchaser for the Property, including, but not limited to, an affidavit stating that there are no parties in possession of the Property other than Seller, that there is no sum owing to any person(s) or entity for work done or material furnished on the Property, and that there are no materialman's or mechanic's liens that exist or that have been filed against the Property that have not been paid in full; and

(g) Such other documents and instruments as may be reasonably required or requested by Purchaser's counsel or the title company to evidence Seller's right and authority to sell or convey title and to carry out the terms and intent of this Agreement.

9. **Items and Documents to be Delivered at Closing by Purchaser.** At the Closing, Purchaser shall execute and/or deliver or cause to be delivered to Seller each of the following:

(a) the Purchase Price (as adjusted pursuant to this Agreement) by wire transfer of cash or other immediately available funds;

(b) Closing Statement executed by Purchaser; and

(c) Such other documents and instruments as may be required by Seller to carry out the terms and intent of this Agreement.

10. **Representations, Warranties and Covenants.**

(a) Seller agrees, represents, and warrants to Purchaser that, to Seller's Knowledge, each of the following are true and will be true at Closing:

(i) Subject to the approval of the Bankruptcy Court, Seller shall have the authority and right to enter into and perform its obligations under this Agreement without the consent or authorization of any other court, agency, or federal, state or local governmental authority. The execution and delivery of this Agreement and the sale of the Property by Seller contemplated hereby have been duly authorized by all requisite company action, and no other proceedings, approvals, permits, authorizations or consents to this Agreement are required under Seller's operating agreement, or under any judgment, order, writ, injunction, decree, ordinance, law, rule, regulation, resolution or instrument of any court, agency, or federal, state or local governmental authority;

(ii) Seller has, or will have as of the Closing Date, fee simple title to the Property sold hereunder, free and clear of any and all liens, encumbrances and adverse matters which have arisen by, through, or under Seller which impose upon the owner of the Property an express obligation to pay money, but otherwise subject to matters shown on the title commitment obtained by Purchaser, and shall convey fee simple title to Purchaser at Closing;

(iii) This Agreement and each agreement, document and instrument executed and delivered by the Seller pursuant to this Agreement constitute, or when executed and delivered will constitute, valid and binding obligations of the Seller;

(iv) Within the last six (6) months, Seller has received no written notice of any liens to be assessed against the Property and not otherwise shown on the title commitment obtained by Purchaser;

(v) Within the last six (6) months, Seller has received no written notice from any local, state, or federal governmental agency of any violation of any statute, law, ordinance, deed restriction, rule, or regulation with respect to the Property or any investigation into violations of any statute, law, ordinance, deed restriction, rule, or regulation, which would have a material adverse effect against the Property;

For purposes of this Agreement, the term "to Seller's knowledge", "to Seller's actual knowledge", "knowledge" generally as it relates to Seller, or similar phrase shall mean without investigation, analysis, or review of court or other records of any kind and without inquiry of persons, the conscious awareness of facts or other information by Kamaljit K. Sidhu.

(b) Purchaser represents, warrants and covenants to Seller as follows, each of the following are true and will be true at Closing:

(i) Purchaser is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Tennessee.

(ii) The execution, delivery, and performance of this Agreement by Purchaser and all agreements, instruments, and documents herein provided to be executed by

Purchaser on the Closing Date: (i) do not violate the formation or governing document of Purchaser, or any contract, agreement, commitment, lease, order, judgment, or decree to which Purchaser is a party; and (ii) have been duly authorized by the consent of the members and managers (as applicable) of Purchaser and the appropriate and necessary action has been taken on the part of Purchaser. This Agreement is valid and binding upon Purchaser, subject to bankruptcy, reorganization, and other similar laws affecting the enforcement of creditors' rights generally.

(iii) "AS IS" SALE DISCLAIMERS. PURCHASER ACKNOWLEDGES AND AGREES AND IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT PURCHASER IS ACQUIRING THE PROPERTY "AS IS" AND "WHERE IS," IN ITS PRESENT STATE AND CONDITION AND WITH ALL FAULTS, WITHOUT ANY REPRESENTATIONS OR WARRANTIES FROM SELLER OF ANY KIND WHATSOEVER, WHETHER EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT OR IN ANY DOCUMENTS TO BE EXECUTED AND DELIVERED BY SELLER TO PURCHASER AT THE CLOSING. IN PARTICULAR, AND NOT BY WAY OF LIMITATION, SELLER MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE QUALITY, TITLE, PHYSICAL CONDITION, VALUE, OPERATION OR MANAGEMENT OF THE PROPERTY, THE INCOME OR EXPENSES FROM OR OF THE PROPERTY, THE COMPLIANCE OF THE PROPERTY WITH APPLICABLE LAWS OR REGULATIONS, INCLUDING, WITHOUT LIMITATION, ANY LAWS RELATING TO ZONING, SUBDIVISION, PLANNING, BUILDING, FIRE SAFETY, EARTHQUAKE, HEALTH OR ENVIRONMENTAL MATTERS, THE PRESENCE OR ABSENCE OF HAZARDOUS SUBSTANCES, OR THE COMPLIANCE OF THE PROPERTY WITH ANY COVENANTS, CONDITIONS OR RESTRICTIONS (WHETHER OR NOT OF RECORD) EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT OR IN ANY DOCUMENTS TO BE EXECUTED AND DELIVERED BY SELLER TO PURCHASER AT THE CLOSING. WITHOUT LIMITING THE FOREGOING, IT IS UNDERSTOOD AND AGREED THAT SELLER MAKES NO WARRANTY OF HABITABILITY, SUITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. DURING THE DUE DILIGENCE PERIOD, PURCHASER WILL HAVE MADE ALL INVESTIGATIONS PURCHASER DEEMS NECESSARY IN PURCHASING THE PROPERTY. IF THIS AGREEMENT IS NOT TERMINATED AND PURCHASER ACQUIRES THE PROPERTY AS PROVIDED HEREIN, PURCHASER SHALL HAVE THEREBY APPROVED ALL ASPECTS OF THE PROPERTY AND THIS TRANSACTION AND THEREBY WAIVES ANY CLAIM OR LIABILITY AGAINST SELLER RESPECTING THE PROPERTY EXCEPT IN CONNECTION WITH ANY REPRESENTATION OR WARRANTY OF SELLER IN THIS AGREEMENT WHICH EXPRESSLY PROVIDES THAT IT WILL SURVIVE THE CLOSING OR IN ANY DOCUMENTS TO BE EXECUTED AND DELIVERED BY SELLER TO PURCHASER AT THE CLOSING. ANY SPECIFIC KNOWLEDGE OF THE PROPERTY WHICH ACTUALLY COMES TO THE ATTENTION OF PURCHASER BEFORE THE CLOSING, WHETHER THROUGH SELLER OR DUE TO PURCHASER'S OWN INVESTIGATIONS, SHALL BE DEEMED TO REDUCE OR ELIMINATE ANY LIABILITY WHICH SELLER MAY OTHERWISE HAVE HAD AFTER THE CLOSING AS A RESULT OF SUCH REPRESENTATIONS AND WARRANTIES.

RELEASE. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT OR IN ANY DOCUMENTS TO BE EXECUTED AND DELIVERED BY SELLER TO PURCHASER AT THE CLOSING, AS A MATERIAL PART OF THE CONSIDERATION TO SELLER FOR THE

SALE OF THE PROPERTY, PURCHASER HEREBY WAIVES AND RELINQUISHES, AND RELEASES SELLER AND EACH OF SELLER'S MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS AND AGENTS (COLLECTIVELY, "SELLER RELEASEES") FROM, ANY AND ALL CLAIMS AND REMEDIES (INCLUDING, WITHOUT LIMITATION, ANY RIGHT OF RESCISSION) AGAINST SELLER RELEASEES, OR ANY OF THEM, BASED DIRECTLY OR INDIRECTLY ON (I) ANY PAST, PRESENT OR FUTURE CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE RELEASE OR PRESENCE OF ANY HAZARDOUS MATERIALS OR (II) ANY FAILURE TO DISCLOSE TO PURCHASER ANY INFORMATION REGARDING THE PROPERTY WHICH IS NOT THE SUBJECT OF A REPRESENTATION OR WARRANTY IN THIS AGREEMENT OR IN ANY DOCUMENTS TO BE EXECUTED AND DELIVERED BY SELLER TO PURCHASER AT THE CLOSING (WHICH MIGHT INCLUDE A DEFECTIVE, HAZARDOUS OR UNLAWFUL CONDITION OF WHICH SELLER SHOULD OTHERWISE BE AWARE, WHETHER OR NOT SUCH CONDITION REASONABLY COULD HAVE BEEN DISCOVERED BY PURCHASER THROUGH AN INSPECTION OF THE PROPERTY OR THE OFFICIAL RECORDS). PURCHASER UNDERSTANDS THAT SUCH WAIVER AND RELEASE INCLUDES STATUTORY AS WELL AS "COMMON LAW" AND EQUITABLE RIGHTS AND REMEDIES AND THAT IT COVERS POTENTIAL CLAIMS OF WHICH PURCHASER MAY BE CURRENTLY UNAWARE OR UNABLE TO DISCOVER. PURCHASER ACKNOWLEDGES THAT THE FOREGOING WAIVER AND RELEASE IS OF MATERIAL CONSIDERATION TO SELLER IN ENTERING INTO THIS AGREEMENT, THAT PURCHASER'S COUNSEL HAS ADVISED PURCHASER OF THE POSSIBLE LEGAL CONSEQUENCES OF MAKING SUCH WAIVER AND RELEASE AND THAT PURCHASER HAS TAKEN INTO ACCOUNT, IN AGREEING TO PURCHASE THE PROPERTY FOR THE PURCHASE PRICE SPECIFIED HEREIN, SELLER'S DISCLAIMER OF ANY WARRANTIES AND REPRESENTATIONS REGARDING THE PROPERTY OTHER THAN THOSE EXPRESSLY SET FORTH HEREIN.

PURCHASER FURTHER AGREES AND ACKNOWLEDGES THAT, IN GIVING THE FOREGOING WAIVER AND RELEASE, IT HAS WITH ITS LEGAL COUNSEL, CONSIDERED ANY STATUTE OR OTHER LAW THAT MIGHT APPLY TO AND LIMIT THE EFFECT OF PURCHASER'S WAIVER AND RELEASE HEREIN AND HEREBY KNOWINGLY WAIVES THE BENEFITS OF ANY SUCH LAW.

(iv) Purchaser is a reasonably knowledgeable, experienced and sophisticated purchaser of real estate and is relying on its own expertise and that of Purchaser's consultants in purchasing the Property and, except for those matters warranted to by Seller in Section 9(a), shall make an independent verification of the accuracy of any documents and information provided by Seller. Purchaser will conduct such inspections and investigations of the Property as to conditions thereof, and shall rely upon same. By failing to terminate this Agreement prior to the expiration of the Due Diligence Period, Purchaser acknowledges that Seller has afforded Purchaser a full opportunity to conduct such investigations of the Property as Purchaser deemed necessary to satisfy itself as to the condition of the Property and the existence or non-existence or curative action to be taken with respect to any hazardous materials on or discharged from the Property, and will rely solely upon same and not upon any information provided by or on behalf of Seller or its agents or employees with respect thereto, other than such representations, warranties and covenants of Seller as are expressly set forth in this Agreement. Upon Closing, Purchaser shall assume the risk that adverse matters, including, but not limited to, adverse physical or construction

defects or adverse environmental, health or safety conditions, may not have been revealed by Purchaser's inspections and investigations.

(v) Purchaser is not, and will not become, a person or entity with whom United States persons or entities are restricted or prohibited from doing business under regulations of OFAC (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

(c) Each of Seller and Purchaser hereby waives any and all rights or remedies it may have or be entitled to, deriving from disparity in size or from any significant disparate bargaining position in relation to the other.

11. Conditions of Purchaser's Obligations. The obligation of Purchaser to purchase the Property hereunder is subject to each of the following conditions precedent:

(a) Seller shall have performed and observed all of its covenants, obligations, conditions and warranties hereunder as of Closing Date in all material respects;

(b) The representations and warranties of Seller as set forth in Section 9 will be true and correct in all material respects as of the Closing Date; and

(c) Seller shall provide all other documents and instruments as may be reasonably required or requested by Purchaser's counsel or title company to evidence Seller's right and authority to sell or convey title.

(d) At Closing, Seller shall convey fee simple title to the Property to Purchaser by executing and delivering to Purchaser a Quit Claim Deed in recordable form for each piece of property and shall deliver exclusive possession to the Property at Closing.

(e) At closing Buyer shall receive an Owners Title Policy in form and terms as satisfactory to Buyer's counsel and as required in terms of Section 4 (g) herein.

In the event any of these conditions are not fully satisfied at time of Closing due to no fault of Purchaser, Purchaser shall have the right, at Purchaser's option, to terminate this Agreement, and thereafter, this Agreement shall be deemed null and void and the Earnest Money shall be returned to Purchaser.

12. Conditions of Seller's Obligations. The obligation of Seller to sell the Property hereunder is subject to each of the following conditions precedent:

(a) Purchaser shall have performed and observed all of its covenants, obligations, conditions and warranties hereunder as of Closing Date in all material respects;

(b) The representations and warranties of Purchaser as set forth in Section 9 will be true and correct in all material respects as of the Closing Date; and

(c) If a Closing does not occur by March 30, 2023 due to no fault of Seller and Seller is not otherwise in breach of its obligations under this Agreement.

In the event any of these conditions are not fully satisfied at time of Closing due to no fault of Seller, Seller shall have the right, at Seller's option, to terminate this Agreement, and thereafter, this Agreement shall be deemed null and void and the Earnest Money shall be retained by Seller.

13. Transfer of Title and Risk of Loss. All risk of loss damage to the Property by fire, windstorm, casualty, or other cause shall remain with Seller until the time of Closing and shall pass to Purchaser upon transfer of title at the Closing. If the Property is destroyed or materially damaged (defined as any single incident of damage or destruction which results in a cost of more than \$100,000 to repair or restore) prior to the transfer of title, this Agreement shall be declared null and void at the option of Purchaser if it notifies Seller, in writing, within ten (10) days of receipt of Seller's notification to Purchaser of such damage or destruction, and in such event the Earnest Money shall be returned to Purchaser. In the event that any damage or destruction shall be of a minor nature (less than \$100,000), or in the event that Purchaser shall be entitled to terminate this Agreement, but shall elect not to do so or fails to do so, Purchaser shall close this transaction and repair the improvements at its option and expense, and Seller shall, on the Closing Date, assign all of its right, title and interest to the insurance proceeds to Purchaser, and Seller shall pay Purchaser any deductible in connection therewith.

14. Taxes. All real estate ad valorem truces due and payable shall be paid by Seller pursuant to the terms of the lease agreement expected to be signed at Closing (which is expected to be a "triple net lease").

15. Closing Costs. Purchaser shall be responsible for the cost of any title examination, title policy/premium, survey, or inspection on the Property if Purchaser chooses to obtain same. Purchaser shall be responsible for all recording fees and transfer tax. Seller shall be responsible for the preparation of the deed. Seller shall be responsible for all other Closing Costs that are customarily paid by a seller. The parties will each bear their own legal fees and other costs and expenditures incident to the sale and purchase contemplated by this Agreement whether or not any such transaction is closed.

16. Brokers and Finders. Seller represents and warrants to Purchaser, and Purchaser represents and warrants to Seller, that Marcus and Millichap Real Estate Investment Brokerage Company ("Marcus & Millichap") has acted as the sole Broker/Agent in this transaction. Seller shall pay all Broker's fees to Marcus and & Millichap pursuant to a separate agreement between Seller and Marcu & Millichap. Each Party hereby indemnifies and agrees to defend and hold the other harmless from any claims resulting from the indemnifying Party's breach of the representations and warranties of this Section 15.

17. Time of Essence. Time will be of the essence with respect to the performance of the terms and conditions of this Agreement.

18. Governing Law: Venue. This Agreement will be governed by and construed in accordance with the laws of the State of Tennessee. Any action commenced hereunder shall only be

brought in a court of competent jurisdiction located in Lawrence County, Tennessee.

19. Further Assurances. After the Closing, the parties to this Agreement will execute and deliver any further documents and take such other action as Purchaser or Seller may reasonably request to complete this transaction; provided, however, that such document or action does not conflict with the terms of this Agreement.

20. Notices. All notices, communications, or deliveries under this Agreement shall be in writing, shall specify the section of this Agreement pursuant to which it is given, and shall be deemed given:

- (i) When received if given in person or by courier or courier service;
- (ii) On the date of transmission if sent by facsimile, email or other wire transmission and a copy of such transmission is sent by overnight courier for delivery on the following business day; or
- (iii) Three business days after being deposited in the mail, certified mail, return receipt request, postage prepaid, and addressed to the parties as set forth below:

If to Seller:

Premier Kings of North Alabama, LLC
5529 Carmichael Road,
Montgomery, Alabama 36117
Tele: 615-489-9730
E-Mail: jmagee@auroramp.com

cc: Cole Schotz P.C.
1201 Wills Street, Suite 320
Baltimore, MD 21231
Attention: Gary Leibowitz, Esquire
Irving E. Walker, Esquire
Email: gleibowitz@coleschotz.com
iwalker@coleschotz.com

If to Purchaser:

Newell-Berg Holdings TN, LLC
115 N. Eighth Street
Mayfield Kentucky 42066
Tele: (270) 705-2384
E-Mail: kevin.newell@supremefoods.com
Attn: Kevin Newell

cc: Price, Hill, Kolarich & Moore
214 Second Avenue, North Suite 205
Nashville, Tennessee 37201

Tele: (615) 242-5772
E-Mail:
benmoore@pricehillkolarich.com
Attn: M. Ben Moore, II, Esq.

or to such other address as may hereafter be designated by a party to the other. If notice is given pursuant to this section of a permitted successor or assign of a party to this Agreement, then notice shall be given as set forth above to such successor or assign of such party.

21. Default.

(a) Breach by Seller. Subject to Section 23, if Seller breaches this Agreement prior to Closing, Purchaser may terminate this Agreement and thereupon shall be entitled to the immediate return of the Earnest Money and all interest earned thereon as its sole remedy hereunder.

(b) Breach by Purchaser. Subject to Section 23, if Purchaser breaches its obligations prior to Closing, Seller shall be entitled to (a) the Earnest Money (including interest accrued thereon), as liquidated damages (and not as a penalty) and (b) a reimbursement from Purchaser of all of Seller's actual costs and expenses incurred by Seller in connection with negotiating and preparing this Agreement and preparing for Closing (including, without limitation, all reasonable attorneys' fees) as Seller's sole remedy and relief under this Agreement. If Closing is consummated, Seller shall have all remedies available at law or in equity, including the right to recover reasonable attorneys' fees and costs, in the event Purchaser fails to perform any of its obligations under this Agreement after Closing but prior to the expiration of the six (6) month survival period described in 4(f).

(c) Disputes; Costs and Expenses. In addition to any other remedies provided herein, upon any dispute between the parties to this Agreement which results in litigation or other proceeding, the prevailing party shall be reimbursed by the non-prevailing party for all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the prevailing party in connection with such litigation or other proceeding and any appeal thereof. Such costs, expenses and fees shall be included in and made a part of any judgment recovered by, or any order of dismissal in favor of, the prevailing party, if any.

22. Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective legal representatives, heirs, successors, and permitted assigns. This Agreement may not be assigned by Purchaser without the prior written consent of Seller, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Purchaser may assign its interest as buyer under this Agreement to (i) any other wholly-owned subsidiary of Purchaser, (ii) any party that wholly owns and controls Purchaser, or (iii) any other party in which Purchaser, one or more the principals of Purchaser or Kevin Newell directly or indirectly (a) owns at least a fifty-one (51%) percent equity interest and (b) controls such party, and Seller's consent shall not be required for any such assignment although Purchaser shall not thereby be released from its obligations hereunder. Purchaser shall notify Seller in writing no later than concurrently with any such assignment, which shall occur, if at all, no later than five (5) business days prior to the Closing Date. Purchaser shall not otherwise assign its interest hereunder without Seller's express written consent which Seller may withhold in its sole discretion.

23. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become a binding agreement when one or more counterparts have been signed by each of the parties and delivered to the other party, provided each appears in its original type written form, without deletions, strike-throughs or modifications of any type. Delivery of an executed counterpart signature page of this Agreement by facsimile or transmitted electronically in a Tagged Image File Format (“tiff”), Portable Document Format (“pdf”) or other electronic format sent by electronic mail shall be effective as delivery of a manually executed counterpart.

24. **Notice of Default.** If Seller or Purchaser fails to comply with any or all of the provisions, covenants, warranties or agreements to be performed or observed by Seller or Purchaser under and pursuant to the terms and provisions of this Agreement, and such default is not cured within fifteen (15) days after written notice thereof, then the non-breaching party may elect to exercise its remedies set forth in Section 20.

25. **Singular or Plural: Gender.** In this Agreement, where applicable, references to the singular shall include the plural and references to the plural shall include the singular. Any reference in this Agreement to the masculine shall include the feminine or neuter and any reference in this Agreement to the feminine shall include the masculine or neuter.

26. **Headings.** The headings of this Agreement are included for convenience of reference only and shall not affect the construction or interpretation of any of its provisions.

27. **Invalid Provision.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and, the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid, or unenforceable provision or by its severance from this Agreement.

28. **Entire Agreement: Modifications; Waivers; Construction.** This Agreement (including, without limitation, the exhibit(s) hereto) constitutes the entire agreement of the parties with respect to the subject matter hereof, all prior and contemporaneous oral and written discussions and agreements of the parties with respect thereto being merged herein and superseded hereby. This Agreement may be amended only by written instrument executed by all the parties hereto. The failure of any party hereto at any time to require performance of any of the provisions hereof shall in no manner affect the right to enforce the same. No waiver of any party hereto of any condition, or of the breach of any term, permission, warranty, representation agreement or covenant contained in this Agreement whether by conduct or otherwise, in any one or more instances, shall be deemed or construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of the breach of any other term, provision, warranty, representation agreement or covenant herein contained. Should any provision of this Agreement require judicial interpretation, the parties hereto agree that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agents drafted the same. Except as otherwise specifically

set forth herein, no representation, warranty or covenant of the Seller shall survive the Closing.

{SIGNATURES ON FOLLOWING PAGE}

IN WITNESS WHEREOF, the parties have hereunto set their hands and as of the day year first set forth above.

SELLER:

PREMIER KINGS OF NORTH ALABAMA, LLC
an Alabama limited liability company

By: 
Name: John Magee *LAURAKEDDALL*
Its: Deputy Restructuring Office

PURCHASER:

NEWELL-BERG HOLDINGS TN, LLC
A Tennessee limited liability company

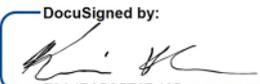
By:  1/24/2024 | 15:04:06 PST
Name: Kevin Newell
Its: Authorized Member

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT B
List of Assets

INVENTORY OF MACHINERY AND OTHER EQUIPMENT

QTY	BK NAME	DESCRIPTION	MANUFACTURER
1	ODMB	Outdoor Order Kiosk, 1 - 15" x 15" Advertisemt Screen, With Intercom System	
1	ODMB	Outdoor Digital Menu Board, 4 - Panel Menu Board 1' x 4'	LSI DDT
1	Minor	Oil Cleaning System, Super Soak System	Kay Chemical
1	Ice machine	Ice maker, With associated bin	Scotsman
1	Walk-in Cooler / Freezer	Combination Walk in Cooler and Freezer, 8' x 8' Freezer, 8' x 8' Kolpak Refrigerator	
1	3 Compartment Sink	Stainless Steel Sink, Triple basin, With Ecolab Dispensing System	
1	Sink	Stainless Steel Sink, Single basin, With Ecolab Dispensing System	
2	Oven	Oven	Blodgett
1	Hood	Stainless Steel Oven Hood, 42" x 84", With integrated fire, suppression Franke system	
1	under counter cooler	Stainless Steel Under Counter Reach In Cooler, 24" x 50"	
1	Broiler	Flexible Batch Broiler	Nieco
1	Upright Freezer	Upright commercial freezer, Double door	Delfield
1	under counter cooler	Stainless Steel Under Counter Reach In Cooler, 24" x 36"	
3	Fryer	Stainless Steel Deep Fryers, Double Well, Double Basket	Pitco
1	Hood	Stainless Steel Fry Hood, 42" x 65", With integrated fire, suppression Franke Food Service system	
1	PHU	Holding Unit Food Warmers, 8- Tray	Prince Castle
1	Minor	Drain/Heat Station, 2 well, Fried Foods, 32"	Special
2	PHU	Holding Unit Food Warmers, 12- Tray	Prince Castle
2	Toaster	Stainless Steel Vertical Contact Toaster, Est 10" Opening	Antunes
2	Microwave	Commercial Stainless Steel Microwaves	Menumaster
1	Egg Griddle	Stainless Steel "Egg Steamer" Griddle, Est 10" x 14"	Roundup
1	Sandwich Table	Sandwich Prep and Assembly Table, 12- Bin, With Cold Wells, Racking, Franke shelving and Electrical Connections	
1	Fry Holding Station	Fried Product Holding Bin, 1' x 2'	
1	chute	Order Preparation and Refrigerated Display, With associated table and Special Racking	
1	Minor	Back of House Kitchen Equipment, Consisting of: Pots, Pans, Trays, Tools, Office Supplies, and Other Related Assets	
15	Minor	Security cameras	
1	shake machine	Ice Cream Machine, Twin-Screw, With integrated shake mixer	Taylor
5	Minor	Order Monitor	
4	POS	Touch Screen POS Terminals, With Associated Cash Drawers	Sicom
1	Minor	Ticket Printer	Brinks
1	under counter cooler	Stainless Steel Under Counter Reach In Cooler	Silver King
5	Minor	Order Tracking Monitor	
1	Icee Machine	Frozen Beverage Dispenser, 3-Flavor	FBD
1	Fountain Drink Machine	Self Serve Drink Dispenser, 8 Flavor, 8- Valve	Cornielis
5	Minor	Headsets	RTI
4	IDMB	Digital Interior Menu Boards, 24" x 36", Each With Associated Controller	
3	Fountain Drink Machine	Freestyle Soda Fountains, Front of House, 10" counter	
1	Front of House Furniture	Lot of Front of house restaurant furniture	

FLV = Forced Liquidation Value

OLV = Orderly Liquidation Value

FMV-R = Fair Market Value Removed

Exhibit C
~~Main Document~~
BILL OF SALE

THIS BILL OF SALE (this “**Bill of Sale**”) is made and entered into as of _____, 2024, by Premier Kings of North Alabama, LLC., an Alabama limited liability company (“**Seller**”) in favor of Newell-Berg Holdings AL, LLC, an Alabama liability company, (“**Buyer**”). Seller and Buyer are referred to collectively as “**Parties**” herein, and each individually, a “**Party**”.

RECITALS

WHEREAS, Buyer and Seller are parties to that certain Real Estate Sale and Purchase Agreement dated as of _____, 2024 (the “**Purchase Agreement**”), pursuant to which Seller agrees to sell, convey, assign, transfer and deliver to Buyer, all of its respective right, title and interest in and to the real property located in Lawrence County, Tennessee parcel number 078E D 010.00 a/k/a 1214 N Locust Avenue, Lawrenceburg, Tennessee (the “**Real Property**”), and Buyer agreed to acquire the same;

WHEREAS, Buyer and Seller have included all personal property (the “**Assets**”) located inside the Real Property, including all signs and signage located on the Real Property; and

WHEREAS, all capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Purchase Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and incorporating the recitals above, the Parties agree as follows:

AGREEMENT

1. Assignment. Subject to the terms and conditions set forth in the Purchase Agreement, for valuable consideration received from Buyer, Seller does hereby irrevocably and unconditionally sell, assign, transfer, convey and deliver to Buyer, its successors and assigns forever, all of Seller’s rights, title and interest in and to the Assets, including good and marketable title thereto, free and clear of any and all Liens (other than Permitted Encumbrances), to have and to hold the same and each and all thereof unto Buyer, its successors and assigns forever, to its and their own use and benefit forever.

2. Further Assurances. In case at any time after the date hereof any further actions are necessary or desirable to carry out the purposes of this Bill of Sale, Seller shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required or requested by Buyer to carry out the provisions hereof.

3. Instrument of Conveyance Only. This Bill of Sale is being made by Seller pursuant to the requirements of the Purchase Agreement, the terms and conditions of which are incorporated herein by this reference, and this Bill of Sale shall be subject to such terms and conditions. Except for the actual conveyance of the Assets as set forth in Section 1 of this Bill of Sale,

nothing set forth in this Bill of Sale is intended to or shall expand, enlarge, modify, restrict, limit, or abridge any of the terms, representations, warranties, ^{Mar}covenants, conditions, agreements, provisions, rights, benefits, obligations or liabilities of the Parties beyond that set forth in the Purchase Agreement. In the event of any conflict, ambiguity or discrepancy between the terms or conditions of the Purchase Agreement and this Bill of Sale, the terms and conditions of the Purchase Agreement shall be controlling in all respects.

4. No Third Party Beneficiaries. This Bill of Sale is for the sole and exclusive benefit of the Parties and their respective successor and permitted assigns, and nothing herein is intended or shall be construed to confer upon any person other than the Parties and their respective successors and permitted assigns any rights, remedies or claims under, or by any reason of, this Bill of Sale of any term, covenant or condition hereof.

5. Governing Law; Disputes. The Parties agree that this Bill of Sale shall be governed by and construed in accordance with the laws of the State of Tennessee without regard to such state's conflicts of laws rules. Any dispute arising from this Bill of Sale shall be subject to the terms and conditions of Section 20 of the Purchase Agreement.

6. Counterparts. This Bill of Sale may be executed in multiple counterparts, each of which will constitute an original and all of which, when taken together, will constitute one and the same agreement. Sellers may deliver executed signature pages to this Bill of Sale by facsimile or email transmission. No Party may raise as a defense to the formation or enforceability of this Bill of Sale, and each Party forever waives any such defense, either (a) the use of a facsimile or email transmission to deliver a signature or (b) the fact that any signature was signed and subsequently transmitted by facsimile or email transmission.

[Remainder of Page Left Blank]

IN WITNESS WHEREOF, the undersigned have executed this Bill of Sale effective as of the date first set forth above.

SELLER:

PREMIER KINGS OF NORTH ALABAMA, LLC
an Alabama limited liability company

By: _____

Name: John Magee

Title: Deputy Restructuring Officer

Exhibit B

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:

PREMIER KINGS, INC., *et al.*,¹

Debtors.

(Chapter 11)

Case No. 23-02871-TOM

(Jointly Administered)

**ORDER APPROVING DEBTORS' MOTION FOR AN ORDER PURSUANT
TO SECTION 363 OF THE BANKRUPTCY CODE AUTHORIZING AND APPROVING
THE SALE OF CERTAIN REAL PROPERTY LOCATED IN LAWRENCEBURG,
TENNESSEE AND CERTAIN RELATED PERSONAL PROPERTY FREE AND CLEAR
OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES**

Upon consideration of the motion (the "Motion")² filed by the Debtors for approval of the sale of the Real Property and Purchased Assets free and clear of Encumbrances; and the Court having jurisdiction to consider the matters raised in the Motion pursuant to 28 U.S.C. § 1334; and the Court having authority to hear the matters raised in the Motion pursuant to 28 U.S.C. § 157 and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and consideration of the Motion and the requested relief being a core proceeding that the Court can determine pursuant to 28 U.S.C. § 157(b)(2)(N); and due and proper notice of the Motion having been given under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Motion; and the Court having

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification numbers, are: Premier Kings, Inc. (3932); Premier Kings of Georgia, Inc. (9797); and Premier Kings of North Alabama, LLC (9282). The Debtors' address is 7078 Peachtree Industrial Blvd., Suite #800, Peachtree Corners, GA 30071.

² All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

determined that the legal and factual bases set forth in the Motion establish just cause for the relief requested therein; and the Court having found that the relief requested in the Motion being in the best interests of the Debtors, their creditors, their estates and all other parties in interest; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED.
2. The sale of the Real Property and Purchased Assets to Purchaser on the terms and conditions set forth in the Purchase Agreement is hereby approved.
3. The transfer to Purchaser of the Debtors' rights, title and interest in the Real Property and Purchased Assets shall be, and hereby is deemed to be, a legal, valid and effective transfer of the Debtors' rights, title and interest in the Real Property and Purchased Assets, and vests with or will vest in Purchaser all rights, title and interest of the Debtors in the Real Property and Purchased Assets, free and clear of all Encumbrances of any kind or nature whatsoever to the fullest extent permitted by section 363(f) of the Bankruptcy Code, with any such Encumbrances attaching to the net available proceeds with the same validity, extent and priority as immediately prior to the sale of the Real Property and Purchased Assets.
4. The sale of the Real Property and Purchased Assets to Purchaser satisfies section 363(f) of the Bankruptcy Code and shall be free and clear of all Encumbrances.
5. Purchaser shall be afforded the protections under section 363(m) of the Bankruptcy Code.
6. The Debtors are authorized to take all such actions as are necessary or appropriate to implement the terms of this Order.

7. The Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and enforcement of this Order.

Dated: _____, 2024
Birmingham, Alabama

TAMARA O. MITCHELL
UNITED STATES BANKRUPTCY JUDGE