

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

In re:

PREMIER KINGS, INC., *et al.*,<sup>1</sup>  
Debtors.

(Chapter 11)

Case No. 23-02781-TOM

Joint Administered

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**SECOND NOTICE OF PROPOSED ORDER**

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Premier Kings, Inc., and its debtor affiliates, as debtors and debtors-in-possession in the above-captioned chapter 11 cases, hereby submit this Second Notice of Proposed Order in connection with the *Second Amended Plan of Liquidation under Chapter 11 of the Bankruptcy Code by the Debtors* [Dkt. No. 554] to include the revised proposed order as **Exhibit A** and the redlined comparison as **Exhibit B** as compared to the Notice of Proposed Order uploaded on the docket by the Debtors [Dkt No. 617].

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<sup>1</sup> 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.



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Dated: April 30, 2024.  
Birmingham, Alabama

/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@hkllaw.com](mailto:jesse.vogtle@hkllaw.com)  
[etray@hkllaw.com](mailto:etray@hkllaw.com)

*-and-*

COLE SCHOTZ P.C.

Gary H. Leibowitz\*  
Irving E. Walker\*  
H.C. Jones III\*  
J. Michael Pardoe\*  
COLE SCHOTZ PC  
1201 Wills Street, Suite 320  
Baltimore, MD 21231  
(410) 230-0660  
(410) 230-0667  
[g Leibowitz@coleschotz.com](mailto:g Leibowitz@coleschotz.com)  
[iwalker@coleschotz.com](mailto:iwalker@coleschotz.com)  
[hjones@coleschotz.com](mailto:hjones@coleschotz.com)  
[mpardoe@coleschotz.com](mailto:mpardoe@coleschotz.com)

*Proposed Attorneys for the Debtors and Debtors-in-Possession*

*\* Admitted Pro Hac Vice*

**EXHIBIT A**

**SECOND PROPOSED ORDER**

*Without Exhibit*

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

In re:

PREMIER KINGS, INC., *et al.*,<sup>1</sup>

Debtors.

(Chapter 11)

Case No. 23-02871-TOM

(Jointly Administered)

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER CONFIRMING  
THE DEBTORS' SECOND AMENDED PLAN OF LIQUIDATION UNDER CHAPTER  
11 OF THE BANKRUPTCY CODE PROPOSED BY THE DEBTORS**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), having filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”) on the Petition Date; and the Debtors having proposed the *Second Amended Plan of Liquidation under Chapter 11 of the Bankruptcy Code Proposed by the Debtors* (as further modified, amended, or supplemented from time to time, the “Plan”) [Dkt. No. 554];<sup>2</sup> and the Court having approved [Dkt. No. 559] the Debtors’ proposed solicitation and voting procedures and the adequacy of the information contained in the *Second Amended Disclosure Statement for Plan of Liquidation under Chapter 11 of the Bankruptcy Code Proposed by the Debtors* (the “Disclosure Statement”) [Dkt. No. 556]; and the Court having set the Confirmation Hearing for May 1, 2024 at 11:00 a.m. (prevailing Central Time); and the Debtors

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<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Plan, the Confirmation Brief, the Disclosure Statement, or the Solicitation Procedures Order, as applicable.

having filed proposed findings of fact, conclusions of law and order granting confirmation of the Plan (the “Confirmation Order”); and the Court having reviewed the *Debtors’ Memorandum of Law in Support of Confirmation of the Second Amended Plan of Liquidation under Chapter 11 of the Bankruptcy Code Proposed by the Debtors* [Dkt No.     ], along with the Exhibits thereto, including the *Certification of Jeffrey R. Miller with respect to the Tabulation of Votes on the Second Amended Plan of Liquidation under Chapter 11 of the Bankruptcy Code Proposed by the Debtors* (the “Voting Report”), and all required notice of the foregoing having been given by the Debtors as shown in the affidavits of service filed by the Claims Agent [Dkt. Nos.579 and 592]; and the Court having taken judicial notice of the papers and pleadings on file in the Chapter 11 Cases, and having reviewed and considered all of the foregoing; and the Court having heard and considered the statements of counsel at the Confirmation Hearing supporting confirmation of the Plan, along with all testimony presented and evidence admitted at the Confirmation Hearing, as well any objections to confirmation asserted at the Confirmation Hearing; and with the Court finding, after due deliberation, that (a) notice of the Confirmation Hearing, and the opportunity provided to all parties in interest to object and be heard, was adequate and appropriate as to all parties affected by the Plan,<sup>3</sup> and (b) that the legal and factual bases set forth at the Confirmation Hearing and as set forth in this Confirmation Order establish just cause for the relief granted herein; the Court hereby makes the following Findings of Fact and Conclusions of Law:

IT IS HEREBY FOUND AND DETERMINED—

**I. Findings of Fact, Application of Law and Conclusions of Law**

- A. Jurisdiction; Venue; Core Proceeding. The Court has jurisdiction over the Chapter 11 Cases pursuant to 28 U.S.C. §§ 157 and 1334. Confirmation of the Plan is a “core proceeding” pursuant to 28 U.S.C. § 157(b)(2)(L), and the Court has jurisdiction to

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<sup>3</sup> In accordance with Rules 2002(b) and 3017(d) of the Bankruptcy Rules.

determine whether (i) the Plan complies with the applicable provisions of the Bankruptcy Code, and (ii) the Plan should be confirmed and a Final Order entered with respect thereto. Venue of the Chapter 11 Cases is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

- B. Burden of Proof. The Debtors have the burden of proving the elements of section 1129(a) of the Bankruptcy Code by a preponderance of the evidence and, as set forth below, the Debtors have met that burden.
- C. Judicial Notice. The Court takes judicial notice of the docket in the Chapter 11 Cases maintained by the Clerk and/or its duly appointed agent, including without limitation, all pleadings, notices and other documents filed, all proceedings during the Chapter 11 Cases, and all orders entered during the pendency of the Chapter 11 Cases.
- D. Objections to Confirmation. Certain objections to confirmation of the Plan have been resolved consensually, through provisions included in this Order which satisfy all applicable requirements of the Bankruptcy Code and the Bankruptcy Rules, are in the best interests of the Estates and are supported by the record of the Confirmation Hearing, and are, therefore, approved. To the extent any objection has not been resolved by agreement at or prior to the Confirmation Hearing, each such objection are overruled, or are otherwise disposed of, as set forth herein and on the record of the Confirmation Hearing.
- E. Compromise and Settlement in Connection with the Plan. All of the settlements and compromises pursuant to and in connection with the Plan comply with the requirements of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019.
- F. Preservation of Causes of Action (11 U.S.C. § 1123(c)(3)). The Plan provides that except as otherwise expressly provided therein, any and all Causes of Action are preserved under the Plan. Except as otherwise provided in the Plan or herein, all Causes of Action shall vest in the post-confirmation Debtors on the Effective Date, and the Plan Administrator shall have the exclusive right to enforce any and all Causes of Action and Specified Causes of Actions retained by the post-confirmation Debtors against any Person.

The Plan's reservation and preservation of all such Causes of Action is adequate and sufficient to reserve, retain and preserve all such Causes of Action other than those that are expressly released in the Plan or this Confirmation Order.

No Person or Entity may rely on the absence of a specific reference in the Plan or Disclosure Statement to any Cause of Action against it, him, or her as any indication that the post-confirmation Debtors will not pursue any and all available Causes of Action against it, him, or her, it being the intent of the Debtors that all Causes of Action not expressly released shall be reserved, retained, and preserved for the benefit of all Creditors and parties in interest. No preclusion doctrine, including the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to any Causes of Action upon, after, or as a consequence of the Plan's confirmation or occurrence of the Effective Date.

The recoveries and proceeds from the Causes of Action reserved and preserved under the Plan will be used to satisfy the Allowed Claims of creditors pursuant to the terms of the Plan. The Plan Administrator is the appropriate representative of the Estates to prosecute and pursue the Causes of Action (and the proceeds thereof) reserved and preserved under the Plan.

G. Compliance with Bankruptcy Rule 3016. The Plan is dated and identifies the entities submitting it, thereby satisfying Bankruptcy Rule 3016(a). The filing of the Disclosure Statement with the Court satisfies Bankruptcy Rule 3016(b).

H. Compliance with Bankruptcy Rule 3017. The Debtors have given notice of the Confirmation Hearing as required by Bankruptcy Rule 3017(d).

I. Transmittal and Mailing of Materials; Notices. The Debtors' solicitation of votes to accept or reject the Plan satisfies Bankruptcy Rule 3018. The Plan was transmitted to all Holders of Claims entitled to vote on the Plan, and sufficient time was prescribed for such Holders of Claims to accept or reject the Plan, thereby satisfying the requirements of Bankruptcy Rule 3018.

J. Receipt and Tabulation of Votes. The procedures used by the Claims Agent to receive and tabulate Ballots of the Holders of Claims in the voting Classes, as set forth in the Voting Report, were proper and appropriate and in compliance with the Solicitation Procedures Order, the Bankruptcy Code, the Bankruptcy Rules, and all other applicable rules, laws and regulations. As described in the Voting Report, which certified both the method and results of the voting, the Plan was accepted by all Impaired Classes entitled to vote. The Debtors, therefore, obtained the requisite acceptance both in number and amount for confirmation of the Plan.

K. Plan Compliance With 11 U.S.C. § 1129. As set forth below and as demonstrated by the record in the Chapter 11 Cases, the Debtors have met their burden of proving the elements of sections 1129(a) and (b) of the Bankruptcy Code.<sup>4</sup>

L. Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)). As set forth and demonstrated below, the Plan complies with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and the orders of the Court with respect to the Plan, thus satisfying the requirements of section 1129(a)(1) of the Bankruptcy Code.

- i. Proper Classification (11 U.S.C. §§ 1122 and 1123(a)(1)). The Plan complies fully with the requirements of sections 1122 and 1123 of the Bankruptcy Code because: (a) the Plan's classifications conform to the requirements of the Bankruptcy Code and separately classify Claims based on valid business and legal reasons; (b) the Plan's classification scheme has a rational basis because it is based on the respective legal rights of each Holder of a Claim against or Interest in the Estates; (c) the Plan was not

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<sup>4</sup> See Confirmation Brief.

proposed to manipulate Class voting; and (d) Article III of the Plan designates the classification of Claims and Interests.

- ii. Specified Unimpaired Classes (11 U.S.C. § 1123(a)(2)). The Plan complies fully with the requirements of section 1123(a)(2) of the Bankruptcy Code because Article III of the Plan specifies which Classes of Claims and Interests are not Impaired under the Plan.
- iii. Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). The Plan complies fully with the requirements of section 1123(a)(3) of the Bankruptcy Code because Article III of the Plan specifies the treatment of Classes of Claims and Interests under the Plan, including those which are Impaired.
- iv. No Discrimination (11 U.S.C. § 1123(a)(4)). The Plan complies fully with the requirements of section 1123(a)(4) of the Bankruptcy Code because, as reflected in the treatment set forth in Article III of the Plan, the treatment of each of the Claims and Interests in each particular Class is the same as the treatment of each of the other Claims or Interests in such Class, except to the extent the Holder of such an Allowed Claim agrees to less favorable treatment.
- v. Implementation of Plan (11 U.S.C. § 1123(a)(5)). The Plan complies fully with the requirements of section 1123(a)(5) of the Bankruptcy Code because Articles IV, V and VI of the Plan provide adequate means for implementation of the Plan through, among other things, substantive consolidation of the Estates and the sources of consideration for Distributions under the Plan, and the vesting of assets in the post-confirmation Debtors.
- vi. Voting Power of Equity Securities (11 U.S.C. § 1123(a)(6)). Section 1123(a)(6) of the Bankruptcy Code requires that a plan provide for the inclusion in a corporate debtor's charter provisions prohibiting the issuance of nonvoting equity securities, and providing for an "appropriate distribution" of voting power among those securities possessing voting power. Section 1123(a)(6) of the Bankruptcy Code is satisfied as the governing corporate documents of each Debtor do not contemplate the issuance of non-voting equity securities.
- vii. Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)). Section 13.11 of the Plan provides that, on the Effective Date, the directors, officers, and Independent Board of each Debtor prior to the Effective Date, in their capacity as such, shall be deemed to have resigned or shall otherwise cease to serve as a member of the applicable governing body of the applicable Debtor, and the Plan Administrator shall take exclusive control of the post-confirmation Debtors. The Plan provides that Mark Smith of Vantage Point Advisory shall serve as the Plan Administrator pursuant to the terms and

requirements of the Plan. Therefore, section 1123(a)(7) of the Bankruptcy Code is satisfied.

- viii. Discretionary Contents of Plan (11 U.S.C. § 1123(b)). The Plan's provisions are appropriate and are not inconsistent with the provisions of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code permits approval of the releases in Section 13.2 of the Plan because as has been established here, based upon the records in the chapter 11 cases and the evidence presented at or in connection with the Confirmation Hearing, the releases provided by the Debtors in Section 13.2 of the Plan (i) are critical to the successful implementation and confirmation of the Plan, (ii) were given in exchange for the good and valuable consideration of the Released Parties, (iii) are an appropriate exercise of the Debtors' business judgment, (iv) are fair, equitable and reasonable, (v) a good faith settlement and compromise of the Claims and Interests cancelled by the Plan, (vi) are in the best interests of the Debtors and their Estates, (vii) were given and made after due notice and an opportunity to object and be heard with respect thereto, (viii) are consistent with sections 105, 524, 1123, 1129 and 1141 of the Bankruptcy Code and other applicable provisions of the Bankruptcy Code and applicable law, and (ix) are a bar to any Entity asserting any claim or Cause of Action released by Article 13.2 of the Plan, including a bar to any of the Releasing Parties asserting any released claims or Causes of Action against any of the Released Parties, as and to the extent provided for in the Plan and this Confirmation Order. The Debtors have demonstrated that the exculpations provided in the Plan were granted to key constituents and professionals within these cases (*i.e.*, the Exculpation Parties), and are appropriate in scope given the consideration provided by the Exculpated Parties and the standards within the Eleventh Circuit. The Plan's injunction is appropriate in scope, necessary to effectuate the Plan and within the standards of the Eleventh Circuit.

M. Debtors' Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)). The Debtors have complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the orders of the Court with respect to the solicitation of acceptances or rejections of the Plan, thus satisfying the requirements of section 1129(a)(2) of the Bankruptcy Code.

N. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The Debtors have proposed the Plan, including all documents necessary to effectuate the Plan, including but not limited to the engagement letter of the Plan Administrator presented at the Confirmation Hearing as Debtors' Exhibit 10 (the "Plan Administrator Engagement Letter") in good faith and not by any means forbidden by law, as evidenced by, among other things, the totality of the circumstances surrounding the formulation of the Plan, the record of the Chapter 11 Cases and the recoveries of Holders of Claims thereunder, thus satisfying the requirements of section 1129(a)(3) of the Bankruptcy Code.

O. Payment for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). All payments that have been made or are to be made by the Debtors, post-confirmation Debtors or Plan Administrator under the Plan, or by any Person acquiring property under the Plan, for services or for costs and expenses in, or in connection with, the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases including administrative expense claims under sections 503 and 507 of the Bankruptcy Code, have been approved by, or will be subject to the approval of, the Court as reasonable, thus satisfying the requirements of section 1129(a)(4) of the Bankruptcy Code.

P. Directors, Officers and Insiders (11 U.S.C. § 1129(a)(5)). The Debtors have complied with section 1129(a)(5) of the Bankruptcy Code. The identity of the person proposed to serve as the Plan Administrator is consistent with the interests of Holders of Claims against and Interests in the Debtors and with public policy. Therefore, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

Q. No Rate Changes (11 U.S.C. § 1129(a)(6)). The Plan does not contain any rate changes. Therefore, the Plan satisfies section 1129(a)(6) of the Bankruptcy Code.

R. Best Interest of Creditors Test (11 U.S.C. § 1129(a)(7)). The Disclosure Statement and the other evidence proffered or adduced at the Confirmation Hearing (i) are persuasive and credible, (ii) have not been controverted by other evidence or persuasively challenged in any of objection to Confirmation of the Plan, and (iii) establish that each Holder of an Impaired Claim or Interest, as the case may be, in such Impaired Classes has either accepted the Plan, or will receive or retain under the Plan property having a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date, thus satisfying the requirements of section 1129(a)(7) of the Bankruptcy Code.

S. Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)). Section 1129(a)(8) of the Bankruptcy Code requires that for each Class of Claims or Interests under the Plan, such Class has either accepted the Plan or is not Impaired under the Plan. Voting Classes 1 and 3 have voted to accept the Plan. Class 2, for Priority Non-Tax Claims, is unimpaired and therefore is deemed to have accepted the Plan. Because Holders of Interests in Class 4 will neither receive nor retain any property under the Plan, they are deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code, and the requirements of section 1129(a)(8) of the Bankruptcy Code have not been met, thereby requiring application of section 1129(b) of the Bankruptcy Code. The Plan does not discriminate unfairly against Classes 4 because Holders of Allowed Claims in Classes 1 and 3 are not being paid in full, so that the Plan is fair and equitable with respect to Classes 4. Therefore, the Plan satisfies section 1129(b) of the Bankruptcy Code with respect to Classes 4.

T. Treatment of Administrative and Priority Claims (11 U.S.C. § 1129(a)(9)). The treatment of Administrative Claims and Priority Non-tax Claims are set forth in Articles II and Section 4.2 of the Plan, thus satisfying the requirements of section 1129(a)(9) of the Bankruptcy Code.

U. Acceptance by Impaired Class (11 U.S.C. § 1129(a)(10)). As set forth in the Voting Report, the Plan has been accepted by Impaired Classes 1 and 3, determined without inclusion of any acceptance of the Plan by any insider, thus satisfying the requirements of section 1129(a)(10) of the Bankruptcy Code.

V. Feasibility (11 U.S.C. § 1129(a)(11)). The evidence submitted through the Disclosure Statement, Confirmation Brief, and evidence at the Confirmation Hearing regarding feasibility (a) is persuasive and credible, (b) has not been controverted by other evidence, and (c) establishes that confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the post-confirmation Debtors, except as proposed in the Plan. Accordingly, the requirements of section 1129(a)(11) of the Bankruptcy Code have been satisfied.

W. Payment of Fees (11 U.S.C. § 1129(a)(12)). As set forth in Section 13.8 of the Plan, the Debtors have paid, or will pay, prior to the Effective Date and thereafter, all amounts due under 28 U.S.C. § 1930, and further provides that all such fees payable after the Effective Date shall be paid when due or as soon thereafter as reasonably practicable, and that satisfaction of such fees is a condition precedent to closing the Chapter 11 Cases, thus satisfying the requirements of section 1129(a)(12) of the Bankruptcy Code.

X. Miscellaneous Provisions (11 U.S.C. §§ 1129(a)(13)-(16)). Sections 1129(a)(13)-(16) of the Bankruptcy Code are inapplicable as the Debtors (i) do not provide retiree benefits (1129(a)(13)), (ii) have no domestic support obligations (1129(a)(14)), (iii) are not individuals (1129(a)(15)), and (iv) are a for-profit business (1129(a)(16)).

Y. No Unfair Discrimination; Fair and Equitable (11 U.S.C. § 1129(b)). Holders of Interests in Classes 4 will receive no Distributions under the Plan and, accordingly, are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. The Debtors presented uncontroverted evidence that the Plan does not discriminate unfairly and is fair and equitable with respect to the treatment of Interests in Class 4. Further, the Plan does not discriminate unfairly against Class 4 because those Interests are junior to and are not equally situated to the Classes receiving a distribution under the Plan and as such, there is a reasonable basis for how the Plan treats Class 4. Thus, the Plan satisfies section 1129(b) of the Bankruptcy Code and may be confirmed notwithstanding its failure to satisfy section 1129(a)(8) of the Bankruptcy Code. The Plan shall be binding upon the members of Class 4 upon confirmation of the Plan.

Z. Principal Purpose of the Plan (11 U.S.C. 1129(d)). The principal purpose of the Plan is not the avoidance of taxes or avoidance of the requirements of section 5 of the Securities Act of 1933, and no Governmental Unit has requested that the Court deny Confirmation on such basis, thus satisfying the requirements of section 1129(d) of the Bankruptcy Code.

AA. Good Faith Solicitation (11 U.S.C. § 1125(e)). Based upon the record before the Court in the Chapter 11 Cases, the Debtors, the Committee, the Claims Agent and each of their respective members, officers, directors, agents, financial advisers, attorneys, employees, equity holders, partners, affiliates and representatives have acted in

“good faith” within the meaning of section 1125(e) of the Bankruptcy Code in soliciting acceptance or rejection of the Plan under section 1125(e) of the Bankruptcy Code and are thus entitled to the protections afforded by section 1125(e) of the Bankruptcy Code with respect to such solicitation of acceptance or rejection of the Plan.

BB. Substantive Consolidation. The substantive consolidation contemplated by Section 6.3 of the Plan, as modified by this Order, which is unopposed, is consistent with, and permissible under, applicable law in the Eleventh Circuit. No party has objected to such substantive consolidation, and the overwhelming majority of parties who have voted have voted in favor of the Plan which is predicated upon entry of an order substantively consolidating the Estates in accordance with of the Plan for administrative convenience and for purposes of voting on the Plan, confirming the Plan, implementing the Plan, and making Distributions pursuant to the Plan.

CC. Likelihood of Satisfaction of Conditions Precedent to the Effective Date. All conditions precedent to the Effective Date set forth in Article IX of the Plan have been satisfied, will be satisfied after entry of this Confirmation Order or have been or will be duly waived.

DD. Retention of Jurisdiction. The Court finds that it may properly retain jurisdiction over the matters set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

Based on the foregoing, the Court holds that the Plan satisfies all of the requirements for Confirmation set forth in section 1129 of the Bankruptcy Code and may be confirmed.

**ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED—**

**I. The Plan is Hereby Confirmed**

1. Approval of the Plan. The Plan, which consists of the Plan as filed on March 20, 2024 (as amended, supplemented or otherwise modified, and including all exhibits and schedules thereto (hereafter, the “Plan”), is approved and confirmed as having satisfied all of the requirements of chapter 11 of the Bankruptcy Code. The terms of the Plan, as modified, are incorporated herein by reference and are an integral part of this Confirmation Order. A copy of the Plan is attached hereto as Exhibit A.

2. Findings of Fact and Conclusions of Law. The findings of fact and conclusions of law of the Court set forth herein and at the Confirmation Hearing shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, as made applicable herein by Bankruptcy Rule 9014, and the findings and conclusions of the Court at the Confirmation Hearing are incorporated herein by reference. To the extent that any finding of fact shall be determined to be a conclusion of law, it shall be so deemed, and vice versa.

3. Objections. All Objections, to the extent not already withdrawn, waived, or settled, and all reservations of rights included therein, shall be, and hereby are overruled.

The Amended Limited Objection and Reservation of Rights of Burger King Company LLC [ECF No. 608] (the “BKC Objection”) is resolved by the Debtors paying Burger King Company LLC (“BKC”) an amount equal to \$125,000 on the Effective Date of the Plan in full and final satisfaction of any and all remaining claims of BKC against the Debtors and their estates, including BKC’s asserted Administrative Expense Claim for post-petition property taxes (the “BKC Settlement Payment”). In the event the Plan is not confirmed and/or the Effective Date of the Plan does not occur, then BKC reserves the right to assert and prosecute a chapter 11 Administrative Expense Claim in the amount of \$172,972.58, including to assert that an appropriate reserve be created in connection therewith.

## **II. The Plan’s Classification and Treatment of Claims is Approved**

4. Approval of Classification Scheme: All Claims and Interests shall be, and hereby are, classified and treated as set forth in the Plan. The Plan’s classification scheme shall be, and hereby is, approved.

5. Classification for Voting Purposes Only: The classifications set forth in connection with voting on the Plan: (a) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan; (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims under the Plan for Distribution purposes; (c) may not be relied upon by any Holder of a Claim as representing the actual classification of such Claims under the Plan for Distribution purposes, and (d) shall not bind the Debtors or post-confirmation Debtors.

6. Approval of the Treatment of Claims: The treatment of Claims and Interests as provided in the Plan is approved.

## **III. Effects of Confirmation**

7. Enforceability of Plan. Pursuant to sections 1123(a), 1141(a) and 1142 of the Bankruptcy Code and the provisions of this Confirmation Order, the Plan shall be, and hereby is, valid, binding and enforceable notwithstanding any otherwise applicable non-bankruptcy law. The Debtors may modify, amend or enter into, as necessary, all documents arising in connection with the Plan, without further order of the Court, in accordance with the provisions of the Plan.

8. Authorization to Implement the Plan. Upon the entry of this Confirmation Order, the Debtors, the post-confirmation Debtors and the Plan Administrator, as applicable, and their respective professionals, are authorized to take or cause to be taken all actions necessary or appropriate to implement all provisions of, and to consummate, the Plan and to execute, enter into or otherwise make effective all documents arising in connection therewith, prior to, on and after the Effective Date; provided that, notwithstanding the foregoing, the Plan Administrator must obtain the Prepetition Agent’s prior written consent prior to conducting a sale, or sales, of assets valued in excess of \$50,000 in the aggregate. All such actions taken or caused to be taken shall be, and hereby are, authorized and approved by the Court such that no further approval, act or action need to be taken under any applicable law, order, rule or regulation, including, without

limitation, (a) the incurrence of all obligations contemplated by the Plan and the making of Distributions and (b) the implementation of all settlements and compromises as set forth in or contemplated by the Plan.

9. Distribution to Holders of Class 1 Allowed Claims. On the Effective Date, the Debtors shall make a distribution to the Administrative Agent, for the benefit of the holders of the Class 1 Allowed Claims, of all Cash held by the Debtors other than the Wind-Down Amount, the Professional Fee Reserve, the Litigation Fund Reserve, the BKC Settlement Payment, an amount equal to \$77,639 (which shall be reserved to pay any unpaid Administrative Expense claims not paid or disallowed prior to the deadline set forth in Section 2.1 of the Plan for filing any such Administrative Expense Claims), and an amount equal to \$41,000 (which shall be used to pay Bankruptcy Administrator fees for the second quarter of 2024). The payment to the Administrative Agent pursuant to this section shall be: (a) free and clear of all Liens, Claims, and encumbrances; and (b) shall not be less than \$2,291,000.00 or such other amount consented to by the Prepetition Agent in its sole discretion (the “Lender Payment”). In addition to the conditions for the Effective Date set forth in the Plan, the Effective Date shall not occur until: (i) the Administrative Agent receives the Lender Payment; and (ii) BKC receives the BKC Settlement Payment.

10. Authorization to Make Payments Pursuant to the Plan. Subject to the Wind-Down Budget, the Plan Administrator is authorized to make payments pursuant to the terms of the Plan at any time after the Effective Date of the Plan, including payments on account of Allowed Other Secured Claims, Allowed Administrative Claims and Allowed Other Priority Claims, Allowed Priority Tax Claims, Allowed Credit Agreement Secured Claims, and Allowed General Unsecured Claims.

11. Binding Effect. Notwithstanding the stay contemplated by Bankruptcy Rule 3020(e) and except as otherwise provided in section 1141 of the Bankruptcy Code, immediately after entry of this Confirmation Order and subject to the occurrence of the Effective Date, the Plan and this Confirmation Order shall be immediately effective and enforceable and binding upon (i) the Debtors, (ii) all entities that are parties to or are subject to the settlements, compromises, releases, discharges and injunctions described in the Plan, (iii) any and all non-Debtor parties to Executory Contracts or Unexpired Leases with the Debtors, and (iv) all present and former Holders of Claims and Interests, whether or not (a) such Holder shall receive or retain any property or interest in property under the Plan, (b) such Holder’s Claim or Interest is Impaired under the Plan, (c) such Holder has accepted the Plan, (d) such Holder has failed to vote to accept or reject the Plan or voted to reject the Plan, (e) such Holder is entitled to a Distribution under the Plan, and (f) such Holder has filed a proof of Claim in the Chapter 11 Cases. Accordingly, as permitted by Bankruptcy Rule 3020(e), the fourteen (14) day period provided by such rule is hereby waived in its entirety.

12. Discharges, Releases, Injunctions, Limitations of Liability and Exculpation. The Plan includes (i) the release by the Debtors of certain parties in interest (the “Debtor Releases”), (ii) an exculpation provision, and (iii) an injunction provision. As set forth above, all discharges, releases, injunctions, limitations of liability and exculpation provisions in the Plan, including, without limitation, the Debtor Releases, and all other

releases, exculpations and injunctions contained in Articles X and XIII of the Plan, are fair and equitable, were given for valuable consideration and are in the best interests of the Debtors and all parties in interest, and such provisions shall be effective and binding on all persons and entities, to the extent provided therein, and are incorporated in this Confirmation Order as if set forth in full herein and are hereby approved in their entirety.

13. Causes of Action; Specified Causes of Action. Except as otherwise provided in the Plan or herein, all Causes of Action shall vest in the post-confirmation Debtors on the Effective Date, and the Plan Administrator shall have the exclusive right to enforce any and all Causes of Action and Specified Causes of Actions retained by the post-confirmation Debtors against any Person. Absent the written consent of the Prepetition Agent, only the Litigation Fund Reserve shall be used to satisfy the expenses of pursuing or disposing of the Specified Causes of Action. For the avoidance of doubt, pursuant to the Plan, neither the post-confirmation Debtors nor the Plan Administrator shall directly or indirectly pursue Causes of Action against Aurora Management Partners, Inc., Wells Fargo Bank, National Association, Bank of America, N.A., City National Bank, Truist Bank, MUFG Bank, Ltd. and PNC Bank, N.A. or any of such entities current and former subsidiaries, officers, directors, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers consultants, representatives, and other professional.

14. Settlements. The settlements contemplated under the Plan, and the respective terms thereof as set forth in the Plan, are hereby approved pursuant to Bankruptcy Rule 9019 as fair, prudent and reasonable compromises of the controversies and Claims resolved by such settlements, are binding upon all Persons affected thereby, and shall be effectuated in accordance with the terms thereof.

15. Cancellation of Interests. On the Effective Date, all Interests shall be cancelled and each Holder thereof shall not be entitled to, and shall not receive or retain, any property or interest in property under the Plan. The Holders of Interests shall not be entitled to receive further notice in these Chapter 11 Cases after such Interests have been cancelled.

16. Cancellation of Existing Securities and Agreements. Except as otherwise provided in the Plan and in any contract, instrument or other agreement or document created in connection with the Plan, on the Effective Date, all agreements and other documents evidencing Claims or rights of any Holder of a Claim or Equity Interest against any of the Debtors, including, but not limited to, all indentures, notes, bonds, and share certificates evidencing such Claims and Equity Interests and any agreements or guarantees related thereto shall be cancelled, terminated, deemed null and void and satisfied, as against the Debtors, but not as against any other Entity unless specifically released by or under the Plan.

17. Executory Contracts and Unexpired Leases. Except as otherwise provided in the Plan or this Confirmation Order, or in any contract, instrument, release or other agreement or document entered into in connection with the Plan, all executory contracts and unexpired leases that exist between the Debtors and any Entity shall be deemed

rejected by the Debtors as of the Effective Date except for any executory contract or unexpired leases that have been assumed or rejected by a Final Order of the Bankruptcy Court entered prior to the Effective Date (including without limitation the leases and executory contracts assumed and assigned pursuant to the terms of the Asset Purchase Agreements with BKC, Mosaic, RRG and Bulldog).<sup>5</sup>

- i. Subject to the occurrence of the Effective Date, entry of the Confirmation Order shall constitute approval of such rejection under section 365(a) of the Bankruptcy Code and a finding by the Bankruptcy Court that each such rejection is in the best interests of the Debtors, their Estates, and all parties in interest in the Chapter 11 Cases.
- ii. Any Claims created by the rejection of Executory Contracts and Unexpired Leases under the Plan must be filed with the Court and served on the post-confirmation Debtors no later than thirty (30) days after the Effective Date. Any Claims arising from the rejection of an Executory Contract or Unexpired Lease under the Plan for which proofs of Claim are not timely filed within that time period shall be forever barred from assertion against the Debtors, the Estates, their successors and assigns, and their assets and properties. All such Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in Article X.E of the Plan. Unless otherwise ordered by the Court, all such Claims that are timely filed as provided in the Plan shall be treated as General Unsecured Claims under the Plan and shall be subject to the provisions of Article III therein.

#### **IV. Implementation of the Plan**

18. Plan Administrator.
  - i. The appointment of the Plan Administrator is hereby approved. The Plan Administrator is hereby authorized to wind up the Debtors' affairs and may make distributions after the Effective Date in accordance with this Confirmation Order, the Plan, the Plan Administrator Engagement Letter and the Wind-Down Budget. The Plan Administrator shall have such rights, powers, and duties set forth in this Confirmation Order, the Plan Administrator Engagement Letter, and the Plan and such receive such compensation as is provided for in the Plan Administrator Engagement Letter subject to the Wind-Down Budget.
  - ii. The Plan Administrator Engagement Letter is hereby approved. The Plan Administrator Engagement Letter sets forth the procedures or resignation or termination of the Plan Administrator. The Plan provides for the procedures the appointment of a successor Plan Administrator. The Prepetition Agent, with the consent of the counsel for the post-confirmation

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<sup>5</sup> The typographical error in Section 8.1 of the Plan, referring to RRG as "BRG", is thus hereby corrected.

Debtors, which shall not be unreasonably withheld, conditioned or delayed, shall appoint a successor to the Plan Administrator or any subsequent Successor Plan Administrator. Notice of any Successor Plan Administrator shall be filed with the Bankruptcy Court and provided to all creditors.

19. Substantive Consolidation. In light of the fact that the substantive consolidation of the Debtors' estates for voting, confirmation and distribution purposes, as provided in Section 6.3 of the Plan, will promote a more equitable distribution of the Debtors' assets, such substantive consolidation set forth in Section 6.3 of the Plan is (i) in the best interests of the Debtors' stakeholders, (ii) appropriate under section 105(a) of the Bankruptcy Code, and (iii) hereby approved.

Thus, on the Effective Date, (i) all intercompany Claims and Equity Interests held by, between and among the Debtors shall be deemed eliminated, (ii) all assets and liabilities of the Debtors shall be merged or treated as if they were merged with the assets and liabilities of Premier Kings, Inc., (iii) any obligation of a Debtor and all guarantees thereof by one or more of the other Debtors shall be deemed to be an obligation of Premier Kings, Inc., and (iv) each Claim filed or to be filed against any Debtor shall be deemed filed only against the consolidated Premier Kings, Inc., and shall be deemed a single Claim against a single obligation of the consolidated Premier Kings, Inc. On the Effective Date, in accordance with the terms of the Plan, all Claims based upon co-obligations or guarantees of collection, payment, or performance made by the Debtors as to the obligations of another Debtor shall be merged into a single obligation of Premier Kings, Inc. and otherwise shall be released and of no further force and effect.

Furthermore, the substantive consolidation effected pursuant to the Plan, as set forth in Section 6.3 of the Plan, shall not otherwise affect (a) the legal and corporate structures of the Debtors; (b) the right to Distributions from any insurance policies or proceeds of such policies; or (c) the rights of the Plan Administrator to contest setoff or recoupment rights alleged by creditors on the grounds of lack of mutuality under section 553 of the Bankruptcy Code and other applicable law. In addition, substantive consolidation shall not, and shall not be deemed to, prejudice any of (i) the Causes of Action, which shall survive for the benefit of the Debtors and their Estates; or (ii) the available defenses to the Causes of Action; provided, however, all causes of action arising under Chapter 5 of the Bankruptcy Code and defenses to such causes of action shall be determined as if the Debtors were at all relevant times a single consolidated "debtor" as that term is used in or in relation to Chapter 5 of the Bankruptcy Code.

20. Dissolution of the Debtors' Governing Bodies. On the Effective Date, (i) the Debtors' boards of directors shall be dissolved and the then-current officers of the Debtors and members of the boards of directors of the Debtors shall be relieved of their positions and corresponding duties and obligations, and the Plan Administrator shall take over all duties of the former officers and directors of the Debtors as of the Effective Date.

21. Dissolution of Debtors. The Plan Administrator is authorized to execute a certificate of dissolution (or its equivalent) with the secretary of state or similar official of each jurisdiction of incorporation of the Debtors pursuant to applicable non-bankruptcy

law at any time on or after the Effective Date at the sole discretion of the Plan Administrator. All applicable regulatory or governmental agencies shall take all steps necessary to allow and affect the prompt dissolution of the Debtors as provided herein, without the payment of any fee, tax, or charge and without need for the filing of reports or certificates.

22. Bankruptcy Administrator Fees. All fees payable through the Effective Date pursuant to 28 U.S.C. § 1930 shall be paid by the Debtors on or before the Effective Date. After the Effective Date, the Plan Administrator shall pay quarterly fees to the Bankruptcy Administrator until each of their respective Chapter 11 Cases are closed or converted.

23. Section 1146(a) Waiver. Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax or other similar tax or governmental assessment, and all state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation instruments or other documents without the payment of any such tax or governmental assessment.

24. Post-Effective Date Expenses. Except as otherwise specifically provided in the Plan, from and after the Effective Date, and subject to the Wind-Down Budget, the Plan Administrator shall pay in Cash the reasonable legal fees and expenses incurred by any post-confirmation Debtor after the Effective Date in the ordinary course of business and without any further notice to or action, order or approval of the Bankruptcy Court. Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Plan Administrator may, subject to the Wind-Down Budget, employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

25. Dissolution of Creditors' Committee. On the Effective Date, the Committee shall be dissolved and its members shall be deemed released and discharged from all further authority, duties, responsibilities and obligations relating to and arising from or in connection with the Chapter 11 Cases or the Plan and its implementation, and the retention and employment of the Committee's attorneys, financial advisors and other agents shall terminate, except with respect to (i) applications filed under sections 330 and 331 of the Bankruptcy Code, (ii) any motions seeking the enforcement of the provisions of the Plan or this Confirmation Order, and (iii) any appeals of this Confirmation Order.

26. Preservation of Causes of Action. Except as otherwise expressly provided in the Plan, any and all Causes of Action are preserved under the Plan.

i. Vesting of Causes of Action

(a) Except as otherwise provided in the Plan or herein, in accordance with section 1123(b)(3) of the Bankruptcy Code, any and all

Causes of Action that the Debtors and the Estates may hold against any Person or Entity shall vest in the post-confirmation Debtors.

(b) Except as otherwise provided in the Plan or herein, after the Effective Date, all privileges, including the attorney-client, work-product and other privileges held by the Debtors and the Estates shall vest in the post-confirmation Debtors, as applicable.

(c) Except as otherwise provided in the Plan or herein, after the Effective Date, the post-confirmation Debtors, acting through the Plan Administrator in consultation with the Prepetition Agent, shall have the exclusive right to investigate, institute, prosecute (in any court or other tribunal, including, without limitation, in an adversary proceeding relating to one or more of the Chapter 11 Cases in the Bankruptcy Court), abandon, settle or compromise any Causes of Action that were held by the Debtors and the Estates. The post-confirmation Debtors' authority to abandon, settle, or compromise such Causes of Action, after consultation with the Prepetition Agent, shall be in the Plan Administrator's sole discretion and without further order of the Bankruptcy Court, except as otherwise set forth in the Plan.

ii. Preservation of All Causes of Action Not Expressly Identified, Disclosed, Settled or Released

(a) Unless a Cause of Action against a Holder or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan, in or by operation of any Final Order (including this Confirmation Order) of the Bankruptcy Court, the Debtors and their Estates expressly reserve such Cause of Action for later adjudication or administration by the post-confirmation Debtors (including, without limitation, Causes of Action not specifically identified or described in the Plan or elsewhere or of which the Debtors may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtors at this time or facts or circumstances which may change or be different from those the Debtors now believe to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise), or laches shall apply to such Causes of Action upon or after the entry of the Confirmation Order or Effective Date based on the Disclosure Statement, Plan, or this Confirmation Order. In addition, the Debtors and their Estates expressly reserve the right of the post-confirmation Debtors to pursue or adopt any claims alleged in any lawsuit in which the Debtors are a defendant or an interested party, against any Person or Entity, including, without limitation, the plaintiffs or codefendants in such lawsuits. Further, the Debtors and their Estates expressly reserve all privileges, including the attorney-client, work-product and other privileges.

(b) Subject to the immediately preceding paragraph, any Person or Entity to whom the Debtors have incurred an obligation (whether on account of services, purchase or sale of goods or otherwise), or who has received services from the Debtors or a transfer of money or property of the Debtors, or who has transacted business with the Debtors, or leased equipment or property from the Debtors should assume that any such obligation, transfer, or transaction, including personal injury and other tort claims, may be reviewed by the post-confirmation Debtors subsequent to the Effective Date and may be the subject of an action after the Effective Date, regardless of whether: (i) such Person or Entity has filed a proof of Claim against the Debtors in the Chapter 11 Cases; (ii) the Debtors have Allowed or objected to any such Person or Entity's proof of Claim; (iii) any such Person or Entity's Claim was included in the Schedules; (iv) the Debtors have objected to any such Person or Entity's scheduled Claim; or (v) any such Person or Entity's scheduled Claim has been identified by the Debtors as disputed, contingent or unliquidated.

27. Authorization to Consummate. The Debtors are authorized to consummate the Plan at any time after the entry of the Confirmation Order subject to satisfaction or waiver (by the required parties as set forth in the Plan) of the conditions precedent to the Effective Date set forth in Article IX of the Plan.

28. Incorporation. The failure to specifically include any particular provision of the Plan in this Confirmation Order will not diminish the effectiveness of such provision, it being the intent of the Court that the Plan is confirmed in its entirety and incorporated herein by its reference.

29. Notice of Entry of the Confirmation Order and the Occurrence of the Effective Date. The Debtors and/or their authorized agent shall serve notice of the entry of this Confirmation Order and the occurrence of the Effective Date on all Creditors and parties in interest in the Chapter 11 Cases within five (5) business days after the occurrence of the Effective Date. Notwithstanding the foregoing, no service of the Notice of Effective Date shall be required to be made upon any Person to whom the Debtors mailed a (a) notice of the meeting of Creditors under section 341 of the Bankruptcy Code, (b) notice of the bar date for filing Proofs of Claim, or (c) a solicitation package or other solicitation-related notice and, in each instance, received such notice or materials returned by the United States Postal Service marked "undeliverable as addressed," "moved – left no forwarding address," "forwarding order expired" or similar marking or reason, unless the Debtors have been informed in writing by such person of that Person's new address. Service of the Notice of Effective Date described herein in the time and manner set forth herein shall constitute due, adequate and sufficient notice, and no other or further notice shall be necessary.

## **V. Miscellaneous Provisions**

30. Class 1 Allowed Claim. Any distributions made on account of the Class 1 Allowed Claim shall be made to an account designated by the Prepetition Agent.

31. Wind-Down Budget. In accordance with the Plan, the Plan Administrator must adhere to the Wind-Down Budget. The Wind-Down Budget shall be used to fund the orderly wind down of the post-confirmation Debtors' estates. The Plan Administrator must obtain the Prepetition Agent's written consent prior to exceeding the Wind-Down Budget. Any portion of the Wind-Down Amount that is remaining after the orderly wind-down of the Debtors' estates, after payment of all amounts due and to become due for the U.S. Bankruptcy Administrator's fees shall be paid to the Prepetition Agent, for the benefit of the holders of the Class 1 Allowed Claims, until satisfaction of the Class 1 Allowed Claims.

32. Modification of Plan. Pursuant to Section 13.9 of the Plan, after the entry of this Confirmation Order, the Debtors or post-confirmation Debtors may, with the written consent of the Prepetition Agent and upon order of the Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order in such manner as may be necessary to carry out the purpose and intent of the Plan, so long as such proceedings do not adversely affect the treatment of Holders of Claims under the Plan; *provided, however*, that prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Court. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, modified or clarified, if the proposed alteration, amendment, modification or clarification does not materially and adversely change the treatment of the Claim of such Holder.

33. Retention of Jurisdiction. Notwithstanding the entry of this Confirmation Order or the occurrence of the Effective Date, the Court shall retain jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and the Plan to the fullest extent permitted by law, including among other things, jurisdiction over the matters set forth in Article XI of the Plan, which provisions are incorporated herein by reference.

34. Confirmation Order Controls. To the extent that the terms of this Confirmation Order are inconsistent with the terms set forth in the Plan or any of the exhibits thereto, then the terms of this Confirmation Order shall govern and control.

35. Final Order. Notwithstanding paragraph 9.1(b) of the Plan and Bankruptcy Rules 3020(e), 6004(h), 6006(d) and 7062, or any other applicable Bankruptcy Rule, the Court finds that there is no reason for delay in the implementation of this Confirmation Order and, thus, this Confirmation Order shall be effective and enforceable immediately upon entry.

Dated: \_\_\_\_\_, 2024  
Birmingham, Alabama

\_\_\_\_\_  
TAMARA O. MITCHELL  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT B**

**REDLINE**

*Without Exhibit*

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

In re:

PREMIER KINGS, INC., *et al.*,<sup>1</sup>

Debtors.

(Chapter 11)

Case No. 23-02871-TOM

(Jointly Administered)

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER CONFIRMING  
THE DEBTORS' SECOND AMENDED PLAN OF LIQUIDATION UNDER CHAPTER  
11 OF THE BANKRUPTCY CODE PROPOSED BY THE DEBTORS**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), having filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”) on the Petition Date; and the Debtors having proposed the *Second Amended Plan of Liquidation under Chapter 11 of the Bankruptcy Code Proposed by the Debtors* (as further modified, amended, or supplemented from time to time, the “Plan”) [Dkt. No. 554];<sup>2</sup> and the Court having approved [Dkt. No. 559] the Debtors’ proposed solicitation and voting procedures and the adequacy of the information contained in the *Second Amended Disclosure Statement for Plan of Liquidation under Chapter 11 of the Bankruptcy Code Proposed by the Debtors* (the “Disclosure Statement”) [Dkt. No. 556]; and the Court having set the Confirmation Hearing for May 1, 2024 at 11:00 a.m. (prevailing Central Time); and the Debtors having filed proposed findings of fact, conclusions of law and order

<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Plan, the Confirmation Brief, the Disclosure Statement, or the Solicitation Procedures Order, as applicable.

granting confirmation of the Plan (the “Confirmation Order”); and the Court having reviewed the *Debtors’ Memorandum of Law in Support of Confirmation of the Second Amended Plan of Liquidation under Chapter 11 of the Bankruptcy Code Proposed by the Debtors* [Dkt No. 618], along with the Exhibits thereto, including the *Certification of Jeffrey R. Miller with respect to the Tabulation of Votes on the Second Amended Plan of Liquidation under Chapter 11 of the Bankruptcy Code Proposed by the Debtors* (the “Voting Report”), and all required notice of the foregoing having been given by the Debtors as shown in the affidavits of service filed by the Claims Agent [Dkt. Nos. 579 and 592]; and the Court having taken judicial notice of the papers and pleadings on file in the Chapter 11 Cases, and having reviewed and considered all of the foregoing; and the Court having heard and considered the statements of counsel at the Confirmation Hearing supporting confirmation of the Plan, along with all testimony presented and evidence admitted at the Confirmation Hearing, as well any objections to confirmation asserted at the Confirmation Hearing; and with the Court finding, after due deliberation, that (a) notice of the Confirmation Hearing, and the opportunity provided to all parties in interest to object and be heard, was adequate and appropriate as to all parties affected by the Plan,<sup>3</sup> and (b) that the legal and factual bases set forth at the Confirmation Hearing and as set forth in this Confirmation Order establish just cause for the relief granted herein; the Court hereby makes the following Findings of Fact and Conclusions of Law:

IT IS HEREBY FOUND AND DETERMINED—

**I. Findings of Fact, Application of Law and Conclusions of Law**

- A. Jurisdiction; Venue; Core Proceeding. The Court has jurisdiction over the Chapter 11 Cases pursuant to 28 U.S.C. §§ 157 and 1334. Confirmation of the Plan is a “core proceeding” pursuant to 28 U.S.C. § 157(b)(2)(L), and the Court has jurisdiction to

<sup>3</sup> In accordance with Rules 2002(b) and 3017(d) of the Bankruptcy Rules.

determine whether (i) the Plan complies with the applicable provisions of the Bankruptcy Code, and (ii) the Plan should be confirmed and a Final Order entered with respect thereto. Venue of the Chapter 11 Cases is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

- B. Burden of Proof. The Debtors have the burden of proving the elements of section 1129(a) of the Bankruptcy Code by a preponderance of the evidence and, as set forth below, the Debtors have met that burden.
- C. Judicial Notice. The Court takes judicial notice of the docket in the Chapter 11 Cases maintained by the Clerk and/or its duly appointed agent, including without limitation, all pleadings, notices and other documents filed, all proceedings during the Chapter 11 Cases, and all orders entered during the pendency of the Chapter 11 Cases.
- D. Objections to Confirmation. Certain objections to confirmation of the Plan have been resolved consensually, through provisions included in this Order which satisfy all applicable requirements of the Bankruptcy Code and the Bankruptcy Rules, are in the best interests of the Estates and are supported by the record of the Confirmation Hearing, and are, therefore, approved. To the extent any objection has not been resolved by agreement at or prior to the Confirmation Hearing, each such objection are overruled, or are otherwise disposed of, as set forth herein and on the record of the Confirmation Hearing.
- E. Compromise and Settlement in Connection with the Plan. All of the settlements and compromises pursuant to and in connection with the Plan comply with the requirements of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019.
- F. Preservation of Causes of Action (11 U.S.C. § 1123(c)(3)). The Plan provides that except as otherwise expressly provided therein, any and all Causes of Action are preserved under the Plan. Except as otherwise provided in the Plan or herein, all Causes of Action shall vest in the post-confirmation Debtors on the Effective Date, and the Plan Administrator shall have the exclusive right to enforce any and all Causes of Action and Specified Causes of Actions retained by the post-confirmation Debtors against any Person.

The Plan's reservation and preservation of all such Causes of Action is adequate and sufficient to reserve, retain and preserve all such Causes of Action other than those that are expressly released in the Plan or this Confirmation Order.

No Person or Entity may rely on the absence of a specific reference in the Plan or Disclosure Statement to any Cause of Action against it, him, or her as any indication that the post-confirmation Debtors will not pursue any and all available Causes of Action against it, him, or her, it being the intent of the Debtors that all Causes of Action not expressly released shall be reserved, retained, and preserved for the benefit of all Creditors and parties in interest. No preclusion doctrine, including the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial,

equitable, or otherwise), or laches, shall apply to any Causes of Action upon, after, or as a consequence of the Plan's confirmation or occurrence of the Effective Date.

The recoveries and proceeds from the Causes of Action reserved and preserved under the Plan will be used to satisfy the Allowed Claims of creditors pursuant to the terms of the Plan. The Plan Administrator is the appropriate representative of the Estates to prosecute and pursue the Causes of Action (and the proceeds thereof) reserved and preserved under the Plan.

G. Compliance with Bankruptcy Rule 3016. The Plan is dated and identifies the entities submitting it, thereby satisfying Bankruptcy Rule 3016(a). The filing of the Disclosure Statement with the Court satisfies Bankruptcy Rule 3016(b).

H. Compliance with Bankruptcy Rule 3017. The Debtors have given notice of the Confirmation Hearing as required by Bankruptcy Rule 3017(d).

I. Transmittal and Mailing of Materials; Notices. The Debtors' solicitation of votes to accept or reject the Plan satisfies Bankruptcy Rule 3018. The Plan was transmitted to all Holders of Claims entitled to vote on the Plan, and sufficient time was prescribed for such Holders of Claims to accept or reject the Plan, thereby satisfying the requirements of Bankruptcy Rule 3018.

J. Receipt and Tabulation of Votes. The procedures used by the Claims Agent to receive and tabulate Ballots of the Holders of Claims in the voting Classes, as set forth in the Voting Report, were proper and appropriate and in compliance with the Solicitation Procedures Order, the Bankruptcy Code, the Bankruptcy Rules, and all other applicable rules, laws and regulations. As described in the Voting Report, which certified both the method and results of the voting, the Plan was accepted by all Impaired Classes entitled to vote. The Debtors, therefore, obtained the requisite acceptance both in number and amount for confirmation of the Plan.

K. Plan Compliance With 11 U.S.C. § 1129. As set forth below and as demonstrated by the record in the Chapter 11 Cases, the Debtors have met their burden of proving the elements of sections 1129(a) and (b) of the Bankruptcy Code.<sup>4</sup>

L. Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)). As set forth and demonstrated below, the Plan complies with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and the orders of the Court with respect to the Plan, thus satisfying the requirements of section 1129(a)(1) of the Bankruptcy Code.

- i. Proper Classification (11 U.S.C. §§ 1122 and 1123(a)(1)). The Plan complies fully with the requirements of sections 1122 and 1123 of the Bankruptcy Code because: (a) the Plan's classifications conform to the requirements of the Bankruptcy Code and separately classify Claims

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<sup>4</sup> See Confirmation Brief.

based on valid business and legal reasons; (b) the Plan's classification scheme has a rational basis because it is based on the respective legal rights of each Holder of a Claim against or Interest in the Estates; (c) the Plan was not proposed to manipulate Class voting; and (d) Article III of the Plan designates the classification of Claims and Interests.

- ii. Specified Unimpaired Classes (11 U.S.C. § 1123(a)(2)). The Plan complies fully with the requirements of section 1123(a)(2) of the Bankruptcy Code because Article III of the Plan specifies which Classes of Claims and Interests are not Impaired under the Plan.
- iii. Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). The Plan complies fully with the requirements of section 1123(a)(3) of the Bankruptcy Code because Article III of the Plan specifies the treatment of Classes of Claims and Interests under the Plan, including those which are Impaired.
- iv. No Discrimination (11 U.S.C. § 1123(a)(4)). The Plan complies fully with the requirements of section 1123(a)(4) of the Bankruptcy Code because, as reflected in the treatment set forth in Article III of the Plan, the treatment of each of the Claims and Interests in each particular Class is the same as the treatment of each of the other Claims or Interests in such Class, except to the extent the Holder of such an Allowed Claim agrees to less favorable treatment.
- v. Implementation of Plan (11 U.S.C. § 1123(a)(5)). The Plan complies fully with the requirements of section 1123(a)(5) of the Bankruptcy Code because Articles IV, V and VI of the Plan provide adequate means for implementation of the Plan through, among other things, substantive consolidation of the Estates and the sources of consideration for Distributions under the Plan, and the vesting of assets in the post-confirmation Debtors.
- vi. Voting Power of Equity Securities (11 U.S.C. § 1123(a)(6)). Section 1123(a)(6) of the Bankruptcy Code requires that a plan provide for the inclusion in a corporate debtor's charter provisions prohibiting the issuance of nonvoting equity securities, and providing for an "appropriate distribution" of voting power among those securities possessing voting power. Section 1123(a)(6) of the Bankruptcy Code is satisfied as the governing corporate documents of each Debtor do not contemplate the issuance of non-voting equity securities.
- vii. Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)). Section 13.11 of the Plan provides that, on the Effective Date, the directors, officers, and Independent Board of each Debtor prior to the Effective Date, in their capacity as such, shall be deemed to have resigned or shall otherwise cease to serve as a member of the applicable governing body of

the applicable Debtor, and the Plan Administrator shall take exclusive control of the post-confirmation Debtors. The Plan provides that Mark Smith of Vantage Point Advisory shall serve as the Plan Administrator pursuant to the terms and requirements of the Plan. Therefore, section 1123(a)(7) of the Bankruptcy Code is satisfied.

viii. Discretionary Contents of Plan (11 U.S.C. § 1123(b)). The Plan's provisions are appropriate and are not inconsistent with the provisions of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code permits approval of the releases in Section 13.2 of the Plan because as has been established here, based upon the records in the chapter 11 cases and the evidence presented at or in connection with the Confirmation Hearing, the releases provided by the Debtors in Section 13.2 of the Plan (i) are critical to the successful implementation and confirmation of the Plan, (ii) were given in exchange for the good and valuable consideration of the Released Parties, (iii) are an appropriate exercise of the Debtors' business judgment, (iv) are fair, equitable and reasonable, (v) a good faith settlement and compromise of the Claims and Interests cancelled by the Plan, (vi) are in the best interests of the Debtors and their Estates, (vii) were given and made after due notice and an opportunity to object and be heard with respect thereto, (viii) are consistent with sections 105, 524, 1123, 1129 and 1141 of the Bankruptcy Code and other applicable provisions of the Bankruptcy Code and applicable law, and (ix) are a bar to any Entity asserting any claim or Cause of Action released by Article 13.2 of the Plan, including a bar to any of the Releasing Parties asserting any released claims or Causes of Action against any of the Released Parties, as and to the extent provided for in the Plan and this Confirmation Order. The Debtors have demonstrated that the exculpations provided in the Plan were granted to key constituents and professionals within these cases (*i.e.*, the Exculpation Parties), and are appropriate in scope given the consideration provided by the Exculpated Parties and the standards within the Eleventh Circuit. The Plan's injunction is appropriate in scope, necessary to effectuate the Plan and within the standards of the Eleventh Circuit.

M. Debtors' Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)). The Debtors have complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the orders of the Court with respect to the solicitation of acceptances or rejections of the Plan, thus satisfying the requirements of section 1129(a)(2) of the Bankruptcy Code.

N. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The Debtors have proposed the Plan, including all documents necessary to effectuate the Plan, including but not limited to the engagement letter of the Plan Administrator presented at the Confirmation Hearing as Debtors' Exhibit 10 (the "Plan Administrator Engagement Letter") in good faith and not by any means forbidden by law, as evidenced by, among other things, the totality of the circumstances surrounding the formulation of the Plan, the

record of the Chapter 11 Cases and the recoveries of Holders of Claims thereunder, thus satisfying the requirements of section 1129(a)(3) of the Bankruptcy Code.

O. Payment for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). All payments that have been made or are to be made by the Debtors, post-confirmation Debtors or Plan Administrator under the Plan, or by any Person acquiring property under the Plan, for services or for costs and expenses in, or in connection with, the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases including administrative expense claims under sections 503 and 507 of the Bankruptcy Code, have been approved by, or will be subject to the approval of, the Court as reasonable, thus satisfying the requirements of section 1129(a)(4) of the Bankruptcy Code.

P. Directors, Officers and Insiders (11 U.S.C. § 1129(a)(5)). The Debtors have complied with section 1129(a)(5) of the Bankruptcy Code. The identity of the person proposed to serve as the Plan Administrator is consistent with the interests of Holders of Claims against and Interests in the Debtors and with public policy. Therefore, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

Q. No Rate Changes (11 U.S.C. § 1129(a)(6)). The Plan does not contain any rate changes. Therefore, the Plan satisfies section 1129(a)(6) of the Bankruptcy Code.

R. Best Interest of Creditors Test (11 U.S.C. § 1129(a)(7)). The Disclosure Statement and the other evidence proffered or adduced at the Confirmation Hearing (i) are persuasive and credible, (ii) have not been controverted by other evidence or persuasively challenged in any of objection to Confirmation of the Plan, and (iii) establish that each Holder of an Impaired Claim or Interest, as the case may be, in such Impaired Classes has either accepted the Plan, or will receive or retain under the Plan property having a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date, thus satisfying the requirements of section 1129(a)(7) of the Bankruptcy Code.

S. Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)). Section 1129(a)(8) of the Bankruptcy Code requires that for each Class of Claims or Interests under the Plan, such Class has either accepted the Plan or is not Impaired under the Plan. Voting Classes 1 and 3 have voted to accept the Plan. Class 2, for Priority Non-Tax Claims, is unimpaired and therefore is deemed to have accepted the Plan. Because Holders of Interests in Class 4 will neither receive nor retain any property under the Plan, they are deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code, and the requirements of section 1129(a)(8) of the Bankruptcy Code have not been met, thereby requiring application of section 1129(b) of the Bankruptcy Code. The Plan does not discriminate unfairly against Classes 4 because Holders of Allowed Claims in Classes 1 and 3 are not being paid in full, so that the Plan is fair and equitable with respect to Classes 4. Therefore, the Plan satisfies section 1129(b) of the Bankruptcy Code with respect to Classes 4.

T. Treatment of Administrative and Priority Claims (11 U.S.C. § 1129(a)(9)). The treatment of Administrative Claims and Priority Non-tax Claims are set forth in Articles II and Section 4.2 of the Plan, thus satisfying the requirements of section 1129(a)(9) of the Bankruptcy Code.

U. Acceptance by Impaired Class (11 U.S.C. § 1129(a)(10)). As set forth in the Voting Report, the Plan has been accepted by Impaired Classes 1 and 3, determined without inclusion of any acceptance of the Plan by any insider, thus satisfying the requirements of section 1129(a)(10) of the Bankruptcy Code.

V. Feasibility (11 U.S.C. § 1129(a)(11)). The evidence submitted through the Disclosure Statement, Confirmation Brief, and evidence at the Confirmation Hearing regarding feasibility (a) is persuasive and credible, (b) has not been controverted by other evidence, and (c) establishes that confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the post-confirmation Debtors, except as proposed in the Plan. Accordingly, the requirements of section 1129(a)(11) of the Bankruptcy Code have been satisfied.

W. Payment of Fees (11 U.S.C. § 1129(a)(12)). As set forth in Section 13.8 of the Plan, the Debtors have paid, or will pay, prior to the Effective Date and thereafter, all amounts due under 28 U.S.C. § 1930, and further provides that all such fees payable after the Effective Date shall be paid when due or as soon thereafter as reasonably practicable, and that satisfaction of such fees is a condition precedent to closing the Chapter 11 Cases, thus satisfying the requirements of section 1129(a)(12) of the Bankruptcy Code.

X. Miscellaneous Provisions (11 U.S.C. §§ 1129(a)(13)-(16)). Sections 1129(a)(13)-(16) of the Bankruptcy Code are inapplicable as the Debtors (i) do not provide retiree benefits (1129(a)(13)), (ii) have no domestic support obligations (1129(a)(14)), (iii) are not individuals (1129(a)(15)), and (iv) are a for-profit business (1129(a)(16)).

Y. No Unfair Discrimination; Fair and Equitable (11 U.S.C. § 1129(b)). Holders of Interests in Classes 4 will receive no Distributions under the Plan and, accordingly, are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. The Debtors presented uncontroverted evidence that the Plan does not discriminate unfairly and is fair and equitable with respect to the treatment of Interests in Class 4. Further, the Plan does not discriminate unfairly against Class 4 because those Interests are junior to and are not equally situated to the Classes receiving a distribution under the Plan and as such, there is a reasonable basis for how the Plan treats Class 4. Thus, the Plan satisfies section 1129(b) of the Bankruptcy Code and may be confirmed notwithstanding its failure to satisfy section 1129(a)(8) of the Bankruptcy Code. The Plan shall be binding upon the members of Class 4 upon confirmation of the Plan.

Z. Principal Purpose of the Plan (11 U.S.C. 1129(d)). The principal purpose of the Plan is not the avoidance of taxes or avoidance of the requirements of section 5 of the Securities Act of 1933, and no Governmental Unit has requested that the Court deny

Confirmation on such basis, thus satisfying the requirements of section 1129(d) of the Bankruptcy Code.

AA. Good Faith Solicitation (11 U.S.C. § 1125(e)). Based upon the record before the Court in the Chapter 11 Cases, the Debtors, the Committee, the Claims Agent and each of their respective members, officers, directors, agents, financial advisers, attorneys, employees, equity holders, partners, affiliates and representatives have acted in “good faith” within the meaning of section 1125(e) of the Bankruptcy Code in soliciting acceptance or rejection of the Plan under section 1125(e) of the Bankruptcy Code and are thus entitled to the protections afforded by section 1125(e) of the Bankruptcy Code with respect to such solicitation of acceptance or rejection of the Plan.

BB. Substantive Consolidation. The substantive consolidation contemplated by Section 6.3 of the Plan, as modified by this Order, which is unopposed, is consistent with, and permissible under, applicable law in the Eleventh Circuit. No party has objected to such substantive consolidation, and the overwhelming majority of parties who have voted have voted in favor of the Plan which is predicated upon entry of an order substantively consolidating the Estates in accordance with of the Plan for administrative convenience and for purposes of voting on the Plan, confirming the Plan, implementing the Plan, and making Distributions pursuant to the Plan.

CC. Likelihood of Satisfaction of Conditions Precedent to the Effective Date. All conditions precedent to the Effective Date set forth in Article IX of the Plan have been satisfied, will be satisfied after entry of this Confirmation Order or have been or will be duly waived.

DD. Retention of Jurisdiction. The Court finds that it may properly retain jurisdiction over the matters set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

Based on the foregoing, the Court holds that the Plan satisfies all of the requirements for Confirmation set forth in section 1129 of the Bankruptcy Code and may be confirmed.

**ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED—**

**I. The Plan is Hereby Confirmed**

17. Approval of the Plan. The Plan, which consists of the Plan as filed on March 20, 2024 (as amended, supplemented or otherwise modified, and including all exhibits and schedules thereto (hereafter, the “Plan”), is approved and confirmed as having satisfied all of the requirements of chapter 11 of the Bankruptcy Code. The terms of the Plan, as modified, are incorporated herein by reference and are an integral part of this Confirmation Order. A copy of the Plan is attached hereto as Exhibit A.

18. Findings of Fact and Conclusions of Law. The findings of fact and conclusions of law of the Court set forth herein and at the Confirmation Hearing shall

constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, as made applicable herein by Bankruptcy Rule 9014, and the findings and conclusions of the Court at the Confirmation Hearing are incorporated herein by reference. To the extent that any finding of fact shall be determined to be a conclusion of law, it shall be so deemed, and vice versa.

19. Objections. All Objections, to the extent not already withdrawn, waived, or settled, and all reservations of rights included therein, shall be, and hereby are overruled. The Amended Limited Objection and Reservation of Rights of Burger King Company LLC [ECF No. 608] (the “BKC Objection”) is resolved by the Debtors paying Burger King Company LLC (“BKC”) an amount equal to \$125,000 on the Effective Date of the Plan in full and final satisfaction of any and all remaining claims of BKC against the Debtors and their estates, including BKC’s asserted Administrative Expense Claim for post-petition property taxes (the “BKC Settlement Payment”). In the event the Plan is not confirmed and/or the Effective Date of the Plan does not occur, then BKC reserves the right to assert and prosecute a chapter 11 Administrative Expense Claim in the amount of \$172,972.58, including to assert that an appropriate reserve be created in connection therewith.

## **II. The Plan’s Classification and Treatment of Claims is Approved**

4. Approval of Classification Scheme: All Claims and Interests shall be, and hereby are, classified and treated as set forth in the Plan. The Plan’s classification scheme shall be, and hereby is, approved.

5. Classification for Voting Purposes Only: The classifications set forth in connection with voting on the Plan: (a) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan; (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims under the Plan for Distribution purposes; (c) may not be relied upon by any Holder of a Claim as representing the actual classification of such Claims under the Plan for Distribution purposes, and (d) shall not bind the Debtors or post-confirmation Debtors.

6. Approval of the Treatment of Claims: The treatment of Claims and Interests as provided in the Plan is approved.

## **III. Effects of Confirmation**

7. Enforceability of Plan. Pursuant to sections 1123(a), 1141(a) and 1142 of the Bankruptcy Code and the provisions of this Confirmation Order, the Plan shall be, and hereby is, valid, binding and enforceable notwithstanding any otherwise applicable non-bankruptcy law. The Debtors may modify, amend or enter into, as necessary, all documents arising in connection with the Plan, without further order of the Court, in accordance with the provisions of the Plan.

8. Authorization to Implement the Plan. Upon the entry of this Confirmation Order, the Debtors, the post-confirmation Debtors and the Plan Administrator, as

applicable, and their respective professionals, are authorized to take or cause to be taken all actions necessary or appropriate to implement all provisions of, and to consummate, the Plan and to execute, enter into or otherwise make effective all documents arising in connection therewith, prior to, on and after the Effective Date; provided that, notwithstanding the foregoing, the Plan Administrator must obtain the Prepetition Agent's prior written consent prior to conducting a sale, or sales, of assets valued in excess of \$50,000 in the aggregate. All such actions taken or caused to be taken shall be, and hereby are, authorized and approved by the Court such that no further approval, act or action need to be taken under any applicable law, order, rule or regulation, including, without limitation, (a) the incurrence of all obligations contemplated by the Plan and the making of Distributions and (b) the implementation of all settlements and compromises as set forth in or contemplated by the Plan.

9. Distribution to Holders of Class 1 Allowed Claims. On the Effective Date, the Debtors shall make a distribution to the Administrative Agent, for the benefit of the holders of the Class 1 Allowed Claims, of all Cash held by the Debtors other than the Wind-Down Amount, the Professional Fee Reserve, the Litigation Fund Reserve, ~~and such other funds~~ the BKC Settlement Payment, an amount equal to \$77,639 (which shall be reserved to pay any unpaid Administrative Expense claims not paid or disallowed prior to the deadline set forth in Section 2.1 of the Plan for filing any such Administrative Expense Claims), and an amount equal to \$41,000 (which shall be used to pay Bankruptcy Administrator fees for the second quarter of 2024). The payment to the Administrative Agent pursuant to this section shall be: (a) free and clear of all Liens and Claims, which amount and encumbrances; and (b) shall not be less than \$2,281,000.00 ~~2,291,000.00~~ or such other amount consented to by the Prepetition Agent in its sole discretion: (the "Lender Payment"). In addition to the conditions for the Effective Date set forth in the Plan, the Effective Date shall not occur until: (i) the Administrative Agent receives the Lender Payment; and (ii) BKC receives the BKC Settlement Payment.

10. Authorization to Make Payments Pursuant to the Plan. Subject to the Wind-Down Budget, the Plan Administrator is authorized to make payments pursuant to the terms of the Plan at any time after the Effective Date of the Plan, including payments on account of Allowed Other Secured Claims, Allowed Administrative Claims and Allowed Other Priority Claims, Allowed Priority Tax Claims, Allowed Credit Agreement Secured Claims, and Allowed General Unsecured Claims.

11. Binding Effect. Notwithstanding the stay contemplated by Bankruptcy Rule 3020(e) and except as otherwise provided in section 1141 of the Bankruptcy Code, immediately after entry of this Confirmation Order and subject to the occurrence of the Effective Date, the Plan and this Confirmation Order shall be immediately effective and enforceable and binding upon (i) the Debtors, (ii) all entities that are parties to or are subject to the settlements, compromises, releases, discharges and injunctions described in the Plan, (iii) any and all non-Debtor parties to Executory Contracts or Unexpired Leases with the Debtors, and (iv) all present and former Holders of Claims and Interests, whether or not (a) such Holder shall receive or retain any property or interest in property under the Plan, (b) such Holder's Claim or Interest is Impaired under the Plan, (c) such

Holder has accepted the Plan, (d) such Holder has failed to vote to accept or reject the Plan or voted to reject the Plan, (e) such Holder is entitled to a Distribution under the Plan, and (f) such Holder has filed a proof of Claim in the Chapter 11 Cases. Accordingly, as permitted by Bankruptcy Rule 3020(e), the fourteen (14) day period provided by such rule is hereby waived in its entirety.

12. Discharges, Releases, Injunctions, Limitations of Liability and Exculpation. The Plan includes (i) the release by the Debtors of certain parties in interest (the “Debtor Releases”), (ii) an exculpation provision, and (iii) an injunction provision. As set forth above, all discharges, releases, injunctions, limitations of liability and exculpation provisions in the Plan, including, without limitation, the Debtor Releases, and all other releases, exculpations and injunctions contained in Articles X and XIII of the Plan, are fair and equitable, were given for valuable consideration and are in the best interests of the Debtors and all parties in interest, and such provisions shall be effective and binding on all persons and entities, to the extent provided therein, and are incorporated in this Confirmation Order as if set forth in full herein and are hereby approved in their entirety.

13. Causes of Action; Specified Causes of Action. Except as otherwise provided in the Plan or herein, all Causes of Action shall vest in the post-confirmation Debtors on the Effective Date, and the Plan Administrator shall have the exclusive right to enforce any and all Causes of Action and Specified Causes of Actions retained by the post-confirmation Debtors against any Person. Absent the written consent of the Prepetition Agent, only the Litigation Fund Reserve shall be used to satisfy the expenses of pursuing or disposing of the Specified Causes of Action. For the avoidance of doubt, pursuant to the Plan, neither the post-confirmation Debtors nor the Plan Administrator shall directly or indirectly pursue Causes of Action against Aurora Management Partners, Inc., Wells Fargo Bank, National Association, Bank of America, N.A., City National Bank, Truist Bank, MUFG Bank, Ltd. and PNC Bank, N.A. or any of such entities current and former subsidiaries, officers, directors, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers consultants, representatives, and other professional.

14. Settlements. The settlements contemplated under the Plan, and the respective terms thereof as set forth in the Plan, are hereby approved pursuant to Bankruptcy Rule 9019 as fair, prudent and reasonable compromises of the controversies and Claims resolved by such settlements, are binding upon all Persons affected thereby, and shall be effectuated in accordance with the terms thereof.

15. Cancellation of Interests. On the Effective Date, all Interests shall be cancelled and each Holder thereof shall not be entitled to, and shall not receive or retain, any property or interest in property under the Plan. The Holders of Interests shall not be entitled to receive further notice in these Chapter 11 Cases after such Interests have been cancelled.

16. Cancellation of Existing Securities and Agreements. Except as otherwise provided in the Plan and in any contract, instrument or other agreement or document

created in connection with the Plan, on the Effective Date, all agreements and other documents evidencing Claims or rights of any Holder of a Claim or Equity Interest against any of the Debtors, including, but not limited to, all indentures, notes, bonds, and share certificates evidencing such Claims and Equity Interests and any agreements or guarantees related thereto shall be cancelled, terminated, deemed null and void and satisfied, as against the Debtors, but not as against any other Entity unless specifically released by or under the Plan.

17. Executory Contracts and Unexpired Leases. Except as otherwise provided in the Plan or this Confirmation Order, or in any contract, instrument, release or other agreement or document entered into in connection with the Plan, all executory contracts and unexpired leases that exist between the Debtors and any Entity shall be deemed rejected by the Debtors as of the Effective Date except for any executory contract or unexpired leases that have been assumed or rejected by a Final Order of the Bankruptcy Court entered prior to the Effective Date (including without limitation the leases and executory contracts assumed and assigned pursuant to the terms of the Asset Purchase Agreements with BKC, Mosaic, RRG and Bulldog).<sup>5</sup> ~~except for any executory contract or unexpired leases (a) that have been assumed or rejected by a Final Order of the Bankruptcy Court entered prior to the Effective Date, or (b) as to which a motion for approval of the assumption of such executory contract or unexpired lease has been filed and served prior to the Effective Date.~~

- i. Subject to the occurrence of the Effective Date, entry of the Confirmation Order shall constitute approval of such rejection under section 365(a) of the Bankruptcy Code and a finding by the Bankruptcy Court that each such rejection is in the best interests of the Debtors, their Estates, and all parties in interest in the Chapter 11 Cases.
- ii. Any Claims created by the rejection of Executory Contracts and Unexpired Leases under the Plan must be filed with the Court and served on the post-confirmation Debtors no later than thirty (30) days after the Effective Date. Any Claims arising from the rejection of an Executory Contract or Unexpired Lease under the Plan for which proofs of Claim are not timely filed within that time period shall be forever barred from assertion against the Debtors, the Estates, their successors and assigns, and their assets and properties. All such Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in Article X.E of the Plan. Unless otherwise ordered by the Court, all such Claims that are timely filed as provided in the Plan shall be treated as General Unsecured Claims under the Plan and shall be subject to the provisions of Article III therein.

#### **IV. Implementation of the Plan**

<sup>5</sup> The typographical error in Section 8.1 of the Plan, referring to RRG as “BRG”, is thus hereby corrected.

18. ~~17.~~ Plan Administrator.

- i. The appointment of the Plan Administrator is hereby approved. The Plan Administrator is hereby authorized to wind up the Debtors' affairs and may make distributions after the Effective Date in accordance with this Confirmation Order, the Plan, the Plan Administrator Engagement Letter and the Wind-Down Budget. The Plan Administrator shall have such rights, powers, and duties set forth in this Confirmation Order, the Plan Administrator Engagement Letter, and the Plan and such receive such compensation as is provided for in the Plan Administrator Engagement Letter subject to the Wind-Down Budget.
- ii. The Plan Administrator Engagement Letter is hereby approved. The Plan Administrator Engagement Letter sets forth the procedures or resignation or termination of the Plan Administrator. The Plan provides for the procedures the appointment of a successor Plan Administrator. The Prepetition Agent, with the consent of the counsel for the post-confirmation Debtors, which shall not be unreasonably withheld, conditioned or delayed, shall appoint a successor to the Plan Administrator or any subsequent Successor Plan Administrator. Notice of any Successor Plan Administrator shall be filed with the Bankruptcy Court and provided to all creditors.

19. ~~18.~~ Substantive Consolidation. In light of the fact that the substantive consolidation of the Debtors' estates for voting, confirmation and distribution purposes, as provided in Section 6.3 of the Plan, will promote a more equitable distribution of the Debtors' assets, such substantive consolidation set forth in Section 6.3 of the Plan is (i) in the best interests of the Debtors' stakeholders, (ii) appropriate under section 105(a) of the Bankruptcy Code, and (iii) hereby approved.

Thus, on the Effective Date, (i) all intercompany Claims and Equity Interests held by, between and among the Debtors shall be deemed eliminated, (ii) all assets and liabilities of the Debtors shall be merged or treated as if they were merged with the assets and liabilities of Premier Kings, Inc., (iii) any obligation of a Debtor and all guarantees thereof by one or more of the other Debtors shall be deemed to be on obligation of Premier Kings, Inc., and (iv) each Claim filed or to be filed against any Debtor shall be deemed filed only against the consolidated Premier Kings, Inc., and shall be deemed a single Claim against and a single obligation of the consolidated Premier Kings, Inc. On the Effective Date, in accordance with the terms of the Plan, all Claims based upon co-obligations or guarantees of collection, payment, or performance made by the Debtors as to the obligations of another Debtor shall be merged into a single obligation of Premier Kings, Inc. and otherwise shall be released and of no further force and effect.

Furthermore, the substantive consolidation effected pursuant to the Plan, as set forth in Section 6.3 of the Plan, shall not otherwise affect (a) the legal and corporate structures of the Debtors; (b) the right to Distributions from any insurance policies or proceeds of such policies; or (c) the rights of the Plan Administrator to contest setoff or

recoupment rights alleged by creditors on the grounds of lack of mutuality under section 553 of the Bankruptcy Code and other applicable law. In addition, substantive consolidation shall not, and shall not be deemed to, prejudice any of (i) the Causes of Action, which shall survive for the benefit of the Debtors and their Estates; or (ii) the available defenses to the Causes of Action; provided, however, all causes of action arising under Chapter 5 of the Bankruptcy Code and defenses to such causes of action shall be determined as if the Debtors were at all relevant times a single consolidated “debtor” as that term is used in or in relation to Chapter 5 of the Bankruptcy Code.

20. ~~19.~~ Dissolution of the Debtors’ Governing Bodies. On the Effective Date, (i) the Debtors’ boards of directors shall be dissolved and the then-current officers of the Debtors and members of the boards of directors of the Debtors shall be relieved of their positions and corresponding duties and obligations, and the Plan Administrator shall take over all duties of the former officers and directors of the Debtors as of the Effective Date.

21. ~~20.~~ Dissolution of Debtors. The Plan Administrator is authorized to execute a certificate of dissolution (or its equivalent) with the secretary of state or similar official of each jurisdiction of incorporation of the Debtors pursuant to applicable non-bankruptcy law at any time on or after the Effective Date at the sole discretion of the Plan Administrator. All applicable regulatory or governmental agencies shall take all steps necessary to allow and affect the prompt dissolution of the Debtors as provided herein, without the payment of any fee, tax, or charge and without need for the filing of reports or certificates.

22. ~~21.~~ Bankruptcy Administrator Fees. All fees payable through the Effective Date pursuant to 28 U.S.C. § 1930 shall be paid by the Debtors on or before the Effective Date. After the Effective Date, the Plan Administrator shall pay quarterly fees to the Bankruptcy Administrator until each of their respective Chapter 11 Cases are closed or converted.

23. ~~22.~~ Section 1146(a) Waiver. Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax or other similar tax or governmental assessment, and all state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation instruments or other documents without the payment of any such tax or governmental assessment.

24. ~~23.~~ Post-Effective Date Expenses. Except as otherwise specifically provided in the Plan, from and after the Effective Date, and subject to the Wind-Down Budget, the Plan Administrator shall pay in Cash the reasonable legal fees and expenses incurred by any post-confirmation Debtor after the Effective Date in the ordinary course of business and without any further notice to or action, order or approval of the Bankruptcy Court. Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Plan

Administrator may, subject to the Wind-Down Budget, employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

25. ~~24.~~ Dissolution of Creditors' Committee. On the Effective Date, the Committee shall be dissolved and its members shall be deemed released and discharged from all further authority, duties, responsibilities and obligations relating to and arising from or in connection with the Chapter 11 Cases or the Plan and its implementation, and the retention and employment of the Committee's attorneys, financial advisors and other agents shall terminate, except with respect to (i) applications filed under sections 330 and 331 of the Bankruptcy Code, (ii) any motions seeking the enforcement of the provisions of the Plan or this Confirmation Order, and (iii) any appeals of this Confirmation Order.

26. ~~25.~~ Preservation of Causes of Action. Except as otherwise expressly provided in the Plan, any and all Causes of Action are preserved under the Plan.

i. Vesting of Causes of Action

(a) Except as otherwise provided in the Plan or herein, in accordance with section 1123(b)(3) of the Bankruptcy Code, any and all Causes of Action that the Debtors and the Estates may hold against any Person or Entity shall vest in the post-confirmation Debtors.

(b) Except as otherwise provided in the Plan or herein, after the Effective Date, all privileges, including the attorney-client, work-product and other privileges held by the Debtors and the Estates shall vest in the post-confirmation Debtors, as applicable.

(c) Except as otherwise provided in the Plan or herein, after the Effective Date, the post-confirmation Debtors, acting through the Plan Administrator in consultation with the Prepetition Agent, shall have the exclusive right to investigate, institute, prosecute (in any court or other tribunal, including, without limitation, in an adversary proceeding relating to one or more of the Chapter 11 Cases in the Bankruptcy Court), abandon, settle or compromise any Causes of Action that were held by the Debtors and the Estates. The post-confirmation Debtors' authority to abandon, settle, or compromise such Causes of Action, after consultation with the Prepetition Agent, shall be in the Plan Administrator's sole discretion and without further order of the Bankruptcy Court, except as otherwise set forth in the Plan.

ii. Preservation of All Causes of Action Not Expressly Identified, Disclosed, Settled or Released

(a) Unless a Cause of Action against a Holder or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan, in or by operation of any Final Order (including this Confirmation Order) of the Bankruptcy Court, the Debtors and their Estates expressly reserve such Cause

of Action for later adjudication or administration by the post-confirmation Debtors (including, without limitation, Causes of Action not specifically identified or described in the Plan or elsewhere or of which the Debtors may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtors at this time or facts or circumstances which may change or be different from those the Debtors now believe to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise), or laches shall apply to such Causes of Action upon or after the entry of the Confirmation Order or Effective Date based on the Disclosure Statement, Plan, or this Confirmation Order. In addition, the Debtors and their Estates expressly reserve the right of the post-confirmation Debtors to pursue or adopt any claims alleged in any lawsuit in which the Debtors are a defendant or an interested party, against any Person or Entity, including, without limitation, the plaintiffs or codefendants in such lawsuits. Further, the Debtors and their Estates expressly reserve all privileges, including the attorney-client, work-product and other privileges.

- (b) Subject to the immediately preceding paragraph, any Person or Entity to whom the Debtors have incurred an obligation (whether on account of services, purchase or sale of goods or otherwise), or who has received services from the Debtors or a transfer of money or property of the Debtors, or who has transacted business with the Debtors, or leased equipment or property from the Debtors should assume that any such obligation, transfer, or transaction, including personal injury and other tort claims, may be reviewed by the post-confirmation Debtors subsequent to the Effective Date and may be the subject of an action after the Effective Date, regardless of whether: (i) such Person or Entity has filed a proof of Claim against the Debtors in the Chapter 11 Cases; (ii) the Debtors have Allowed or objected to any such Person or Entity's proof of Claim; (iii) any such Person or Entity's Claim was included in the Schedules; (iv) the Debtors have objected to any such Person or Entity's scheduled Claim; or (v) any such Person or Entity's scheduled Claim has been identified by the Debtors as disputed, contingent or unliquidated.

27. ~~26.~~ Authorization to Consummate. The Debtors are authorized to consummate the Plan at any time after the entry of the Confirmation Order subject to satisfaction or waiver (by the required parties as set forth in the Plan) of the conditions precedent to the Effective Date set forth in Article IX of the Plan.

28. ~~27.~~ Incorporation. The failure to specifically include any particular provision of the Plan in this Confirmation Order will not diminish the effectiveness of such provision, it being the intent of the Court that the Plan is confirmed in its entirety and incorporated herein by its reference.

29. ~~28.~~ Notice of Entry of the Confirmation Order and the Occurrence of the Effective Date. The Debtors and/or their authorized agent shall serve notice of the entry of this Confirmation Order and the occurrence of the Effective Date on all Creditors and parties in interest in the Chapter 11 Cases within five (5) business days after the occurrence of the Effective Date. Notwithstanding the foregoing, no service of the Notice of Effective Date shall be required to be made upon any Person to whom the Debtors mailed a (a) notice of the meeting of Creditors under section 341 of the Bankruptcy Code, (b) notice of the bar date for filing Proofs of Claim, or (c) a solicitation package or other solicitation-related notice and, in each instance, received such notice or materials returned by the United States Postal Service marked “undeliverable as addressed,” “moved – left no forwarding address,” “forwarding order expired” or similar marking or reason, unless the Debtors have been informed in writing by such person of that Person’s new address. Service of the Notice of Effective Date described herein in the time and manner set forth herein shall constitute due, adequate and sufficient notice, and no other or further notice shall be necessary.

## V. Miscellaneous Provisions

30. ~~29.~~ Class 1 Allowed Claim. Any distributions made on account of the Class 1 Allowed Claim shall be made to an account designated by the Prepetition Agent.

31. ~~30.~~ Wind-Down Budget. In accordance with the Plan, the Plan Administrator must adhere to the Wind-Down Budget. The Wind-Down Budget shall be used to fund the orderly wind down of the post-confirmation Debtors’ estates. The Plan Administrator must obtain the Prepetition Agent’s written consent prior to exceeding the Wind-Down Budget. Any portion of the Wind-Down Amount that is remaining after the orderly wind-down of the Debtors’ estates, after payment of all amounts due and to become due for the U.S. Bankruptcy Administrator’s fees shall be paid to the Prepetition Agent, for the benefit of the holders of the Class 1 Allowed Claims, until satisfaction of the Class 1 Allowed Claims.

32. ~~31.~~ Modification of Plan. Pursuant to Section 13.9 of the Plan, after the entry of this Confirmation Order, the Debtors or post-confirmation Debtors may, with the written consent of the Prepetition Agent and upon order of the Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order in such manner as may be necessary to carry out the purpose and intent of the Plan, so long as such proceedings do not adversely affect the treatment of Holders of Claims under the Plan; *provided, however,* that prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Court. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, modified or clarified, if the proposed alteration, amendment, modification or clarification does not materially and adversely change the treatment of the Claim of such Holder.

33. ~~32.~~ Retention of Jurisdiction. Notwithstanding the entry of this Confirmation Order or the occurrence of the Effective Date, the Court shall retain

jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and the Plan to the fullest extent permitted by law, including among other things, jurisdiction over the matters set forth in Article XI of the Plan, which provisions are incorporated herein by reference.

34. ~~33.~~ Confirmation Order Controls. To the extent that the terms of this Confirmation Order are inconsistent with the terms set forth in the Plan or any of the exhibits thereto, then the terms of this Confirmation Order shall govern and control.

35. ~~34.~~ Final Order. Notwithstanding paragraph 9.1(b) of the Plan and Bankruptcy Rules 3020(e), 6004(h), 6006(d) and 7062, or any other applicable Bankruptcy Rule, the Court finds that there is no reason for delay in the implementation of this Confirmation Order and, thus, this Confirmation Order shall be effective and enforceable immediately upon entry.

Dated: \_\_\_\_\_, 2024  
Birmingham, Alabama

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TAMARA O. MITCHELL  
UNITED STATES BANKRUPTCY JUDGE