

**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)

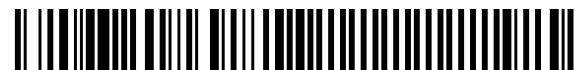
Case No. 23-02871-TOM

Jointly Administered

**DEBTORS' APPLICATION FOR ENTRY OF AN ORDER (I) APPROVING THE
RETENTION AND EMPLOYMENT OF MARCUS & MILLICHAP AS REAL
ESTATE BROKER FOR THE DEBTORS IN CONNECTION WITH THE SALE OF
CERTAIN REAL PROPERTY LOCATED IN NEW HOPE, ALABAMA AND
(II) AUTHORIZING ASSUMPTION OF THE LISTING AGREEMENT**

Premier Kings, Inc. and its debtor affiliates, as debtors and debtors-in-possession (each a “Debtor” and collectively, the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), by their undersigned counsel, file this application (this “Application”) pursuant to sections 327, 328 and 330 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 2016-1 of the Local Rules of the United States Bankruptcy Court for the Northern District of Alabama (the “Local Rules”), for entry of an order substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”) authorizing the retention and employment of Marcus & Millichap Real Estate Investment Services, Inc. (“Marcus & Millichap”) as the Debtors’ real estate broker in connection with certain real property located in New Hope, Alabama (as defined herein) in accordance with the terms and conditions of the Listing Agreement (as defined herein),

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 GA, Inc. (9797); and Premier Kings of North Alabama, LLC (9282). The Debtors’ address is 7078 Peachtree Industrial Blvd., Suite #800, Peachtree Corners, GA 30071.



modifying the timekeeping requirements under Bankruptcy Rule 2016 and Local Rule 2016-1, authorizing the Debtors to assume the Listing Agreement (as defined herein) and granting related relief. In support of this Application, the Debtors rely upon and incorporate by reference the *Declaration of Justin Sturdivant in Support of the Debtors' Application for the Entry of an Order (I) Approving the Retention and Employment of Marcus & Millichap as Real Estate Broker in connection with the Sale of Certain Real Property Located in New Hope, Alabama and (II) Authorizing Assumption of the Listing Agreement* (the "Sturdivant Declaration"), a copy of which is attached to this Application as **Exhibit B**. In further support of this Application, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the Northern District of Alabama (the "Court") has jurisdiction over this matter 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.

2. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief sought herein are sections 327(a), 328, 330 and 365 of the Bankruptcy Code, Rules 2014 and 2016 of the Bankruptcy Rules and Local Rule 2016-1.

BACKGROUND

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 "Chapter 11 Cases").

5. The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. No trustee or examiner has been appointed in the Chapter 11 Cases. Detailed information addressing the Debtors' businesses, their finances and the circumstances leading to the filing of the Chapter 11 Cases is contained in the *Declaration of David M. Baker in Support of First-Day Motions* [Docket No. 20] (the "First Day Declaration").

7. Debtor Premier Kings of North Alabama, LLC ("Debtor PKNA") the following described piece of real property in New Hope, Alabama, together with all improvements thereon, and easements and appurtenances thereto (the "Property"):

Madison County, Alabama Parcel Numbers 29-02-04-0-001-001.00 (PIN 105819), 22-09-32-002001-001.000 (PIN 85408), 22-08-33-0-000.018.000 (PIN 105821), and 22-08-33-0-000-019.000 (PIN 105820) a/k/a 104 Peter Lane, New Hope, Alabama 35760.

See Purchase Agmt. § 1. The Real Property is identified as Lots One, Two, and Three, Block One according to the Map of the Survey of Spearwood Estates Subdivision recorded in Plat Book 18, Page 63 in the Office of the Judge of Probate of Madison County, AL. *See* Purchase Agmt., Ex. A. The Real Property includes a building that historically operated as a Burger King Restaurant, although the restaurant is currently closed.

8. The Debtors determined, prior to bankruptcy, that it was appropriate to list the Property on the market for sale in order to maximize value to the Debtors' estate and creditors. In connection therewith, Debtor PKNA retained Marcus & Millichap to market and sell the Property, subject to Court approval. Marcus & Millichap recently identified a buyer for the Property who is willing to pay a purchase price acceptable to the Debtors, and contemporaneously herewith, the Debtors are filing a separate motion to obtain Court approval of the sale of the Property.

9. Prior to the Petition Date, Debtor PKNA also entered into a separate Representation Agreement dated August 1, 2023, for the sale of the other real property owned by the Debtors, a Burger King store located at 1214 N. Locust Avenue, Lawrenceburg, TN 38464 (the

“Lawrenceburg Property”). On February 14, 2024, the Debtors filed an application to employ Marcus & Millichap as real estate broker in connection with the sale of the Lawrenceburg Property, and to assume the Representation Agreement regarding the same [Doc. No. 467]. The Court approved that application by Order entered on March 12, 2024 [Doc. No. 535].

RELIEF REQUESTED

10. By this Application, the Debtors request entry of an order, substantially in the form of the Proposed Order attached hereto as **Exhibit A**, authorizing the retention and employment of Marcus & Millichap as the Debtors’ real estate broker to market and sell the Property, in accordance with the terms of that certain Representation Agreement dated as of August 1, 2023 between Marcus & Millichap and debtor Premier Kings of North Alabama LLC (the “Listing Agreement”), which is attached to the Proposed Order as Exhibit 1. In addition, the Debtors seek authority to assume the Listing Agreement under section 365 of the Bankruptcy Code.

BASIS FOR RELIEF

A. Marcus & Millichap’s Qualifications

11. Marcus & Millichap is a leading real estate investment services firm with more than 80 offices throughout the United States and Canada. The firm has significant experience matching properties with the largest pool of qualified buyers. The firm has substantial experience marketing and selling restaurant properties, with more than 15,000 restaurants sold.

12. In working with the Debtors to develop the Listing Agreement, Marcus & Millichap became familiar with the Property and developed knowledge relating to the Debtors and their business operations.

13. The Debtors believe that Marcus & Millichap is well qualified to provide real estate brokerage services to the Debtors in connection with the Property in an efficient and timely

manner. Thus, the Debtors submit that the retention and employment of Marcus & Millichap for the sale of the Property is in the best interests of the Debtors' estates and their stakeholders.

B. Services to be Provided by Marcus & Millichap

14. The Listing Agreement governs the relationship between the Debtors and Marcus & Millichap. The terms and conditions of the Listing Agreement were negotiated at arms' length and in good faith between the Debtors and Marcus & Millichap. In that role, Marcus & Millichap assisted the Debtors in marketing the Property and negotiating the terms and conditions of sale with any prospective purchasers.

15. The services that Marcus & Millichap provided to the Debtors were necessary to enable the Debtors to maximize the value of the Property for the benefit of the Debtors' estates and creditors.

16. Marcus & Millichap's services have not duplicated the services that other professionals have provided to the Debtors in the Chapter 11 Cases. Marcus & Millichap will carry out unique functions and have used and will use reasonable efforts to coordinate with the Debtors' other professionals to avoid unnecessary duplication of services.

C. Marcus & Millichap's Compensation

17. In consideration of the services to be provided by Marcus & Millichap, and as more fully set forth in the Listing Agreement, subject to Court approval, the Debtors have agreed to pay Marcus & Millichap a commission equal to four percent (4%) of the purchase price of the Property (the "Commission") upon closing of the sale of such Property.

18. Marcus & Millichap's compensation structure is set at a level designed to fairly compensate the firm for the work of its professionals in connection with the marketing and sale of the Property. Notably, the compensation structure is appropriate and not significantly different

from (a) the amount Marcus & Millichap charges for other similar types of representations or (b) the amount that other comparable real estate brokerage firms would charge to do work similar to the work Marcus & Millichap performed for the Debtors.

19. Retaining another brokerage firm would require such firm to expend significant time and expenses to understand the various complexities of the Property and the Debtors' business. The Debtors believe that such cost would far exceed the amount owed to Marcus & Millichap as provided herein.

20. As set forth in the Sturdivant Declaration, Marcus & Millichap has no agreement with any other entity to share any compensation received by the firm in connection with the Chapter 11 Cases, except as permitted by section 504 of the Bankruptcy Code.

D. Marcus & Millichap's Record Keeping and Application for Compensation

21. Consistent with its ordinary practice and the practice of brokerage firms in other chapter 11 cases whose fee arrangements are typically not hours-based, Marcus & Millichap does not ordinarily maintain contemporaneous time records in one-tenth hour increments (similar to those customarily kept by attorneys) or provide or conform to a schedule of hourly rates for its professionals. Accordingly, Marcus & Millichap requests that it be excused from such requirements.

22. The Debtors understand that Marcus & Millichap intends to apply to this Court for allowance and payment of its Commission in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and any orders entered in the Chapter 11 Cases governing professional compensation. To the extent that Marcus & Millichap seeks time at an hourly rate outside of the Commission, such applications will include time records in half-hour (0.5) increments setting forth, in a summary format, a description of the services rendered by

each professional and the amount of time spent on each date by each such individual in rendering services on behalf of the Debtors. The Debtors respectfully request that the Court waive compliance with any such requirements inconsistent therewith.

E. Marcus & Millichap's Disinterestedness

23. Marcus & Millichap employs over 1,500 brokers and agents, all of whom are independent contractors. As set forth in the Sturdivant Declaration, Marcus & Millichap did not run conflicts on the clients of such independent contractors.

24. To the best of the Debtors' knowledge and except as disclosed in the Sturdivant Declaration, Marcus & Millichap is a "disinterested person" as such term is defined in section 101(14) of the Bankruptcy Code, as required by section 327 of the Bankruptcy Code, and does not hold or represent any interest adverse to the Debtors, their creditors or any other parties in interest in the Chapter 11 Cases.

25. As set forth in the Sturdivant Declaration, Marcus & Millichap has certain connections with parties in interest in the Chapter 11 Cases. All of these matters, however, are unrelated to the Chapter 11 Cases. The Debtors do not believe that any of these matters represent an interest materially adverse to the Debtors' estates or otherwise create a conflict of interest regarding the Debtors or the Chapter 11 Cases.

26. Marcus & Millichap will review its files periodically during the pendency of the Chapter 11 Cases to ensure no conflicts or other disqualifying circumstances exist or arise. If any new relevant facts or relationships are discovered or arise, Marcus & Millichap will use reasonable efforts to identify such further developments and will promptly file a supplemental declaration as required by Bankruptcy Rule 2014(a).

F. The Debtors Should be Permitted to Retain and Employ Marcus & Millichap

27. The Debtors seek to retain and employ Marcus & Millichap as their real estate broker for the Property pursuant to section 327(a) of the Bankruptcy Code, which permits a debtor to employ “one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons,” subject to Court approval. 11 U.S.C. § 327(a). The United States Supreme Court’s recent decision in *Roman Catholic Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano* has called into question a court’s ability to issue *nunc pro tunc* relief. 140 S. Ct. 696 (2020). However, “neither the Code nor the Rules preclude an award of ‘reasonable compensation’ or reimbursement for ‘actual, necessary expenses’ pursuant to section 330 for services rendered prior to an order approving retention of the professional.” *In re Benitez*, 2020 WL 1272258, at *2 (Bankr. E.D.N.Y. Mar. 13, 2020). “Simply stated, a professional must be retained as required by the statute, but once having been retained, the bankruptcy court is free to compensate him for services rendered to the estate at any time, pre and post-court approval, in accordance with section 330 of the Code.” *Id.*

28. In addition, the Debtors seek approval of the Listing Agreement pursuant to section 328(a) of the Bankruptcy Code. Under that statute, with the Court’s approval, a debtor may employ professional persons under section 327 of the Bankruptcy Code “on any reasonable terms and conditions of employment, including on retainer, on an hourly basis, on a fixed or percentage basis, or on a contingent fee basis.” 11 U.S.C. § 328(a). Section 328 of the Bankruptcy Code permits the compensation of professionals, including real estate brokers, on more flexible terms that reflect the nature of their services and market conditions.

29. As discussed above and in the Sturdivant Declaration, Marcus & Millichap satisfies the disinterestedness standard in section 327(a) of the Bankruptcy Code. Marcus & Millichap has committed a significant amount of time and effort assisting the Debtors with the marketing and sale of the Property. The Debtors have selected Marcus & Millichap because of the firm's reputation and experience in marketing and selling commercial properties and because of its familiarity with the Property in particular. Marcus & Millichap is thus well-qualified to market and sell the Property.

30. Moreover, the Debtors believe that the Commission is consistent with Marcus & Millichap's normal and customary compensation structure for similar engagements and comparable to those generally charged by real estate brokers of similar stature to Marcus & Millichap for comparable engagements in and out-of-court insofar as the commission is tied to the consummation and closing of the sale of the Property. The Commission is also identical to the proposed compensation structure that was approved by the Court in connection with the Debtors' application to employ Marcus & Millichap in connection with the sale of the Lawrenceburg Property [Doc. No. 535]. The Debtors therefore believe that the proposed compensation is both reasonable and market-based. Accordingly, the terms and conditions of the Application are fair, reasonable and market-based under the standards set forth in section 328(a) of the Bankruptcy Code.

31. The Debtors submit that for the reasons stated herein and in the Sturdivant Declaration, the retention and employment of Marcus & Millichap on the terms and conditions set forth in the Listing Agreement is warranted and should be approved.

G. The Debtors Should be Permitted to Assume the Listing Agreement

32. Section 365(a) of the Bankruptcy Code provides that a debtor in possession, subject to the court's approval, may assume or reject any executory contract of the debtor. 11 U.S.C. § 365(a). Approval of a debtor's decision to assume an executory contract is appropriate when the debtor's reasonable business judgment supports assumption. *See, e.g., Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098 (2d Cir. 1993) (noting that Section 365 "permits the trustee or debtor-in-possession, subject to the approval of the bankruptcy court, to go through the inventory of executory contracts of the debtor and decide whether ones it would be beneficial to adhere to and which ones it would be beneficial to reject"); *In re Armstrong World Indus.*, 348 B.R. 136, 162 (D. Del. 2006) (explaining that courts defer to a debtor's business judgment to reject a contract under 11 U.S.C. § 365(a)). If the debtor's business judgment has been reasonably exercised, a court should approve the assumption of an executory contract. *See Group of Institutional Investors v. Chicago M. St. P. & P.R.R. Co.*, 318 U.S. 523 (1943); *Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 39-40 (3d Cir. 1989). The business judgment test "requires only that the trustee [or debtor-in-possession] demonstrate that [assumption] of the contract will benefit the estate." *Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co. (In re Wheeling-Pittsburgh Steel Corp.)*, 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987).

33. The Debtors respectfully submit that assumption of the Listing Agreement is appropriate. The Listing Agreement was executed by the parties prior to the Petition Date, and Marcus & Millichap has expended significant time and effort since its retention marketing the Property for sale. In fact, Marcus & Millichap recently identified a buyer for the Property willing to pay a price acceptable to the Debtors, and contemporaneously herewith, the Debtors are filing

a separate motion to obtain Court approval of the sale of the Property. The sale of the Property will inure to the benefit of the Debtors' stakeholders. Moreover, the Listing Agreement is substantially similar to the Representation Agreement that the Court permitted the Debtors to assume in connection with the sale of the Lawrenceburg Property [Doc. No. 535]. As of the date herein, there are no defaults under the Listing Agreement.

34. Accordingly, assumption of the Listing Agreement by the Debtors is the product of the Debtors' reasonably exercised business judgment, which judgment the Debtors respectfully ask the Court to ratify and approve.

NOTICE

35. The Debtors will provide notice of this Application either by electronic mail, facsimile or United States First Class Mail to: (a) the Office of the Bankruptcy Administrator for the Northern District of Alabama; (b) counsel for the official committee of unsecured creditors; (c) counsel to BKCI; (d) counsel to Wells Fargo Bank, National Association, as Prepetition Agent for the Lender Group; (e) the United States Attorney's Office for the Northern District of Alabama; (f) the Internal Revenue Service; (g) the office of the Attorney General for the State of Alabama; (h) the Securities and Exchange Commission; and (i) 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 and grant the relief requested in this Application and such other and further relief as the Court may deem just and proper.

Dated: April 23, 2024
Birmingham, Alabama

/s/ Jesse S. Vogtle, Jr.
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EXHIBIT A

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 (I) APPROVING THE RETENTION AND EMPLOYMENT
OF MARCUS & MILLICHAP AS REAL ESTATE BROKER FOR
THE DEBTORS IN CONNECTION WITH THE SALE OF CERTAIN
REAL PROPERTY LOCATED IN NEW HOPE, ALABAMA AND
(II) AUTHORIZING ASSUMPTION OF THE LISTING AGREEMENT**

Upon the Application² of the above-captioned debtors and debtors-in-possession (the “Debtors”) for entry of an order (the “Order”) authorizing the Debtors to retain and employ Marcus & Millichap as real estate broker in connection with the sale of certain real property located in New Hope, Alabama and assume the Listing Agreement, all as more fully set forth in the Application; and this Court having jurisdiction over this matter 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; and this Court having found that venue of this proceeding and the Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; this is a core proceeding pursuant to 28 U.S.C. § 157(b); and having found that

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 GA, 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 Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Application.

the Debtors' notice of the Application and opportunity for a hearing on the Application were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Application and having heard the statements in support of the relief requested therein at a hearing, if any, before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Application and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT, ADJUDGED AND DECREED THAT:

1. The Application is **GRANTED** as stated herein.
2. The Debtors are authorized to retain and employ Marcus & Millichap, effective as of the date of the filing of the Application (the "Application Date"), to provide services to the Debtors in these Chapter 11 Cases, pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, on the terms set forth in the Application, the Sturdivant Declaration and the Listing Agreement attached as **Exhibit 1** hereto.
3. The assumption of the Listing Agreement is hereby approved pursuant to section 365 of the Bankruptcy Code.
4. Marcus & Millichap shall be entitled to seek allowance of compensation and reimbursement of expenses pursuant to the Listing Agreement, upon the filing and approval of a final application for the payment of fees and reimbursement of expenses, pursuant to the Bankruptcy Code, Bankruptcy Rules, Local Rules and applicable Orders of this Court. For any fees that Marcus & Millichap will seek pursuant to an hourly rate arrangement, as opposed to the flat fee arrangement set forth in the Listing Agreement, Marcus & Millichap will maintain time

records in half-hour (0.5) increments, setting forth, in a summary format, a description of the services rendered and the professional rendering such services on behalf of the Debtors.

5. Notwithstanding anything contrary in this Order, Application or the Listing Agreement, the Bankruptcy Administrator for the Northern District of Alabama and the Court shall have the right to object to Marcus & Millichap's request for compensation and reimbursement based on the reasonableness standard provided in section 330 of the Bankruptcy Code, and not section 328(a) of the Bankruptcy Code; *provided, however*, that "reasonableness" shall be evaluated by comparing (among other things) the fees payable in the case to fees paid to comparable real estate brokerage firms with similar experience and reputation offering comparable services in other chapter 11 cases and shall not be evaluated primarily on an hourly or length-of-case based criteria.

6. In the event of any conflict between the terms of this Order and the Listing Agreement, the terms of this Order shall govern.

7. The Court shall retain jurisdiction with respect to 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

Exhibit 1

Listing Agreement

Marcus & Millichap

REPRESENTATION AGREEMENT

(EXCLUSIVE AUTHORIZATION TO SELL OR EXCHANGE)

THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT. READ IT CAREFULLY.

The undersigned ("Seller") hereby employs Marcus & Millichap Real Estate Investment Services of Seattle, Inc. ("Agent") and grants to Agent, for a period of time (the "Term") commencing on the date executed below by the Seller, and ending at midnight on Six (6) months thereafter, and subject to extension as set forth in paragraph 24 below, the exclusive and irrevocable right and authority to sell that certain real property (the "Property") located in the City of New Hope, County of Madison, State of Alabama and more particularly described as follows:

Burger King Restaurant
100-106 Peter Lane
New Hope, Alabama 35760

&

10107 Highway 431 S
New Hope, Alabama 35760

Parcel Numbers:
22-08-33-0-000-018.000
22-08-33-0-000-019.000
29-02-04-0-001-001.000
22-09-32-0-002-001.000

If the Property described above consists of two or more separate legal parcels, Seller agrees to sell all or any combination of such parcels, and the term "Property" as used herein shall refer to any such combination.

1) **TERMS AND CONDITIONS OF SALE:** Seller agrees to accept an offer containing the following terms and conditions of sale:

a. PURCHASE PRICE: **\$1,260,000**

2) **TITLE, CLOSING COSTS, PRORATIONS:** At the closing, Seller shall execute and deliver to Buyer a special warranty deed to the Property, subject to those exceptions permitted hereunder, Bill of Sale Absolute, an Owner's Affidavit, and I.R. C. 1445 Non-Foreign Affidavit, all in form sufficient for the title insurance agent to remove from Buyer's Owner's title policy any exceptions for labor and materials, unpaid federal and state taxes, and unpaid real estate agent's commissions.

3) **TERMINATION:** Seller reserves the right to terminate this Agreement with written notice to Agent.

4) **TITLE CONVEYANCE:** Seller represents and warrants to Agent that fee title to the Property is now vested as follows Premier Kings of North Alabama LLC and that Seller and the individuals executing this Representation Agreement on behalf of Seller are duly authorized and empowered to execute this Representation Agreement and any subsequent purchase agreement; and that execution hereof shall not result in any breach of, or constitute a default under, any contract or other agreement to which Seller is a party.

Seller shall convey by special warranty deed to Buyer (or such other person as Buyer may specify) marketable fee simple title subject only to the exceptions approved by Buyer in accordance with this Agreement.

5) **COMMISSION:** In consideration of the brokerage services to be rendered by Agent, Seller agrees to pay to Agent a commission equal to Four Percent (4%) of the purchase price of the Property, upon the occurrence of any of the following events:

a. ; or

Seller's Initials rk Agent's Initials EY

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- b. The Property is sold, exchanged or otherwise conveyed during the Term, or any extension thereof, whether by Seller or by or through any other person or entity; excluding a conveyance by foreclosure or other lender conveyance
- c. ; or
- d. A sale, exchange or other conveyance of the Property occurs and the applicable contract to transfer, or instrument transferring, the Property was executed within six (6) months after the expiration of the Term to a person or entity with whom Agent has negotiated, or to whose attention Agent has brought the Property, or who was introduced to Seller by Agent as a prospective purchaser (herein, "Prospective Purchaser"). This section applies only when the name of any such person or entity has been submitted by Agent to Seller by delivery of a written offer to purchase the Property prior to expiration of the Term or by written notice within fifteen (15) calendar days of such expiration. With respect to a sale, exchange or other conveyance to any such person or entity, Agent shall conclusively be deemed to be the procuring cause. The term "Prospective Purchaser" shall include that person or entity to whose attention Agent has brought the Property, as well as any partnership, joint venture, corporation, trust or other similar entity which that person or entity represents or in which it holds an ownership or beneficial interest.

Except as otherwise set forth herein, this commission shall be paid at the closing, and Agent shall be entitled to make demand of any escrow holder or closing attorney for payment from the proceeds of sale. Alabama law provides that when a broker has earned a commission by performing services under a brokerage agreement, the broker may claim a lien against your net sales proceeds or the subject property for the broker's commission. Seller and Buyer agree to allow broker to place a lien upon the property to secure payment, should a commission be due hereunder but unpaid. Seller and Agent agree that if completion of a sale of the Property pursuant to a duly executed purchase agreement is prevented by default of the Buyer, Seller shall be obligated to pay to Agent only an amount equal to one-half of any damages or other monetary compensation (including liquidated damages) collected from said Buyer by suit or otherwise as a consequence of Buyer's default, if and when such damages or other monetary compensation are collected; provided, however, that the amount due Agent shall not exceed the brokerage commission set forth above. The term "Property" shall include any interest therein or in its ownership.

In the event of a foreclosure of the Property during the term of this Agreement, no commission shall be due to the Agent, and the Property will be withdrawn from the market.

- 6) **INSPECTION CONTINGENCIES:** Shall be determined by the Purchase and Sale Agreement.
- 7) **DEPOSIT INCREASES:** Shall be determined by the Purchase and Sale Agreement.
- 8) **PERSONAL PROPERTY:** Seller shall provide to Buyer a written inventory of all items of personal property to be conveyed to Buyer in connection with the sale of the Property. Title to these items shall be conveyed to Buyer at close of escrow by Bill of Sale free and clear of all encumbrances, except those approved by buyer in writing. The price of these items shall be included in the Purchase Price for the Property, and Buyer shall accept all such personal property in "as is" condition.
- 9) **INSPECTION OF PROPERTY:** Seller agrees that Agent and its representatives shall have the right to enter upon and inspect the interior and exterior of the Property with prospective purchaser's at all reasonable times.
- 10) **SELLER EXCHANGE:** Buyer agrees to cooperate should Seller elect to sell the Property as parts of a like kind exchange under IRC section 1031. Seller's contemplated exchange shall not impose upon Buyer any additional liability or financial obligation, and Seller agrees to hold Buyer harmless from any liability that might arise from such exchange. This Agreement is not subject to or contingent upon Seller's ability to acquire a suitable exchange property or effectuate an exchange. In the event any exchange contemplated by Seller should fail to occur, for whatever reason, the sale of the Property shall nonetheless be consummated as provided herein.
- 11) **BUYER EXCHANGE:** Seller agrees to cooperate should Buyer elect to purchase the Property as parts of a like kind exchange under IRC section 1031. Buyer's contemplated exchange shall not impose upon Seller any additional liability or financial obligation, and Buyer agrees to hold Seller harmless from any liability that might arise from such exchange. This Agreement is not subject to or contingent upon Buyer's ability to dispose of its exchange property or effectuate an exchange. In the event any exchange contemplated by Buyer should fail to occur, for whatever reason, the sale of the Property shall nonetheless be consummated as provided herein.
- 12) **SELLER'S REPRESENTATIONS AND WARRANTIES:**
 - a. **Material defects:** Seller represents and warrants that Seller knows of no material defects of the Property, including, but not limited to, energy conservation and/or safety retrofit(s) required by local ordinance as a condition of transfer. (Note any exceptions: _____).

Seller's Initials Agent's Initials

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- b. **Compliance with laws:** Seller represents and warrants that, to the best of Seller's knowledge, the Property and all improvements thereon are in compliance with all applicable laws, codes, regulations and other similar governmental standards and requirements and that no material structural modifications or alterations of the improvements on the Property have been made without appropriate permits. (Note any exceptions: _____).
- c. **Legal units:** N/A
- d. **Flood zone:** Seller represents and warrants that the Property (select one "X") _____ is is not in a flood zone as set forth on HUD "Special Flood Zone Area Maps."
- e. **Hazardous materials:** Seller represents and warrants that, to the best of Seller's knowledge, the Property is not contaminated with any hazardous materials, including, but not limited to, asbestos, PCB transformers, other toxic, hazardous or contaminated substances, and underground storage tanks. (Note any exceptions: _____).
- f. **Lead-based paint hazards:** N/A
- g. **Records, financial data and marketing assistance:** Seller agrees to furnish, and to make available to Agent and prospective buyers all financial data, rent statements, leases and other operating records of the Property, and to provide Agent with such assistance as Agent may reasonably request in marketing the Property. Seller agrees to refer promptly to Agent all inquiries of anyone interested in the Property.
- h. **Indemnification:** Seller agrees to indemnify and hold Agent harmless from any and all liability, damages, losses, causes of action, or other claims (including attorneys' fees and other defense costs) arising from or asserted in connection with any incomplete or inaccurate information provided by Seller, or any material information concerning the Property which Seller has failed to disclose.

13) **DISCLOSURE OF REAL ESTATE LICENSURE:** N/A

14) **SCOPE OF AGENT'S AUTHORITY AND RESPONSIBILITY:** Agent shall assist Seller in marketing the Property and in negotiating the terms and conditions of sale with any prospective purchasers. Agent shall not, however, have authority to bind Seller to any contract or purchase agreement. Agent shall not be responsible for performing any due diligence or other investigation of the Property, or for providing professional advice with respect to any legal, tax, engineering, construction or hazardous materials issues. Except for confidential information regarding Seller's business or financial condition and the negotiation of the terms of a purchase agreement between Seller and a prospective purchaser, Seller and Agent agree that their relationship is at arm's length.

15) **LIMITATION OF LIABILITY:** Except for Agent's gross negligence or willful misconduct, Agent's liability for any breach or negligence in its performance of this Agreement shall be limited to the greater of \$50,000 or the amount of compensation actually received by Agent in any transaction hereunder.

16) **AFFILIATED BROKER/AGENT/AGENCY:** Broker/Agent is affiliated with other brokerage companies in other states. Broker/Agent shall disseminate information about the Property to such affiliated Brokers/Agents, inviting the submission of offers on the Property. Seller authorizes Agent and any affiliated brokers/agents to represent any prospective purchaser in the acquisition of the Property and to submit offers on behalf of such purchasers. Seller understands that this authorization may result in affiliated Brokers/Agents of Broker/Agent representing both Seller and a prospective purchaser. In the event Broker/Agent is the listing agent of Seller with respect to the Property and another Broker/Agents of Broker/Agent procures a Buyer as the purchaser of the Property, then in such event, Seller and Buyer agree that Broker/Agent shall become a transaction Broker/Agent with respect to the transaction, as such term is defined by Alabama law. Seller hereby authorizes and consents to such agency disclosure and agrees to execute a confirmation of such disclosed agency.

17) **BROKER CO-OP - SELLER'S OPTION:** Broker co-op is recommended by Marcus & Millichap. Seller authorizes broker co-op commencing:

- (1) at the beginning of the marketing period dk (initials)
- (2) after the first half of the listing _____ (initials)
- (3) Broker co-op is not authorized _____ (initials)

Seller agrees that, in the event any broker other than Agent or a broker affiliated with Agent is involved in the disposition of the property, Agent shall have no liability to Seller for the acts or omissions of such other broker, who shall not be deemed to be a subagent of Agent.

18) **ARBITRATION OF DISPUTES AND WAIVER OF JURY TRIAL:** All disputes arising between the Parties with respect to the subject matter of this Representation Agreement (including but not limited to the payment of commissions as provided herein) shall be settled exclusively by final, binding arbitration. The judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

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The arbitration will proceed in the county where Agent's office is located and be conducted by the American Arbitration Association ("AAA"), or such other administrator as the parties shall mutually agree upon, in accordance with the AAA's then-applicable Commercial Arbitration Rules (the "Rules"). Any party who fails or refuses to submit to arbitration following a demand by the other party shall bear all costs and expenses, including attorneys' fees, incurred by such other party in compelling arbitration.

The arbitration will be decided by a single arbitrator selected according to the Rules. The arbitrator will decide any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication and may grant any remedy or relief that a court could order or grant on similar motions. The arbitrator shall apply the provisions of this Representation Agreement without varying therefrom, and shall not have the power to add to, modify, or change any of the provisions hereof.

In any arbitration proceeding discovery will be permitted only in accordance with the terms of this paragraph. Discovery by each party shall be limited to: (i) a maximum number of five (5) depositions limited to four hours each; (ii) requests for production of documents; (iii) two interrogatories: one inquiring into the amount of damages sought by the other party and another into the calculation of those damages; and (iv) subpoenas upon third parties for production of documents, depositions, and to appear at a hearing. The scope of discovery may be expanded only upon the mutual consent of the parties. Discovery not set forth in this paragraph shall not be permitted.

The Parties understand and agree that they are entering into this arbitration agreement voluntarily, and that by doing so they are waiving their rights to a jury trial or to have their claims otherwise litigated in court.

- 19) **ATTORNEYS' FEES:** In any litigation, arbitration or other legal proceeding which may arise between any of the parties hereto, including Agent, the prevailing party shall be entitled to recover its costs and expenses, including costs and expenses of arbitration, court costs and expenses and costs and expenses incurred on appeal, and reasonable attorneys' fees incurred in any dispute through arbitration and appeal of and final judgment in addition to any other relief to which such party may be entitled.
- 20) **EXCHANGE:** As used in this Agreement, the terms "sale", "sell" or "purchase" shall be understood to include an exchange of the Property. In the event of an exchange, if no purchase price is identified, the commission described in Paragraph 4 above shall be calculated as a percentage of the exchange value of the Property. Agent is hereby authorized to represent all parties to any such exchange transaction and to collect compensation or commission from them, provided there is full disclosure to all principals of such agency.
- 21) **TAX WITHHOLDING:** Seller agrees to execute and deliver any instrument, affidavit or statement, or to perform any act reasonably necessary to carry out the provisions of the Foreign Investment in Real Property Tax Act and regulations promulgated thereunder, as well as any similar requirements of state law.
- 22) **ADDENDA:** Any addendum attached hereto, and either signed or initialed by the parties shall be deemed a part hereof. This Agreement, including addenda, if any, expresses the entire agreement of the parties and supersedes any and all previous agreements between the parties with regard to the Property. There are no other understandings, oral or written, which in any way alter or enlarge its terms, and there are no warranties or representations of any nature whatsoever, either express or implied, except as set forth herein. Any future modification of this Agreement will be effective only if it is in writing and signed by the party to be charged.
- 23) **THE EFFECTIVE DATE:** The "Effective Date" as defined in this agreement, shall be the later of (a) the date on which Seller executes the Purchase Agreement, or (b) the date of or written acceptance (by either Buyer or Seller) of the final counter-offer submitted by the other party.
- 24) **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.
- 25) **EXTENSION OF TERM:** If an agreement or letter of intent for the sale of the Property is executed by all necessary parties, and if said agreement or letter of intent is revoked, rescinded or otherwise terminated, and/or the transaction is subsequently canceled, the Term shall be extended by the number of calendar days during which the sale agreement or letter of intent was in effect. The maximum extension permitted hereunder shall be the number of days remaining on the Term from the date the sale agreement or letter of intent was executed, or an escrow opened, whichever event occurred earlier. Notwithstanding the foregoing, this Representation Agreement shall expire in all cases no later than nine (9) months after the original termination date stated above. The purpose of this extension provision is to allow agent the opportunity to expose the Property to the marketplace for the full period of time contemplated by this Agreement.
- 26) **SEVERABILITY:** In the event any term or provision of this Agreement shall be held illegal, unenforceable or inoperative as a matter of law, the remaining terms and provisions of this Agreement shall not be affected thereby and shall remain in full force and effect.

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27) **SALE LEASEBACK TERMS:** Seller hereby agrees to execute an absolute triple net lease at the close of escrow for this location. The Lease shall be for a period of 20 Years from the close of escrow. The lease will have Four (4) – Five (5) year options to renew. The lease shall have zero Landlord responsibility and shall provide for 10% increases every Five (5) years. The initial base rental rate shall be \$80,000.

THE BROKER AND/OR AGENT IN CONNECTION WITH THIS TRANSACTION SHALL CONDUCT ALL OF ITS BROKERAGE ACTIVITIES IN REGARD TO THIS AGREEMENT WITHOUT RESPECT TO THE RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, HANDICAP OR FAMILIAL STATUS OF ANY BUYER, PROSPECTIVE BUYER, SELLER OR PROSPECTIVE SELLER. FOR THE PURPOSES OF THIS RULE, THE TERM, FAMILIAL STATUS, SHALL BE DEFINED AS IT IS IN ALABAMA HOUSING CODE SECTION 24-8-3(5).

The undersigned Seller and Agent agree to the terms and conditions set forth in this Representation Agreement, and Seller acknowledges receipt of an executed copy hereof.

SELLER: *Jaura Kendall* *Deputy Restructuring Officer* ADDRESS: On File
Authorized Representative
Premier Kings of North Alabama LLC

DATE: 8/1/23 TELEPHONE: On File

Agents accepts and agrees to the foregoing.

AGENT: **MARCUS & MILLICHAP REAL ESTATE INVESTMENT SERVICES OF SEATTLE, INC.**
BY: *Eddie Greenhalgh* ADDRESS: On File
Eddie Greenhalgh

DATE: 8/3/2023 | 13:34:22 PDT TELEPHONE: On File

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EXHIBIT B

Sturdivant Declaration

**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

**DECLARATION OF JUSTIN STURDIVANT IN SUPPORT OF THE DEBTORS'
APPLICATION FOR THE ENTRY OF AN ORDER (I) APPROVING THE
RETENTION AND EMPLOYMENT OF MARCUS & MILLICHAP AS REAL
ESTATE BROKER FOR THE DEBTORS IN CONNECTION WITH THE SALE OF
CERTAIN REAL PROPERTY LOCATED IN NEW HOPE, ALABAMA AND
(II) AUTHORIZING ASSUMPTION OF THE LISTING AGREEMENT**

Pursuant to 28 U.S.C. § 1746, I, Justin Sturdivant, hereby declare and state as follows:

1. I am the First Vice President of Investments of Marcus & Millichap Real Estate Investment Services, Inc. ("Marcus & Millichap") and work out of their Nashville office located at 6 Cadillac Drive, Suite 100, Brentwood, Tennessee 73027. I am a licensed real estate broker in Tennessee and have been marketing and selling commercial real estate for over 17 years.

2. I submit this declaration (the "Declaration") in connection and in support of the *Debtors' Application for Entry of an Order (I) Approving the Retention and Employment of Marcus & Millichap as Real Estate Broker for the Debtors in Connection with the Sale of Certain*

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 GA, Inc. (9797); and Premier Kings of North Alabama, LLC (9282). The Debtors' address is 7078 Peachtree Industrial Blvd., Suite #800, Peachtree Corners, GA 30071.

Real Property Located in New Hope, Alabama and (II) Authorizing Assumption of the Listing Agreement (the “Application”).²

3. Unless otherwise stated in this Declaration, I have personal knowledge of the facts set forth herein. To the extent that any information disclosed herein requires amendment or modification upon Marcus & Millichap’s completion of further analysis or as additional information becomes available to Marcus & Millichap, a supplemental declaration will be submitted to the Court reflecting the same.

QUALIFICATION OF PROFESSIONALS

4. Marcus & Millichap is a leading real estate investment services firm with more than 80 offices throughout the United States and Canada. The firm has significant experience matching properties with the largest pool of qualified buyers. In fact, the firm has substantial experience marketing and selling restaurant properties with more than 15,000 restaurants sold.

5. On August 1, 2023, Marcus & Millichap entered into that certain Representation Agreement with debtor Premier Kings of North Alabama LLC (the “Listing Agreement”). The Listing Agreement governs the relationship between the Debtors and Marcus & Millichap. The terms and conditions of the Listing Agreement were negotiated at arms’ length and in good faith between the Debtors and Marcus & Millichap.

6. Pursuant to the Listing Agreement, Marcus & Millichap assisted the Debtors in marketing the Property and negotiating the terms and conditions of sale with any prospective purchasers.

² Capitalized terms used herein but not otherwise defined shall have the meanings set forth in the Application.

7. Marcus & Millichap is well qualified to serve in its role as real estate broker to the Debtors in connection with the Property. Since its retention, Marcus & Millichap has become familiar with the Property and developed knowledge relating to the Debtors and their business operations. The professionals at Marcus & Millichap possess extensive knowledge and considerable expertise performing all tasks associated with the marketing and brokering of commercial real estate.

DISINTERESTEDNESS OF PROFESSIONAL

8. Marcus & Millichap employs over 1,500 brokers and agents, all of whom are independent contractors. Marcus & Millichap did not run conflicts on the clients of such independent contractors.

9. In connection with its proposed retention by the Debtors in the Chapter 11 Cases, Marcus & Millichap undertook to determine whether it had any conflicts or other relationships that might cause it to hold or represent an interest adverse to the Debtors. Specifically, Marcus & Millichap obtained from the Debtors and their professionals the names of individuals and entities that may be parties in interest in the Chapter 11 Cases (the “Potential Parties in Interest”). In preparing this Declaration, either I or someone under my supervision and direction searched Marcus & Millichap’s client database to determine whether Marcus & Millichap had any connections with the Potential Parties in Interest. To the extent that I have been able to ascertain that Marcus & Millichap has a relationship with any Potential Parties in Interest in matters unrelated to the case, such facts are disclosed on **Schedule 1** attached hereto.

10. Marcus & Millichap and certain of its professionals may have in the past represented, may currently represent and likely in the future will represent, entities that may be Potential Parties in Interest in the Chapter 11 Cases in connection with matters unrelated (except

as otherwise disclosed on **Schedule 1**) to the Debtors and the Chapter 11 Cases. From time to time, Marcus & Millichap has referred work to other professionals who are or may be retained in the Chapter 11 Cases. Likewise, certain such professionals have referred work to Marcus & Millichap.

11. To the best of my knowledge, information and belief, except as otherwise disclosed herein, Marcus & Millichap (i) is not a creditor, an equity security holder or an insider of any of the Debtors; (ii) is not and was not, within two years before the Petition Date, a director, officer or employee of any of the Debtors; (iii) does not hold or represent an interest adverse to the Debtors' estates with respect to the matter for which it will be retained under sections 327(a) and 328(a) of the Bankruptcy Code; and (iv) is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code.

12. Marcus & Millichap will review its files periodically during the pendency of the Chapter 11 Cases to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new relevant facts or relationships are discovered or arise, Marcus & Millichap will use reasonable efforts to identify such further developments and will promptly file a supplemental declaration.

COMPENSATION

13. In consideration of the services to be rendered by Marcus & Millichap, as more fully set forth in the Listing Agreement, the Debtors have agreed to pay a commission equal to four percent (4%) of the purchase price of the Property (the "Commission") upon the sale of the Property, subject to Court approval and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and any other applicable procedures and orders of the Court.

14. The compensation arrangement is standard in the real estate industry and designed to fairly compensate Marcus & Millichap for the work of its professionals. Specifically, the compensation is appropriate and not significantly different from (a) the amount Marcus & Millichap charges for other similar types of representations or (b) the amount that other comparable real estate brokerage firms would charge to do work similar to the work Marcus & Millichap performed for the Debtors.

15. Marcus & Millichap does not ordinarily maintain contemporaneous time records in one-tenth hour increments (similar to those customarily kept by attorneys) or provide or conform to a schedule of hourly rates for its professionals. Accordingly, Marcus & Millichap requests that it be excused from such requirements.

16. Marcus & Millichap will apply to the Court for allowance and payment of its Commission in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and the orders of this Court. For any such applications, Marcus & Millichap has agreed to accept as compensation such sums as may be allowed by the Court. To the extent that Marcus & Millichap seeks time at an hourly rate outside of the Commission, such applications will include time records in half-hour (0.5) increments setting forth, in a summary format, a description of the services rendered by each professional and the amount of time spent on each date by each such individual in rendering services on behalf of the Debtors. The Debtors respectfully request that the Court waive compliance with any such requirements inconsistent therewith.

17. Marcus & Millichap has not shared or agreed to share any of its compensation with any other person, other than a professional of Marcus & Millichap, as permitted by section 504 of

the Bankruptcy Code. Marcus & Millichap's proposed retention is not prohibited by Bankruptcy Rule 5002.

18. Neither I nor Marcus & Millichap has received any post-petition compensation under the Listing Agreement (although we have filed an application for compensation for the sale of the Lawrenceburg Property which is pending before the Court, and neither I nor Marcus & Millichap has any existing agreement with the Debtors, their professionals or any other entity to share any compensation received by Marcus & Millichap in connection with the Chapter 11 Cases.

19. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on April 23, 2024

/s/ Justin Sturdivant
Justin Sturdivant

Schedule 1

Parties in Interest Identified by Marcus & Millichap

Interested Party	Relationship to Debtors	Relationship to the Firm
GEWSI 2 LLC	Landlord creditor	Purchaser of property previously sold by M&M
Newell Berg Alliance TN LLC	Unsuccessful stalking horse bidder	Former client
Newell Berg Alliance AL LLC	Unsuccessful stalking horse bidder	Current client
Premier Holdings	Non-debtor affiliate	Current client