

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

<p><b>In re:</b></p> <p><b>PREMIER KINGS, INC., et al.,</b></p> <p><b>Debtor.</b></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>Chapter 11</b></p> <p><b>CASE NO. 23-02871 (TOM11)</b></p> <p><b>(Jointly Administered)</b></p>
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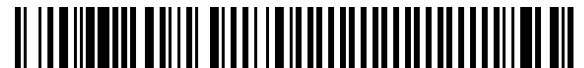
<p><b>PREMIER HOLDINGS OF GEORGIA, LLC,</b></p> <p><b>Plaintiff,</b></p> <p><b>v.</b></p> <p><b>RRG OF JACKSONVILLE, LLC</b></p> <p><b>Defendant.</b></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>Adv. Proc. No. 24-00016-TOM</b></p>
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**PLAINTIFF PREMIER HOLDINGS OF GEORGIA, LLC’S EVIDENTIARY  
SUBMISSION IN SUPPORT OF PLAINTIFF PREMIER HOLDINGS OF GEORGIA,  
LLC’S MOTION FOR SUMMARY JUDGMENT**

COMES NOW, Plaintiff Premier Holdings of Georgia, LLC (“PHGA”), by and through its undersigned counsel, and submits the following evidentiary materials in support of *Plaintiff Premier Holdings of Georgia, LLC’s Motion for Summary Judgment* [Doc. No. 43]:

- Ex 1: Deposition Transcript of Jaipal S. Gill dated September 10, 2024 (“Gill Dep.”).
- Ex 2: Deposition Transcript of Randy Pianin dated September 10, 2024, redacted pursuant to Doc. No. 41 (“Pianin Dep.”).
- Ex. 3: The Sale Agreement between Premier Holdings of Georgia, LLC and JG Coastal Properties, Inc. dated April 5, 2024 (“Sale Agr.”).



- Ex. 4: The Promissory Note dated March 27, 2024 (“Promissory Note”).
- Ex. 5: The Supplemental Interrogatory Responses submitted by RRG of Jacksonville, LLC (“Supp. Int. Responses”).

**DATED** this the 25th day of October, 2024.

/s/ Heather A. Jamison

Heather A. Jamison (ASB-8673-H49L)

Chloe E. Champion (ASB-5104-Q54H)

*Counsel for Plaintiff, Premier Holdings of Georgia, LLC*

**OF COUNSEL:**

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**CERTIFICATE OF SERVICE**

Service of the foregoing shall be made via ECF to all parties entitled to notice thereunder, and to the following via e-mail, and if e-mail is not available via U.S. mail, on this the 25th day of October, 2024:

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/s/ Heather A. Jamison

OF COUNSEL



# EXHIBIT 1

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

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(Chapter 11)

Case No. 23-02871-TOM

Jointly Administered

- - -

In Re:

PREMIER KINGS, INC., et al.,  
Debtors.

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Adversary Proceeding No. 24-00016-TOM

- - -

PREMIER HOLDINGS OF GEORGIA, LLC,

Plaintiff,

vs.

RRG OF JACKSONVILLE, LLC,

Defendant.

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DEPOSITION OF  
JAIPAL (JAY) S. GILL

Atlanta, Georgia  
Tuesday, September 10, 2024

Court Reporter: Michelle M. Boudreaux-Phillips, CCR

September 10, 2024

1:02 p.m.

Deposition of JAIPAL (JAY) S. GILL, held  
at the offices of Nelson Mullins Riley &  
Scarborough LLP, Atlantic Station, Suite  
1700, 201 17th Street NW, Atlanta, Georgia,  
pursuant to Agreement, before Michelle M.  
Boudreaux-Phillips, a Certified Court  
Reporter in the State of Georgia.

APPEARANCES

On behalf of the Plaintiff:

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CHLOE E. CHAMPION, Esq.

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Also Present: Annie Hughes

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1                   JAIPAL (JAY) S. GILL,  
2       being first duly sworn, was examined and testified as  
3       follows:

4                   EXAMINATION

5       BY MR. HALEY:

6           Q       Could you state your name, please?

7           A       My full name is Jaipal, middle initial S,  
8       last name Gill.

9           Q       And how are you employed, Mr. Gill?

10          A       I worked with the operating company,  
11       Premier Kings, while my partner was alive, and then --  
12       I'm just a member of Holdings company, one of them.

13          Q       And the partner you referred to was  
14       Mr. Sidhu; is that correct?

15          A       Yes.

16          Q       And so were -- did you have a salaried  
17       position, or were you an officer of the debtor,  
18       Premier Kings, Inc.?

19          A       I had a salaried position, and I wrote my  
20       title as vice president.

21          Q       And when did your employment with  
22       Premier Kings, Inc. end?

23          A       December 1st, 2023.

24          Q       And were you also -- was your employment with  
25       Premier Kings, Inc. or Premier Kings of Georgia, Inc.,

1 or both?

2 A Both.

3 Q Both. Okay.

4 And did your employment with Premier Kings of  
5 Georgia end on December 1, 2023 as well?

6 A Yes.

7 Q And why did it end on that date?

8 A The restructuring company that was operating  
9 the locations, Burger King locations, called and said  
10 that I'm not needed anymore, my help is not needed.

11 Q And up until December 1, 2023, were you  
12 making all the effort you could to maximize the  
13 incoming profit for the debtor, Premier Kings, Inc.?

14 A Actually, no. As soon as the restructuring  
15 company, Aurora, came in the picture, they took over  
16 the operations and the financials of our company, and I  
17 was pretty much on the sideline, and they would just  
18 ask certain questions if they didn't understand the  
19 business. Besides that, in day-to-day involvement in  
20 the operations, I didn't have any.

21 Q And were you still employed at the same  
22 salary that you were employed at prior to the  
23 commencement of the bankruptcy case?

24 A No. The salary had gone down in the middle  
25 of 2023.

1           Q     And with respect to Premier Holdings of  
2     Georgia, LLC, you're a member of Premier Holdings of  
3     Georgia, LLC?

4           A     That's correct.

5           Q     And as long as you or Ms. Jamison don't  
6     object, I'll just refer to it as "Holdings."

7                     And what is your membership interest in --

8           A     It's 50 percent.

9           Q     Fifty percent. And who holds the other fifty  
10    percent?

11          A     It was Manraj Sidhu, the partner who is  
12    deceased now.

13          Q     And who -- how is his 50 percent administered  
14    now?

15          A     The estate handled that.

16          Q     Okay. And who on behalf of the estate?

17          A     The attorney is Robert Ritchey.

18          Q     Okay. And who is the manager of Holdings?

19          A     Premier Holdings of Georgia, I am the  
20    manager.

21          Q     Okay. And how long have you been the  
22    manager?

23          A     We both were members, and we really didn't  
24    have any titles. But after his passing, I became the  
25    manager. So that's May of 2022.



1 Q And when was Holdings formed?

2 A I don't know exactly.

3 Q And do you know if there's an operating  
4 agreement for Holdings?

5 A There is, yes.

6 Q And has that been amended at all?

7 A I don't recall. Robert Ritchey would have  
8 that.

9 Q And have you ever had an officer or a  
10 salaried position with Holdings?

11 A No.

12 Q And why was Holdings formed?

13 A Pretty much, Patrick, my partner at that  
14 time, thought that there should be a company that  
15 should hold all the real estate, and then we have  
16 leases between that company and the operating company,  
17 and that's why it was formed.

18 Q And the operating company was Premier Kings?

19 A Premier Kings of Georgia, yes.

20 Q Okay. And was the -- was the interest in  
21 Premier Kings of Georgia, Inc. also held equally by you  
22 and Mr. Sidhu?

23 A No. It was strictly him, a hundred percent.

24 Q And when were you first employed by  
25 Premier Kings, Inc.?

1           A     2010.

2           Q     And what did you do prior to that?

3           A     Had different businesses.

4           Q     And what's your educational background?

5           A     Undergrad and grad, both mechanical  
6     engineering, University of Maryland.

7           Q     And what's your graduate degree?

8           A     Mechanical engineering.

9           Q     And is that a master's or --

10          A     Yes, master's.

11          Q     And what year is that?

12          A     '86 -- sorry, '88 is master's.

13          Q     And 1986 was undergrad?

14          A     Yes.

15          Q     And where do you currently reside?

16          A     I live in Marietta, Georgia.

17          Q     And do you have a regular place of business?

18          A     I do.

19          Q     And where is that?

20          A     In -- on Peachtree Industrial in  
21     Peachtree Corners, Georgia.

22          Q     And in addition to Holdings, are there other  
23     companies that you hold an interest in?

24          A     Yes, there are.

25          Q     And what are they?

1           A     One is JP Enterprises. Then I have my own  
2 businesses which are apart from all of these.

3           Q     And what businesses are those?

4           A     I have a cabin rental company. I'm a partner  
5 in an auto body collision center.

6           Q     And are those both located in Georgia?

7           A     No. The cabin's in Tennessee.

8           Q     And what about the collision center?

9           A     Yes, that's in Georgia.

10          Q     Okay. And other than through Premier Kings,  
11 Inc. and Holdings, do you have any other experience in  
12 the fast-food or restaurant sector?

13          A     I do. With Subway, with -- had Quiznos Subs.  
14 With Church's Chicken.

15          Q     And were those all in connection with  
16 Mr. Sidhu?

17          A     No, none of them.

18          Q     None. Okay.

19                 And with respect to Subway, Quiznos, and  
20 Church's, what was your -- did you own franchises, or  
21 what was your experience --

22          A     I did.

23          Q     And what period of time was that?

24          A     Subway, we're going back to 2000 to 2004.  
25 Church's is '23, '24, present. And Quiznos was same,

1       2001 to 2004.

2           Q       How many Church's franchises do you own?

3           A       Twelve.

4           Q       And where are they located?

5           A       Atlanta.

6                   MR. HALEY: Mark that as Exhibit 1,  
7       please.

8                   (Exhibit 1 marked for identification.)

9           Q       (By Mr. Haley) And, Mr. Gill, I show you  
10       what's been marked as Exhibit 1. Have you seen that  
11       before?

12          A       Yes.

13          Q       And beginning on page 3, starting with --  
14       No. 1 through 11, there are various categories, and the  
15       exhibit asks Holdings to designate a person with -- who  
16       can testify on behalf of it with respect to those  
17       matters. Are you that person?

18          A       Yes.

19          Q       And is there anyone else who is a member or  
20       has any other affiliation with Holdings?

21          A       The estate does.

22          Q       And other than the estate, anyone else?

23          A       No.

24                   (Exhibit 2 marked for identification.)

25          Q       (By Mr. Haley) Mr. Gill, I show you what's

1       been marked as Exhibit 2, which is a document entitled  
2       "Assignment and Assumption of Development Agreement."

3               Is that your signature on page 3 of  
4       Exhibit 2?

5           A     Yes.

6           Q     And who's the other signatory?

7           A     It's the -- Patrick's dad, who's the manager  
8       of the trust.

9           Q     Okay. And is -- and his name is Joginder, or  
10       how do you pronounce that?

11          A     Joginder Sidhu.

12          Q     Joginder (pronunciation)?

13          A     Yeah.

14          Q     So -- and that's, for the benefit of the  
15       record, J-O-G-I-N-D-E-R, Joginder, Sidhu?

16          A     That's correct.

17          Q     And was he the manager of Holdings as of  
18       April 5th?

19          A     2024?

20          Q     Yes.

21          A     Yes.

22          Q     And when did he cease to be the manager?

23          A     He still is.

24          Q     Okay. When did he become the manager?

25          A     As per the will, after Patrick's passing.

1 Q Okay. And when was Patrick's passing?

2 A May 23rd, 2022.

3 Q And have you had any discussions with  
4 Joginder Sidhu about your deposition here today?

5 A Yes, he's aware of it.

6 Q And what discussions have you had with him  
7 regarding that?

8 A Nothing much. He's just aware that there is  
9 a deposition.

10 Q And JG Coastal Properties, Inc. is an entity  
11 in which you own an equity interest?

12 A Yes.

13 Q And how much of the equity do you own?

14 A A hundred percent.

15 Q And when was it formed?

16 A It was formed in -- this year, 2024.

17 Q And what was the purpose of forming  
18 JG Coastal Properties?

19 A To buy certain real estate.

20 Q And has it purchased any real estate?

21 A Yes.

22 Q And what real estate is that?

23 A It's the two properties from Premier Holdings  
24 of Georgia.

25 Q Which are?

1           A     Nahunta and Port Wentworth.

2           Q     And with respect to the Port Wentworth  
3 property, who did JG Coastal purchase that property  
4 from?

5           A     The loan was with First Horizon Bank.  
6 So it was just paid off, and it was bought from  
7 Premier Holdings of Georgia.

8           Q     And was there a sale agreement between  
9 Premier Holdings of Georgia and JG Coastal Properties?

10          A     I believe so, yes.

11          Q     And the loan that was paid off was the loan  
12 to First Horizon Bank; is that correct?

13          A     That's correct.

14          Q     And when was that paid off?

15          A     Date of transfer, April 5th, 2024.

16          Q     And so is there -- presently, are there any  
17 monies owed to First Horizon for the loan to the  
18 Port Wentworth property?

19          A     No.

20          Q     And what was the payoff number?

21          A     I have to look at it. I don't remember.

22          Q     Do you know roughly how much it was?

23          A     Yeah. For both the properties, it was  
24 roughly 2.75 million.

25          Q     And that was Port Wentworth and Nahunta?

1           A     And Nahunta, yes.

2           Q     And what were the source of those funds?

3           A     Personal and some private loan.

4           Q     And who was the private loan from?

5           A     From a good friend of mine.

6           Q     And what is his name or her name?

7           A     Sal, S-A-L, Akturk, A-K-T-U-R-K.

8           Q     And when you say that JG Coastal purchased  
9     the property from Holdings, it didn't purchase real  
10    estate, correct?

11          A     It is the real estate.

12          Q     And when you say "it is the real estate," the  
13    land itself is owned by a different entity, correct,  
14    Port Wentworth Fee Owner?

15          A     That's correct.

16          Q     Okay. And so did JG Coastal purchase  
17    anything from Port Wentworth Fee Owner?

18          A     No.

19          Q     And so what it purchased was -- were the  
20    improvements on the property?

21          A     That's correct.

22          Q     And what about the equipment within the  
23    improvements?

24          A     There was a separate loan that was paid off  
25    as part of the payoff, which had equipment also in it.



1           Q     And with respect to the sale agreement, which  
2     is referenced in the "Recitals," paragraph E, on the  
3     first page of the exhibit, did the sale agreement also  
4     provide for the transfer of equipment?

5           A     I'm not sure.

6           Q     Do you have a copy of the sale agreement?

7           A     I should have it somewhere.

8           Q     Okay.

9           MR. HALEY:   And just for the record and  
10    for the benefit of counsel, I'd just ask for  
11    a copy of the sale agreement.

12          Q     (By Mr. Haley)   And with respect to the  
13    transfer of the improvements, how was that evidenced?  
14    Was there anything recorded with the Registry of Deeds,  
15    or was there a bill of sale?

16          A     There is a bill of sale and deed.

17          Q     And does Holdings have any continued interest  
18    in the development agreement?

19          A     No.

20          Q     And was that true as of the effective date,  
21    April 5th, 2024?

22          A     That's correct.

23                     (Exhibit 3 marked for identification.)

24          Q     (By Mr. Haley)   Mr. Gill, I show you what's  
25    marked as Exhibit 3, which is the complaint in this

1 action. And did you review the complaint before it was  
2 filed?

3 A Yes, I read over it.

4 Q And the complaint, on page 7 of Exhibit 3, is  
5 dated April 5th, 2024, and the legend at the bottom of  
6 each page indicates it was filed with the court on that  
7 date.

8 But at the time that the complaint was filed,  
9 Premier Holdings of Georgia didn't hold any interest in  
10 the development agreement; is that correct?

11 A I guess it's the same date, April 5th, 2024.

12 Q And so do you know if Exhibit 2 was executed  
13 prior to the complaint being filed?

14 A That, I'm not sure.

15 Q And Exhibit 3, paragraph 31 of the complaint  
16 on page 6, and it says, "The development agreement is  
17 therefore a valid and binding contract between PHGA,"  
18 which is the acronym assigned to Holdings, "and RRG,"  
19 the defendant.

20 But presently, Holdings doesn't have any  
21 interest in the development agreement, correct?

22 A That's presently, yes.

23 Q And that was true as of the execution of the  
24 assignment on April 5th?

25 A Yes.

1 MS. JAMISON: Object to form.

2 (Exhibit 4 marked for identification.)

3 (Discussion off the record.)

4 Q (By Mr. Haley) And, Mr. Gill, with respect  
5 to Exhibit 4, the development agreement, did you have  
6 any role in negotiating the development agreement?

7 A No.

8 Q And what was the purpose of the development  
9 agreement?

10 A I was not even a part of getting it together.  
11 It was done by Mr. Sidhu and our in-house counsel at  
12 the time.

13 But what I knew then is that the bank gave a  
14 loan to build the building on the ground lease, and  
15 they needed this kind of agreement to get the loan  
16 payments back to them, debt service payment.

17 Q And the agreement identifies Premier Holdings  
18 of Georgia, LLC as the developer. And there is, in  
19 paragraph 5, an assignment provision. It says, "This  
20 agreement is not assignable, except that the developer  
21 shall have the right at any time to assign its rights  
22 in and to the project and to transfer the agreement or  
23 any part thereof to any affiliate of the developer that  
24 agrees to assume assigned obligations of the developer  
25 in and to the project."

1                   Was JG -- is JG Coastal an affiliate of  
2 Holdings?

3                   A       I'm a member of both the companies.

4                   Q       And has JG Coastal agreed to assume any  
5 obligations of Holdings?

6                   MS. JAMISON: Object to form.

7                   THE WITNESS: Just for Port Wentworth.

8                   Q       (By Mr. Haley) And the development fee set  
9 forth in paragraph 3 of the development agreement,  
10 Exhibit 4, how much is the development fee?

11                  A       It's the debt service payment, and it  
12 was a floating rate. So at one time, it was 10,100,  
13 and then it went all the way up to 11,100, plus  
14 \$100 administrative fee.

15                  Q       And is there any way to determine from  
16 Exhibit 4, the development agreement, what the  
17 development fee is?

18                  MS. JAMISON: Object to form.

19                  THE WITNESS: Not from line 3, but it's  
20 from the bank statements that we used to  
21 get.

22                  Q       (By Mr. Haley) And not limiting your  
23 response to just line 3 or paragraph 3, but there's --  
24 is it fair to say that there's nothing in the  
25 development agreement that indicates what the

1 development fee is without reference to documents that  
2 are not part of the development agreement?

3 MS. JAMISON: Object to form.

4 THE WITNESS: That's correct.

5 Q (By Mr. Haley) And how much is the  
6 development fee currently?

7 A Currently, it's 11,100 a month.

8 Q And how is that calculated?

9 A It was a debt service fee for First Horizon  
10 Bank.

11 Q But there's no fee being paid to First  
12 Horizon Bank presently, correct?

13 A Presently, no.

14 Q And so is there any amount due under the  
15 development agreement presently for the development  
16 fee?

17 A That needs to be calculated.

18 Q And how would that be calculated?

19 A Based on the monies spent to pay off the loan  
20 and then the cost of the monies.

21 Q And when you say "the cost of the monies,"  
22 what do you mean by that?

23 A The part that's -- as a loan, it has  
24 interest, and then the remaining is personal.

25 Q And how much is the -- that was Mr. --

1           A     Sal Akturk.

2           Q     Sal. And how much is the loan payment to  
3     Sal?

4           A     500,000.

5           Q     And how much is the monthly amount?

6           A     It hasn't been set yet.

7           Q     And is there a loan agreement between Coastal  
8     and Sal?

9           A     No.

10          Q     Is there a promissory note or any other  
11     indicia of the indebtedness?

12          A     Promissory note, yes.

13          Q     And how much is the promissory note for?

14          A     It hasn't been calculated yet as payment.

15          Q     But if there's a promissory note, does the  
16     promissory note give an amount that's due?

17          A     No. No. It would be that you pay it in four  
18     years and be done with it. There's no calculation as  
19     such.

20          Q     But does the promissory note state a  
21     principal amount?

22          A     500,000.

23          Q     Okay. And what's the date of the promissory  
24     note?

25          A     It was dated -- I'll have to check exactly,

1 but March, sometime -- right before we were making the  
2 transfer.

3 Q And do you have a copy of the promissory  
4 note?

5 A Not with me right now.

6 Q But --

7 A Yes, I should have it.

8 Q Okay.

9 MR. HALEY: So just for the record, I'll  
10 ask for a copy of that.

11 Q (By Mr. Haley) And then with respect to --  
12 and with respect to the interest rate on the 500,000 or  
13 the due date, those amounts have not yet been agreed  
14 to; is that correct?

15 A No. I mean that's correct.

16 Q I'm sorry, that was a bad question.

17 A Yes.

18 Q Thank you for clarifying.

19 The -- and with respect to the -- you also  
20 testified that there would be a cost of money for the  
21 personal funds that you invested in the payoff. What  
22 would that cost be?

23 A I would say it would be calculated if I were  
24 to invest that somewhere, what would be the return, if  
25 I had a business to buy for that amount. So based on

1       that, it can be calculated.

2           Q       And do you know -- have you done that  
3       calculation?

4           A       No, I have not.

5                   (Exhibit 5 marked for identification.)

6           Q       (By Mr. Haley) And, Mr. Gill, I show you  
7       what's marked as Exhibit 5. Was this the payoff that  
8       you testified to earlier on the First Horizon loan?

9           A       Yes.

10          Q       And so it was 344,203 for the equipment loan  
11       and 899,679 for the real estate loan?

12          A       That's correct.

13          Q       And with respect to the development  
14       agreement, Exhibit 4, do you know if that was ever  
15       placed in the data room for the -- this transaction?

16          A       So at that time, I was not part of the sale  
17       process. It was -- Aurora, the CRO, was dealing with  
18       Raymond James and the data room and everything, yeah.

19          Q       So do you have any personal knowledge as to  
20       whether the development was in the data room?

21          A       I have no idea.

22          Q       Okay. And did you ever discuss the  
23       development agreement -- prior to the commencement of  
24       this action, did you ever discuss the development  
25       agreement with anyone at RRG?



1           A     No. I did not talk to anyone at RRG.

2           Q     Okay. And did you ever talk to anyone at  
3 STNL or anyone on their behalf?

4           A     No.

5           Q     Okay. And did you ever have any discussions  
6 with anyone on behalf of Premier Kings, Inc., the  
7 debtors, concerning the development agreement?

8           A     The CRO company knew very well that there is  
9 an agreement. That's why we were getting paid our debt  
10 service on this agreement.

11          Q     And that was Aurora?

12          A     Yes.

13          Q     And when you say "that's why we were getting  
14 paid our debt service," were those payments that took  
15 place during the bankruptcy proceedings?

16          A     Before, and then there was a cure payment.

17          Q     And how much was the cure payment?

18          A     It was based on \$11,100.

19          Q     And what was the amount of the cure payment?

20          A     It was about 26,000 something. Yeah.

21          Q     So around -- a little over two months' of  
22 payments?

23          A     That's correct.

24          Q     And so until the sale -- until two months  
25 before the sale, were you getting the debt service

1       payments every month?

2           A       We were.

3           Q       And who were those being paid to?

4           A       To Premier Holdings.

5           Q       Okay. And who was the -- that was something  
6       that was being generated by Aurora?

7           A       Aurora, yeah.

8           Q       Okay. And directing your attention to the  
9       development agreement, Exhibit 4, the development  
10      agreement doesn't reference the ground lease at all; is  
11      that correct?

12          A       Yes.

13          Q       And is there anything about the ground lease  
14      that requires the continued existence or performance  
15      under the development agreement?

16               MS. JAMISON: Object to form.

17               THE WITNESS: I don't know.

18               (Exhibit 6 marked for identification.)

19               (Discussion off the record.)

20          Q       (By Mr. Haley) Mr. Gill, I show you what has  
21      been marked as Exhibit 6, which is "Ground Lease,"  
22      dated May 8th, 2018.

23               Do you know who the equity holders are of  
24      Port Wentworth Fee Owner, LLC?

25          A       I'm not sure.

1           Q     And have you ever had any discussions with  
2     Port Wentworth Fee Owner, LLC?

3           A     No.

4           Q     Or anyone on their behalf?

5           A     No.

6           Q     Did you play any role in the negotiation and  
7     execution of the ground lease or the first amendment,  
8     which is the last two pages of Exhibit 6?

9           A     No.

10          Q     And have you ever had any discussions with  
11     Port Wentworth Fee Owner, LLC or anyone on its behalf  
12     concerning the development agreement?

13          A     No.

14                     (Exhibit 7 marked for identification.)

15          Q     (By Mr. Haley) And, Mr. Gill, I show you  
16     what's been marked as Exhibit 7, which is a loan  
17     agreement between Holdings and IBERIABANK, which my  
18     understanding is IBERIABANK became First Horizon. Is  
19     that correct?

20          A     That's correct.

21          Q     And did you play any role in the negotiation  
22     of the loan agreement?

23          A     No.

24          Q     And you're a guarantor of the loan; is that  
25     correct?

1           A     That's correct.

2           Q     And did First Horizon ever commence any  
3     action against you to pursue the collection?

4           A     They were trying to tell me that that's what  
5     they'll do.

6           Q     And other than telling you that that's what  
7     they intended to do, did they ever start a lawsuit  
8     against you to collect under the guaranty?

9           A     I'm not sure about that, if they did or not.

10          Q     And is there anything that would refresh your  
11     recollection concerning that?

12          A     I believe their attorney had said that he's  
13     going to file -- start a lawsuit to collect and put  
14     this in foreclosure.

15               MS. JAMISON: May I say something?

16               MR. HALEY: Could we go off the record?

17               Yeah, sure.

18               (Discussion off the record.)

19          Q     (By Mr. Haley) And, Mr. Gill, I direct your  
20     attention to page 36 of Exhibit 7, the loan agreement,  
21     which is titled "Exhibit A, Development Budget," and it  
22     lists expenses -- expense categories in the amount of  
23     \$1,805,000.

24               Were those the amounts -- were those the --  
25     were those the uses of the amounts borrowed from

1 First Horizon?

2 A This was -- I was not involved in this, but  
3 this is how the budget would be to build a new  
4 location.

5 Q And understanding that these are budget  
6 categories in round numbers and just approximation, to  
7 your knowledge, though, is this generally how the bank  
8 loans were expended?

9 A Yes.

10 (Exhibit 8 marked for identification.)

11 Q (By Mr. Haley) And, Mr. Gill, I show you  
12 what's been marked as Exhibit 8, which is a document  
13 entitled "Guaranty Agreement." And is that your  
14 signature on the very last page of the document,  
15 Exhibit 8?

16 A Yes.

17 Q And was this the loan that you guaranteed?

18 A That's correct.

19 (Exhibit 9 marked for identification.)

20 Q (By Mr. Haley) And, Mr. Gill, I show you  
21 what's been marked as Exhibit 9, which is a document  
22 entitled "Assignment of Development Agreement."

23 And this agreement has Holdings assigning to  
24 First Horizon, then known as IBERIA, the development  
25 agreement, Exhibit 4, that we reviewed earlier, and

1       this appears to be a requirement of the loan agreement.

2               Is that an accurate summation of what  
3       Exhibit 8 was, to your understanding?

4               MS. JAMISON:   Object to form.

5               THE WITNESS:   I wasn't part of it, but I  
6       would say so, yeah.

7               Q       (By Mr. Haley)   And the -- in fact, the  
8       "Assignment of Development Agreement" has, as  
9       Exhibit A, the development agreement itself, correct?

10              A       As Exhibit -- what was that?

11              Q       Exhibit A.   It is starting on the document  
12       that has a --

13              A       Yes.

14              Q       -- numbering at the bottom, 728 --

15              A       Yes.

16              Q       -- or 727.

17                      (Exhibit 10 marked for identification.)

18              Q       (By Mr. Haley)   And, Mr. Gill, I show you  
19       what's been marked as Exhibit 10, which is a document  
20       constituting the affidavit of Laura Kendall, who states  
21       that she's the senior managing director for Aurora  
22       Management Partners.

23                      Have you seen this document before?

24              A       No, I haven't.

25              Q       And on the third page of Exhibit 10,

1 paragraph 8 states that "A development agreement for  
2 Store 26868," which is the number assigned to the  
3 Port Wentworth store, "was included in the Dropbox."

4 It then says in paragraph 9 that "No buyers  
5 under the sale order, including RRG, accessed the  
6 Dropbox."

7 And in paragraph 10, "At no point did Aurora  
8 have any contact with RRG regarding Store 26868 or the  
9 development agreement."

10 Do you have any reason to believe that those  
11 statements are inaccurate?

12 A I wouldn't know.

13 Q And are you aware of any communications  
14 between Raymond James and RRG regarding the development  
15 agreement?

16 A No.

17 (Exhibit 11 marked for identification.)

18 Q (By Mr. Haley) And, Mr. Gill, I show you  
19 what's been marked as Exhibit 11, which is a proof of  
20 claim filed in this matter on behalf of Holdings.

21 And on the third page of Exhibit 11, it  
22 indicates electronically that you signed this document  
23 on January 2nd, 2024. Is that accurate?

24 A Yes.

25 Q And was the document true and accurate at the

1 time you signed it?

2 A Yes.

3 Q And the -- after the signature page, there's  
4 an addendum and then an Exhibit A to the addendum. And  
5 my questions relate to the page after Exhibit A to the  
6 addendum, which has a number at the bottom, 360, a  
7 Bates-stamp number, and it has -- the page I'm  
8 referring to says "Damages Related to Leases."

9 A Yes, I see it.

10 Q And it has store numbers. And for  
11 Store No. 26868, it states the balance of the FFE loan,  
12 328,816.

13 How come there's no statement there for the  
14 real estate loan?

15 A I don't know.

16 Q And did you ever amend or supplement this  
17 Proof of Claim?

18 A I'm not aware.

19 (Exhibit 12 marked for identification.)

20 Q (By Mr. Haley) And, Mr. Gill, I show you  
21 what's been marked as Exhibit 12, which is a motion  
22 filed by the debtors in the bankruptcy proceedings and  
23 assigned Docket No. 134. This is a motion that was  
24 filed on November 6, 2023. And it references a  
25 complaint that was filed by First Horizon Bank. And



1 the complaint starts on page 16 of the docket entry.  
2 It says "Page 16 of 44."

3 And this is the complaint your counsel was  
4 kind enough to call to my attention earlier. You are  
5 named as a defendant in this action by First Horizon  
6 Bank; is that correct?

7 A Yes.

8 Q And at the time, you were still employed by  
9 the debtors, correct?

10 A Yes.

11 Q And how was this complaint resolved, to your  
12 knowledge?

13 A How was this resolved?

14 Q Yeah. Did the lawsuit get dismissed, or do  
15 you know what happened to it?

16 A The estate attorney, Robert Ritchey, was  
17 looking into it, because I would forward all the  
18 paperwork to him, because they are 50 percent owner.

19 (Exhibit 13 marked for identification.)

20 Q (By Mr. Haley) And it appears from the  
21 record in the bankruptcy court that the debtors were  
22 successful in having the bankruptcy court get an order  
23 to stay the lawsuit. And do you have any independent  
24 memory of that?

25 A I don't.

1 (Exhibit 14 marked for identification.)

2 Q (By Mr. Haley) And I show you what's been  
3 marked as Exhibit 14, which is a pleading filed by  
4 Holdings in the bankruptcy case on December 4th, 2023  
5 and identified as Docket No. 293.

6 Have you seen this document before?

7 A A lot of these were coming to my office, but  
8 I used to forward it to the estate attorney.

9 Q And --

10 A So I would not really read the details.

11 Q And this document, though, if you look on the  
12 page number -- Page 13 of 16, it's signed by  
13 Ms. Jamison and was filed on behalf of Premier Holdings  
14 of Georgia, LLC, which, at the time, you were the sole  
15 member of, is that correct, or you and the estate?

16 A Both of us, yes, estate and myself.

17 Q And were you directing the activities of  
18 Holdings at the time, in December of 2023?

19 A Not really.

20 Q Who was doing that?

21 A The estate side.

22 Q And was Ms. Jamison someone who was employed  
23 by you or employed by the estate?

24 A Estate.

25 Q And in the pleading, on page 2, in paragraph

1 No. 4, the statement is made in the pleadings by  
2 Holdings that "For a portion of the furniture,  
3 fixtures, and equipment that the debtors seek to sell,  
4 such assets were purchased by Holdings and installed in  
5 premises leased by Holdings to the debtors. Many of  
6 the applicable leases preserve Holdings' ownership in  
7 these assets and, most importantly, Holdings has not  
8 transferred title of these assets to the debtors."

9 Is that correct?

10 A I believe so, yes.

11 (Exhibit 15 marked for identification.)

12 Q (By Mr. Haley) And I'll show you what's been  
13 marked as Exhibit 15, which is another pleading filed  
14 in the bankruptcy court by First Horizon Bank.

15 Have you seen that before?

16 A I don't recall.

17 Q And in the pleading, First Horizon Bank, on  
18 page 1 of Exhibit 15, states that it's objecting so  
19 that the debtors do not use the sale to transfer the  
20 assets that consist of First Horizon's collateral,  
21 including the Port Wentworth stores and the store in  
22 Nahunta, Georgia.

23 Did you have any discussions with  
24 First Horizon about this?

25 A No.

1 (Exhibit 16 marked for identification.)

2 Q (By Mr. Haley) And we've marked as  
3 Exhibit 16, Mr. Gill, the order of the bankruptcy court  
4 approving the sale of the assets in the bankruptcy case  
5 to RRG and others, free and clear of all liens.

6 And in the Court's order, it makes reference  
7 to limiting -- on page 4 of the order, it says in the  
8 second full paragraph, the last sentence, "During the  
9 hearing, all parties that filed written objections to  
10 the sale on account of an alleged lien or interest in  
11 the assets (the 'Objecting Parties'), other than  
12 First Horizon Bank, indicated assent to the reservation  
13 and limitation of their rights to the 'Designated  
14 Proceeds.'"

15 And then further on in the exhibit, the term  
16 "designated proceeds" is --

17 A What page is that?

18 Q The thing that I just read from was on  
19 page 4, the bottom of the second full paragraph.

20 A Okay.

21 Q And then on page 8, in the paragraph entitled  
22 "Property of the Estate," it identifies paragraph H, it  
23 says that "Holdings and its lenders (other than  
24 First Horizon Bank with respect to one location),  
25 agrees to resolve their objections for purposes of the

1 Court's approval of the sale, as set forth below by  
2 reserving their claims against the 'Disputed Claims  
3 Reserve.' "

4 And the Court later defines the disputed  
5 claims reserved in the order as being the amount of  
6 \$650,000.

7 Were you involved in those negotiations?

8 A No.

9 Q And did you object to the resolution  
10 reflected in the sale order?

11 A No.

12 MS. JAMISON: Objection to the extent it  
13 calls for attorney-client privilege.

14 Q (By Mr. Haley) And were the parties who  
15 agreed to reserve their claims against the 650,000, at  
16 the time, were they authorized to act on behalf of  
17 Holdings, to your knowledge?

18 A I believe the estate attorney was involved.

19 Q And did you ever file any individual  
20 objection with the Court or otherwise take any action  
21 to keep them from agreeing to these terms?

22 A No.

23 Q And was it your understanding that one of the  
24 things RRG was buying free and clear of all liens was  
25 the equipment in the Port Wentworth store?

1           A     It was not really my understanding. The  
2     equipment had the loan. So the issue was who owns the  
3     equipment, Holdings or the operating company, so that's  
4     what -- they were going back and forth. So I have  
5     knowledge of that. That's about it.

6           Q     And is it fair to say that that issue, who  
7     owns the equipment, was resolved in favor of Premier  
8     Kings, Inc., and Holdings agreed to limit its claims to  
9     the 650,000?

10           MS. JAMISON: Object to form.

11           THE WITNESS: I'm not 100 percent of  
12     that.

13           Q     (By Mr. Haley) Do you have any reason to  
14     believe that statement is inaccurate?

15           A     I don't.

16                     (Exhibit 17 marked for identification.)

17           Q     (By Mr. Haley) And, Mr. Gill, I show you  
18     what's been marked as Exhibit 17, which is a series of  
19     email messages. And if I could direct your attention  
20     to the second page of Exhibit 17, in which Ms. Jamison  
21     is corresponding with Patrick Finn of STNL Advisors by  
22     a message dated Thursday, January 4th, at 11:26 a.m.

23                     And in those -- in that message, there are  
24     five stores delineated and proposed rental amounts for  
25     those stores being made as what's referred to as a

1 "counteroffer to RRG." And you are copied on the  
2 message. Was that your email address at the time?

3 A Yes, that's correct.

4 Q And did you receive a copy of this?

5 A Yes.

6 Q And did you authorize the offers being made  
7 to RRG?

8 A Yes.

9 Q And the -- looking at paragraph 1, for  
10 Store No. 25937, it says, "Total Rent: Greater of  
11 \$120,000 or 8.50% RTS."

12 Does RTS stand as an abbreviation for Rent To  
13 Sales?

14 A That's correct.

15 Q And so what's being offered is that the  
16 proposed tenant, RRG, would either pay 120,000 or  
17 8.5 percent of sales at that location; is that correct?

18 A That's correct.

19 Q And other than through these emails between  
20 Ms. Jamison and Mr. Finn, did you ever have any direct  
21 negotiations with RRG concerning these leases?

22 A Not that I can think of, no.

23 Q And do you know what the percentage of rent  
24 to sales would be at the Port Wentworth store if the  
25 11,000 per month was included in the ground lease

1 payment?

2 A It would depend on the sales at the time.

3 Q And at the time -- earlier this morning, in  
4 reviewing exhibits that were provided by your counsel,  
5 those exhibits indicated that the sales for the  
6 trailing twelve months at this time were approximately  
7 1.2 million dollars. Was that accurate?

8 A They would know better. If they're saying  
9 it, then that would be.

10 Q And do you have any reason to believe it's  
11 inaccurate?

12 A I wouldn't know.

13 Q And did you ever attempt to have any  
14 discussions with RRG or anyone else regarding the rent  
15 at the Port Wentworth store?

16 A Not the rent, but I remember emailing  
17 Todd Donaghue that "Hey, I did not get anything for the  
18 rent on Port Wentworth" earlier, I would say February.

19 Q And that was after the closing; is that  
20 correct?

21 A That's correct.

22 Q And when you say, "I did not get anything on  
23 the rent at Port Wentworth," what did you mean by that?

24 A What I meant was that we were getting the  
25 debt service rent, and we did not receive anything from



1       them. And as a matter of fact, for January, Aurora had  
2       paid their share of 15 days for January, and there was  
3       a column -- it says the tenant -- whoever buys it, the  
4       buyer or the tenant, to pay so much. So we never  
5       received any of that.

6           Q       And when you say "rent," you're talking about  
7       the amounts due under the development agreement, right?

8           A       Yes.

9           Q       So there was no -- there's no real estate  
10      involved with that, correct?

11          A       I call it rent, which is the debt service  
12      payment.

13          Q       And you made a reference to -- in your  
14      testimony now about payments being made through  
15      January 15th, for 15 days, and then the balance.

16                   And let me show you what was previously  
17      marked as Plaintiff's Exhibit 19. Was that the  
18      document that you were referring to?

19          A       Yes.

20          Q       But if you --

21          A       Let me see -- one second.

22          Q       Sure. I apologize for the size of the  
23      exhibit.

24          A       Rent prorated, yes.

25          Q       But there, the amount of the rent, the

1 continued -- if you follow that line all the way out  
2 for 2868, the continued amount on a monthly basis is  
3 stated as \$6100 dollars a month, correct?

4 A That's what this says, but this goes to  
5 Port Wentworth Fee Owner.

6 What had happened was originally Aurora would  
7 be paying us the full amount, and we would be paying  
8 the ground lease; then they started paying the ground  
9 lease directly, and then they would pay us the debt  
10 service amount.

11 Q And were you receiving the debt service  
12 amount every month?

13 A Month, yes, until they filed the bankruptcy,  
14 and then it came as a cure payment.

15 Q But you said the cure payment was \$26,000?

16 A It was two months' backlog.

17 Q Okay. So other than the two months, they  
18 paid --

19 A Yes.

20 Q -- every time?

21 So this is Exhibit 25 and -- previously  
22 marked as Plaintiff's Exhibit 25, and I'm directing  
23 your attention to the third page, which Counsel asked  
24 questions about earlier this morning. But there, it  
25 seems to show that starting in March 2023 --

1           A     They paid as directed --

2           Q     The payments were six-one-six-nine, correct?

3           A     That's correct. That's what they paid the  
4 ground lease people. But then on top of that, they  
5 paid 11,100 to Holdings.

6           Q     But there's nowhere -- there's nowhere  
7 indicated on this, the six months from -- starting in  
8 March, that they were paying Holdings, is there?

9           A     Yeah, whoever created this, they didn't show  
10 it here, but prior to that, it was 20,000, 14,000, and  
11 all that.

12          Q     And do you know why they weren't showing it  
13 for the six months prior?

14          A     I have no idea.

15          Q     And are you aware of anyone ever telling RRG  
16 that the payments were not 6100, but were 17,000 a  
17 month?

18          A     No. I was out of the picture there. Aurora  
19 didn't let me talk to anyone.

20                   (Exhibit 18 marked for identification.)

21          Q     (By Mr. Haley) Mr. Gill, I show you what's  
22 been marked as Exhibit 18. Have you seen this document  
23 before?

24          A     I think it's a part of a large spreadsheet  
25 that I've seen before, yes.

1 Q And do you know who prepared it?

2 A If I recall it correctly, it's Aurora. They  
3 put everything together in this. And a lot of  
4 information comes from different sources, but they put  
5 everything together when they came on board.

6 Q And on the -- at the bottom of Exhibit 18, on  
7 the first page, the fifth line up from the bottom  
8 relates to the Port Wentworth store, 26868. And there  
9 it states that the lease amount is 10,118, and the  
10 difference paid versus the lease is 4,530.

11 Do you know what those numbers refer to?

12 A They were just trying to put things together  
13 after reading all the leases and all. And this was, I  
14 think, the initial copy. So that's what they were  
15 trying to figure out. So that's why in Column -- where  
16 it says "Fee/Sublease," they say "Ground lease/3rd  
17 party and" -- I think it says "and Premier Holdings."

18 So the 10,118 was -- according to them, they  
19 were paying 10,118, which was just our debt service at  
20 the time with the lower interest because it was a  
21 floating interest. And then I don't know why they  
22 would say minus 4,560 [sic] because they were aware  
23 that there's a ground lease payment of -- at that time,  
24 it was about 6,000.

25 Q So what would the -- so what would the 10,118

1       be consistent --

2           A       That was just our debt service from  
3       First Horizon back then. This must be a year ago.

4           Q       And in addition to that, there would be  
5       another 6,000?

6           A       6,000, yeah. 5,500 plus CAM.

7           Q       So the lease payment would actually -- the  
8       total payment at that location would actually be  
9       \$16,000 per month?

10          A       That's correct.

11          Q       And are you aware of any place in the  
12       documents provided by the debtor or Raymond James where  
13       RRG or anyone else could have determined that the  
14       monthly payment was 16- or 17,000 dollars a month?

15          A       Yes. There were P&Ls in the box that listed  
16       157- or 160,000 as rent payment for this location.  
17       '21, '22, and then '23, they provided whatever they  
18       provided. But if anybody looks at the P&L for that  
19       store, it shows a much, much higher rent than 74,000.

20          Q       But the rent that it showed for the trailing  
21       twelve months, the twelve months immediately prior to  
22       sale, was 120,000, correct?

23          A       That -- I don't know where they got that  
24       number. I'm not aware of it being 120,000.

25          Q       But that would be the -- that was what -- as

1 far as you know, though, that was what was told to RRG  
2 and all the other --

3 A I wouldn't even know that because they did  
4 not let me be any part of the sale process or any part  
5 of the financial process with the buyers.

6 Q And do you have any reason to believe that  
7 that wasn't the number that they told the buyers,  
8 though?

9 A I don't have any reason.

10 MR. HALEY: I just want to take a quick  
11 break. I don't think I have too much more.

12 (Recess taken.)

13 Q (By Mr. Haley) Mr. Gill, I show you a copy  
14 of what was previously marked as Exhibit 4, which is  
15 the development agreement in this action.

16 What benefits does RRG receive from assuming  
17 the development agreement?

18 MS. JAMISON: Object to form.

19 THE WITNESS: As far as benefits --  
20 could you repeat that?

21 MR. HALEY: Sure.

22 Q (By Mr. Haley) Under the terms of the  
23 development agreement in the complaint, Holdings  
24 alleges that the agreement has been assumed by RRG.

25 Is there any benefit that RRG derives from

1       being a party to the development agreement?

2               MS. JAMISON: Same objection.

3               THE WITNESS: My thought on that would  
4       be, just my thought, is it's a building on  
5       the ground, and they need the entire real  
6       estate building with the ground and the  
7       equipment to run the operation there.

8               Q       (By Mr. Haley) But isn't that what they  
9       bought from Premier Kings, Inc. by paying the  
10      15.2 million dollars?

11              A       That -- I don't know what they bought from  
12      Premier Kings, Inc. But we had a loan on the building,  
13      and we built the building.

14              Q       But didn't the -- when you say "we," you mean  
15      Holdings?

16              A       Holdings, yes.

17              Q       And -- but didn't the bankruptcy court rule  
18      that that property actually belonged to the debtor,  
19      Premier Kings, Inc.?

20              MS. JAMISON: Object to form.

21              THE WITNESS: I don't know if that was  
22      ruled.

23              Q       (By Mr. Haley) And in the asset purchase  
24      agreement that RRG has, it says it's buying all of the  
25      equipment in all of the stores?

1 MS. JAMISON: Object to form.

2 THE WITNESS: I don't know if this was  
3 part of it.

4 MR. HALEY: I do not have any further  
5 questions. I would like to suspend in the  
6 event that I receive a copy of the promissory  
7 note with Sal and/or the sale agreement, if I  
8 don't already have it, and to ask questions  
9 regarding those documents. But other than  
10 that, I have no further questions at this  
11 time.

12 THE WITNESS: Sure.

13 MS. JAMISON: And I have no questions.

14 (Deposition concluded at 2:28 p.m.)  
15  
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C E R T I F I C A T E

STATE OF GEORGIA

COUNTY OF COBB

I, MICHELLE M. BOUDREAUX-PHILLIPS, do hereby  
certify that JAIPAL (JAY) S. GILL, the witness whose  
deposition is hereinbefore set forth, was duly sworn by  
me and that such deposition is a true record of the  
testimony given by such witness.

I further certify that I am not related to  
any of the parties to this action by blood or marriage  
and that I am in no way interested in the outcome of  
this matter.

IN WITNESS WHEREOF, I have hereunto set my  
hand this 17th day of September 2024.



MICHELLE M. BOUDREAUX-PHILLIPS, CCR

1 HEATHER A. JAMISON, Esq.

2 hjamison@burr.com

3 September 17, 2024

4 RE: Premier Holdings Of Georgia, Llc v. Rrg Of Jacksonville, Llc  
5 9/10/2024, Jaipal (Jay) S. Gill (#6880618)

6 The above-referenced transcript is available for  
7 review.

8 Within the applicable timeframe, the witness should  
9 read the testimony to verify its accuracy. If there are  
10 any changes, the witness should note those with the  
11 reason, on the attached Errata Sheet.

12 The witness should sign the Acknowledgment of  
13 Deponent and Errata and return to the deposing attorney.  
14 Copies should be sent to all counsel, and to Veritext at  
15 CS-NY@veritext.com

16 Return completed errata within 30 days from  
17 receipt of testimony.

18 If the witness fails to do so within the time  
19 allotted, the transcript may be used as if signed.

20  
21  
22 Yours,

23 Veritext Legal Solutions  
24  
25

Premier Holdings Of Georgia, Llc v. Rrg Of Jacksonville, Llc  
Jaipal (Jay) S. Gill (#6880618)

E R R A T A S H E E T

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REASON \_\_\_\_\_

Jaipal (Jay) S. Gill Date

Premier Holdings Of Georgia, Llc v. Rrg Of Jacksonville, Llc  
Jaipal (Jay) S. Gill (#6880618)

ACKNOWLEDGEMENT OF DEPONENT

I, Jaipal (Jay) S. Gill, do hereby declare that I  
have read the foregoing transcript, I have made any  
corrections, additions, or changes I deemed necessary as  
noted above to be appended hereto, and that the same is  
a true, correct and complete transcript of the testimony  
given by me.

\_\_\_\_\_  
Jaipal (Jay) S. Gill

\_\_\_\_\_  
Date

\*If notary is required

SUBSCRIBED AND SWORN TO BEFORE ME THIS

\_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted

fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at [www.veritext.com](http://www.veritext.com).

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

<p>In re:</p> <p>PREMIER KINGS, INC., <i>et al.</i>,<sup>1</sup></p> <p style="text-align: center;">Debtors.</p>	<p>(Chapter 11)</p> <p>Case No. 23-02871-TOM</p> <p>Jointly Administered</p>
<p>PREMIER HOLDINGS OF GEORGIA, LLC</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>RRG OF JACKSONVILLE, LLC</p> <p style="text-align: center;">Defendant.</p>	<p>Adversary Proceeding No. 24- 00016-TOM</p>

**NOTICE OF DEPOSITION**  
**[Premier Holdings of Georgia, LLC]**

To: Heather A. Jamison  
Chloe E. Champion  
Burr & Forman  
420 North 20th Street, Suite 3400  
Birmingham, Alabama 35203

PLEASE TAKE NOTICE that on Tuesday, September 10, 2024 at 2:00 p.m. at the offices of Nelson Mullins Riley & Scarborough, LLP, Atlantic Station, 201 17<sup>th</sup> Street NW, 101 Atlanta, Georgia, the Defendant RRG of Jacksonville, LLC ("Defendant"), by its attorneys, will take the deposition upon oral examination of Premier Holdings of Georgia, LLC ("Premier"),

<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. The Court entered an order for joint administration on October 30, 2023 [Doc. No. 84].





pursuant to the Federal Rules of Bankruptcy Procedure and Rule 30(b)(6) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7030, before a Notary Public in and for the State of Georgia, or some other officer authorized by law to administer oaths. The testimony will be recorded by stenographic means.

Premier is required to designate one or more officers, directors, managing agents or other persons to testify on its behalf on the matters set forth on Exhibit A attached hereto.

RRG of Jacksonville, LLC

By its attorneys,

/s/ Peter J. Haley

Peter J. Haley, BBO #543858

[peter.haley@nelsonmullins.com](mailto:peter.haley@nelsonmullins.com)

Nelson Mullins Riley & Scarborough LLP

One Financial Center, Suite 3500

Boston, MA 02111

(617) 217-4700

Dated: September 3, 2024



## Exhibit A

### Definitions

- a. As used herein, the term "Premier" shall refer to the deponent Premier Holdings of Georgia, LLC its affiliates, officers, directors, employees, agents, managers, attorneys and any person acting or purporting to act on its behalf.
- b. As used herein, the term "Defendant" shall refer to RRG of Jacksonville, LLC its affiliates, officers, directors, employees, agents, managers, attorneys and any person acting or purporting to act on its behalf.
- c. As used herein, the term "Debtor" shall refer to Premier Kings, Inc.; Premier Kings of Georgia, Inc. and Premier Kings of North Alabama, LLC.
- d. As used herein the term "Bankruptcy Case" shall mean the bankruptcy proceeding of Premier Kings, Inc. et al in the United States Bankruptcy Court for the Northern District of Alabama identified as Case No. 23-02871-TOM.
- e. As used herein the term "Development Agreement" mean that certain agreement dated May 17, 2019 and identified in the Complaint in this action.
- f. As used herein the term "Lease" shall mean the Ground Lease dated May 8, 2018 and the First Amendment to the Ground Lease dated Augst 3, 2018 for the store location numbered 26868 at Port Wentworth, Georgia.

### Areas of Inquiry

- 1. The documents produced in response to the Defendant's Requests for Production.
- 2. The Development Agreement.
- 3. The negotiation of the Development Agreement.
- 4. The relationship between the Development Agreement and the Lease.

5. The history of payments under the Lease and Development Agreement.
6. The “bank loan” identified in the Development Agreement.
7. Any communications between Premier and the Defendant.
8. Any and all amounts owed to Premier by the Defendant.
9. The publication of the Development Agreement to the Defendant.
10. Any communications between Premier and the Debtor regarding the Development Agreement.
11. The alleged assumption of the Development Agreement.



## ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT

[Assignment of Development Agreement -  
7304 Georgia Highway 21, Port Wentworth, GA 31407]

This Assignment and Assumption of Development Agreement (the "Assignment Agreement") is made and entered into by and between **PREMIER HOLDINGS OF GEORGIA, LLC**, a Georgia limited liability company ("Assignor"), and **JG COASTAL PROPERTIES, INC.**, a Georgia corporation ("Assignee") effective as of April 5, 2024 (the "Effective Date").

### RECITALS

A. Assignor is a party to that certain Development Agreement dated May 17, 2019, by and between Assignor, as Developer, and Premier Kings of Georgia, Inc. ("PKGA"), as Owner/Operator, a copy of which, as amended, is attached hereto as **EXHIBIT "A"** and incorporated herein by reference ("Development Agreement"), whereby Assignor, as Developer, agreed to construct a Burger King restaurant, referenced as Burger King Store No. 26868, Project # [REDACTED] 26-04 (the "Project") for PKGA on the real property located at 7304 Highway 21, Port Wentworth, Calhoun County Georgia 31407, which real property is more particularly described in the Development Agreement.

B. The Development Agreement has heretofore been assigned to RRG of Jacksonville, LLC ("RRG") pursuant to that certain Asset Purchase Agreement dated as of October 25, 2023, by and between PKGA, RRG and others, as amended.

C. Jaipal Gill ("Gill") is an affiliate of Assignor based on Gill owning a fifty percent (50%) membership interest in Assignor, and likewise owning 100% of the capital stock of Assignee.

D. The Development Agreement permits Assignor the right at any time to assign all its rights and obligations in and to the Project and to assign the Development Agreement or any part thereof to any affiliate of Assignor that agrees to assume assigned obligations of Assignor under the Development Agreement.

E. Assignee and Assignor have entered into a Sale Agreement dated of even date herewith (the "Sale Agreement") setting forth the terms whereby Assignor will assign to Assignee all its rights and obligations in and to the Project and assign and transfer the Development Agreement to Assignee, and Assignee will assume and perform the assigned obligations of Assignor under the Development Agreement.

NOW, THEREFORE, in consideration of premises, the Purchase Price paid under the Sale Agreement, together with the mutual benefits, promises, obligations, agreements and other considerations provided for herein contained herein, the receipt and sufficiency of which are hereby acknowledged, Assignee and Assignor, intending to be legally bound, do hereby agree as follows:

1. Assignment of Development Agreement. Assignor hereby assigns, grants, conveys, transfers and sets over to Assignee all its right, title and interest in, to and under the Development Agreement, including without limitation all Assignor's rights in and to the Project and under the Development Agreement (the "Development Rights"), together with all of Assignor's obligations under the Development Agreement accruing on and after the Effective Date. Assignor hereby warrants and represents that Assignor has full power and authority to assign the Development Agreement, subject to



any liens and encumbrances of record filed against Assignor with respect to the Development Agreement, as more particularly set forth in the Sale Agreement. To the best of Assignor's knowledge, Assignor is not in default under the Development Agreement.

2. Assumption of Development Agreement. Assignee hereby accepts the assignment of all of Assignor's right, title and interest in, to and under the Development Agreement and assumes all of the obligations of Assignor accruing under the Development Agreement as of the Effective Date. Assignee hereby warrants and represents that Assignee has full power and authority to accept assignment of the Development Agreement, and to perform the obligations of Assignor under the Development Agreement.

3. Successors and Assigns; Governing Law. This Assignment Agreement and the obligations of the parties hereunder shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, shall be governed and construed in accordance with the laws of the State of Georgia and may not be modified or amended other than by a written agreement signed by the party to be charged therewith.

4. Further Assurances. Assignor and Assignee hereby covenant and agree that, at or after the date hereof, each shall, at the request of other party, promptly execute and deliver, or cause to be executed and delivered, to the other party such further instruments and to take such further actions as may be necessary to carry out the purposes and intent of this Assignment Agreement.

5. Indemnification. Assignor hereby agrees to indemnify, defend and hold Assignee harmless from and against any loss, cost, damage, expense, injury, claim or liability, including, without limitation, reasonable attorneys' fees and other legal expenses, whether incurred at or before the trial level or in any appellate, bankruptcy or administrative proceeding, incurred by Assignee with respect to (i) Assignor's obligations under the Development Agreement arising or existing prior to the Effective Date of this Assignment Agreement (ii) any material inaccuracy in any representation or warranty of Assignor under this Assignment Agreement, and (iii) any breach of any covenant or other agreement in this Assignment Agreement by Assignor. Assignee hereby agrees to indemnify, defend and hold Assignor harmless from and against any loss, cost, damage, expense, injury, claim or liability, including, without limitation, reasonable attorneys' fees and other legal expenses, whether incurred at or before the trial level or in any appellate, bankruptcy or administrative proceeding, incurred by Assignor with respect to (a) Assignee's obligations under the Development Agreement arising or existing on or after the Effective Date of this Assignment Agreement, (b) any material inaccuracy in any representation or warranty of Assignee under this Assignment Agreement, and (c) any breach of any covenant or other agreement in this Assignment Agreement by Assignee.

6. Counterparts. This Agreement may be executed in one or more counterparts, each of which, duly executed, shall be deemed to be part of one and the same agreement. Duly executed counterparts delivered by email or other electronic means shall be deemed to be original copies in all respects.

**[SIGNATURE PAGES FOLLOW]**

**ASSIGNEE SIGNATURE PAGE TO ASSIGNMENT AND ASSUMPTION OF  
DEVELOPMENT AGREEMENT**

[Assignment of Development Agreement -  
7304 Georgia Highway 21, Port Wentworth, GA 31407]

**ASSIGNEE:**

**JG COASTAL PROPERTIES, INC.,**  
a Georgia corporation

By: 

Name: Jaipal (Jay) Gill

Its: President



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

In re:	)	
PREMIER KINGS, INC., et al.,	)	Chapter 11
	)	CASE NO. 23-02871 (TOM11)
Debtor.	)	(Jointly Administered)
	)	
PREMIER HOLDINGS OF GEORGIA, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adv. Proc. No. _____
	)	
RRG OF JACKSONVILLE, LLC	)	
	)	
Defendant.	)	

**COMPLAINT**

COMES NOW Premier Holdings of Georgia, LLC ("PHGA"), by and through its undersigned counsel of record, and hereby brings this Complaint against RRG of Jacksonville, LLC ("RRG") and in support thereof, avers as follows:

**INTRODUCTION**

1. PHGA files this action seeking, among other relief, a declaratory judgment against RRG that, pursuant to the Asset Purchase Agreement dated October 25, 2023 by and between Premier Kings of Georgia, Inc. ("PKGI") and RRG (as amended, the "APA"), RRG assumed PKGI's obligations under that certain Development Agreement dated May 17, 2019 by and between PKGI and PHGA (the "Development Agreement"), and therefore is contractually required to perform its obligations due under the Development Agreement.



### **PARTIES, VENUE, AND JURISDICTION**

2. PHGA is a Georgia limited liability company with its principal place of business at 7078 Peachtree Industrial Blvd, Suite 800, Peachtree Corners, GA 30071.

3. According to information and belief, RRG is a Florida limited liability company with its principal place of business at 525 South Flagler Drive, Suite 201, West Palm Beach, FL 33401.

4. This adversary proceeding arises under and relates to the above-captioned, jointly-administered chapter 11 proceeding pending before this Court.

5. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334. This Court has jurisdiction to grant the relief sought herein under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*

6. This adversary proceeding is a core proceeding under 28 U.S.C. § 157(b)(2).

7. Venue is proper in this Court pursuant to 28 U.S.C. §§1408 and 1409.

8. The statutory predicates for relief are Rule 7001 of the Federal Rules of Bankruptcy Procedure, 28 U.S.C. § 2201, *et seq.*, and section 105 of 11 U.S.C. § 101 *et seq.* (the “Bankruptcy Code”).

### **FACTUAL ALLEGATIONS**

9. On or about October 25, 2023 (the “Petition Date”), Premier Kings, Inc.; PKGI; and Premier Kings of North Alabama, LLC (collectively, “Debtors”) filed for bankruptcy protection (the “Bankruptcy”) under Chapter 11 of the Bankruptcy Code. Debtors continued to operate its business and manage its property as debtors-in-possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.

10. Debtors were founded to operate Burger King restaurants throughout Alabama, Georgia, Tennessee, South Carolina, and Florida. With a few exceptions, Debtors did not own

the real property or the restaurants operated on said real property, but rather leased the same from related entities, one of which is PHGA.

11. By an Order entered on December 13, 2023 [Doc. No. 355] (the “Sale Order”) the Court approved the sale of Debtors’ assets, including certain leases between PHGA and PKGI, pursuant to the terms of the APA.

12. The APA was attached to the Sale Order. [See Doc. No. 355]. The APA states that PKGI’s restaurants include those listed on Exhibit A to the APA. Exhibit A to the APA is entitled “List of Store Locations.” Store 26868, located at 7306 Hwy 21, Port Wentworth, GA 31407 (the “Port Wentworth Store”), is listed as one such store location. The Port Wentworth Store is depicted on Exhibit A to the APA as follows:

26868	Premier Kings of Georgia, Inc.	7306 Hwy 21	Port Wentworth	GA	31407
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13. On the first page of the APA, following the cover page, the APA states that Exhibit B contains each leasing agreement affecting the restaurants, and defines each individual lease as an “Existing Lease.” Exhibit B to the APA is entitled “Leased Properties” and depicts the Port Wentworth Store as being subject to the following Existing Leases:

26868	7306 Hwy 21	Port Wentworth	GA	31407	Port Wentworth LLC, an Entity of PHGA (DBA Agreement #24-006)	PKGI	5/8/18 (GI)	5/17/18 Dev Ag	8/7/18 (GI)	3/31/39
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14. As shown in the preceding paragraph, the Port Wentworth Store is subject to a ground lease dated May 8, 2018, between Port Wentworth Fee Owner, LLC and PKGI (the “Ground Lease”) and the Development Agreement, wherein PHGA agreed to build a Burger King restaurant on the ground leased pursuant to the Ground Lease, and in return, PKGI agrees to pay a monthly development fee equal to: (a) the debt service payment of PHGA, plus (b) an administrative fee of \$100.00 (the “Development Fee”). A copy of the Development Agreement is attached hereto as **Exhibit 1**.



15. Because both the Ground Lease and the Development Agreement are listed on Exhibit B, they are each Existing Leases as defined by the APA.

16. Additionally, Section 1.1(a) of the APA states that PKGI “will sell, assign, transfer, convey and deliver” to RRG, and that RRG “agrees to purchase, accept, acquire, assume, and take assignment and delivery [of]” certain “Designated Leases”.

17. Section 1.3(a) of the APA states that Schedule 1.3(a)-1 of the APA lists all “Assignable Leases” from which RRG may elect to assume. For the Port Wentworth Store, both the Ground Lease and the Development Agreement are listed as Assignable Leases. Both the Ground Lease and the Development Agreement are depicted in Schedule 1.3(a)-1 as follows:

26868	7304 Hwy 21	Port Wentworth	GA	31407	Port Wentworth (DL) 16 PKGI/PKGA (Dev Agreement w/ PKGI)	PKGI	5/5/18 (DL) 5/17/18 Dev Agt	8/3/18 (DL)	1/31/19
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18. Also under Section 1.3(a) of the APA, RRG has the right to designate leases which it will assume. Under this provision, RRG is required to designate from the Assignable Leases which of those leases shall be “Designated Leases” and RRG was required to list the Designated Leases on Schedule 1.3(a)-2.

19. The First Amendment to Asset Purchase Agreement dated December 11, 2023 (the “APA Amendment”) included Schedule 1.3(a)-2, which constitute those Assignable Leases that RRG would assume. This schedule includes the Port Wentworth Store, which is depicted as follows:

26868	7304 Hwy. 21, Port Wentworth, GA
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20. The Assignment and Assumption of Lease Agreement (the “Assumption Agreement”), documented the assignment and assumption of the Port Wentworth Store to RRG. In the recitals portion of the Assumption Agreement, it is stated that the Port Wentworth Store is “subject to that certain Development Agreement between Premier Holdings of Georgia, LLC and

Assignor.” The Assumption Agreement expressly incorporated the recitals into the agreement portion of the Assumption Agreement. A copy of the Assumption Agreement is attached hereto as **Exhibit 2**.

21. Under Section 1.3(b) of the Lease, PKGI was required to pay “any amounts necessary to cure any default under such Designated Lease” as “Cure Costs” for such Designated Lease. Following the closing of the sale to RRG pursuant to the APA, PKGI paid to PHGA the Cure Costs due under the Development Agreement.

22. There is no indication in the APA or otherwise that RRG did not intend to assume both the Ground Lease and the Development Agreement. In actuality, there are facts supporting that RRG did intend to assume the Ground Lease because (a) the Assumption Agreement referenced the Development Agreement and (b) PKGI paid the Cure Costs due and owing under the Development Agreement.

23. Currently, RRG owes PHGA at least \$38,850.00 in past-due Development Fees.

### **COUNT ONE** **DECLARATORY JUDGMENT**

24. A justiciable controversy has arisen involving RRG’s assumption of the Development Agreement, and PHGA seeks to obtain a declaration of the parties’ rights, status or other legal obligations related to the same.

25. The Development Agreement is executory, and therefore subject to assumption and assignment by RRG.<sup>1</sup>

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<sup>1</sup> See *In re Walter Energy*, 2015 WL 9487718 at \*4 (Bankr. N.D. Ala. 2015) (holding that the Eleventh Circuit applies the functional approach to determine if a contract is executory, under which, “even if one of the parties to the contract has material performance obligations remaining, the contract ‘may nevertheless be deemed executory . . . if its assumption or rejection would ultimately benefit the estate and its creditors.’”).



26. The APA, the Assumption Agreement, and the Sale Order are unambiguous as to RRG's assumption of the Development Agreement.

27. PHGA seeks a declaration from this Court that, pursuant to the APA, RRG assumed the Development Agreement, RRG is liable to PHGA under the Development Agreement, and RRG is required to perform its obligations due under the Development Agreement.

**COUNT TWO**  
**BREACH OF CONTRACT**

28. The Development Agreement was a valid and binding contract between PHGA and PKGI.

29. The Development Agreement was validly assigned by PKGI to RRG pursuant to the APA, the Assumption Agreement, and the Sale Order.

30. RRG assumed the Development Agreement pursuant to the APA, the Assumption Agreement, and the Sale Order.

31. The Development Agreement is therefore a valid and binding contract between PHGA and RRG.

32. RRG is liable for the Development Fee pursuant to the Development Agreement.

33. RRG is in default under the Development Agreement for its failure to pay the Development Fee.

34. Due to RRG's failure to pay the Development Fee, as of the date herein, RRG owes PHGA \$38,850.00 for past due Development Fees, exclusive of attorney's fees and expenses, plus accruing charges due under the Development Agreement, and any other amounts due and owing to PHGA by RRG.

**RELIEF REQUESTED**

**WHEREFORE**, PHGA respectfully requests that this Court:

(1) Enter a judgment against RRG for breach of contract damages in the amount of \$38,850.00 for past due Development Fees, exclusive of attorney's fees and expenses, plus accruing charges due under the Development Agreement, and any other amounts due and owing to PHGA by RRG;

(2) Issue a declaration determining and declaring that RRG assumed the Development Agreement, RRG is liable to PHGA under the Development Agreement, and RRG is required to perform its obligations due under the Development Agreement;

(3) Issue an order permitting PHGA to file a motion for award of attorney's fees and costs incurred in enforcing this Court's Sale Order against RRG, pursuant provided by Federal Rule of Civil Procedure 54, as made applicable by Federal Rule of Bankruptcy Procedure 7054; and

(4) Enter a judgment awarding all additional, other, and different relief to which PHGA may be entitled.

**DATED** this the 5th day of April, 2024.

/s/ Heather A. Jamison

Heather A. Jamison

Chloe E. Champion

*Counsel for Premier Holdings of Georgia, LLC*

**OF COUNSEL:**

BURR & FORMAN LLP  
420 North 20th Street, Suite 3400  
Birmingham, Alabama 35203  
Telephone: (205) 251-3000  
Facsimile: (205) 458-5100  
Email: [hjamison@burr.com](mailto:hjamison@burr.com)  
[cchampion@burr.com](mailto:cchampion@burr.com)

**ADDRESS FOR SERVICE**

RRG of Jacksonville, LLC  
c/o BCRA, LLC, Its Registered Agent  
1905 NW Corporate Boulevard, Suite 310  
Boca Raton, FL 33431



## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made and entered into by and between Premier Holdings of Georgia, LLC, a Georgia limited liability company hereinafter called the "Developer") and Premier Kings of Georgia Inc., a Georgia corporation (hereinafter called the "Owner/Operator") on or about May 17, 2019, 2019.

### WITNESSETH:

WHEREAS, Developer and Owner/Operator desire to establish in writing their agreement concerning their relationship, obligations and rights with respect to the development of a Burger King restaurant on certain property located Chatham County, Georgia which is described on Exhibit "A" and to be known as Burger King Store No. 26868, 7304 Highway 21, Port Wentworth, Georgia 31407 (the "Premises").

WHEREAS, Developer and Owner/Operator acknowledge that this Development Agreement is made subject to the provisions hereof, and the terms and conditions of any bank loan, the proceeds of which will be used to construct the improvements on the Premises (hereinafter called the "Bank Loan").

WHEREAS, Developer and Owner/Operator acknowledge that the development of the Premises is made subject to the provisions hereof, all matters of record, and the terms and conditions of that certain franchise agreement entered into between Owner/Operator and Burger King Corporation (hereinafter called the "Franchise Agreement").

NOW, THEREFORE, in consideration of the payments hereinafter agreed to be paid and the mutual covenants and agreements hereinafter set forth and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Developer and Owner/Operator agree as follows:

1. Development of the Premises: Developer, for and in consideration of the fees, covenants, agreements and stipulations hereinafter mentioned, reserved and contained, to be paid, kept and performed by Owner/Operator, by these presents does hereby agree to construct a Burger King restaurant on the Premises described on Exhibit "A" for the use and benefit of the Owner/Operator upon the terms and conditions hereinafter set forth and in compliance with the Project # 26868 including all plans and specifications (and appendices and addendums thereto) for the Project, as provided, updated, and supplemented by Hendon + Huckestein Architects, PC (the "Plans and Specifications"), which are incorporated herein by reference (collectively, the "Project").

2. Term: The term of the Development Agreement shall commence on the date hereof and shall terminate twenty (20) years from the date hereof (the "Termination Date").

3. Development Fee. Owner/Operator agrees to pay to Developer, without deduction, set off or abatement, and without previous notice or demand therefor, a monthly development fee on the first day of each month commencing on June 1, 2019, and continuing through the Termination Date, equal to (a) the Developer's debt service payment associated with the development of the Project, including without limitation under the Bank Loan, plus (b) an administrative/overhead/profit fee of \$100.00.

4. Costs and Expenses. Each Party agrees to pay its own costs and expenses incurred in connection with the proposals, responses, and negotiation of the transactions contemplated herein, including all costs and expenses incurred in connection with the preparation of any studies or reports, surveys, or approvals for this Agreement or otherwise.

5. Assignment. This Agreement is not assignable, except that the Developer shall have the right at any time to assign all its rights and obligations in and to the Project and to transfer this Agreement or any part thereof to any affiliate of the Developer that agrees to assume assigned obligations of the Developer in and to the



Project; and if so assigned, the Developer shall continue to be responsible for the performance of the obligations of the Developer under this Agreement.

6. Section Titles and Headings. The section titles and headings are for convenience only and do not define, modify, or limit any of the terms and provisions hereof.

7. Survival of Representations and Warranties. The representations, warranties, and covenants made by each of the Parties hereto and contained herein shall survive the performance of any obligations to which such representations, warranties, and covenants relate.

8. Waivers. Waiver of any of the obligations of any Party under this Agreement shall be effective only when stated in writing and signed by the waiving Party. No delay or omission to exercise any right or power by any Party shall be construed to be a waiver. In the event any provision is waived by a Party, such waiver shall not be deemed to waive any other provision.

9. Time is of the Essence. The Parties acknowledge and agree that time is of the essence in performing their respective duties under this Agreement.

10. Notices. All notices required by, or arising out of, or related to this Agreement shall be sent by United States Mail, first class postage affixed, addressed to the receiving Party as described below:

PREMIER HOLDINGS OF GEORGIA, LLC  
3300 Eastern Blvd  
Montgomery AL 36116

PREMIER KINGS OF GEORGIA, INC.  
3300 Eastern Blvd  
Montgomery AL 36116

or to such other address as the receiving Party shall have most recently forwarded to the sending Party pursuant to the provisions of this Section.

11. Entire Agreement; Amendment. This Agreement is the entire agreement and supersedes all prior and collateral communications and agreements of the Parties relating to the subject matter. This Agreement may be amended only by a written modification executed by each of the Parties' duly authorized representatives. The terms and provisions of this Agreement shall run with the land for as long as this Agreement remains in effect and shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

12. Severability. In case any one or more of the provisions contained herein should be invalid, illegal or unenforceable in any respect and for any reason whatsoever, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, and in the event any such provision is held to be invalid, illegal or unenforceable, those Parties affected by such event shall exercise their best efforts to agree upon a provision in substitution for such invalid, illegal or unenforceable provision that is as near in economic benefit as possible to the provision found to be invalid, illegal or unenforceable.

13. No Third-Party Beneficiaries. Other than as set forth in this Agreement, this Agreement shall not confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assigns.

14. Governing Law. The governing law of this Agreement shall be the law of the State of Alabama without regard to conflicts of law provisions.

15. Construction. In this Agreement, unless the context indicates otherwise, the singular includes the plural and the plural the singular, references to statutes, sections or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section or regulation referred to; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation" or "but not limited to" or words of similar import; references to exhibits, attachments or appendices are to those of this Agreement unless otherwise indicated and shall be deemed to include all subsequent modifications thereto; references to agreements and other contractual instruments shall be deemed to include all exhibits, attachments and appendices attached thereto and all subsequent amendments and other modifications to such instrument; and references to Parties include their respective successors and permitted assigns.

16. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

[Execution begins on following page]

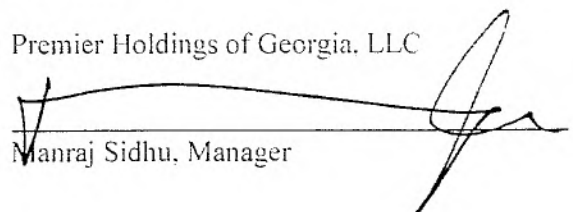


IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be executed in their respective names by their respective authorized representatives as of the day and year first above written.

DEVELOPER:

Premier Holdings of Georgia, LLC

Manraj Sidhu, Manager



OWNER/OPERATOR:

Premier Kings of Georgia Inc.

Manraj Sidhu, President

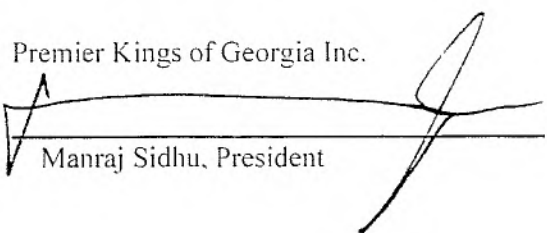


Exhibit "A"

LEGAL DESCRIPTION

## **ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT (this "**Assignment**") is made and entered into as of January 16, 2024, by and between Premier Kings of Georgia, Inc., a Georgia corporation ("**Assignor**"), and RRG of Jacksonville, LLC, a Florida limited liability company ("**Assignee**"). Assignor and Assignee are referred to collectively as "**Parties**" herein, and each individually, a "**Party**".

### **RECITALS**

WHEREAS, Assignor, as tenant, and Port Wentworth Fee Owner, LLC, as landlord, are parties to that certain Ground Lease, dated as of May 8, 2018, as amended by that certain Amendment to Ground Lease, dated August 3, 2018, and as subject to that certain Development Agreement between Premier Holdings of Georgia, LLC and Assignor, dated May 17, 2019 (collectively, the "**Lease**");

WHEREAS, Assignor and Assignee are parties to that certain Asset Purchase Agreement dated as of October 25, 2023 (as amended, the "**Purchase Agreement**"), pursuant to which Assignor agreed to assign, and Assignee agreed to assume, all of Assignor's right, title and interest in, to and under the Lease;

WHEREAS, in connection with the consummation of the transactions contemplated by the Purchase Agreement, Assignor agreed to assign, and Assignee agreed to assume, pay, perform, discharge or otherwise satisfy the Assumed Liabilities; and

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

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

### **AGREEMENT**

1. Assignment of Lease. Subject to the terms and conditions set forth in the Purchase Agreement, for valuable consideration received from Assignee, Assignor hereby assigns, transfers and conveys to Assignee all of Assignor's right, title and interest in, to and under the Lease and Assignee accepts such assignment.

2. Assumption of Assumed Liabilities. Subject to the terms and conditions set forth in the Purchase Agreement, Assignor hereby assigns to Assignee the Assumed Liabilities and Assignee hereby accepts such assignment and agrees to pay, perform, discharge or otherwise satisfy the Assumed Liabilities. Other than as specifically set forth herein, Assignee assumes no debt, liability, or obligation of Assignor, all of which shall remain the responsibility of Assignor and shall be Excluded Liabilities.

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



4. Instrument of Conveyance Only. This Assignment is being made by the Parties pursuant to the requirements of the Purchase Agreement, the terms and conditions of which are incorporated herein by this reference, and this Assignment shall be subject to such terms and conditions. Except for the actual conveyance of the Lease as set forth in Section 1 of this Assignment and the assumption of the Assumed Liabilities as set forth in Section 2 of this Assignment, nothing set forth in this Assignment is intended to or shall expand, enlarge, modify, restrict, limit, or abridge any of the terms, representations, warranties, covenants, conditions, agreements, provisions, rights, benefits, obligations or liabilities of Assignors or Assignee beyond that set forth in the Purchase Agreement. In the event of any conflict, ambiguity or discrepancy between the terms or conditions of the Purchase Agreement and this Assignment, the terms and conditions of the Purchase Agreement shall be controlling in all respects.

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

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

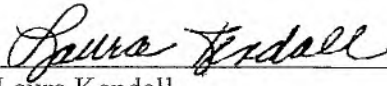
7. Counterparts. This Assignment may be executed in multiple counterparts, each of which will constitute an original and all of which, when taken together, will constitute one and the same agreement. The Parties may deliver executed signature pages to this Assignment by facsimile or email transmission.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

[Signature Page Follows]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment effective as of the date first set forth above.

**ASSIGNOR:**

**PREMIER KINGS OF GEORGIA, INC.,**  
a Georgia corporation

By:   
Name: Laura Kendall  
Title: Deputy Restructuring Office

**ASSIGNEE:**

**RRG OF JACKSONVILLE, LLC,**  
a Florida limited liability company

By: \_\_\_\_\_  
Name: Randy Pianin  
Title: Manager





## LANDLORD CONSENT TO ASSIGNMENT AND ASSUMPTION OF LEASE

To the extent required under the Lease, effective as of the date (the “**Effective Date**”) of the Assignment and Assumption of Lease Agreement enclosed herewith (the “**Assignment Agreement**”), the undersigned (“**Landlord**”) hereby (a) consents to the assignment effected by the Assignment Agreement; (b) waives any right of refusal to repossess the space, any option to purchase, and any termination option which may arise as a result of Assignor’s assignment of the Lease to Assignee pursuant to the Assignment Agreement; (c) agrees to recognize Assignee as the “Owner/Operator” under the Lease, and to thereby establish direct privity of estate and privity of contract with Assignee; (d) waives any right of Landlord to charge any fee or other amount in connection with Assignor’s assignment of the Lease to Assignee pursuant to the Assignment Agreement; and (e) certifies and agrees that (i) Landlord has all requisite power and authority to execute and deliver this consent to the Assignment Agreement (this “**Consent**”), without the need to obtain the consent or approval of, or to deliver notice to, any other person or entity, and the Assignment Agreement and this Consent are binding upon and enforceable against Landlord, its successors and assigns, (ii) Landlord is the current, sole fee simple owner of record of all real and personal property, and all other equipment, fixtures, buildings, structures, and premises currently leased by Assignor under and pursuant to the Lease, (iii) the consummation of Assignor’s assignment of the Lease to Assignee pursuant to the Assignment Agreement shall not be deemed a breach or violation of, or default or event of default under, any provision of the Lease, and (iv) except to the extent mutually amended, restated, supplemented, or otherwise modified by Assignee and Landlord in accordance with the terms and conditions of the Lease, the Lease shall remain in full force and effect from and after the Effective Date, in accordance with its terms and conditions. All capitalized terms used but not defined in this Consent shall have the respective meanings ascribed thereto in the Assignment Agreement.

### LANDLORD:

**PORT WENTWORTH FEE OWNER, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## DEVELOPER CONSENT TO ASSIGNMENT AND ASSUMPTION OF LEASE

To the extent required under the Development Agreement between Premier Kings of Georgia, Inc., a Georgia corporation, and the undersigned ("**Counterparty**"), dated May 17, 2019 (the "**Development Agreement**"), effective as of the date (the "**Effective Date**") of the Assignment and Assumption of Lease Agreement enclosed herewith (the "**Assignment Agreement**"), Counterparty hereby (a) consents to the assignment effected by the Assignment Agreement; (b) waives any right of refusal to repossess the space, any option to purchase, and any termination option which may arise as a result of Assignor's assignment of the Lease and/or the Development Agreement (as applicable) to Assignee pursuant to the Assignment Agreement; (c) agrees to recognize Assignee as the "Tenant" under the Lease and (as applicable) the "Owner/Operator" under the Development Agreement, and to thereby establish direct privity of estate and privity of contract with Assignee; (d) waives any right of Counterparty to charge any fee or other amount in connection with Assignor's assignment of the Lease and/or the Development Agreement (as applicable) to Assignee pursuant to the Assignment Agreement; and (e) certifies and agrees that (i) Counterparty has all requisite power and authority to execute and deliver this consent to the Assignment Agreement (this "**Consent**"), without the need to obtain the consent or approval of, or to deliver notice to, any other person or entity, and the Assignment Agreement and this Consent are binding upon and enforceable against Counterparty, its successors and assigns, (ii) the consummation of Assignor's assignment of the Lease and/or the Development Agreement (as applicable) to Assignee pursuant to the Assignment Agreement shall not be deemed a breach or violation of, or default or event of default under, any provision of the Lease or the Development Agreement, and (iv) except to the extent mutually amended, restated, supplemented, or otherwise modified by Assignee and Counterparty in accordance with the terms and conditions of the Lease and the Development Agreement, the Lease and the Development Agreement shall remain in full force and effect from and after the Effective Date, in accordance with their respective terms and conditions. All capitalized terms used but not defined in this Consent shall have the respective meanings ascribed thereto in the Assignment Agreement.

### COUNTERPARTY:

**PREMIER HOLDINGS OF GEORGIA, LLC,**  
a Georgia limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made and entered into by and between Premier Holdings of Georgia, LLC, a Georgia limited liability company hereinafter called the "Developer") and Premier Kings of Georgia Inc., a Georgia corporation (hereinafter called the "Owner/Operator") on or about May 17, 2019, 2019.

WITNESSETH:

WHEREAS, Developer and Owner/Operator desire to establish in writing their agreement concerning their relationship, obligations and rights with respect to the development of a Burger King restaurant on certain property located Chatham County, Georgia which is described on Exhibit "A" and to be known as Burger King Store No. 26868, 7304 Highway 21, Port Wentworth, Georgia 31407 (the "Premises").

WHEREAS, Developer and Owner/Operator acknowledge that this Development Agreement is made subject to the provisions hereof, and the terms and conditions of any bank loan, the proceeds of which will be used to construct the improvements on the Premises (hereinafter called the "Bank Loan").

WHEREAS, Developer and Owner/Operator acknowledge that the development of the Premises is made subject to the provisions hereof, all matters of record, and the terms and conditions of that certain franchise agreement entered into between Owner/Operator and Burger King Corporation (hereinafter called the "Franchise Agreement").

NOW, THEREFORE, in consideration of the payments hereinafter agreed to be paid and the mutual covenants and agreements hereinafter set forth and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Developer and Owner/Operator agree as follows:

1. Development of the Premises: Developer, for and in consideration of the fees, covenants, agreements and stipulations hereinafter mentioned, reserved and contained, to be paid, kept and performed by Owner/Operator, by these presents does hereby agree to construct a Burger King restaurant on the Premises described on Exhibit "A" for the use and benefit of the Owner/Operator upon the terms and conditions hereinafter set forth and in compliance with the Project # 14-44 (including all plans and specifications (and appendices and addendums thereto) for the Project, as provided, updated, and supplemented by Hendon - Huckestein Architects, PC (the "Plans and Specifications"), which are incorporated herein by reference (collectively, the "Project").

2. Term: The term of the Development Agreement shall commence on the date hereof and shall terminate twenty (20) years from the date hereof (the "Termination Date").

3. Development Fee. Owner/Operator agrees to pay to Developer, without deduction, set off or abatement, and without previous notice or demand therefor, a monthly development fee on the first day of each month commencing on June 1, 2019, and continuing through the Termination Date, equal to (a) the Developer's debt service payment associated with the development of the Project, including without limitation under the Bank Loan, plus (b) an administrative/overhead/profit fee of \$100.00.

4. Costs and Expenses. Each Party agrees to pay its own costs and expenses incurred in connection with the proposals, responses, and negotiation of the transactions contemplated herein, including all costs and expenses incurred in connection with the preparation of any studies or reports, surveys, or approvals for this Agreement or otherwise.

5. Assignment. This Agreement is not assignable, except that the Developer shall have the right at any time to assign all its rights and obligations in and to the Project and to transfer this Agreement or any part thereof to any affiliate of the Developer that agrees to assume assigned obligations of the Developer in and to the

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Project; and if so assigned, the Developer shall continue to be responsible for the performance of the obligations of the Developer under this Agreement.

6. Section Titles and Headings. The section titles and headings are for convenience only and do not define, modify, or limit any of the terms and provisions hereof.

7. Survival of Representations and Warranties. The representations, warranties, and covenants made by each of the Parties hereto and contained herein shall survive the performance of any obligations to which such representations, warranties, and covenants relate.

8. Waivers. Waiver of any of the obligations of any Party under this Agreement shall be effective only when stated in writing and signed by the waiving Party. No delay or omission to exercise any right or power by any Party shall be construed to be a waiver. In the event any provision is waived by a Party, such waiver shall not be deemed to waive any other provision.

9. Time is of the Essence. The Parties acknowledge and agree that time is of the essence in performing their respective duties under this Agreement.

10. Notices. All notices required by, or arising out of, or related to this Agreement shall be sent by United States Mail, first class postage affixed, addressed to the receiving Party as described below:

PREMIER HOLDINGS OF GEORGIA, LLC  
3300 Eastern Blvd  
Montgomery AL 36116

PREMIER KINGS OF GEORGIA, INC.  
3300 Eastern Blvd  
Montgomery AL 36116

or to such other address as the receiving Party shall have most recently forwarded to the sending Party pursuant to the provisions of this Section.

11. Entire Agreement; Amendment. This Agreement is the entire agreement and supersedes all prior and collateral communications and agreements of the Parties relating to the subject matter. This Agreement may be amended only by a written modification executed by each of the Parties' duly authorized representatives. The terms and provisions of this Agreement shall run with the land for as long as this Agreement remains in effect and shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

12. Severability. In case any one or more of the provisions contained herein should be invalid, illegal or unenforceable in any respect and for any reason whatsoever, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, and in the event any such provision is held to be invalid, illegal or unenforceable, those Parties affected by such event shall exercise their best efforts to agree upon a provision in substitution for such invalid, illegal or unenforceable provision that is as near in economic benefit as possible to the provision found to be invalid, illegal or unenforceable.

13. No Third-Party Beneficiaries. Other than as set forth in this Agreement, this Agreement shall not confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assigns.

14. Governing Law. The governing law of this Agreement shall be the law of the State of Alabama without regard to conflicts of law provisions.

15. Construction. In this Agreement, unless the context indicates otherwise, the singular includes the plural and the plural the singular, references to statutes, sections or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section or regulation referred to; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation" or "but not limited to" or words of similar import; references to exhibits, attachments or appendices are to those of this Agreement unless otherwise indicated and shall be deemed to include all subsequent modifications thereto; references to agreements and other contractual instruments shall be deemed to include all exhibits, attachments and appendices attached thereto and all subsequent amendments and other modifications to such instrument; and references to Parties include their respective successors and permitted assigns.

16. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

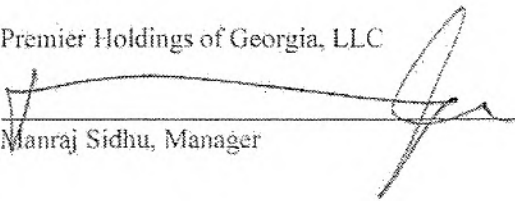
[Execution begins on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be executed in their respective names by their respective authorized representatives as of the day and year first above written.

DEVELOPER:

Premier Holdings of Georgia, LLC

Manraj Sidhu, Manager



OWNER/OPERATOR:

Premier Kings of Georgia Inc.

Manraj Sidhu, President

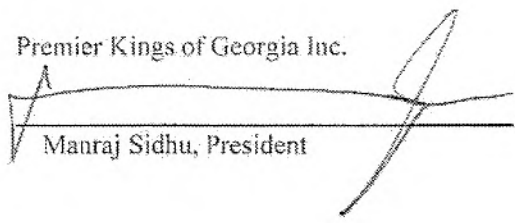


Exhibit "A"

LEGAL DESCRIPTION

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March 22, 2024

**VIA EMAIL** ([mmoselev@kppblaw.com](mailto:mmoselev@kppblaw.com) & [rritchey@gilpingivban.com](mailto:rritchey@gilpingivban.com))

Premier Holdings of Georgia, LLC  
As Borrower  
Attn: Jaipal Gill (Reg. Agent)  
7078 Peachtree Industrial Blvd., Suite 800  
Peachtree Corners, GA 30071

Jaipal ("Jay") Gill  
As Guarantor  
7078 Peachtree Industrial Blvd., Suite 800  
Peachtree Corners, GA 30071

**Attorneys at Law**

Alabama  
Colorado  
Florida  
Georgia  
Louisiana  
Mississippi  
North Carolina  
South Carolina  
Tennessee  
Texas  
Washington, D.C.

**Clarence A. Wilbon**  
Licensed in Tennessee  
and Kentucky  
Direct: 901.524.5324  
E-Fax: 901.524.5424  
[clarence.wilbon@arlaw.com](mailto:clarence.wilbon@arlaw.com)

**Re: Obligations owed to First Horizon ("First Horizon") by Premier Holdings of Georgia, LLC ("Borrower") and Jaipal "Jay" Gill ("Guarantor") under those certain Promissory Notes dated March 1, 2019 in the original principal amounts of \$517,500.00 and \$1,365,200.00, those certain Promissory Notes dated May 17, 2019 in the original principal amounts of \$517,500.00 and \$1,030,000.00, and those certain Guaranty Agreements dated May 1, 2019 and May 17, 2019.**

Dear Mr. Gill:

As you know, we represent First Horizon with regard to the above-referenced obligations to First Horizon. This letter confirms First Horizon's receipt of your March 20, 2024 email correspondence indicating your intent to pay off the above referenced loan on or by **March 27, 2024**. In accordance with the language provided in the above-referenced Promissory Notes and Guaranty Agreements, the payoff details are as follows:

	Original Principal	Current Principal	Interest	Late Fees	Total	Per Diem
Port Wentworth Equipment Loan	\$517,500.00	\$328,743.20	\$15,165.18	\$294.84	\$344,203.22	\$70.19
Port Wentworth Real Estate Loan	\$1,030,000.00	\$895,464.25	\$4,214.85	\$0.00	\$899,679.10	\$191.20
Nahunta Equipment Loan	\$517,500.00	\$122,897.84	\$3,767.45	\$6,299.16	\$132,964.45	\$26.24
Nahunta Real Estate Loan	\$1,365,200.00	\$1,090,244.11	\$5,131.72	\$0.00	\$1,095,375.83	\$232.80
Appraisal Fee					\$ 5,800.00	
Legal Fees					\$296,928.89	
<b>Total Payoff</b>					<b>2,774,951.49</b>	

Premier Holdings of Georgia, LLC  
Jaipal "Jay" Gill  
March 22, 2024  
Page 2

Please note that certain of the amounts set forth above continue to accrue, including attorneys' fees and other expenses. Accordingly, please contact me the day before closing to obtain an updated payoff that includes all attorneys' fees and other expenses, as well as to obtain wire transfer instructions to be used to transfer the payment funds to First Horizon.

Additionally, the estimated payoff amount is subject to final reconciliation and accounting and may change if there are returned payments or fees assessed on the account. If your monthly payment is being deducted by an auto-debit transaction, it will continue as scheduled until the account is paid in full and appropriately reconciled. Any payoff overage or excess funds debited after your account is paid in full will be refunded to you within 30-45 days of payoff.

Please be advised that all of Borrower's and Guarantor's obligations to First Horizon are still ongoing. Nothing herein should be construed as an election of remedies by First Horizon, which reserves all rights and remedies, at law and in equity, waiving none. Likewise, this correspondence in no way constitutes any agreement by First Horizon to take any affirmative action or not to take any action with respect to Borrower, any owner of Borrower, any affiliate of Borrower, or any Guarantor.

First Horizon expressly reserves all of its rights, powers, privileges and remedies under the governing notes and related documents and/or applicable laws. No oral representations or course of dealing on the part of First Horizon or any of its officers, employees, attorneys, or agents, and no failure or delay by First Horizon with respect to the exercise of any right, power, privilege or remedy under any loan document or applicable laws shall operate as a waiver thereof, and the single or partial exercise of any such right, power, privilege or remedy shall not preclude any later exercise of any other right, power, privilege or remedy.

Sincerely,



Clarence A. Wilbon

c: First Horizon



## GROUND LEASE

THIS GROUND LEASE (the "Lease") is made and entered into this 8 day of May, 2018 (the "Effective Date"), by and between PORT WENTWORTH FEE OWNER, LLC, a Delaware limited liability company ("Landlord"), and PREMIER KINGS OF GEORGIA, INC., a Georgia corporation ("Tenant").

### ARTICLE I. DEMISE OF PREMISES

Section 1.01. Demise. For and in consideration of the rents, terms, covenants and agreements hereinafter set forth on the part of Tenant and Landlord to be paid, kept, observed and performed, Landlord does hereby demise and lease to Tenant, and Tenant does hereby take and hire from Landlord, upon and subject to the terms and conditions contained herein, that certain tract of land, consisting of approximately 1.05 acres, lying and being within the shopping center commonly known as Waterford Commons located in Chatham County, Georgia (the "Shopping Center"), known as "Outparcel B" on the Site Plan attached hereto as Exhibit "A" and incorporated herein by reference (the "Site"), and as more particularly described in Exhibit "B" attached hereto and incorporated herein by this reference, together with all improvements now located thereon and all appurtenances thereunto belonging (said Site, improvements and appurtenances hereinafter collectively referred to as the "Premises"), subject to all encumbrances of record and as would be shown on a current, accurate ALTA survey.

Section 1.02. Appurtenant Rights and/or Easements. The Premises are leased by Landlord to Tenant together with, but subject to the terms and conditions of this Lease, the rights, privileges and easements appurtenant to the Site created and established by virtue of that certain Declaration of Easements, Covenants, Restrictions and Maintenance Responsibilities (Shopping Center and Outparcel Property) dated September 19, 2005, recorded in Deed Book 294Q, Page 361 in the Official Records of the Chatham County Clerk in Chatham County, Georgia, as affected by that certain Amended and Restated Declaration of Easements, Covenants, Restrictions and Maintenance Responsibilities (Shopping Center and Outparcel Property) dated March 19, 2007, recorded in Deed Book 322U, Page 457, aforesaid Records, as further affected by that certain First Amendment to Amended and Restated Declaration of Easements, Covenants, Restrictions and Maintenance Responsibilities (Shopping Center and Outparcel Property) dated February 21, 2008, recorded in Deed Book 337V, Page 103, aforesaid Records, and as further affected by that certain Assignment and Assumption of Declarant's Rights dated May 31, 2015, recorded in Deed Book 387Z, Page 942, aforesaid Records (collectively, the "Declaration"). In the event there is any conflict between the rights appurtenant to the Site in the Declaration and the terms of this Lease, the terms of this Lease shall prevail.

Section 1.03. Reservation of Easements. Landlord hereby reserves for the benefit of the property owned by Landlord in the Shopping Center all easements over and across the Site and other rights conferred upon "Declarant" (as defined in the Declaration) pursuant to the Declaration.

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## ARTICLE II. TERM OF LEASE

Section 2.01. Term of Lease. The term of this Lease (the "Initial Term") shall commence on the Rent Commencement Date (as defined below) and unless sooner terminated or extended under the terms and conditions contained herein, shall continue until 11:59 p.m. (local time) on the day preceding the twentieth (20th) anniversary of the Rental Commencement Date (as hereinafter defined), plus the remainder of the month in which the twentieth anniversary of the Rental Commencement Date occurs if the Rental Commencement Date is not on the first day of a calendar month.

Section 2.02. Extended Term. Provided this Lease has not been terminated for any reason prior to the expiration of the Initial Term or current Extended Term (as defined below), as applicable, unless Tenant has issued a Non-Renewal Notice in accordance with the requirements of this Section 2.02, the Term of this Lease shall automatically be extended for four (4) successive additional periods of five (5) years each (each such additional period being herein referred to as an "Extended Term"). Each Extended Term shall be upon all of the same terms, covenants and conditions of this Lease then applicable except that the Rent (as defined below) during the Extended Terms shall be as set forth in Section 3.03 hereof. The term "Term" or the phrase "Term of this Lease" as used in this Lease shall mean the Initial Term and any Extended Term which may become effective. Tenant shall have the right to cause any or all Extended Terms which have not yet commenced to be terminated by written notice to Landlord (a "Non-Renewal Notice") given not less than one hundred eighty (180) days before the expiration of the Initial Term or the then current Extended Term, as the case may be. Unless Tenant shall send a Non-Renewal Notice to Landlord as provided hereinabove, then, subject to the conditions contained in this Section 2.02, this Lease shall automatically extend as provided herein. All Extended Terms shall be sequential, i.e., Tenant shall not have the right to issue a Non-Renewal Notice for less than all of the Extended Terms which have not yet commenced.

## ARTICLE III. RENT AND ADDITIONAL RENT

Section 3.01. Pre-Paid Rent. Within two (2) business days of the Effective Date, Tenant shall deposit Ten Thousand and No/100 Dollars (\$10,000.00) ("Pre-paid Rent") with Laura Kaltz at Fidelity National Title Insurance Company, 5565 Glenridge Connector, Suite 300, Atlanta, Georgia 30342 ("Landlord's Agent") to be held in escrow, whereby such Pre-paid Rent shall be solely applied to (i) the first (1st) month of Rent (as hereinafter defined) commencing on the Rental Commencement Date, and (ii) the first (1st) month of Rent for the second Lease Year (as defined below).

Section 3.02. Rental Payments. Subject to Section 3.01, commencing on the Rental Commencement Date, Tenant covenants and agrees to pay Landlord, in lawful money of the United States of America, the base annual rent (hereinafter referred to as "Rent") specified in Section 3.03 hereunder, plus any and all additional sums and charges that come due under the terms and conditions of this Lease (any and all such sums and charges hereinafter referred to as "Additional Rent"). Rent shall be payable, in advance and without demand, in twelve (12) equal monthly installments for each Lease Year, on the first day of each calendar month during the Term, commencing on the Rental Commencement Date, at the office of Landlord, or at such



other address as Landlord may from time to time designate in writing to Tenant. If the Rental Commencement Date is other than the first day of a calendar month, then Rent for such month shall be prorated on a daily basis and the installment so prorated shall be paid in advance on the Rental Commencement Date.

Section 3.03. Rent. Commencing on the Rental Commencement Date and thereafter during the Term, Tenant shall pay Rent as follows:

<u>Lease Year</u>	<u>Base Annual Rent</u>	<u>Base Monthly Rent</u>
1 – 5	\$60,000.00	\$5,000.00
6 – 10	\$60,000.00	\$5,000.00
11 – 15	\$60,000.00	\$5,000.00
16 – 20	\$60,000.00	\$5,000.00
21 – 25 (1 <sup>st</sup> Extension)	\$66,000.00	\$5,500.00
26 – 30 (2 <sup>nd</sup> Extension)	\$72,600.00	\$6,050.00
31 – 35 (3 <sup>rd</sup> Extension)	\$79,860.00	\$6,655.00
36 – 40 (4 <sup>th</sup> Extension)	\$87,846.00	\$7,320.50

For purposes of this Lease the term "Lease Year" shall mean each twelve (12) full calendar month period during the Term commencing on the Rental Commencement Date and on each anniversary thereof. In addition, for purposes of this Lease the "Rental Commencement Date" shall mean the date which is the earlier of: (i) the date when Tenant opens for business to the public in the Premises, or (ii) the expiration of the Construction Period (as defined below).

Section 3.04. Additional Rent. In addition to Rent, Tenant shall pay Additional Rent during the Term of any and all other sums and charges required to be paid by Tenant pursuant to this Lease, whether designated as additional rent or not, and such sums and charges shall be collectible when due as Additional Rent as provided herein and shall be subject to all provisions of this Lease as to default in the payment of rent.

#### ARTICLE IV. TAXES, ASSESSMENTS AND CHARGES

Section 4.01. Taxes and Assessments. Tenant covenants and agrees to discharge and pay before the same become delinquent and before any fine, penalty, or interest may be added for nonpayment, any and all taxes, assessments, license or permit fees, excises, imposts and charges of every nature and classification (all or any one of which are hereinafter referred to as "Taxes") that at any time during the Term are levied, assessed, charged or imposed upon the Premises, this Lease, the leasehold estate of Tenant created hereby, the Improvements, or any Rent or Additional Rent reserved or payable hereunder, including any gross receipts or other taxes levied upon, assessed against or measured by the Rent or Additional Rent. Unless the creation of separate assessments are not permitted under applicable law, Landlord may, but shall not be obligated to, cause the Improvements to be assessed separately for real estate tax purposes from all other buildings and structures within the Shopping Center and Landlord may, but shall not be obligated to, cause the land within the Shopping Center to be separately assessed for real estate tax purposes from the buildings and improvements within the Shopping Center. For all tax years during the Term for which the Improvements, the other buildings and structures within the



Shopping Center and the land within the Shopping Center are separately assessed for real estate tax purposes in the manner described above, Tenant shall pay to Landlord, in the manner otherwise provided under this Section 4.01, one hundred percent (100%) of the Taxes levied and assessed upon the Improvements.

Landlord shall notify Tenant of Tenant's share of the Taxes and will furnish Tenant with a copy of applicable tax bills and calculation of Tenant's share of Taxes within thirty (30) days after receipt by Landlord thereof. Tenant shall pay its share of the Taxes as set forth above to Landlord, not later than ten (10) days before the taxing authority's delinquency date or ten (10) days after receipt of a bill from Landlord, whichever is later.

Section 4.02. General. Tenant shall prepare and file all reports and returns required by law and governmental regulations with respect to any Taxes and shall furnish copies thereof to Landlord, if requested by Landlord. Tenant shall promptly forward to Landlord copies of any bill or assessment respecting any Taxes upon Tenant's receipt thereof from the taxing authority. Likewise, Landlord shall promptly furnish to Tenant copies of any bill or assessment respecting any Taxes upon Landlord's receipt thereof from the taxing authority. Upon request of Landlord, Tenant agrees to furnish and deliver to Landlord receipts evidencing the payment of any Taxes payable by Tenant as provided in Section 4.01 hereof. Any Taxes for the year in which the Term of this Lease commences and the year in which it terminates or expires shall be prorated on a daily basis between Landlord and Tenant. If Tenant fails to pay any Taxes when due, Landlord, without declaring a default hereunder and without relieving Tenant of any liability hereunder, may, but shall not be obligated to, pay any such Taxes and any amount so paid by Landlord, together with all costs and expenses incurred by Landlord in connection therewith, shall constitute Additional Rent hereunder and shall be paid immediately by Tenant to Landlord on demand with Default Interest thereon in the manner provided in Section 15.05 hereof. Tenant's obligation to pay Taxes which accrue during the Term shall survive any termination of this Lease.

Section 4.03. Impact Fees. Tenant covenants and agrees that it shall pay any charges in the nature of impact fees, environmental fees and other similar charges necessary to bring all utilities to the boundary line of the Site.

Section 4.04. Utility Charges. Tenant covenants and agrees that it shall pay when due all charges for all public or private utility services including, but not limited to, water, sewer, gas, light, heat and air conditioning, telephone, electricity, cable television, trash removal, power and other utility and communications services that at any time during the Term are rendered or become due and payable with respect to the Premises. Tenant shall, at its sole cost and expense, obtain all necessary permits and approvals and install all meters, wires, conduits, transformers, and other equipment required for supplying such utility services to the Premises, and Tenant shall pay all tap and connection fees pertaining to such utilities. Landlord shall have no responsibility and shall bear no cost with respect to the installation, maintenance, or repair of such lines.



Section 4.05 Reimbursement Obligations.

(a) Tenant shall be responsible for Landlord's pro-rata share of the Reimbursement Obligations (as defined in the Declaration) set forth in Section 5 of the Declaration.

(b) Tenant shall pay to Landlord its share of the Reimbursement Obligations in equal monthly installments in advance of the first day of each calendar month as Additional Rent. Within one hundred twenty (120) days after the end of each calendar year, Landlord shall furnish Tenant with a written statement providing reasonable detail of the actual costs of the Reimbursement Obligations paid or incurred during the preceding calendar year and showing the calculation of the pro rata share allocated to the Site. Any overpayments of Reimbursement Obligations as may be reflected in said statement shall be applied against Tenant's next due installments of Reimbursement Obligations. Any deficiency in the total monthly payments for the year in relation to its share of actual costs shall be paid by Tenant to Landlord within thirty (30) days after such Tenant's receipt of the annual statement.

ARTICLE V. NET LEASE; NON-TERMINATION

Section 5.01. Net Lease. Except as otherwise provided to the contrary herein, this Lease is a net lease and Rent and Additional Rent shall be paid without notice, demand (except as expressly provided herein in the case of certain Additional Rent), counterclaim, setoff, recoupment, deduction or defense and, without abatement, suspension, deferment, diminution or reduction. It is the purpose and intent of Landlord and Tenant that Rent and Additional Rent (where payable to Landlord) shall be absolutely net to Landlord, so that this Lease shall yield, net to Landlord, the Rent specified in Section 3.03 hereof throughout the Term, and that all costs, expenses and obligations of every kind and nature whatsoever relating to the Premises which may arise and become due as specified in Sections 4.01, 4.02, 4.03, 4.04 and 4.05, or elsewhere in this Lease during the Term shall be paid by Tenant, and that Landlord shall be indemnified and saved harmless by Tenant from and against the same.

Section 5.02. Non-Termination. Except as otherwise expressly provided in this Lease, this Lease shall not terminate nor shall Tenant have any right to terminate this Lease or be entitled to the abatement of any Rent or Additional Rent hereunder or any reduction thereof, nor shall the obligations of Tenant under this Lease be otherwise affected, by reason of (a) any damage to or destruction of all or any portion of the Premises from whatever cause, (b) the prohibition, limitation or restriction of or interference with Tenant's use of all or any portion of the Premises, or (c) for any other cause, whether similar or dissimilar to the foregoing.

ARTICLE VI. PERMIT/LIMITED DILIGENCE PERIOD; PREMISES;  
CONSTRUCTION OF IMPROVEMENTS

Section 6.01. Intentionally Omitted.



Section 6.02. Permit/Limited Diligence Period. Tenant shall have a period of seventy five (75) days following the Effective Date (the "Permit/Limited Diligence Period") to obtain any and all permits, licenses or governmental approvals (the "Permits") which are necessary, in Tenant's sole discretion, to construct and operate a Burger King restaurant on the Site, and also to obtain a geotechnical report reflecting soil conditions reasonably sufficient to support the contemplated Burger King development, a Phase I environmental report which reveals no evidence of material adverse environmental conditions (ie, a Phase II is not needed or recommended), an ALTA survey, and a leasehold title commitment evidencing good title to the Premises ("Basic Diligence Items"). Tenant agrees to use commercially diligent efforts to obtain such Permits and Basic Diligence Items in an expeditious manner and shall immediately notify Landlord of receipt thereof. In the event Tenant fails to obtain all Permits or is unable to in good faith obtain the Basic Diligence Items during the Permit/Limited Diligence Period, Landlord shall be entitled (without obligation) to a period of seventy five (75) days after the Permit/Limited Diligence Period ("Landlord Permit/Limited Diligence Period") in which to pursue the Permits or obtain the Basic Diligence Items on Tenant's behalf. If Landlord does not elect to exercise the Landlord Permit/Limited Diligence Period, or Landlord is unable to obtain all Permits and/or Basic Diligence Items on behalf of Tenant during the Landlord Permit/Limited Diligence Period, Tenant shall have the right to terminate this Lease and neither party shall have further obligations, rights, remedies or claims of liability to the other hereunder, except for such obligations that expressly survive termination of this Lease. If Tenant terminates this Lease during the Permit/Limited Diligence Period for any reason other than failure to secure the Permits or because of failure to obtain the Basic Diligence Items, and provided Landlord is not then in default under any provision of this Lease that provides Tenant the right to terminate, Tenant shall pay Landlord, within thirty (30) days of such termination, a termination fee of \$25,000.00, and neither party shall have further obligations, rights, remedies or claims of liability to the other hereunder, except for such obligations that expressly survive termination of this Lease.

Section 6.03. Condition and Suitability of the Premises. TENANT AGREES THAT TENANT IS LEASING THE PREMISES "AS IS," AND LANDLORD MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO FITNESS, MERCHANTABILITY, USE OR CONDITION OF THE PREMISES. Tenant leases the Premises without representation or warranty by Landlord, express or implied, in fact or by law, and without recourse, with respect to (a) the condition of the Premises, including, but not limited to the soil and subsurface conditions thereof, and (c) access to or from the Premises.

Section 6.04. Intentionally Omitted.

Section 6.05. Use of the Premises. Tenant agrees that, subject to the limitations of this Lease, it will construct and open for business on the Site a Burger King restaurant with a drive through service (the "Permitted Use"), and shall thereafter use and operate the Premises for the Permitted Use and for no other purpose whatsoever without the prior written consent of Landlord, not to be unreasonably withheld, provided any such use is not prohibited by any other existing uses within the Shopping Center at that time or as set forth in the Declaration.



Section 6.06. Tenant Exclusive. Landlord agrees that, commencing on the Effective Date and for a period of fifteen (15) years thereafter or until a Burger King restaurant ceases to operate on the Site for a period of more than seventy-five (75) days consecutively, whichever occurs first, Landlord, for itself and for its successors and assigns, shall not allow (i) any portion of that certain adjacent property located in the Shopping Center as depicted on Exhibit "D" attached hereto and incorporated herein (the "Adjacent Property") to be leased, used or occupied by or as a McDonald's, Hardee's or Wendy's; nor (ii) any portion of the Adjacent Property to be leased, used or occupied as "a business selling or serving hamburgers as a principal menu item". For purposes of this Lease, "a business selling or serving hamburgers as a principal menu item" means a quick serve restaurant deriving fifty (50%) or more of its food and beverage gross sales from the sale of hamburgers.

Section 6.07. Restricted Uses. Notwithstanding anything else to the contrary provided in this Lease, in no event shall Tenant use the Premises for any of the purposes set forth in Exhibit "C" attached hereto and by reference made a part hereof.

Section 6.08. Construction of Improvements. The layout of the Site and all buildings, signs, landscaping and related improvements (the "Improvements") constructed upon the Site by Tenant shall be initially constructed in substantial accordance with plans for such work approved by Landlord as provided herein. Within forty five (45) days following the Effective Date and prior to the commencement of the construction and installation of any Improvements whatsoever on the Site or any part thereof, Tenant shall deliver to Landlord a site plan, scaled elevations, exterior design concepts, material selection and color for the exterior surfaces of the proposed Improvements, including signage and landscaping plans. Landlord shall either approve, disapprove, or make recommendations for changes in such plans or any revisions thereto within fifteen (15) days of the receipt thereof. Failure to approve, disapprove, or make recommendations for changes within said fifteen (15) day period shall constitute an approval of such plans as submitted. Any disapproval or recommendation for change shall specify with particularity the reason therefor. Upon submission of any disapproval or recommendation for change, Landlord shall consult with Tenant and both parties shall use good faith efforts to establish approved plans for the proposed work. Landlord shall exercise its discretion with respect to approval or disapproval of any such plans in a reasonable and uniform manner for the mutual benefit of the Shopping Center and all of the occupants thereof, and consistent with the Declaration.

Tenant shall have the lesser of (i) one hundred twenty (120) days following receipt of the Permits, or (ii) one hundred twenty (120) days following the expiration of the Permit/Limited Diligence Period in order to construct and install the Improvements on the Site substantially in accordance with the mutually approved plans, except in the case of changes required to comply with applicable governmental laws, ordinances or regulations (the "Construction Period").

Upon the completion of the initial construction and installation of any such Improvements, except in the case of changes required to comply with applicable governmental laws, ordinances or regulations, the same shall not be thereafter changed or altered without the prior written consent of Landlord if such changes or alterations would materially and substantially modify the site layout, building and landscaping materials, elevations, or exterior



appearance of the Improvements, or add to the footprint of the building, which approval shall be sought pursuant to the terms set forth above and, subject to the requirements of the other provisions of this Lease, which approval shall not be unreasonably withheld in accordance with the criteria set forth above. The approval of any plans and specifications hereunder by Landlord shall not impose any liability or responsibility whatsoever upon Landlord with respect to the compliance or non-compliance of any such plans and specifications, or any improvements erected or installed in accordance therewith, with applicable zoning ordinances, building codes, or other applicable governmental laws, ordinances, or regulations.

All buffer strips and other undeveloped land areas on the Site, if any, shall be landscaped by the Tenant with trees, shrubs, or suitable ground cover (which may include grass) in a uniform manner consistent with standards of first class shopping center development and in accordance with governmental requirements.

Within forty five (45) days after Tenant's completion of the Improvements, Tenant shall deliver to Landlord, at Tenant's expense, copies of the following items: (a) an "as-built" survey of the Improvements, certified by a registered land surveyor licensed by the State of Georgia, showing the Improvements and utility easements in place in relation to the boundaries of the Site; (b) an A.I.A. form architect's certificate of completion, certifying that the Improvements have been constructed and completed in substantial compliance with the approved plans and specifying the particularities of any variation therefrom; (c) a final contractor's affidavit and waiver of liens with respect to the Premises executed by the general contractor(s) performing work or supplying labor or materials in connection with the Improvements; and (d) a certificate of occupancy for the Premises by the appropriate governmental authorities.

Section 6.09. Tenant's Signage. Tenant shall be entitled to install signage on the Premises, subject to compliance with all applicable signage ordinances and Tenant obtaining all applicable governmental approvals, and further subject to Landlord's approval of the dimensions, design and materials for such signage, which approval shall not be unreasonably withheld and may be conditioned upon the conformity of such signage with reasonable uniform signage criteria to be developed for the Shopping Center by Landlord. Tenant shall maintain all such signage in good condition and repair at all times. If any damage is done to Tenant's signage, Tenant shall repair (or commence to repair and proceed diligently to complete) same within ten (10) days or Landlord shall have the right to repair such sign and bill Tenant for the cost of the repairs. Tenant shall remove such signage at the expiration or sooner termination of this Lease and shall repair any damage caused by such removal.

Section 6.10. Recapture. Notwithstanding anything in this Lease to the contrary, in the event Tenant has not commenced construction of the Improvements within eight (8) months of the Effective Date in accordance with approved plans, Landlord shall have the right to terminate this Lease, and Tenant shall pay Landlord a termination fee of \$35,000.00 to compensate Landlord for Landlord's damages as a result of Tenant's failure to commence construction of the Improvements, the parties agreeing that Landlord's damages in the event Tenant fails to commence construction of the Improvements within eight (8) months of the Effective Date are difficult to ascertain at this time and the amount set forth herein is a reasonable estimate of those damages and represents full and liquidated damages.



## ARTICLE VII. COMPLIANCE WITH LAW; LIENS AND ENCUMBRANCES

Section 7.01. Compliance with Laws. Tenant, at its sole cost and expense, shall comply with and cause the Premises and any and all Improvements located thereon to comply with all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances or recommendations affecting the Premises or any part thereof, or the use thereof, whether foreseen or unforeseen, including those which require "Repairs", as that term is defined in Section 8.01 hereof, or any structural changes in the Improvements.

Section 7.02. Tenant's Agreement Relating to Hazardous Substances. Tenant hereby covenants that Tenant and its agents, employees and contractors will not generate, store, use, treat or dispose of any "Hazardous Substances" (as defined below) in, on or at the Premises or any part of the Improvements, except for Hazardous Substances as are commonly legally used or stored (and in such amounts as are commonly legally used or stored) as a consequence of using the Premises for the Permitted Use, but only so long as Tenant strictly complies or causes compliance with all laws, statutes, rules, orders, regulations, ordinances and decrees concerning the use or storage of such Hazardous Substances. Tenant further covenants that neither the Premises nor any part of the Improvements shall ever be used by Tenant or its agents, contractors or employees as a dump site or storage site (whether permanent or temporary) for any Hazardous Substances during the Term.

Tenant hereby agrees to indemnify Landlord and hold Landlord harmless from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, Landlord by any person or entity or governmental agency for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release if caused or permitted in whole or in part by Tenant, its agents, contractors, employees, representatives, licensees, subtenants or concessionaires on or from, the Premises, the Improvements or the Shopping Center of any Hazardous Substance, including, without limitation, any losses, liabilities, including without limitation strict liability, damages, injuries, expenses, including without limitation reasonable attorneys' fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, as same may be amended ("CERCLA"), any so called federal, state or local "Superfund" or "Superlien" laws, or any federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability, including strict liability, or standards of conduct concerning any Hazardous Substance.

Landlord shall indemnify and hold Tenant harmless from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment and claims of any kind whatsoever paid, incurred or suffered by, or asserted against, Tenant by any entity or governmental agency for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release if caused solely by Landlord or Landlord's agents, in the Shopping Center of any Hazardous Substance.



For purposes of this Lease, "Hazardous Substances" shall mean and include those elements or compounds which are contained in the lists of hazardous substances or wastes now or hereafter adopted by the United States Environmental Protection Agency (the "EPA") or the lists of toxic pollutants designated now or hereafter by Congress or the EPA or which are defined as hazardous, toxic, pollutant, infectious or radioactive by CERCLA or any Superfund law or any Superlien law or any other Federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

Landlord shall have the right but not the obligation, and without limitation of Landlord's rights under this Lease, to enter onto the Premises or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Substance following receipt of any notice from any person or entity (including without limitation the EPA) asserting the existence of any Hazardous Substance in, on or at the Premises or any part thereof which, if true, could result in an order, suit or other action against Tenant and/or Landlord; provided, however, Landlord agrees that, except in the case of an emergency, Landlord will take such action only after written notice to Tenant of the alleged existence of Hazardous Substances and, in the event Landlord is claiming indemnity by Tenant pursuant to the terms hereof, should Tenant fail within a reasonable period of time following receipt of such notice to commence, or fail to thereafter diligently pursue to completion, the appropriate action to clean-up, remove, resolve or minimize the impact of such Hazardous Substances. All reasonable costs and expenses incurred by Landlord in the exercise of any such rights, which costs and expenses result from the violation of the covenants and agreements of Tenant contained in the first paragraph of this Section 7.02, shall be deemed Additional Rent under this Lease and shall be payable by Tenant upon demand.

This Section 7.02 shall survive cancellation, termination or expiration of this Lease.

Section 7.03. Liens and Encumbrances. Tenant shall not create or permit to be created or to remain, and shall promptly discharge, at its sole cost and expense, any lien, encumbrance or charge (all or any one of which hereinafter referred to as "Lien") upon the Premises, or any part thereof or upon Tenant's leasehold estate hereunder, that arises from the use or occupancy of the Premises by Tenant or by reason of any labor, service or material furnished or claimed to have been furnished to or for the benefit of Tenant or by reason of any construction or repairs by or at the direction of Tenant of all or any part of the Improvements.

Notice is hereby given that Landlord shall not be liable for the cost and expense of any labor, services or materials furnished or to be furnished with respect to the Premises at or by the direction of Tenant or anyone holding the Premises or any part thereof by, through or under Tenant and that no laborer's, mechanic's or materialman's or other lien for any such labor, service or materials shall attach to or affect the interest of Landlord in and to the Premises. Nothing contained in this Lease shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any



materials for any improvements or Repairs to or of the Premises or any part thereof, nor as giving Tenant any right, power or authority on behalf of Landlord to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any Lien against the Premises or any part thereof.

If Tenant fails to discharge any Lien created or established in violation of Tenant's covenant herein, and if such failure continues for a period of thirty (30) days after receipt by Tenant of notice of the existence of the Lien, Landlord, without declaring a default hereunder and without relieving Tenant of any liability hereunder, may, but shall not be obligated to, discharge or pay such Lien (either by paying the amount claimed to be due or by procuring the discharge of such Lien by deposit or by bonding proceedings), and any amount so paid by Landlord and all costs and expenses incurred by Landlord in connection therewith shall constitute Additional Rent hereunder and shall be paid immediately by Tenant to Landlord upon demand by Landlord, with Default Interest thereon from the date of demand by Landlord.

#### ARTICLE VIII. REPAIRS AND ALTERATIONS.

Section 8.01. Maintenance and Repair. Tenant, at all times during the Term, at its expense, shall keep the Premises, including, without limitation, the Improvements, in good order, condition and repair, ordinary wear and tear excepted, and shall promptly make or cause to be made any and all necessary repairs, replacements, or renewals (all or any one of which herein referred to as "Repairs"). All Repairs shall be at least equal in quality and class to the original work or to a lesser standard approved in writing by Landlord. The term "Repairs" includes, without limitation, all necessary repairs and replacements of the Premises, structural or otherwise, ordinary or extraordinary, foreseen and unforeseen, including but not limited to the roofs, foundations, all interior and exterior walls, all structural and exterior portions of the buildings and other improvements, exterior and interior windows, doors and entrances, signs, floor coverings, columns and partitions, lighting, heating, plumbing and sewerage facilities, and air conditioning equipment. Landlord shall not be required to make any repairs of any kind or nature in, on or to the Premises during the Term.

Section 8.02. Alterations. Tenant shall have the right to make any modifications, alterations or additions to the Improvements subsequent to the initial construction of such Improvements as may be necessary for the proper conduct of its business and use of the Premises as permitted herein. Any such alterations shall be expeditiously completed by Tenant in a good and workmanlike manner in compliance with the Declaration and all applicable laws, rules, regulations, and ordinances, then in effect.

#### ARTICLE IX. DAMAGE AND DESTRUCTION.

Section 9.01. Notice. In the event of any material damage to or destruction of all or any part of the Premises, Tenant will promptly give written notice thereof to Landlord, which notice shall generally describe the nature and extent of such damage or destruction. There shall be no abatement of or adjustment to Rent or Additional Rent under this Lease as a result of any damage or destruction.



Section 9.02. Restoration. Subject to the following grammatical paragraph, in the event of any damage to or destruction of all or any part of the Improvements and whether or not the insurance proceeds on account of such damage or destruction shall be sufficient for the purpose, or in the event of any condemnation of the Premises of the character described in Section 16.02 hereof and whether or not the proceeds of any award received on account of such condemnation shall be sufficient for the purpose, Tenant, at its sole cost and expense, shall promptly commence and shall thereafter diligently and continuously prosecute to completion the restoration, replacement or rebuilding of the Improvements and/or the Premises, as the case may be, as nearly as practicable to its value, architectural condition and character as existed immediately prior to such damage, destruction or condemnation (but with such changes in the design, type or character of the Improvements as Tenant may deem desirable, subject to the prior written approval of Landlord, of any such changes, which approval shall not be unreasonably withheld so long as the Improvements have an architectural style which is similar to, and a level of quality which is at least equal to, the Improvements originally constructed by Tenant and are not inconsistent with the terms of the Declaration) so as to permit resumption of the use of the Premises for the Permitted Use to as nearly the same degree as possible (pending completion of the work, such restoration, replacement or rebuilding, together with any temporary repairs and property protection, are herein collectively referred to as "Restoration").

In the event damage to or destruction of a substantial portion of the Improvements occurs within the last year of the Term, Tenant shall have the right, at its election and in lieu of fulfilling its obligations under this Section 9.02, to terminate this Lease upon thirty (30) days' prior written notice to Landlord by paying to Landlord, simultaneously with such notice, a sum equal to all Rent and Additional Rent due from Tenant to Landlord to such termination date and paying or assigning to Landlord all insurance proceeds due on account of any damage or destruction of the Premises or any part thereof less and excepting only the amount actually expended by Tenant in demolishing and removing all damaged Improvements and in clearing and cleaning the surface area of the Site, and by surrendering the Premises to Landlord, on or before the effective date of such termination, in a clean and sightly condition, free of any and all debris and free of damaged Improvements. Tenant's obligation to demolish and remove Improvements damaged prior to the termination of this Lease shall survive any termination of this Lease.

Section 9.03. Application of Proceeds. Except as otherwise provided in Section 9.02 hereof, insurance proceeds received on account of any damage to or destruction of the Premises or any part thereof shall be applied to pay for the cost of Restoration. To the extent any such proceeds shall be inadequate to pay such cost, it shall be Tenant's sole cost and obligation to pay all costs of Restoration.

#### ARTICLE X. INSURANCE

Section 10.01. Tenant's Insurance. Commencing on the Effective Date of this Lease (with regard to the insurance required by subsection (b) below) and on the date Tenant shall commence construction of any Improvements on the Site (with regard to the insurance required by subsections (a) and (c) below), and at all times thereafter through and during the Term, Tenant shall keep the Premises insured against the risks and hazards and with coverage in amounts not less than those specified as follows:



(a) Insurance against the risks customarily included under "special form" policies with respect to improved properties similar to the Premises in an amount equal to the "full insurable value" (which as used herein shall mean the full replacement value, including the costs of debris removal, which amount shall be determined annually) of the Improvements, and which amount shall be sufficient to prevent either Landlord or Tenant from becoming a coinsurer of any loss; and

(b) Commercial general public liability insurance (including, but not limited to, coverage for any construction on or about the Premises) covering the legal liability of Tenant against all claims for any bodily injury or death of persons and for damage to or destruction of property occurring on, in or about the Premises and the adjoining streets, sidewalks and passageways and arising out of the use or occupation of the Premises by Tenant; such insurance to provide for a limit of not less than Three Million and No/100 Dollars (\$3,000,000.00) for personal injury or death to any one person, for a limit of not less than Five Million and No/100 Dollars (\$5,000,000.00) for personal injury or death to any number of persons arising out of any one occurrence, and for a limit of not less than One Million and No/100 Dollars (\$1,000,000.00) in respect of any instance of property damage. Commencing on the fifth (5th) anniversary of the Rental Commencement Date, and continuing thereafter on the fifth (5th) anniversary of the previous "Adjustment Date" (as defined below) during the Term (each of such dates being referred to in this Section 10.01 and in Section 10.02 below as an "Adjustment Date"), the aforesaid minimum amounts of insurance coverage shall be increased to such limits as are then prevailing within the restaurant industry.

(c) Business interruption insurance sufficient to cover Rent payable under this Lease for a period of not less than one (1) year.

Section 10.02. Requirements. All insurance required under Section 10.01 hereof shall be written by companies of recognized financial standing which are authorized to do insurance business in the State of Georgia and shall provide that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days after receipt by Landlord of written notice thereof. All liability policies shall name Landlord, any mortgagee of Landlord, and any other party designated by Landlord as additional insureds. Tenant's casualty policy shall expressly provide (a) an effective waiver by the insurer of all rights of subrogation against Landlord, and (b) that during construction of any Improvements on the Premises such policy shall be in "builder's risk" form. A copy of each policy required to be carried by Tenant hereunder or of an acceptable certificate of insurance in force, issued by the insurer as provided in Section 10.01 hereof, shall be delivered to Landlord on or before the date Tenant is required to obtain the applicable insurance, and with respect to renewal or replacement policies, not less than ten (10) days prior to expiration of the policy being renewed or replaced. Tenant may obtain the insurance required hereunder by endorsement to blanket insurance policies, provided that said policies fulfill the requirements of this Section 10.02, that said policies reference the Premises, and that Landlord receives satisfactory written proof of coverage. Tenant shall permit the Landlord to examine all policies evidencing the insurance required to be maintained under this Lease.



Section 10.03. Mutual Release and Waiver of Subrogation. Landlord and Tenant hereby release each other and anyone claiming through or under the other by way of subrogation or otherwise from any and all liability for any loss or damage to property, whether caused by the negligence or fault of the other party, to the extent of any recovery made by the parties hereto for such loss or damage under any casualty insurance policy now or hereafter issued covering the property of such party. In addition, Landlord and Tenant shall cause each such insurance policy carried by them to be written to provide that the insurer waives all rights of recovery by way of subrogation.

#### ARTICLE XI. INDEMNIFICATION

Section 11.01. Indemnification by Tenant. Tenant covenants and agrees to pay, defend, indemnify and save harmless Landlord from and against any and all liability, loss, damage, cost, expense (including without limitation all attorneys' fees and expenses of Landlord), causes of action, suits, claims, demands or judgments of any nature whatsoever based upon, arising from or connected in any manner with (a) injury to or the death of any person or damage to any property occurring on the Premises, (b) the use, non-use, condition, possession, construction, operation, maintenance, management or occupation of the Premises or any part thereof, or (c) any negligence or intentional misconduct on the part of Tenant or its agents, contractors, servants or employees or the negligence or intentional misconduct on the part of Tenant's licensees or invitees while they are located at the Premises. If any action or proceeding should be brought against Landlord based upon any such claim, Tenant, upon notice from Landlord, shall cause such action or proceeding to be defended at Tenant's expense by counsel selected by Tenant and reasonably satisfactory to Landlord. The agreement of indemnification set forth in this Section 11.01 shall not extend to claims for loss or damage to property caused by or resulting from the negligence of Landlord, its agents or employees, unless such claims are covered by the casualty insurance required to be maintained by Tenant under Section 10.01(a) above. The obligations of Tenant under this Section 11.01 shall commence to accrue on the Effective Date of this Lease and shall survive any termination of this Lease and any permitted transfer or assignment by Landlord or Tenant of this Lease or any interest hereunder.

Section 11.02. Release of Landlord. Landlord shall not in any event whatsoever be liable for any injury or damage to the Premises or the Tenant or to any concessionaires, subtenants or other persons claiming through or under Tenant, or their respective agents, employees, licensees, invitees, guests or other such persons or to any property of any such persons as a result of Tenant's use, occupancy, or possession of the Premises, unless caused by Landlord's negligence, in which case Landlord's liability shall be limited to damages not covered by insurance carried by Tenant or insurance which Tenant is required to carry by this Lease and applicable law. Tenant shall not make any claim or demand upon or institute any action against the Landlord as a result of such injury or damage.

#### ARTICLE XII. OWNERSHIP OF IMPROVEMENTS

Section 12.01. Title to Improvements. Title to the Improvements during the Term shall be in Tenant, and Tenant alone shall be entitled to deduct all depreciation on Tenant's income



tax returns for such Improvements during the Term. Notwithstanding such title, the terms and conditions of this Lease shall govern the construction, use, and operation of the Improvements and the exercise of Tenant's rights with respect thereto; and Tenant's right, title, interest, and estate in and to the Improvements shall not be separable from the leasehold estate granted Tenant hereunder. Upon the termination or expiration of this Lease, title to the Improvements shall vest in and become the full and absolute property of Landlord without need of any further action being taken by Tenant or Landlord, and Tenant shall immediately surrender possession of the Improvements upon such termination or expiration as provided in Section 12.02 hereof. The value or cost of the Improvements constructed by Tenant shall not in any way constitute a substitute for or a credit against any obligation of Tenant under this Lease to pay Rent or Additional Rent.

Section 12.02. Surrender. Upon the termination or expiration of this Lease, Tenant shall peaceably quit and surrender the Premises, and any and all fixtures, machinery and equipment constructed, installed or placed by Tenant thereon which is necessary to the operation of the Improvements, to Landlord in good order and condition, ordinary wear and tear excepted. In the event Tenant is not then in default under this Lease, Tenant shall have the right upon the termination or expiration of this Lease to remove from the Premises all personal property and trade fixtures used in Tenant's business, and placed, installed or used by Tenant thereon, such as installed food service equipment, as distinguished from fixtures, machinery and equipment used in and necessary to the operation of the Improvements or Premises such as HVAC systems; provided, however, that Tenant shall repair, at its sole cost and expense, any damage to the Premises or to the Improvements caused by such removal. In no event shall any machinery and equipment used in and necessary to the operation of the Improvements or Premises be removed by Tenant unless same is promptly replaced with comparable or better such machinery or equipment or unless same is damaged and is required to be removed by Tenant pursuant to Section 9.02 hereof.

### ARTICLE XIII. ASSIGNMENT AND SUBLETTING

Section 13.01. No Assignment or Subletting. Except as expressly herein provided, neither this Lease nor the interest of Tenant in this Lease or in the Premises, or any part thereof, shall be sold, assigned or otherwise transferred by Tenant, whether by operation of law or otherwise, and the Premises shall not be sublet in whole or in part, without the express prior written consent of Landlord, such consent not to be unreasonably withheld. For purposes hereof, the transfer of any voting capital stock of Tenant or the voting capital stock of any corporate entity which directly or indirectly controls Tenant or any interest in any non-corporate entity which directly or indirectly controls Tenant, which transfer results in a change in the direct or indirect voting control of Tenant (whether such transfer occurs at one time or at intervals so that, in the aggregate, such a transfer shall have occurred) shall be deemed to be an assignment governed by the provisions of this Section 13.01. The preceding sentence shall not apply to, and Tenant shall not be in default under this Section 13.01 as a result of, an offering of voting stock to the public pursuant to a registered securities offering, the transfer of voting stock which is listed on a national securities exchange or on the NASDAQ national market system both before and after the transfer (regardless of whether such transfer is made on a national securities exchange or through the NASDAQ national marketing system), the transfer of voting stock to



employees of the applicable corporate entity pursuant to a bona fide employee stock ownership plan or other bona fide arrangement with one or more employees, or any transfer of voting stock by gift, bequest or inheritance.

Section 13.02 Tenant's Notice. Should Tenant desire to assign this Lease or any right or interest herein or sublet the Premises or any part thereof and such assignment or sublease requires Landlord's prior consent hereunder, Tenant shall give Landlord written notice of such desire, which notice shall contain (i) the name and address of the proposed subtenant or assignee and its form of organization, (ii) the material terms and conditions of the proposed sublease or assignment (including, without limitation, the financial terms of such proposed subletting or assignment and the proposed commencement date of the proposed sublease or assignment), (iii) in the case of a proposed assignment, financial statements for the three (3) most recently completed fiscal years of the proposed assignee and such other financial information as Landlord shall reasonably request (or if the proposed assignee has not been existent for at least three (3) years, such financial statements as are available), and (iv) a description of any proposed remodeling or renovation to the exterior of the Improvements to be conducted by the proposed assignee or subtenant, together with the request that Landlord approve such assignment or sublease. Landlord shall have a period of thirty (30) days following receipt of such written notice within which to notify Tenant in writing that Landlord elects either (a) to permit Tenant to assign this Lease or sublet the Premises, or (b) to withhold consent to Tenant's assigning or subleasing such space and to continue this Lease in full force and effect as to the entire Premises. The failure of Landlord to notify Tenant in writing of such election within the thirty (30) day period described above shall be deemed an election to withhold consent to such proposed assignment or sublease.

Section 13.03. Terms of Landlord Consent. Any consent given by Landlord to any assignment or subletting shall apply only to the specific transaction thereby authorized and shall not relieve Tenant or any approved successor of Tenant from the requirement of obtaining the prior written consent of Landlord to any further transfer or subletting. No consent by Landlord to any assignment of this Lease or of Tenant's interest under this Lease or in the Premises, or any part thereof, or to any sublease shall be effective unless and until there shall have been delivered to Landlord a written agreement, in a form reasonably acceptable to Landlord, executed by Tenant and the proposed assignee or subtenant, as the case may be, wherein and whereby any assignee legally binds itself to pay the Rent and Additional Rent due under this Lease and to observe and perform all of the other terms, conditions and provisions of this Lease on the part of Tenant to be observed or performed, and any subtenant acknowledges the right of Landlord to continue or terminate any sublease, in Landlord's sole discretion, upon termination of this Lease, and such subtenant agrees to recognize and attorn to Landlord in the event that Landlord elects to continue such sublease.

Section 13.04. No Release. Any person or entity who shall, by operation of law or otherwise, become an assignee of this Lease or become vested with a leasehold interest hereunder shall be bound by and be liable upon all the terms, covenants, provisions and conditions contained in this Lease during the Term, whether or not of the nature of covenants ordinarily running with the land, but neither Tenant nor any subsequent Tenant whose interest is



assigned or divested shall be relieved of liability hereunder other than by an express release from liability executed in writing by Landlord.

Section 13.05. Permitted Assignment. Notwithstanding the provisions above to the contrary, Tenant shall have the right, without Landlord's prior consent, to assign this Lease to an entity controlled by or under the direct control of the majority owners of Tenant. No such permitted assignment shall be deemed to release Tenant from its obligation to observe and perform all of the terms, covenants and provision on the Tenant's part to be observed and performed under this Lease. Any permitted assignee or successor in interest must execute and deliver to Landlord a written assumption agreement for the benefit of Landlord, in a form reasonably acceptable to Landlord, whereby such assignee legally binds itself to pay the Rent and Additional Rent due under this Lease and to observe and perform all of the other terms, conditions and provisions of this Lease on the part of Tenant to be observed or performed.

#### ARTICLE XIV. BROKERAGE PROVISIONS.

Section 14.01. Brokers. Landlord and Tenant represent and warrant that no broker, commission agent, real estate agent or salesman has participated in the negotiation of this Lease, its procurement or in the procurement of Landlord or Tenant except for Colliers International and Mopper-Stapen, Inc. d/b/a NAI Mopper Benton (individually and collectively, "Broker"), which have acted as Landlord's and Tenant's brokers, respectively, with regard to this Lease. Broker's fee, if any, shall be paid pursuant to a separate agreement between Landlord and Broker. No other person, firm, corporation or other entity is or shall be entitled to the payment of any fee, commission, compensation or other form of remuneration in connection herewith in any manner. Landlord shall and does hereby indemnify and agree to hold Tenant harmless from and against any claims, demands, actions and judgments of any and all brokers, agents and other intermediaries (other than Broker) alleging a commission, fee or other payment to be owing by reason of Landlord's dealings, negotiations or communications in connection with this Lease or the demise of the Premises. Likewise, Tenant shall and does hereby indemnify and agree to hold Landlord harmless from and against any claims, demands, actions and judgments of any and all brokers, agents and other intermediaries (other than Broker) alleging a commission, fee or other payment to be owing by reason of Tenant's dealings, negotiations or communications in connection with this Lease or the demise of the Premises. The terms of this Section 14.01 shall survive any termination of this Lease.

#### ARTICLE XV. DEFAULT

Section 15.01. Events of Default. The occurrence of any of the following acts, events or conditions, notwithstanding the pendency of any proceeding which has or might have the effect of preventing Tenant from complying with the terms, conditions or covenants of this Lease, shall constitute an "Event of Default" under this Lease:

- (a) The Rent, Additional Rent or any other sum of money payable under this Lease is not paid when due and such failure shall continue for ten (10) days after the due date;



(b) The failure or refusal of Tenant, at any time during the Term, to fulfill or perform any other covenant, agreement or obligation of Tenant hereunder if such failure or refusal shall continue without correction for a period of thirty (30) consecutive calendar days from and after notice thereof to Tenant by Landlord, provided that if such covenant, agreement or obligation shall be of such nature that it can be fulfilled or performed and if Tenant in good faith commences to fulfill or perform same within said thirty (30) day period, but due to the nature of same it could not be reasonably fulfilled or performed within said thirty (30) day period exercising due diligence, an Event of Default shall not be deemed to have occurred if Tenant is then diligently pursuing the fulfillment or performance of the covenant, agreement or obligation and shall thereafter continuously and diligently proceed therewith until completion;

(c) The initiation of any proceeding whereupon the estate or interest of Tenant in the Premises, or any portion thereof, or in this Lease is levied upon or attached if such proceeding is not vacated, discharged or bonded within thirty (30) days after the date of notice to Tenant of such levy or attachment;

(d) The entry of any decree or order for relief by a court having jurisdiction in the Premises in respect of Tenant in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Tenant or for any substantial part of the assets of Tenant, or the entry of any decree or order with respect to winding-up or liquidation of the affairs of Tenant, if any such decree or order continues unstayed and in effect for a period of thirty (30) consecutive days;

(e) The commencement by Tenant of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by Tenant to the appointment of or possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of Tenant or for any substantial part of the assets of Tenant, or any assignment made by Tenant for the benefit of creditors;

(f) Any sale, assignment, mortgage, pledge, hypothecation or other transfer of this Lease or any interest of Tenant hereunder or in the Premises or any sublease of the Premises without full compliance with any and all requirements therefor set forth in Section 13.01 or 13.02, as the case may be, of this Lease; or

(g) Tenant's failure to open for business in the Premises as required by this Lease, or Tenant's failure to operate at the Premises, except as expressly permitted herein, for a period of thirty (30) consecutive days following Landlord's written notice to Tenant of such default, unless Tenant's failure is the result of casualty or condemnation or remodeling.



Section 15.02, Remedies. Upon the occurrence of an Event of Default, Landlord shall have the option to do and perform any one or more of the following in addition to, and not in limitation of, any other remedy or right permitted it by law or in equity or by this Lease:

(a) Landlord, with or without terminating this Lease, may reenter the Premises and perform, correct or repair any condition which shall constitute a failure on Tenant's part to keep, observe, perform, satisfy, or abide by any term, condition, covenant, agreement, or obligation of this Lease, and Tenant shall fully reimburse and compensate Landlord on demand for all costs and expenses incurred by Landlord in such performance, correction or repair, including, without limitation, accrued interest as provided in the next sentence. All sums so expended to cure Tenant's default shall accrue Default Interest from the date of demand until date of payment at the rate specified in Section 15.05 hereof.

(b) Landlord, with or without terminating this Lease, may immediately or at any time thereafter demand in writing that Tenant vacate the Premises and thereupon Tenant shall vacate the Premises and remove therefrom all property thereon belonging to or placed on the Premises by, at the direction of, or with consent of Tenant within five (5) business days of receipt by Tenant of such notice from Landlord, whereupon Landlord shall have the right to reenter and take possession of the Premises. Any such demand, reentry and taking possession of the Premises by Landlord shall not of itself constitute an acceptance by Landlord of a surrender of this Lease or of the Premises by Tenant and shall not of itself constitute a termination of this Lease by Landlord.

(c) Landlord, with or without terminating this Lease, may immediately or at any time thereafter reenter the Premises and remove therefrom Tenant and all property belonging to or placed on the Premises by, at the direction of, or with consent of Tenant. Any such reentry and removal by Landlord shall not of itself constitute an acceptance by Landlord of a surrender of this Lease or of the Premises by Tenant and shall not of itself constitute a termination of this Lease by Landlord.

(d) Landlord, with or without terminating this Lease, may terminate Tenant's right of possession and immediately or at any time thereafter relet the Premises or any part thereof for such term or terms (which may be for a term extending beyond the Term), at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable, and Landlord may make any alterations, redecorations or repairs to the Premises which it may deem reasonably necessary or proper to facilitate such reletting; and Tenant shall pay all reasonable costs of such reletting including but not limited to the reasonable cost of any such alterations, redecorations and repairs made to the Premises, reasonable attorneys' fees, reasonable brokerage commissions and lease assumptions; and if this Lease shall not have been terminated, Tenant shall continue to pay all Rent, Additional Rent and all other charges due under this Lease up to and including, without limitation, the date of beginning of payment of rent by any subsequent tenant of part or all of the Premises, and thereafter Tenant shall pay monthly during the remainder of the Term the difference, if any, between the rent and other charges collected from any such subsequent tenant or tenants



and the Rent, Additional Rent and other charges reserved in this Lease, but Tenant shall not be entitled to receive any excess of any such rents collected over the Rent and Additional Rent reserved herein.

(e) Landlord shall be entitled to bring suit against Tenant for the performance of any non-monetary covenant or obligation of Tenant or to seek injunctive or other equitable relief with respect to any such default. In addition, Landlord shall be entitled to sue for and recover any actual damages incurred by Landlord as a result of any non-monetary default, and pursuit of any of the other remedies provided for in this Section 15.02 shall not preclude pursuit of any such claim for actual damages.

(f) Landlord may immediately or at any time thereafter terminate this Lease, and this Lease shall be deemed to have been terminated upon receipt by Tenant of written notice of such termination. Upon such termination, Landlord shall have and retain full right to sue for and recover from Tenant all damages Landlord may suffer by reason of such termination, all arrearages in Rent, costs, charges, Additional Rent, and reimbursements, the cost (including, without limitation, court costs and attorneys' fees) of recovering possession of the Premises, and the cost of any alteration or redecoration of or repair to the Premises and Improvements which is reasonably necessary or proper to prepare the same for reletting. Tenant shall immediately surrender and deliver up the Premises to Landlord upon any such termination by Landlord, and upon any failure by Tenant in so doing, Landlord shall have the right to recover possession by summary proceedings or otherwise.

Section 15.03. Reentry by Landlord. No reentry or taking possession of the Premises by Landlord or any other action taken by or on behalf of Landlord shall be construed to be an acceptance of a surrender of this Lease or an election by Landlord to terminate this Lease.

Section 15.04. General. No course of dealing between Landlord and Tenant or any failure or delay on the part of Landlord in exercising any rights of Landlord under Section 15.02 hereof or under any other provisions of this Lease shall operate as a waiver of any rights of Landlord hereunder, at law or in equity or under any other provisions of this Lease, nor shall any waiver of an Event of Default on one occasion operate as a waiver of any subsequent Event of Default or of any other Event of Default. No express waiver shall affect any condition, covenant, rule, or regulation other than the one specified in such waiver and that one only for the time and in the manner specifically stated. The exercise by Landlord of any one or more of the rights and remedies provided in this Lease shall not prevent the subsequent exercise by Landlord of any one or more of the other rights and remedies herein provided. All remedies provided for in this Lease are cumulative and may, at the election of Landlord, be exercised alternatively, successively, or in any other manner and are in addition to any other rights provided for or allowed by law or in equity.

Section 15.05 Default Interest and Late Charges. Any Rent or Additional Rent not paid within ten (10) days after the due date thereof shall bear interest at a rate of interest equal to the rate of interest announced by Wells Fargo in Atlanta, Georgia as its base rate or reference rate (which rate shall change automatically and simultaneously from time to time with each change in



the announced base rate or reference rate) plus four percent (4%) per annum ("Default Interest"), but in no event in excess of the maximum lawful rate, from the original due date until paid-in-full. In addition, Tenant acknowledges that late payments by Tenant to Landlord of amounts due from Tenant under this Lease will cause Landlord to incur costs not otherwise contemplated by this Lease, the exact amount of which is extremely difficult or impracticable to determine. Such costs include, but are not limited to, processing and accounting charges and, late charges that may be imposed on Landlord by the terms of any encumbrance or notes secured by any encumbrance covering the Premises. Therefore, if an installment of Rent or Additional Rent due from Tenant is not received by Landlord within ten (10) days after the applicable due date a late charge will be assessed pursuant to this Section 15.05 equal to Five Hundred Dollars (\$500.00) for each such occurrence. The parties acknowledge that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. Acceptance of any late charge shall not constitute a waiver by Landlord of Tenant's default with respect to the overdue amount, and shall not prevent Landlord from exercising any of the other rights and remedies available to Landlord for any other event of Default under this Lease.

Section 15.06. Attorneys' Fees. In the event of any action or dispute between the parties arising out of this Lease which results in litigation or dispute resolution or on account of any default of a party's obligations hereunder, the losing or defaulting party, as the case may be, shall pay the prevailing or non-defaulting party as the case may be, the reasonable cost (including reasonable attorney's fees) incurred in bringing or defending such action, enforcing any judgment granted therein and/or enforcing its remedies hereunder.

#### ARTICLE XVI. CONDEMNATION

Section 16.01. Material Condemnation. If, during the Term, all or such portion of the Premises is condemned or taken by the United States or any other legal entity having the power of eminent domain with respect thereto:

(a) which part so taken includes the building (or any part thereof) to be located on the Premises; or

(b) which results in a reduction of twenty-five percent (25%) or more of the parking area within the permitted parking area; or

(c) which eliminates or materially adversely affects access to public streets securing the Premises;

then Tenant may, at its election, terminate this Lease by giving Landlord notice of the exercise of Tenant's election within thirty (30) days after Tenant shall receive notice of such taking, which notice shall include the condemning authority's official notice or a reasonably detailed account thereof. In the event of termination by Tenant under the provisions of this Section 16.01, this Lease and the Term hereof shall terminate as of the date that title to the Premises or portion thereof vests in such condemning authority; provided, however, that such termination shall not benefit such condemning authority and shall be without prejudice to the rights of either Landlord or Tenant to recover just and adequate compensation from the condemning authority.



Section 16.02. Partial Condemnation. If, during the Term, any portion of the Premises is condemned or taken by the United States or any other legal entity having the power of eminent domain with respect thereto in respect of which Tenant shall not have the right to terminate this Lease; or having such right shall not elect to terminate this Lease, then Tenant shall (subject to the last sentence of this Section) forthwith cause the Premises to be restored, by effecting Restoration as provided in Section 9.02 hereof. From and after the date of such taking, Rent shall be equitably reduced taking into account all of the relevant factors and circumstances; provided, however, there shall be no reduction whatsoever in Rent in the event of a taking without compensation to Landlord of any portion of the Site for the widening of roads or rights-of-way adjoining the Site or for the purpose of construction of acceleration or deceleration lanes adjoining the Site, unless such taking shall reduce the area of the Site used for parking. In the event such partial condemnation occurs within the last year of the Term, Tenant shall have the right, at its election and in lieu of fulfilling its obligations under this Section 16.02, to terminate this Lease upon thirty (30) days prior written notice to Landlord and satisfaction of the following conditions: (a) by paying to Landlord, on the effective date of such termination, a sum equal to all Rent and Additional Rent due from Tenant to Landlord to such date; (b) by releasing to Landlord all of the right and interest of Tenant in and to any condemnation award made in connection with such condemnation proceeding; and (c) by surrendering the Premises to Landlord on the effective date of such termination in a clean and sightly condition, free of any and all debris.

Section 16.03. Awards. Landlord and Tenant hereby agree to petition the court in any condemnation proceeding to make separate awards to Landlord and Tenant, if said separate awards are not prohibited by law. In the event such court is prohibited by law from making separate awards to Landlord and Tenant or declines to do so and if all of the Premises or such portion is condemned as to render the remaining portion thereof to be of substantially no commercial value for the Permitted Use, the award shall be divided between Landlord and Tenant so that each party shall receive that portion of the award which bears the same proportion of the total award as the value of such party's interests in the Premises bears to the total value of all interests in the Premises. The value of Landlord's interests shall include the value of the land; the value of Landlord's interest in this Lease had the Premises not been condemned, including the right to receive payment of all sums required to be paid by Tenant to Landlord hereunder for the remainder of the Term; and the value of Landlord's residual right to the Improvements upon termination of this Lease. The value of the Tenant's interests shall include: the value of the Improvements reduced by the value of Landlord's reversionary interest therein; and the value of Tenant's leasehold estate hereunder had the Premises not been condemned, including the right to use and occupy the Premises for the remainder of the Term subject to the obligation of Tenant to pay Rent and Additional Rent hereunder.

In the event such court is prohibited by law from making separate awards to Landlord and Tenant or declines to do so and the remaining portion of the Premises after such condemnation is of some commercial value for the Permitted Use, the award shall be divided between Landlord and Tenant as follows: Landlord shall receive such portion of the award as shall represent the value of the part of the land so taken; Tenant shall receive such portion of the award as shall represent the value of the Improvements so taken and shall apply such portion of the award to the costs of Restoration as provided in Section 16.02 hereof; and if there shall



remain any balance of the award after Restoration as aforesaid, said balance shall belong to Landlord.

Section 16.04. Taking for Temporary Use. If there is a temporary taking of all or any portion of the Premises, Tenant shall give prompt notice thereof to Landlord, and the Term of this Lease shall not be reduced or affected in any way. In such case, Tenant shall continue to pay the full Rent and Additional Rent and other sums and charges provided to be paid by Tenant hereunder. Tenant shall be entitled to the entire award for such taking (whether paid by way of damages, rent or otherwise) unless the period of occupation and use by the condemning authority shall extend beyond the date of expiration of the Term of this Lease, in which case the award made for such taking shall be apportioned between Landlord and Tenant as of the date of such expiration. In any proceeding for such temporary taking, Landlord shall have the right to intervene and participate, but no award or settlement shall be made without Tenant's written approval; provided that if such intervention shall not be permitted, Tenant shall, at Tenant's expense, consult with Landlord, its attorneys and experts, and shall cooperate with Landlord in the prosecution or defense of such proceeding. At the termination of any such use or occupation of the Premises, Tenant will, at its sole cost, repair and restore the Improvements then upon the Premises to the condition, as nearly as may be reasonably possible, in which such Improvements were at the time of such taking. Tenant shall not be required to make such repairs and restoration if the Term of this Lease shall expire prior to the date of termination of the temporary taking, and in any such event, Landlord shall be entitled to recover all damages and awards arising out of the failure of the condemning authority to repair and restore the Improvements at the expiration of such temporary taking. Any recovery or sum received by Tenant as an award or compensation for physical damage to the Premises caused by and during the temporary taking shall be used to the extent necessary for the purpose of repairing or restoring such damage as required hereinabove.

#### ARTICLE XVII. MISCELLANEOUS.

Section 17.01. No Waiver. Failure of Landlord to insist upon the strict performance by Tenant of any term, condition or covenant on Tenant's part to be performed pursuant to the terms of this Lease or to exercise any option, right, power, or remedy contained in this Lease shall not be or be deemed to be a waiver of such performance or relinquishment of such right now or at any time subsequent hereto. The receipt by Landlord of any Rent or Additional Rent required to be paid by Tenant hereunder with knowledge of any Event of Default by Tenant shall not be or be deemed to be a waiver of such Event of Default. No waiver by Landlord of any provision of this Lease shall be or be deemed to have been made unless expressed in writing and signed by Landlord.

Section 17.02. Waiver of Redemption. Tenant hereby waives and surrenders any right or privilege under any present or future constitution, statute or law to redeem the Premises or to continue this Lease after the termination of this Lease for any reason, and the benefits of any present or future constitution, statute or rule of law which exempts property from liability for debt or for distress for rent.



Section 17.03. Estoppel Certificates. Within ten (10) days of Tenant's receipt of a written request from Landlord, Tenant shall from time to time execute, acknowledge and deliver to Landlord and to any mortgagee of or prospective purchaser from Landlord, a written certificate certifying (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications), (b) the dates to which Rent and Additional Rent payable by Tenant hereunder have been paid, and (c) that no notice has been received by Tenant of any default or Event of Default by Tenant hereunder which has not been cured, except as to any default or Event of Default specified in said certificate.

Upon written request of Tenant, Landlord shall from time to time execute, acknowledge and deliver to Tenant a written certificate certifying (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications), (b) the dates to which Rent and Additional Rent payable by Tenant hereunder have been paid, and (c) whether or not, to the knowledge of Landlord, a default or Event of Default by Tenant has occurred under this Lease which has not been cured (and if so, specifying the same).

Section 17.04. Quiet Enjoyment. If and so long as Tenant shall pay, when due, the Rent and Additional Rent reserved or payable under this Lease and shall observe all terms, conditions and covenants and other obligations required to be observed by Tenant under this Lease, Landlord shall not interfere with the peaceful and quiet occupation and enjoyment of the Premises by Tenant, which occupation and enjoyment shall be without hindrance or ejection by Landlord; provided, however, that this Section 17.04 shall not abrogate or diminish, in any way, the approval and inspection rights granted Landlord under this Lease.

Section 17.05. Transfer by Landlord. In the event Landlord shall transfer or assign or otherwise dispose of its interest in the Premises or in this Lease, Landlord shall thereupon be released and discharged from any and all liabilities and obligations under this Lease (except those accruing prior to such transfer, assignment or other disposition) and such liabilities and obligations thereafter accruing shall be binding upon the assignee of Landlord's interest under this Lease.

Section 17.06. Landlord's Liability. Landlord shall have no personal liability with respect to any of the provisions of this Lease. If Landlord is in default with respect to its obligations under this Lease, Tenant shall look solely to the equity of Landlord in and to the Shopping Center for satisfaction of Tenant's remedies, if any. It is expressly understood and agreed that Landlord's liability under the terms of this Lease shall in no event exceed the amount of its interest in and to said Shopping Center. In no event shall any partner of Landlord nor any joint venturer in Landlord, nor any officer, director or shareholder of Landlord or any such partner or joint venturer of Landlord be personally liable with respect to any of the provisions of this Lease.

Section 17.07. Mortgaging Landlord's Interest. This Lease is and shall be subordinate and subject to any mortgage, pledge, deed to secure debt, deed of trust, or any other hypothecation for security which has been or which hereafter may be placed upon the Premises.



Any provision, term or condition of this Lease which is or which may appear to be to the contrary notwithstanding, Landlord shall, at all times and from time to time after the Effective Date of this Lease, have the express right, power and privilege of pledging, conveying, assigning or mortgaging Landlord's interest in and to the Premises and/or Landlord's reversionary right to the Improvements, for the purpose of obtaining financing, credit, or as security for any financing or extension of credit. Tenant hereby agrees that upon request from Landlord, or from the holder or proposed holder of any mortgage, pledge, deed to secure debt or deed of trust which encumbers or will encumber Landlord's interest in the Premises, including the current holder of the mortgage encumbering the Premises, which Landlord shall use reasonable efforts to procure within thirty (30) days of the Effective Date, Tenant shall execute a subordination, non-disturbance and attornment agreement in a commercially reasonable form subordinating this Lease to the interest of such holder and its heirs, successors and assigns. The holder or proposed holder of any such mortgage, pledge, deed to secure debt or deed of trust shall agree in such subordination, non-disturbance and attornment agreement that, so long as Tenant complies with all of the terms and conditions of this Lease and is not in default hereunder beyond the period for cure of such default as provided herein, such holder or any person or entity acquiring the interest of Landlord under this Lease as a result of the enforcement of such mortgage, pledge, deed to secure debt or deed of trust shall not take any action to disturb Tenant's possession of the Premises during the remainder of the Term and shall recognize all of Tenant's rights under this Lease despite any foreclosure or other action by such holder. Alternatively, the person or entity accepting such pledge, conveyance, assignment or mortgage as security may elect to take subject to the rights of Tenant and its successors and permitted assigns under this Lease. In any event, Tenant, in the event of any foreclosure or deed in lieu of foreclosure or other final conveyance and transfer of Landlord's interest as aforesaid, shall recognize and attorn to the grantee thereof as "landlord" under this Lease. Likewise, and to similar effect, Landlord, at all times and from time to time after the date of this Lease, shall have the express right, power and privilege of assigning Landlord's interest in this Lease or in the Rent and Additional Rent to be paid hereunder.

Section 17.08. Mortgaging Tenant's Interest. Landlord hereby grants to Tenant and its successors and assigns approved by Landlord in accordance with this Lease, the right, without Landlord's prior written consent, to mortgage its interests in, to or under this Lease, or any part or parts thereof, and otherwise to assign and/or convey all or any part of Tenant's interest in or rights under this Lease to any institutional lender(s) solely as collateral for loans, and, in such event, the mortgagee or assignee shall have all the rights of Tenant hereunder. Notwithstanding anything contained herein to the contrary, Landlord's fee interest in the Premises will not become, in any respect whatsoever subject to, considered a part of, or become subordinate to any mortgage of the Tenant, its successors and/or assigns. Nor will the Landlord's fee interest become subordinate to any subtenant of Tenant. If Tenant mortgages Tenant's leasehold estate to an institutional lender and the mortgagee or holders of the indebtedness secured by the leasehold mortgage or trust deed notify Landlord, in accordance with the notice provisions of this Lease, of the execution of such mortgage or trust deed and name the place for service of notice upon such institutional mortgagee or holder of indebtedness, then, in such event, Landlord agrees that for the benefit of such mortgagees or holders of indebtedness from time to time:

- (a) Landlord will give to any such mortgagee or holder of indebtedness simultaneously



with service on Tenant, a duplicate of any and all notices or demands given by Landlord to Tenant. Landlord will deliver such notices in the manner and subject to the terms of the notice provisions of this Lease.

- (b) Such mortgagee or holder of indebtedness will have the privilege of performing any of Tenant's covenants under this Lease, curing any Tenant default or exercising any election, option or privilege conferred upon Tenant by the terms of this Lease.
- (c) Landlord will not terminate this Lease or Tenant's right of possession for any Tenant default if, within a period of ten (10) days after the expiration of any applicable period of time within which Tenant might cure such default under the provisions of this Lease, such mortgagee or holder of indebtedness commences in good faith to eliminate the cause of such default and proceeds diligently and with reasonable dispatch to complete such cure and actually cures such default within an additional ten (10) days.
- (d) Except for the termination rights contained in this Lease, no negotiated termination of this Lease will be effective unless joined in by any such mortgagee or holder of the indebtedness.
- (e) No liability for the payment of rent or the performance of any of Tenant's covenants and agreements will attach to or be imposed upon any mortgagee, trustee under any trust deed or holder of any indebtedness secured by any mortgage or trust deed upon the leasehold estate, unless such mortgagee, trustee or holder of indebtedness forecloses its interest and becomes the Tenant under this Lease or otherwise enters into possession of the Premises, in which instance such mortgagee, trustee, or holder of indebtedness shall bring rent current hereunder within fifteen (15) days.

Section 17.09. Separability. Each and every covenant and agreement contained in this Lease shall be for any and all purposes hereof construed as separate and independent, and the breach of any covenant by either party shall not discharge or relieve the other party from its obligation to perform each and every covenant and agreement to be performed under this Lease. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate applicable law and shall be limited to the extent necessary to render this Lease valid and enforceable. If any term, provision or covenant of this Lease or the application thereof to any person or circumstance shall be held to be invalid, illegal or unenforceable, by a court of last resort having jurisdiction in the Premises, the validity of the remainder of this Lease shall not be affected, this Lease shall not terminate, and there shall be substituted for such illegal, invalid or unenforceable provision a like provision which is legal, valid and enforceable within the limits established by such court's final opinion and which most nearly accomplishes and reflects the original intention of the parties.

Section 17.10. Notices, Demands and Other Instruments. All notices, demands, requests, consents, and approvals desired, necessary, required or permitted to be given pursuant to the terms of this Lease shall be in writing and shall be deemed to have been properly given if delivered personally or by courier with a signed receipt, delivered by a recognized national

overnight delivery service, or sent, postage prepaid, by first class registered or certified United States mail, return receipt requested, addressed to each party hereto at the following address:

Landlord: Port Wentworth Fee Owner, LLC  
c/o JDH Capital, LLC  
3735-B Beam Road  
Charlotte, North Carolina 28217  
Attention: Gary J. Davies

Tenant: Premier Kings of Georgia, Inc.  
3300 Eastern Boulevard  
Montgomery, Alabama 36116  
Attention: Legal Dept.

or at such other address in the United States as Landlord or Tenant may from time to time designate by like notice. Additionally, Tenant agrees to send copies of all notices required or permitted to be given to Landlord to each holder of a mortgage, deed to secure debt, deed of trust or similar financing instrument encumbering Landlord's interest in the Premises that notifies Tenant in writing of its interest and the address to which notices are to be sent. Any such notice, demand, request or other communication shall be considered given or delivered, as the case may be, on the date of personal or courier delivery or within three (3) days of the date of deposit in the United States mail as provided above. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand, request or other communication.

Section 17.11. Successors and Assigns. Each and every covenant, term, condition and obligation contained in this Lease shall apply to and be binding upon and inure to the benefit or detriment of the respective legal representatives, heirs, successors and permitted assigns of Landlord and Tenant. Whenever reference to the parties hereto is made in this Lease, such reference shall be deemed to include the legal representatives, successors, heirs and permitted assigns of said party the same as if in each case expressed. The term "person" when used in this Lease shall mean any individual, corporation, partnership, firm, trust, joint venture, business association, syndicate, government or governmental organization or any other entity.

Section 17.12. Headings. The headings to the various Articles and Sections of this Lease have been inserted for purposes of reference only and shall not limit or define or otherwise affect the express terms and provisions of this Lease.

Section 17.13. Counterparts. This Lease may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all of which may be annexed to one another and shall constitute one instrument.

Section 17.14. Applicable Law. This Lease shall be construed under and enforced in accordance with the laws of the State of Georgia.



Section 17.15. Entire Agreement; Amendments. This Lease sets forth the entire understanding and agreement of Landlord and Tenant with respect to the Premises; all courses of dealing, usage of trade and all prior representations, promises, understandings and agreements, whether oral or written, are superseded by and merged into this Lease. No modification or amendment of this Lease shall be binding upon Landlord and Tenant, or either, unless in writing and fully executed.

Section 17.16. Relationship of the Parties. Nothing contained herein shall be deemed or construed by the parties hereto, or any third party, as creating the relationship of principal and agent or a partnership or joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rent nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

Section 17.17. Time is of Essence. Time is of the essence of this Lease. Whenever a day certain is provided for the payment of any sum of money or the performance of any act or thing, the same enters into and becomes a part of the consideration for this Lease.

Section 17.18. Memorandum of Lease. Landlord and Tenant hereby agree that this Lease shall not be recorded in the public records of Chatham County, Georgia. Landlord and Tenant shall, upon request of either party, execute a Memorandum of Lease, wherein a legal description of the Premises, the Term and certain other terms and provisions hereof, excepting, however, the provisions hereof relating to the amount of Rent, Additional Rent or any other sum payable hereunder, may be set forth. The Memorandum of Lease may be filed for record with the Official Records of Chatham County, Georgia promptly after (and not before) expiration of the Permit/Limited Diligence Period. Any and all recording costs and taxes, if any, required in connection with the recording of the Memorandum of Lease shall be at the sole cost and expense of the requesting party.

Section 17.19. Approval and Inspection Rights. Tenant expressly acknowledges and agrees that Landlord has the right, but not the duty, at all times and from time to time upon reasonable notice to Tenant and during normal business hours, to enter upon the Premises and any portion thereof to determine to Landlord's satisfaction whether the terms, covenants and conditions of this Lease, including Tenant's performance obligations, are being kept and observed. Tenant agrees that other than as provided herein to the contrary, any failure of Landlord to approve or disapprove anything or undertaking where Landlord's approval or disapproval is required shall not be a waiver or abatement of Landlord's right to give or withhold such approval as to the specific thing or undertaking involved, nor as to any future or other instance where Landlord has such right. Tenant agrees that any failure of Landlord to exercise any right of inspection shall not be or be deemed to be a waiver of the right of inspection, which is and shall be continuing, nor shall Landlord ever be accountable or liable to Tenant or to any other person for exercising or not exercising its right of inspection.

Section 17.20. Holding Over, No Extension, Month-to-Month Tenancy and Holdover Rent. In the event Tenant shall hold the Premises after the expiration of the Term, without the express written consent of the Landlord, such holding shall be deemed to have created a tenancy

from month to month which shall be terminable upon thirty (30) days' written notice by either party to the other, and which shall be on a monthly rental basis and otherwise subject to all terms and provisions of this Lease, except as contemplated to the contrary in this Section 17.20. Monthly rental during the period of Tenant's occupancy shall be one-twelfth (1/12) of the amount equal to the product of the total rental payable by Tenant to Landlord during the last twelve (12) month period of the Term, including but not limited to, Rent, Additional Rent and all other additional charges provided by this Lease, multiplied by 1.50.


If the Tenant fails to surrender the Premises upon the expiration of the Term, then Tenant shall, in addition to any other liabilities to Landlord accruing therefrom, indemnify and hold Landlord harmless from any loss or liability resulting from such failure, including, without limitation, any claims made by any succeeding tenant founded on such failure.

(SIGNATURES APPEAR ON THE FOLLOWING PAGE)

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease, have affixed their seals hereunto and have delivered same, in duplicate originals, as of the day, month and year first above written.

"LANDLORD":

PORT WENTWORTH FEE OWNER, LLC,  
a Delaware limited liability company

By:   
Name: GARY S. DAVIES  
Its: Manager

"TENANT":

PREMIER KINGS OF GEORGIA, INC.,  
a Georgia corporation

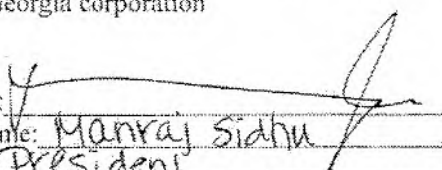
By:   
Name: Manraj Sidhu  
Its: President

EXHIBIT "A"

SITE PLAN

[See Attached]





EXHIBIT "B"

LEGAL DESCRIPTION

Outparcel B:

BEING all of that certain piece or parcel of real property located in Port Wentworth, Georgia, containing approximately 1.052 acres, and being more particularly described as follows:

To find the Beginning Point commence at calculated point located in the easterly margin of the right-of-way of State Highway 21 (variable width right-of-way) and marking the northwesterly corner of the property now or formerly owned by Coldbrook Station, LLC (PIN 7-0037-01-036) (the "Coldbrook Property") (said point being 0.39 feet northerly and 0.20 feet westerly of an iron rod), and proceed with the easterly margin of the right-of-way of Highway 21 the following three (3) courses and distances: (1) North 17-16-49 West 69.18 feet to a calculated point, (2) North 83-48-14 West 30.12 feet to a calculated point, and (3) North 17-31-45 West 164.16 feet to a calculated point, said point being the Beginning Point; thence from said point and place of BEGINNING continuing with the easterly margin of the right-of-way of Highway 21 North 17-31-45 West 156.10 feet to a calculated point; thence leaving the easterly margin of the right-of-way of Highway 21 the following three (3) courses and distances: (1) North 79-16-35 East 304.85 feet to a calculated point, (2) South 10-43-25 East 155.00 feet to a calculated point, and (3) South 79-16-35 West 286.35 feet to the point and place of BEGINNING.



## EXHIBIT "C"

### USE RESTRICTIONS

1. During the term of this Lease, no portion of the Premises shall be used for any of the following purposes:

(a) Any use which is illegal or dangerous, which constitutes a public or private nuisance, or which creates vibrations or offensive odors, fumes, dust or vapors, other than normal cooking odors, which are noticeable outside of any building on the Site, or any noise or sound which can be heard outside of any building in the Shopping Center and which is offensive due to intermittency, beat, frequency, shrillness or loudness;

(b) Any operation primarily used as a warehouse operation (which shall not include storage incidental to a retail operation constructed on the same premises), any drilling for and/or removal of subsurface conditions, any manufacturing or industrial operation, any processing or rendering plant, or any lumber yard;

(c) The storage of explosives or other unusually hazardous materials (other than materials sold or used in the normal course of business, provided that the same are handled in accordance with all governmental rules, regulations, and requirements applicable thereto);

(d) Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);

(e) Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage dumpsters or compactors which are screened from public view);

(f) Any automobile, truck, boat, trailer, RV or other motorized vehicle sales, rental, leasing, display or repair facility, including any quick lube change service, or tire, battery and accessory facility;

(g) Any funeral parlor or mortuary;

(h) Any adult book store or establishment selling or exhibiting pornographic materials;

(i) Any massage parlor (provided that nothing herein shall restrict massage services in connection with operation of a physical therapy clinic or health care facility) or any establishment selling or exhibiting paraphernalia for use with illicit drugs, or any so-called "head shop"; or

(j) Any off-track betting parlor or other gambling establishment; provided lottery sales departments incidental to the operation of a permitted use shall be permitted to the extent operated, or authorized by the appropriate governmental authority.

2. In addition to the restrictions set forth in Paragraph 1 above, the Premises shall be subject to the following restrictions:

(a) The Premises shall not be used for the operation of automobile or trailer sales and services related to such businesses (including, but not limited to, gas stations and auto repair, sales or storage; or

(b) The Premises shall not be used for the operation of an extended-stay hotel.

Nothing contained in this Exhibit "C" shall be deemed to grant Tenant any right or privilege to operate within the Premises in any manner inconsistent with Tenant's Permitted Use as described in Section 6.05 of the Lease.



FIRST AMENDMENT TO GROUND LEASE

THIS FIRST AMENDMENT TO GROUND LEASE (this "Amendment") is made as of the 3 day of August 2018, between PORT WENTWORTH FEE OWNER, LLC, a Delaware limited liability company ("Landlord"), and PREMIER KINGS OF GEORGIA, INC., a Georgia corporation ("Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant are parties to that certain Ground Lease dated May 8, 2018 (the "Lease"), pursuant to which Tenant agreed to lease a certain tract of land consisting of approximately 1.05 acres located in Chatham County, Georgia, as more particularly described in the Lease (the "Premises"); and

WHEREAS, Landlord and Tenant have agreed to modify and amend certain terms and conditions of the Lease;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant, intending to be legally bound, hereby agree as follows:

1. Recitals. The recitals set forth above are incorporated herein.
2. Capitalized Terms. All terms used in this Amendment with an initial capital letter which are not otherwise defined herein shall have the meanings given to such terms in the Lease.
3. Permit/Limited Diligence Period. The definition of "Permit/Limited Diligence Period" set forth in Section 6.02 of the Lease is hereby amended to delete "seventy five (75) days" therefrom and to insert the following in lieu thereof: "one hundred twenty (120) days".
4. Construction of Improvements. The second paragraph of Section 6.08 is hereby deleted in its entirety and replaced with the following:  
  
"Tenant shall have the lesser of (i) one hundred eighty (180) days following receipt of the Permits, or (ii) one hundred eighty (180) days following the expiration of the Permit/Limited Diligence Period in order to construct and install the Improvements on the Site substantially in accordance with the mutually approved plans, except in the case of changes required to comply with applicable governmental laws, ordinances or regulations (the "Construction Period")."
5. Governing Law. This Amendment shall be governed, construed and interpreted in accordance with the laws of the State of Georgia.
6. Successors and Assigns. This Amendment shall inure to the benefit of and shall be binding upon Landlord, Tenant, and their respective successors and assigns.
7. Execution Counterparts. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original and together which shall constitute one and the same instrument.

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IN WITNESS WHEREOF, Landlord and Tenant have caused this Amendment to be executed in their names and their seals to be hereunto affixed and attested by their officers thereunto duly authorized the day and year first above written.

LANDLORD

PORT WENTWORTH FEE OWNER, LLC,  
a Delaware limited liability company

BY: 

Name: Gary J. Davies

Title: Vice President

TENANT

PREMIER KINGS OF GEORGIA, INC.,  
a Georgia corporation

BY: 

Name: John Howard

Title: Vice President

General  
Counsel





## LOAN AGREEMENT

THIS LOAN AGREEMENT (this "Agreement") is entered as of the 17<sup>th</sup> day of May, 2019, by and between **Premier Holdings of Georgia, LLC**, a Georgia limited liability company (the "Borrower"), and **IBERIABANK**, a Louisiana state chartered bank (the "Lender").

### Recitals

A. The Borrower has applied to the Lender for (i) a loan in the principal amount not to exceed \$1,030,000 to acquire certain real property located in Port Wentworth, Chatham County, Georgia and construct a Burger King restaurant thereon (the "Real Estate Loan") and (ii) a loan in the principal amount not to exceed \$517,500 to acquire certain furniture, fixtures and equipment for such Burger King restaurant (the "Equipment Loan").

B. The Lender has agreed to make such loan on the terms, conditions and agreements hereinafter set forth.

### Agreement

NOW, THEREFORE, in consideration of the Recitals and of the covenants and agreements hereinafter set forth, and of other valuable considerations, the Borrower and the Lender hereby agree as follows:

## ARTICLE I.

### DEFINITIONS

For the purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular, and vice versa.

All accounting terms not otherwise defined herein have the meanings assigned to them, and all computations herein provided for shall be made in accordance with generally accepted accounting principles. All references herein to "generally accepted accounting principles" refer to such principles as they exist at the date of application thereof.

All references in this instrument to designated "Articles", "Sections" and other subdivisions are to the designated Articles, Sections and subdivisions of this instrument as originally executed.

The terms "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

Actual/360 Basis shall mean a method of computing interest or other charges

Port Wentworth, GA



hereunder on the basis of an assumed year of 360 days for the actual number of days elapsed, meaning that interest or other charges accrued for each day will be computed by multiplying the rate applicable on that day by the unpaid principal balance (or other relevant sum) on that day and dividing the result by 360.

Adjusted LIBOR Rate shall mean, for any Interest Period during the term of the Loan, the rate per annum determined by the Lender to be equal to the quotient obtained by dividing (a) the LIBOR Rate for such Interest Period, by (b) an amount equal to (i) one (1), minus (ii) the LIBOR Reserve Requirement, if any (rounded upwards to the nearest .0001). The Adjusted LIBOR Rate shall be adjusted effective as of the first day of each Interest Period, and the Adjusted LIBOR Rate effective as of the first day of such Interest Period shall remain in effect for the entirety of such Interest Period, except to the extent that such Adjusted LIBOR Rate shall be adjusted during an Interest Period as a result of a change in the LIBOR Reserve Requirement.

Advances shall have the meaning attributed to that term in Section 2.02.

Affiliate means with respect to any Person, another Person that directly or indirectly controls, or is under common control with, or is controlled by, such Person and, if such Person is an individual, any member of the immediate family (including parents, spouse, children and siblings) of such individual and any trust whose principal beneficiary is such individual and/or one or more members of such individual's immediate family and any Person who is controlled by any such member or trust. As used in this definition, "control" (including, with its correlative meanings, "controlled by" and "under common control with") shall mean possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

Applicable Margin shall mean 2.25% per annum.

Architect shall mean any architect for the Project that shall be acceptable to the Lender.

Assessment Rate shall mean any assessment rate required to be paid by the Lender from time to time to the Federal Deposit Insurance Corporation (or any successor) for the insurance provided by such corporation (or any successor) of the Lender's time deposits in the United States; any change in the Assessment Rate shall be effective immediately and shall result in an automatic adjustment, on and as of the effective date of any such change, in the LIBOR-Based Rate.

Assignment shall have the meaning attributed to that term in Section 2.05.

Business Day shall mean a day (other than a Saturday or Sunday) that is not a public holiday and on which banks and financial institutions are open for general business in New York City, New York and London, England.

Change in Law means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request,



rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith, (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, and (iii) all requests, rules, guidelines or directives issued by a Governmental Authority in connection with a Lender's submission or re-submission of a capital plan under 12 C.F.R. § 225.8 or a Governmental Authority's assessment thereof shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

Code means the Internal Revenue Code of 1986, as amended or superseded from time to time. Any reference to a specific provision of the Code shall be construed to include any comparable provision of the Code as hereafter amended or superseded.

Collateral shall mean the Real Estate, the Improvements, the Personal Property, the Leases, the Rents, and all other property covered by the Security Documents.

Completion Date shall mean six (6) months from the date hereof.

Connection Income Taxes means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

Construction Consultant shall mean any architect and/or engineer designated by the Lender to be the Construction Consultant with respect to the Project pursuant to Section 5.19.

Contractor shall mean any general contractor of the Project that shall be acceptable to the Lender.

Debt Service Coverage Ratio shall mean, for the trailing 12-month period, the ratio of Net Operating Income to Debt Service. "Net Operating Income" shall mean Operating Revenues less Operating Expenses of the Premier Related Entities, plus all amounts which shall have been deducted during such period for (i) interest, (ii) taxes, (iii) depreciation, and (iv) amortization. "Operating Revenues" shall mean all collected rents and other income and receipts of any kind received by the Premier Related Entities; provided, however, Operating Revenues will exclude extraordinary receipts arising from condemnation awards or proceeds received from insurance policies. "Operating Expenses" shall mean the actual expenses incurred by the Premier Related Entities. "Debt Service" shall be calculated as the actual amount of the regularly scheduled monthly installments of principal and interest that were due and payable on any debt obligations of the Premier Related Entities during the applicable test period.

Default Rate shall mean a rate per annum equal to the sum of (a) the rate of interest that would otherwise from time to time be in effect under this Agreement and the Note with respect to the outstanding principal balance of the Loan, plus (b) four percent (4%); provided, however, that in no event shall the Default Rate exceed the maximum rate allowed by applicable law.



Development Agreement shall mean that certain Development Agreement dated May 17, 2019, between the Borrower and Premier Kings.

Development Budget shall mean the budget for the Project attached hereto as Exhibit A, which shows in reasonable detail the cost of all materials and work necessary to acquire and complete the Project in accordance with the Plans.

Environmental Indemnity shall have the meaning attributed to that term in Section 2.08.

Equipment Loan shall have the meaning attributed to that term in Recital A.

Equipment Note shall mean a promissory note payable to the order of the Lender, duly executed by the Borrower, dated the date of this Agreement, in the principal amount of the Equipment Loan.

Event of Default shall have the meaning attributed to that term in Article VI.

Excluded Taxes means any of the following Taxes imposed on or with respect to the Lender or required to be withheld or deducted from a payment to the Lender, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of the Lender being organized under the laws of, or having lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes; (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of the Lender with respect to its interest in the Loan pursuant to a law in effect on the date on which (i) the Lender acquires its interest in the Loan or (ii) the Lender changes its lending office, except in each case to the extent that amounts with respect to such Taxes were payable either to the Lender's assignor immediately before the Lender became a party hereto or to the Lender immediately before it changed its lending office; and (c) any U.S. federal withholding Taxes imposed under FATCA.

FATCA means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the Code.

Governmental Authority shall mean any federal, state, county or municipal agency, authority, department, commission, bureau, board or court.

Governmental Requirements shall mean all laws, rules, ordinances, judgments, decrees, codes, and orders of any Governmental Authority applicable to the Borrower, any Guarantor or any of the Collateral.

Ground Lease shall mean that certain Ground Lease dated May 8, 2018, by and between Premier Kings and Port Wentworth Fee Owner, LLC, as amended by that First Amendment to Ground Lease dated August 3, 2018.

Guarantors shall mean Premier Kings, Manraj "Patrick" Sidhu, a resident of



Alabama, and Jaipal Gill, a resident of Georgia, jointly and severally.

Guaranty Agreement shall have the meaning attributed to that term in Section 2.06.

Hedge Agreement shall mean (a) an agreement (including terms and conditions incorporated by reference therein and all schedules thereto and confirmations thereof) in any notional principal amount (which notional amount may reduce periodically under the agreement) from time to time and at any time executed and delivered by the Borrower and the Lender which provides for an interest rate, currency, equity, credit or commodity swap, cap, floor or collar, spot or foreign exchange transaction, cross-currency rate swap, currency option, any combination thereof, or option with respect to, any of the foregoing or any similar transactions, for the purpose of hedging the Borrower's exposure to fluctuations in interest rates, exchange rates, currency, stock, portfolio or loan valuations or commodity prices (including any such or similar agreement or transaction entered into by the Lender in connection with any other agreement or transaction between the Borrower and the Lender, (b) a master agreement for any of the foregoing agreements referenced in (a), together with all supplements, and (c) any other existing or future agreement between the Borrower (or any affiliate of the Borrower) and the Lender (or any affiliate of the Lender) that constitutes a "swap agreement", as such term is defined in 11 U.S.C. § 101 (or successor statute) as in effect from time to time.

Improvements shall have the meaning attributed to that term in the Mortgage.

Indemnified Taxes means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Obligor under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

Interest Period shall mean each consecutive one (1) month period of time commencing on the 5th day of the first full calendar month commencing after the date of the Loan Agreement, and ending on the 5th day of each consecutive calendar month during the term of the Loan, provided, however, that the first Interest Period shall commence on the date of the Loan Agreement and shall end on the 5th day of the first full calendar month commencing after the date of the Loan Agreement, and provided that the last Interest Period during the term of the Loan shall end on the Maturity Date. Should an Interest Period end on a day other than a Business Day, then the Interest Period shall be extended to the next Business Day (or, if the next Business Day falls into the next calendar month, then on the immediately preceding Business Day) and such adjustment shall be included in the calculation of interest.

Leases shall have the meaning attributed to that term in the Mortgage.

Liabilities shall mean (i) the indebtedness evidenced by the Note, and all interest thereon and any and every extension, renewal and modification thereof and all costs, expenses and charges payable with respect to the Loan Documents, (ii) the compliance with all of the stipulations, covenants, agreements, representations, warranties and conditions contained in the Loan Documents and (iii) all other indebtedness, obligations and liabilities of the Borrower to the Lender of every kind and description whatsoever, whether now existing or hereafter incurred, and any and all extensions, renewals and modifications of any of the same, including, without limitation, the indebtedness and obligations of the Borrower, including all assessments, penalties,



losses, fees and costs of any kind or nature incurred by Lender under any Hedge Agreement, which arise, directly or indirectly, as a result of Borrower's prepayment of the principal amount of the Note, in whole or in part, whether voluntary or involuntary.

LIBOR-Based Rate shall mean, at any given time, a rate per annum equal to the sum of (a) the Adjusted LIBOR Rate in effect at such time, plus (b) the Applicable Margin. Interest which accrues at the LIBOR-Based Rate shall be computed on an Actual/360 Basis.

LIBOR Breakage Amount shall have the meaning attributed to that term in Section 2.03(C).

LIBOR Rate shall mean, when determined, the rate per annum offered for U.S. Dollar deposits in an amount comparable to the applicable Interest Period as of 11:00 a.m. City of London, England time two (2) Business Days prior to the first day of the relevant Interest Period equal to the "London Interbank Offered Rate" from ICE Benchmark Administrative Settlement (ICE) as shown on Bloomberg. If such rate is not available on Bloomberg, then such offered rate shall be otherwise independently determined by Lender from an alternate, substantially similar independent source available to Lender or shall be calculated by Lender by a substantially similar methodology as that previously used to determine such rate, or it shall be calculated by any of Lender's successors and assigns using such methodology. The LIBOR Rate is not necessarily the lowest rate charged by Lender on its loans. Notwithstanding the foregoing, the Borrower agrees that the LIBOR Rate shall never be less than 0.000% per annum (the "Floor"); provided, however, if the Borrower has entered into an interest rate swap transaction with Lender for purposes of hedging the interest rate on the Note (e.g., a Hedge Agreement), then no Floor shall be applicable during the period such swap transaction is in effect.

LIBOR Reserve Requirement shall mean, at any time, the maximum rate, expressed as a decimal, at which reserves (including, without limitation, any basic, marginal, special, supplemental, emergency or other reserves) are required to be maintained against "Eurocurrency liabilities" (as such term is defined in Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time) under regulations issued from time to time by the Board of Governors of the Federal Reserve System or other applicable banking regulator. Without limiting the effect of the foregoing, the LIBOR Reserve Requirement shall include any other reserves required to be maintained by member banks of the Federal Reserve System with respect to (i) any category of liabilities that includes deposits by reference to which the Adjusted LIBOR Rate, LIBOR Rate or any other interest rate applicable to the Loan is determined, or (ii) any category of extensions of credit or other assets that includes loans priced upon reference to rates for deposits in the London interbank market. The Loan shall be deemed to constitute a "Eurocurrency liability" for purposes of such Regulation D, and as such shall be deemed subject to reserve requirements without benefits of credit for proration, exceptions or offsets that may be available from time to time to the Lender. The rate of interest on the Loan shall be adjusted automatically on and as of the effective date of any change in the LIBOR Reserve Requirement.

Lien shall mean any mortgage, pledge, assignment, charge, encumbrance, lien, security interest or other preferential arrangement of any kind or nature whatsoever.

Loan shall mean, individually and collectively, as applicable, the Real Estate Loan



and the Equipment Loan.

Loan Documents shall mean this Agreement, the Note, the Security Documents, any Hedge Agreement and all other documents now or hereafter executed or delivered in connection with the Loan or any of the foregoing documents, or to evidence, secure or guarantee the Loan, and all amendments thereto.

Margin Stock shall have the meaning attributed to that term in Regulation U of the Federal Reserve Board, as amended.

Maturity Date shall mean (a) with respect to the Real Estate Loan, May 16, 2026 and (b) with respect to the Equipment Loan, May 16, 2024.

Mortgage shall have the meaning attributed to that term in Section 2.05.

Note shall mean, individually and collectively, as applicable, the Real Estate Note and the Equipment Note.

Obligors shall mean the Borrower and the Guarantors.

Other Connection Taxes means, with respect to the Lender, Taxes imposed as a result of a present or former connection between the Lender and the jurisdiction imposing such Tax (other than connections arising from the Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

Other Taxes means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

Person shall include natural persons, sole proprietorships, corporations (which shall be deemed to include business trusts), unincorporated organizations, associations, companies, institutions, entities, joint ventures, partnerships, limited liability companies, governments (whether national, federal, state, county, city, municipal or otherwise) and any governmental instrumentality, division, agency, body or department.

Personal Property shall have the meaning attributed to that term in the Mortgage.

Plans shall mean the final working plans and specifications prepared by the Architect for the Project, and all amendments and modifications thereto, as approved by the Lender.

Post-Closing Items shall mean those items set forth on Schedule 5.30 attached hereto which are to be provided by the Borrower to the Lender in accordance with the terms thereof.



Premier Kings shall mean Premier Kings of Georgia, Inc., a Georgia corporation.

Premier Related Entities shall mean, collectively, the Borrower, Premier Holdings, LLC, Premier Kings, Inc., Premier Kings and Premier Kings of North Alabama, LLC.

Project shall mean the construction of a Burger King restaurant and related improvements on the Real Estate, as further described in the Plans.

Real Estate shall have the meaning attributed to that term in the Mortgage.

Real Estate Loan shall have the meaning attributed to that term in Recital A.

Real Estate Note shall mean a promissory note payable to the order of the Lender, duly executed by the Borrower, dated the date of this Agreement, in the principal amount of the Real Estate Loan.

Rents shall have the meaning attributed to that term in the Mortgage.

Replacement Rate shall mean a rate of interest established by Lender at such time as applicable pursuant to Section 2.03(B) using its best determination of what said rate should be at said time. The Replacement Rate may not necessarily be Lender's most favorable lending rate.

Security Agreement shall have the meaning attributed to that term in Section 2.05.

Security Documents shall mean the Mortgage, the Assignment, the Guaranty Agreement, the Environmental Indemnity, the Security Agreement and any other documents and agreements now or hereafter executed by the Borrower or the Guarantors in favor of the Lender securing, guaranteeing or relating to the Loan.

## ARTICLE II.

### LOAN TERMS AND COLLATERAL

SECTION 2.01. Note. On the terms and conditions set forth in this Agreement, the Lender agrees to make the Loan to the Borrower. The Loan shall be evidenced by the Note, bearing interest on amounts advanced and outstanding thereunder from the date advanced until paid at the rate per annum as set forth therein.

SECTION 2.02. Advances. The Lender, upon the terms and subject to the conditions set forth in this Agreement, shall advance the proceeds of the Loan to the Borrower in installments ("Advances") from time to time at the request of the Borrower. Advances shall be made no more frequently than once in each calendar month, the Loan must be current and not in default prior to any Advance. The Lender, at its option, may make Advances by (i) wire transfer to the Borrower's account with a financial institution designated by the Borrower depositing to the Borrower's account with the Lender or (ii) delivering to the Borrower a check payable to the Borrower and any persons owed money with respect to the Project; provided, however, that nothing in this Agreement shall be construed to impose on the Lender any duty to pay bills related to the Project or to see that such bills are paid. The Lender's obligation to make Advances hereunder shall



terminate, if not sooner terminated pursuant to the provisions of this Agreement, on the date that is six (6) months after the date hereof. Notwithstanding anything to the contrary set forth in this Agreement, the Lender, at its option, without any request therefor by the Borrower, may make Advances on the first day of each month for the Lender's account for the purpose of paying any interest or expenses then due to the Lender with respect to the Loan.

SECTION 2.03. Applicable Interest Rate; Late Charge.

A. Interest Rate. The Loan shall bear interest at the LIBOR-Based Rate.

B. Termination of LIBOR-Based Rate; Increase in LIBOR-Based Rate.

(a) If at any time the Lender shall reasonably determine (which determination, if reasonable, shall be final, conclusive and binding upon all parties) that:

(i) by reason of any changes arising after the date of this Agreement affecting the London interbank market or affecting the position of the Lender in such market, adequate and fair means do not exist for ascertaining the LIBOR-Based Rate by reference to the LIBOR Rate or the LIBOR Rate no longer exists; or

(ii) the continuation by the Lender of Advances at the LIBOR-Based Rate or the funding thereof in the London interbank market would be unlawful by reason of any law, governmental rule, regulation, guidelines or order; or

(iii) the continuation by the Lender of Advances at the LIBOR-Based Rate or the funding thereof in the London interbank market would be impracticable as a result of a contingency occurring after the date of this Agreement that materially and adversely affects the London interbank market;

then, and in any such event, the Lender shall on such date give notice (by telephone and confirmed in writing) to the Borrower of such determination. The obligation of the Lender to permit interest to be computed thereon at the LIBOR-Based Rate shall be terminated, and interest shall thereafter be computed on the Loan at the then applicable Replacement Rate. Notwithstanding anything contained to the contrary in this Section 2.03(B), the then-outstanding Loan bearing interest at a LIBOR-Based Rate shall continue to bear interest at such rate until the end of the applicable Interest Period.

(b) It is the intention of the parties that the LIBOR-Based Rate shall accurately reflect the cost actually incurred by the Lender of maintaining the Advance during any Interest Period in which interest accrues thereon at a LIBOR-Based Rate. Accordingly, if by reason of any change after the date hereof in any applicable law or governmental rule, regulation or order (or any interpretation thereof and including the introduction of any new law or governmental rule, regulation or order), including but not limited to any change in the Assessment Rate or the LIBOR Reserve Requirement, the cost actually incurred by the Lender of maintaining the LIBOR-Based Rate or funding the same by means of a London interbank market time deposit, shall increase, the LIBOR-Based Rate shall be adjusted as necessary to reflect such actual change in cost incurred by the Lender, effective immediately, or at Lender's discretion, as of the first day of the next Interest



Period.

C. Compensation. The Borrower has elected for the Loan to bear interest at the LIBOR-Based Rate, and the Borrower shall compensate the Lender for any LIBOR Breakage Amount. As used herein, the term "LIBOR Breakage Amount" shall mean any reasonable loss, cost or expense (other than lost profits) actually incurred by the Lender as a result of any payment or prepayment of the Loan on a day other than a regularly scheduled interest payment date for the Loan or at scheduled maturity (whether voluntary, mandatory, automatic, by reason of acceleration or otherwise), and any reasonable loss, cost or expense arising from the liquidation or reemployment of funds obtained by the Lender or from fees payable to terminate the deposits from which such funds were obtained, provided that any such loss, cost or expense shall be limited to the time period from the date of such prepayment through the earlier of (i) the next payment date, or (ii) the Maturity Date.

D. Default Interest. Notwithstanding anything to the contrary contained herein, after the Maturity Date and during any period when an Event of Default exists, in the event Lender, in its sole and absolute discretion, elects to assess interest on the Loan at the Default Rate, Borrower shall pay to Lender interest at the applicable Default Rate on the outstanding principal amount of the Loan, any interest payments thereon not paid when due, and any other amount payable by Borrower hereunder, under the Note and/or any of the other Loan Documents.

E. Late Charges. In addition to any sums due under this Agreement, Borrower shall pay to Lender a late payment charge in the amount of five percent (5%) of any payment of principal, interest or other amounts owed in connection with the Loan (exclusive of any balloon payment due on the Maturity Date) that is made more than twelve (12) days after the due date thereof, which late payment shall be due upon demand by Lender. This late charge will never be less than \$10.00 on each payment. Such late payment charge represents the reasonable estimate of Borrower and Lender of a fair compensation for the loss that may be sustained by Lender due to the failure of Borrower to make timely payments. Such late charge shall be paid without prejudice to the right of Lender to collect any other amounts provided herein or in the other Loan Documents to be paid or to exercise any other rights or remedies under the Loan Documents.

#### SECTION 2.04. Payments.

(a) Real Estate Note. Principal and interest on the Real Estate Note shall be due and payable as follows:

(i) Commencing June 5, 2019, and continuing on the same day of each month thereafter through November 5, 2019, interest only shall be payable on the then outstanding principal balance of the Real Estate Note.

(ii) Commencing December 5, 2019, and continuing on the same day of each successive month to and including May 5, 2026, a payment of principal plus interest on the then outstanding principal balance of the Real Estate Note shall be payable in an amount equal to the amount required to amortize and pay in full the entire principal amount of the Real Estate Loan and interest thereon as though payable in 240 equal monthly payments.



(iii) On May 16, 2026, the outstanding principal balance of the Real Estate Loan together with all accrued and unpaid interest shall be due and payable in full, which payment shall be a balloon payment.

(b) Equipment Note. Principal and interest on the Equipment Note shall be due and payable as follows:

(i) Commencing June 5, 2019, and continuing on the same day of each month thereafter through November 5, 2019, interest only shall be payable on the then outstanding principal balance of the Equipment Note.

(ii) Commencing December 5, 2019, and continuing on the same day of each successive month to and including May 5, 2024, a payment of principal and interest on the then outstanding principal balance of the Equipment Note shall be payable equal to the amount required to amortize and pay in full the entire principal amount of the Equipment Loan and interest thereon as though payable in 54 equal monthly payments.

(iii) On May 16, 2024, the outstanding principal balance of the Equipment Loan together with all accrued and unpaid interest shall be due and payable in full.

SECTION 2.05. Security Documents. As security for the Liabilities, the Borrower or Premier Kings, as applicable, shall execute and deliver to the Lender at closing (a) a Leasehold Deed to Secure Debt, Security Agreement and Assignment of Rents and Leases (the "Mortgage") dated the date of this Agreement, granting to the Lender, among other things, a first priority lien on the Real Estate and the Improvements, a first priority security interest in the Personal Property and a first priority assignment of the Leases and the Rents, as more particularly described therein, (b) an Assignment of Contract Documents (the "Assignment") dated the date hereof and granting to the Lender a first priority security interest in the design and construction contracts related to the Project, as more particularly described therein, and (c) a Security Agreement (the "Security Agreement") dated the date hereof and granting to the Lender a first priority security interest in the furniture, fixtures and equipment located at the Project, as more particularly described therein.

SECTION 2.06. Guaranty Agreement. Concurrently with the execution of this Agreement, the Guarantors shall each execute and deliver to the Lender the Guaranty Agreement (the "Guaranty Agreement") wherein the Guarantors irrevocably, unconditionally and jointly and severally, guarantee the Loan, all interest accrued thereon, all costs and expenses incurred in connection therewith and all extensions and renewals thereof, as well as completion of the Project.

SECTION 2.07. Intentionally Deleted.

SECTION 2.08. Environmental Indemnity. Concurrently with the execution of this Agreement, the Borrower and the Guarantors shall execute and deliver to the Lender an Environmental Indemnity Agreement wherein the Borrower and Guarantors agree to indemnify the Lender for any liability associated with possible environmental contamination at the Real Estate, as more fully set forth therein (the "Environmental Indemnity").



SECTION 2.09. Prepayment.

(a) The Borrower may at any time prepay all or any part of the Loan so long as the Note bears interest at the variable rate provided therein. The Borrower shall pay all interest accrued to the date of prepayment on any amount prepaid. The Borrower shall not reborrow any amount that is prepaid.

(b) Any insurance proceeds or condemnation award received as a result of damage to or condemnation of the Collateral, to the extent that such proceeds or award are not used to repair or restore the Collateral as provided in the Mortgage, shall be applied promptly to the prepayment of the Loan, without prepayment penalty or premium.

SECTION 2.10. Loan Fee. The Borrower shall pay to the Lender on the date hereof a loan fee in the amount of (a) twenty-five (25) basis points with respect to the Real Estate Loan and (b) \$500 with respect to the Equipment Loan. The loan fees were fully earned by the Lender when the Lender's commitment was accepted and shall be non-refundable, whether or not any credit is extended hereunder.

SECTION 2.11. Time, Place and Application of Payments. All amounts payable under the Loan Documents, including principal, interest, other fees and charges, and reimbursement for expenses, shall be made to the Lender on or before 2:00 p.m. (Birmingham time) on the date on which such payment is due, at the main office of the Lender in Birmingham, Alabama, in immediately available funds. Payments received by the Lender shall be applied first to expenses, fees and charges, then to interest and finally, on a pari passu basis, to principal under the Loan and any obligations under any Hedge Agreement.

SECTION 2.12. Change in Law.

(a) Increased Costs. If any Change in Law shall (i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, the Lender (except any reserve requirement reflected in the LIBOR-Based Rate) and, (ii) subject the Lender to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or (iii) impose on the Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or the Loan; and the result of any of the foregoing shall be to increase the cost to the Lender of making, converting to, continuing or maintaining the Loan or of maintaining its obligation to make the Loan, or to reduce the amount of any sum received or receivable by the Lender (whether of principal, interest or any other amount) then, upon request of the Lender, the Borrower will pay to the Lender, as the case may be, such additional amount or amounts as will compensate the Lender, as the case may be, for such additional costs incurred or reduction suffered.

(b) Increased Costs Due to Capital and Liquidity Requirements. If the Lender determines, as a consequence of the Note, this Agreement, the commitment of the Lender



hereunder, or the Loan or the advances made by the Lender, that any Change in Law regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on the Lender's capital or on the capital of the Lender's holding company to a level below that which the Lender or the Lender's holding company could have achieved but for such Change in Law (taking into consideration the Lender's policies and the policies of the Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to the Lender such additional amount or amounts as will compensate the Lender or the Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of the Lender setting forth the amount or amounts necessary to compensate the Lender or its holding company as specified in subsection (a) or (b) of this Section and delivered to the Borrower, shall be conclusive absent manifest error. The Borrower shall pay the Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of the Lender to demand compensation pursuant to this Section shall not constitute a waiver of the Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that the Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of the Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine (9) month period referred to above shall be extended to include the period of retroactive effect thereof).

### ARTICLE III.

#### REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to Lender as follows:

SECTION 3.01. Organization, Powers, Existence, etc. (a) The Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Georgia. (b) The Borrower has the limited liability company power and authority to own its properties and assets (including, without limitation, the Collateral) and to carry on its business as now being conducted and is duly qualified to do business in every jurisdiction wherein such qualification is necessary, specifically including but not limited to the State of Georgia (c) The Borrower has the limited liability company power to execute and perform this Agreement, to borrow hereunder and to execute and deliver the Note and the Security Documents.

SECTION 3.02. Authorization of Borrowing, etc. The execution, delivery and performance of this Agreement, the borrowings hereunder and the execution and delivery of the Note and the Security Documents by the Borrower (a) have been duly authorized by all requisite limited liability company action (including any necessary member or manager action), and (b) will not violate any provision of law, any order of any court or other agency of government, the governing documents of the Borrower or any indenture, agreement or other instrument to which Borrower is a party, or by which the Borrower or any of its properties or assets (including, without limitation, the Collateral) are bound, or be in conflict with, result in a breach of or constitute (with



due notice or lapse of time or both) a default under, any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets (including, without limitation, the Collateral) of the Borrower, except as contemplated by this Agreement and the Security Documents.

SECTION 3.03. Liabilities. The most recent balance sheet for the Borrower furnished to the Lender accurately reflects the Borrower's obligations for borrowed money or other debts, obligations and liabilities, direct or contingent.

SECTION 3.04. Taxes. Each Obligor has filed or caused to be filed all federal, state and local tax returns which are required to be filed, and has paid or has caused to be paid all taxes as shown on said returns or on any assessment received by it to the extent that such taxes have become due.

SECTION 3.05. Title to Collateral. The Borrower and Premier Kings each have good and marketable title to all its properties and assets (including, without limitation, the Collateral) reflected on the balance sheet referred to in Section 3.03 hereof except as encumbered by any liens reflected on said balance sheet and except for such properties and assets (other than the Collateral) as have been disposed of since the date of said balance sheet as no longer used or useful in the conduct of its business or as have been disposed of in the ordinary course of the business thereof. The Collateral is free and clear of mortgages, pledges, liens, charges and other encumbrances, except as otherwise permitted or required by the provisions of this Agreement or the Security Documents. Premier Kings has a leasehold interest in all that certain real property described in the Mortgage.

SECTION 3.06. Litigation. There are no actions, suits or proceedings (whether or not purportedly on behalf of the Borrower) pending or, to the best knowledge of the Borrower, threatened against or affecting the Borrower, at law or in equity or by or before any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which involve any of the transactions contemplated in this Agreement or the Security Documents or the possibility of any judgment or liability that may result in any material adverse change in the business, operations, properties or assets (including, without limitation, the Collateral), or in the condition, financial or otherwise, of the Borrower, and the Borrower is not, to the best knowledge of the Borrower, in default with respect to any judgment, writ, injunction, decree, rule or regulation of any court or federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.

SECTION 3.07. Agreements. To the best of its knowledge, the Borrower is not a party to any agreement or instrument, or subject to any charter or other corporate/partnership restriction, materially and adversely affecting its business, properties or assets (including, without limitation, the Collateral), operations or condition, financial or otherwise, and the Borrower, to the best of its knowledge, is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party, which default would have a material adverse effect upon its business, properties or assets (including, without limitation, the Collateral), operations or condition, financial or otherwise.



SECTION 3.08. Federal Reserve Board Regulations. The Borrower does not intend to use any part of the proceeds of the Loan for the purpose of purchasing or carrying any Margin Stock or retiring any debt incurred to purchase or carry any Margin Stock.

SECTION 3.09. The Project.

(a) The construction and use of the Project as a fast food restaurant with drive thru will not violate any restrictive covenant or any applicable zoning, planning or building restriction or other Governmental Requirements.

(b) The Real Estate has convenient and adequate access to all electric, gas, water, sewer, telephone and other utility services necessary for the construction and intended use of the Project.

(c) The Real Estate has access to existing public roads and highways (including all necessary rights and governmental approvals for related ingress and egress) that is adequate for the intended use of the Project.

(d) The Project, when completed, will comply with all applicable building codes and standards and other applicable Governmental Requirements and any applicable franchising, development, operational or other requirements of the corporate parent of Burger King.

SECTION 3.10. Construction. The Project will be constructed by the Contractor in accordance with the Plans. The Contractor must be acceptable to the Lender. Evidence of each of the following shall be provided to the Lender prior to the commencement of construction: (i) fully executed counterparts of all contracts with architects, engineers and contractors in regard to the Project (which contracts shall include any and all amendments and modifications thereto), (ii) final site plan approval by all applicable Governmental Authorities, (iii) the revision of the Plans to incorporate all changes required by any such Governmental Authority in its plan approval processes, (iv) the issuance of all appropriate permits or approvals by the Georgia Department of Environmental Management and the Army Corps of Engineers, or satisfactory written evidence that no such permit or approval is required, and (v) satisfactory evidence that all other governmental permits or approvals necessary for the construction of the Project have been obtained and are in full force and effect or will be obtained prior to the applicable stage of construction of the Project. Any change from the Plans must be approved by the Lender in writing.

ARTICLE IV.

CONDITIONS OF LENDING

SECTION 4.01. Representations and Warranties. On the date of each Advance hereunder, the representations and warranties set forth in Article III hereof shall be true and correct on and as of such date with the same effect as though such representations and warranties had been made on and as of such date, except to the extent that such representations and warranties expressly relate to an earlier date.



SECTION 4.02. No Default. On and as of the date hereof and on and as of the date of each Advance hereunder, Borrower shall be in compliance with all the terms and provisions set forth in this Agreement on its part to be observed or performed, and no Event of Default, nor any event which upon notice or lapse of time or both would constitute such an Event of Default, shall have occurred and be continuing.

SECTION 4.03. Supporting Documents. Subject to the terms of Section 5.30, the Lender shall have received no less than one (1) Business Day before the date of the first Advance of the Real Estate Loan (or such other date or dates as shall be satisfactory to the Lender in its sole discretion) the following documents, which must be satisfactory in form and content to the Lender in its sole discretion:

(a) Plans and Specifications. A copy of the final Plans, approved by the Lender. The Plans shall not be changed or added to without the prior written consent of the Lender.

(b) Survey. A current ALTA survey of the Real Estate prepared and certified by a registered land surveyor or engineer.

(c) Governmental Approvals. Copies of all permits, licenses, certificates, authorizations and other governmental approvals issued as of such date and required for the commencement of construction of the Project and written evidence that the intended use of the Project is in accordance with all applicable zoning, planning and building restrictions.

(d) Development Budget; Sources and Uses of Funds Statement. The Development Budget for the Project and a sources and uses of funds statement for the Project.

(e) Insurance Policies. Certificate of insurance with respect to all insurance policies as described in Schedule 4.03(e) attached hereto.

(f) Title Insurance. A loan or mortgagee title insurance policy issued by a company acceptable to the Lender in standard ALTA form insuring the mortgage lien created by the Mortgage in an amount not less than the maximum principal amount of the Loan.

(g) Hazardous Waste Investigation. Such studies, investigations and reports as the Lender shall deem necessary or desirable to determine that no hazardous substances or pollutants, including asbestos, are now, or have ever been, located on the Real Estate or real estate adjacent thereto, including the Improvements, or if they have, what requirements must be met to bring the Real Estate, the adjacent real estate and any Improvements into compliance with all environmental Governmental Requirements.

(h) Geological Evaluation. Such studies, investigations and reports as the Lender shall deem necessary or desirable to determine the adequacy of soil compaction and the existence of any subsurface geological deficiencies or problems.



(i) Appraisal. An appraisal prepared by a state licensed or certified appraiser selected and retained by the Lender, which appraisal must show that amount of the Real Estate Loan is no more than eighty percent (80%) of the as is completed appraised value of the Real Estate and the Project, which appraisal must be in all respects satisfactory to the Lender.

(j) Construction Schedule. A construction schedule verifying that completion of the Project as required herein can be achieved by the Completion Date.

(k) Development Agreement. A fully executed copy of the Development Agreement, in form and substance satisfactory to the Lender.

(l) Ground Lease. A fully executed copy of the Ground Lease, in form and substance satisfactory to the Lender, together with a Landlord's Waiver and Consent and Subordination, Nondisturbance and Attornment Agreement executed by Premier Kings in the form required by the Lender.

(m) Additional Documents. Such other documents regarding the Borrower, the Real Estate or the Project that the Lender may reasonably require.

SECTION 4.04. Initial Advance of Real Estate Loan. Subject to the satisfaction of the terms and conditions of this Agreement, the Lender shall make an Advance of the Real Estate Loan to the Borrower on or around the date hereof in an amount equal to sixty-five percent (65%) of the gross purchase price from the Borrower to acquire the Real Estate.

SECTION 4.05. Required Equity. Following the initial Advance of the Real Estate Loan at closing, the Borrower shall furnish the Lender with evidence satisfactory to the Lender, prior to making any further Advances of the Real Estate Loan hereunder, that the Borrower has injected its own funds into the Project in an amount equal to twenty percent (20%) of the costs of the Project, as such amount may change based on changes in the Development Budget approved by the Lender as set forth herein.

SECTION 4.06. Payments for Construction Costs. The Lender shall have received no less than five (5) Business Days before the date of each Advance of the Real Estate Loan, the proceeds of which will be used in whole or in part to pay costs incurred in the construction of the Project (or to reimburse the Borrower for such a payment), (i) an AIA Document G702 and G703 standard draw request form and certificate for payment, certified by both the Borrower and the Architect, (ii) a date-down endorsement to the Lender's title insurance policy, showing that there are no new exceptions to said policy and that the amount of title insurance coverage has increased to the full amount advanced by the Lender hereunder, which amount shall include the amount of the proposed Advance, and (iii) a partial (or full, if applicable) lien waiver affidavit from the Contractor and each subcontractor that has performed work at the Project and each supplier that has supplied materials to the Project. If the Advance is the final hard cost Advance of the Real Estate Loan, the Borrower shall provide to the Lender with the request for the Advance: (i) a certificate from the Architect certifying that the construction of the Project has been substantially completed in accordance with the Plans; (ii) a certificate from the Contractor and each subcontractor and supplier with respect to the Project satisfactory to the



Lender certifying that such Contractor, subcontractor and/or supplier has been paid in full for all work performed or to be performed and for all materials furnished or to be furnished with respect to the Project, or if not, the amounts payable for such work and/or materials, and releasing all lien rights with respect to the Project; (iii) a certificate of occupancy for the Project from the relevant Governmental Authority; and (iv) if required, an "as built" survey of the Real Estate, certified by a licensed surveyor satisfactory to the Lender, showing that the Project has been completed substantially in accordance with the Plans.

SECTION 4.07. Other Payments. The Lender shall have received, no less than five (5) Business Days before the date of each Advance of the Real Estate Loan, the proceeds of which will be used in whole or in part to pay a cost or expense other than construction costs (or to reimburse the Borrower for such a payment), an invoice, bill or statement describing in reasonable detail the purpose for which such payment is made and a statement relating to the payment of an item or category in the Development Budget.

SECTION 4.08. Updated Sources and Uses of Funds Statement. The Lender shall have received, no less than five (5) Business Days before the date of each Advance of the Real Estate Loan subsequent to the first Advance, an updated sources and uses of funds statement. Such statement must demonstrate that the amount of the Real Estate Loan remaining to be disbursed after such Advance is made will be sufficient to pay all remaining costs to be incurred with respect to the Project.

SECTION 4.09. Certification of Borrower. The Lender shall have received, no less than five (5) Business Days before the date of each Advance of the Real Estate Loan subsequent to the first Advance, a written statement from the Borrower that there have been no changes in the Development Budget for the Project or a written certification specifying the changes which have been made in such budget.

SECTION 4.010. Retention of Counsel or Consultants. The Lender, in its sole discretion, and at the expense of the Borrower, may retain legal counsel or other consultants to review any documents and information delivered to the Lender pursuant to an Advance, and the Lender shall have no obligation to make an Advance until the Lender is satisfied that such documents and information are in good order and comply with this Agreement. The Lender will make each Advance within five (5) Business Days of the date on which the Borrower requests the Advance unless the Lender shall reasonably determine and notify the Borrower that Borrower has not satisfied the conditions precedent applicable to the Advance specified in this Agreement.

SECTION 4.011. Status of Project. On the date of each Advance hereunder, (a) the Project shall not have been materially damaged by fire, wind, flood, vandalism or other casualty, (b) neither the Project nor the Real Estate shall be subject to condemnation proceedings or negotiations for sale in lieu thereof and (c) the Lender must be reasonably satisfied that the Project is completed to an extent appropriate for the amount of the Loan advanced to the Borrower through such date, that construction is progressing in such a manner that the Project will be completed in accordance with the Plans on or before the Completion Date, and that all documents submitted to the Lender are in good order and comply with the terms and conditions of this Agreement.



SECTION 4.012. Equipment Advances. The Lender agrees to make Advances of the Equipment Loan to the Borrower for the purpose of purchasing furniture, fixtures and equipment for the operation of the Project within five (5) Business Days following receipt of a request for an Advance from Borrower, together with the invoices for the furniture, fixtures or equipment being purchased and any additional supporting information required by the Lender. The Borrower may request up to one hundred percent (100%) of the cost of purchasing such furniture, fixtures and equipment.

## ARTICLE V

### COVENANTS OF BORROWER

From the date on which this Agreement is delivered until payment in full of the principal of and interest on the Loan and all other amounts payable by the Borrower under the Loan Documents and the termination of the Lender's obligation to make any further Advances hereunder, the Borrower covenants and agrees that, unless the Lender shall otherwise consent in writing:

SECTION 5.01. Construction of Project, Survey, etc. The Borrower shall proceed promptly to construct the Project commencing no later than thirty (30) days from the date hereof and shall locate and construct the Project strictly in accordance with the Plans and with all applicable ordinances, statutes, regulations and restrictions (including any building restrictions or use restrictions), and the requirements of all regulatory authorities. The Borrower shall cause the Project to be completed in accordance with the Plans on or before the Completion Date.

SECTION 5.02. Use of Loan Proceeds. The Borrower (a) shall use the Real Estate Loan proceeds only for the purpose of constructing the Project and (b) shall use the Equipment Loan proceeds only for the purpose of acquiring furniture, fixtures and equipment for the operation of the Project, and in each case, for the payment of transaction fees, costs and expenses related to this Loan, not in contravention of Governmental Requirements or any Loan Document, and shall not commingle any of the Loan proceeds or any of the funds of the Borrower which are to be invested in the Project with the funds of any other entity or person or use any of the Loan proceeds for the construction of other improvements or another project. The Lender reserves the right, at any time, to require satisfactory proof as to the disposition made of any of the Loan proceeds. Nothing contained herein shall be construed to require the Lender to follow the disposition, or to monitor the proper application, of any funds advanced by the Lender. No portion of the Loan proceeds of this Loan or any advance shall be used to (i) finance or refinance any commercial paper issued by Borrower or (ii) in any manner that causes or might cause this Loan or such advance or the application of such advance to violate Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System as in effect from time to time or any other regulation thereof or to violate the federal Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

SECTION 5.03. Payment of Bills, etc. The Borrower shall pay promptly all bills for labor and materials going into the construction of the Project and all other charges related to the Project, and shall submit to the Lender all invoices relating to those costs. The Borrower shall,



on each check used to pay costs related to the Project, identify the bill, invoice or statement being paid.

SECTION 5.04. Non-Sale or Encumbrance; Transfer. The Borrower will not and will not suffer to permit Premier Kings, without the prior written consent of the Lender, to sell, assign, transfer, convey or otherwise dispose of, or grant any mortgage, lien or other encumbrance on, or security interest in, any of the Collateral and will not permit or suffer any liens, statements of lien or suits seeking to establish or enforce a lien to be filed against any of the Collateral. The Borrower shall not be dissolved, liquidated or terminated, whether by operation of law or otherwise. Any sale, pledge, encumbrance, contract to sell, assignment or other transfer of any equity interest in the Borrower, or any other transaction whereby the legal or beneficial ownership of the Borrower is changed, including the sale of additional stock or other equity interests, the liquidation or dissolution of the Borrower, the merger or consolidation of the Borrower with any other Person, or the participation by the Borrower in a statutory share exchange with any other Person, shall be treated as a transfer of the Real Estate for purposes of this Section 5.04.

SECTION 5.05. Payment of Taxes, Insurance, etc. The Borrower shall pay all taxes, insurance premiums, recording fees, cost of title insurance, surveys, appraisals, attorneys' fees (including the reasonable fees and disbursements of counsel to the Lender) and all other expenses and costs of every kind reasonably incurred by the Lender in connection with (a) the making or collecting of the Loan, (b) the preparation and review of the Loan Documents (whether or not the transactions contemplated by this Agreement shall be consummated), (c) the enforcement of any of the Loan Documents, (d) maintaining unimpaired the Lender's security and lien under the Security Documents, and (e) otherwise connected with, or growing out of, this transaction, including any such expenses and costs incurred in connection with the successful defense of any action, counterclaim, cross-claim or other claim asserted by any other party against the Lender in connection with any of the foregoing. The provisions of this Section 5.05 shall survive (i) the payment in full of the principal and interest on the Loan and all fees and charges with respect thereto and (ii) the termination of this Agreement.

SECTION 5.06. Insurance. The Borrower shall keep and maintain all insurance required pursuant to and in accordance with Schedule 4.03(e) at times during the term of the loan.

SECTION 5.07. Existence. The Borrower shall do or cause to be done all things necessary to preserve and keep in full force and effect its limited liability company existence, rights and franchises and comply with all laws applicable to it; at all times maintain, preserve and protect all franchises and trade names and preserve all the remainder of its property (including, without limitation, the Collateral) used or useful in the conduct of its business and keep the same in good repair, working order and condition, and from time to time make, or cause to be made, all needful and proper repairs, renewals and replacements, betterments and improvements thereto, so that the business carried on in connection therewith may be properly and advantageously conducted at all times. No change in the management of the Borrower shall be permitted without the prior written consent of the Lender.

SECTION 5.08. Payment of Indebtedness, Taxes. The Borrower shall (i) pay all of its indebtedness and obligations in accordance with normal terms and (ii) pay and discharge or cause to be paid and discharged promptly all taxes, assessments and governmental charges or



levies imposed upon it or upon its income and profits or upon any of its properties, including without limitation the Collateral, before the same shall become in default; provided, however, that the Borrower shall not be required to pay and discharge or cause to be paid and discharged any such tax, assessment, charge, levy or claim so long as the validity thereof shall be contested in good faith by appropriate proceedings and Borrower shall have set aside on its books adequate reserves with respect to any such tax, assessment, charge, levy or claim so contested.

SECTION 5.09. Financial Statements. The Borrower shall furnish or cause to be furnished to Lender:

(a) within one hundred twenty (120) days after the end of its fiscal year, the annual compiled financial statements of the Borrower, together with supporting schedules, all on a comparative basis with the prior fiscal year, in reasonable detail, prepared in accordance with generally accepted accounting principles consistently applied throughout the periods involved, and certified by independent certified public accountants of recognized standing selected by the Borrower and satisfactory to the Lender (the form of such certification also to be satisfactory to Lender), showing the financial condition, assets, liabilities and members'/partners' equity of the Borrower at the close of such year and the results of the operations of the Borrower during such year;

(b) within forty-five (45) days after the end of the first three fiscal quarters in each fiscal year, financial statements similar to those referred to in Section 5.09(a), certified by an officer of the Borrower, such balance sheet to be as of the end of each such quarter and such statement of income and changes in financial position to be for the period from the beginning of the fiscal year to the end of such quarter, in each case subject to audit and to year-end adjustments;

(c) with the statements submitted under Sections 5.09(a) and (b), a certificate signed by the party certifying said statement to the effect that no Event of Default, nor any event which, upon notice or lapse of time or both, would constitute an Event of Default, has occurred or, if any such Event of Default or event has occurred, specifying the nature and extent thereof;

(d) annually, within thirty (30) days of filing, a copy of the federal income tax return of the Borrower for the prior fiscal year;

(e) promptly upon receipt thereof, copies of all other reports, management letters and other documents submitted to the Borrower by independent accountants in connection with any annual or interim audit of the books of Borrower made by such accountants; and

(f) as soon as practical, from time to time, such other information regarding the operations, business affairs and financial condition of the Borrower, Premier Kings and the Project as the Lender may reasonably request.

SECTION 5.10. Litigation Notice. The Borrower shall promptly after the same shall have become known to any member, manager or officer of the Borrower, notify the Lender



in writing of any action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency which, if adversely determined, might impair the ability of the Borrower to perform its obligations under this Agreement, might impair the right of the Borrower to carry on its business substantially as now conducted, or might materially and adversely affect the business, operations, properties (including, without limitation, the Collateral), assets or condition, financial or otherwise, of the Borrower.

SECTION 5.11. Default Notice. The Borrower shall promptly give notice in writing to the Lender of the occurrence of any Event of Default, or any event which upon notice or lapse of time or both would constitute such an Event of Default.

SECTION 5.12. Payment of Debt. The Borrower shall (i) make full and timely payment of the principal of, and interest on, the Loan and all other indebtedness, obligations and liabilities of the Borrower to the Lender, whether now existing or hereafter arising, and (ii) duly comply with all the terms and covenants contained in the Note, the Security Documents and all other instruments and documents given to the Lender in connection with or pursuant to this Agreement, all at the times and places and in the manner set forth therein.

SECTION 5.13. Further Assurances. The Borrower shall, at its cost and expense, upon request of the Lender, duly execute and deliver, or cause to be duly executed and delivered, to the Lender such further instruments and do and cause to be done such further acts as may be reasonably necessary or proper to carry out more effectively the provisions and purposes of this Agreement and the Security Documents.

SECTION 5.14. Lender's Right of Access, etc. The Lender and its agents, at all reasonable times during the construction of the Project, shall have the right of entry and free access to the Project and the right to inspect all work done, labor performed and materials furnished in, on or connected with the Project, to inspect all books, subcontracts and records of the Borrower relating to the Project, and to demand and receive from the Borrower and the Borrower's Contractor, agents and employees any information regarding the Project and the finances connected therewith.

SECTION 5.15. Undisbursed Proceeds. At all times the Borrower will leave as the undisbursed portion of the Real Estate Loan an amount sufficient to complete the Project in accordance with the Plans and to pay all bills and charges in connection therewith. If the Lender at any time is of the opinion that the undisbursed portion of the Real Estate Loan is inadequate to complete the Project, the Borrower will, upon the Lender's request, pay out of the Borrower's own funds all costs of the Project until such time as the undisbursed portion of the Real Estate Loan is, in the Lender's opinion, sufficient to complete the Project and pay all bills and charges in connection therewith.

SECTION 5.16. Re-Appraisals. The Borrower shall pay all expenses associated with any re-appraisals which may be requested by the Lender from time to time, if such appraisals are required by regulation or law.



SECTION 5.17. Further Documents. The Borrower shall execute all other agreements, affidavits, powers of attorney, pledges, assignments, conveyances, notes and other instruments which may reasonably be requested by the Lender in connection with the Loan.

SECTION 5.18. Construction Sign. The Borrower agrees to have, at the request of the Lender, a sign constructed and placed on the Real Estate in a location satisfactory to the Lender stating that the Project is being built with the proceeds of a Real Estate Loan by the Lender, in a form acceptable to the Lender.

SECTION 5.19. Construction Consultant. The Lender shall have the right, in its sole discretion, to commission, at the expense of the Borrower, a preliminary review of the Project and all related contracts, plans and specifications, geotechnical reports, environmental assessments and any other information relevant to the preparation of the site and completion of the Improvements. The purpose of the review is to confirm the feasibility of Project construction and the adequacy of the Borrower's projected Development Budget. The Lender shall have the right to employ the services of an inspecting architect or engineer to serve as the Lender's Construction Consultant to review the Borrower's request for Advances. The Borrower shall pay all reasonable fees and expenses of such inspecting architect or engineer. The Construction Consultant may from time to time, at such intervals as may be acceptable to the Lender, review the Plans and inspect the Project on the Lender's behalf and review the continued adequacy of the Development Budget, and the Lender shall have no obligation to make an Advance under the Real Estate Loan if the Construction Consultant has not approved the Borrower's draw request and the supporting documentation associated therewith. The Borrower shall cooperate fully with the Construction Consultant and give the Construction Consultant convenient access to the Project.

SECTION 5.20. Construction Contract. The Borrower's construction contract with the Contractor must provide for all work required to complete the Project and must contain the following items:

- (a) a completion date (specified by day, month and year) satisfactory to the Lender, which is not later than the Completion Date;
- (b) a sum certain amount for the construction of the Project;
- (c) a provision for retainage from progress payments to the Contractor of at least 10% of each payment until the work is substantially complete or such other amount as may be agreed upon by Lender.

SECTION 5.21. Development Budget; Contingency. The Borrower shall not modify the Development Budget without the prior written consent of the Lender, nor shall the Borrower use any portion of the contingency reserve included in the Development Budget without the prior written consent of the Lender.

SECTION 5.22. Bank Accounts. All depository accounts relating to the construction and operation of the Project must be maintained with the Lender throughout the term of the Loan.



SECTION 5.23. Breach of any Contract. The Borrower shall not commit any act, or suffer or permit any act to occur, that would, in any manner, constitute or give rise to a material breach of any term, covenant or condition on Borrower's part to be performed under any other contract or agreement to which the Borrower is a party or by which it is bound, if such breach would have a material adverse effect on the Project, any other security for the Loan, or the financial condition of the Borrower.

SECTION 5.24. Maintenance of Separateness. Until the Liabilities are paid in full, the Borrower (a) shall not operate any business other than the management and operation of fast food restaurant franchise locations of Burger King; (b) shall not maintain its assets in a way difficult to segregate and identify; and (c) shall not make any loans or advances to any Person.

SECTION 5.25. Management/Leasing Agreement. The Borrower shall not, and shall not suffer to permit Premier Kings to, enter into a management and/or leasing agreement for the Project without first obtaining the written consent of the Lender, which consent shall be conditioned on the Lender's approval of the proposed management company and the form and substance of said management and/or leasing agreement and receipt by the Lender of an Assignment of Management Agreement and a Subordination Agreement executed by the Borrower and the management/leasing company in form and substance approved by the Lender.

SECTION 5.26. Office of Foreign Assets Control. The Borrower shall (a) ensure that no Person which owns a controlling interest in or controls the Borrower is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, (b) not use or permit the use of any Loan proceeds to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, (c) comply with all applicable Bank Secrecy Act laws and regulations, as amended, and (d) provide all information necessary for the Lender to comply with the USA Patriot Act, as amended from time to time.

SECTION 5.27. Advances for Off-Site or Stored Materials. The Lender shall be required to disburse funds for any materials, furnishings, fixtures, machinery or equipment not yet incorporated into the Real Estate or Improvements ("Stored Materials") only as hereinafter provided. Any disbursement for the cost of Stored Materials shall be subject to retainage and shall be contingent upon the Lender receiving satisfactory evidence that:

(a) the Stored Materials are components in a form ready for incorporation into the Real Estate or the Improvements and shall be so incorporated within a period of thirty (30) days;

(b) the Stored Materials are stored on the Real Estate or at such other site as the Lender shall reasonably approve, and are protected against theft and damage;

(c) the Stored Materials have been paid for in full or will be paid for with the funds to be disbursed and all lien rights or claims of the supplier have been released or will be released upon payment with disbursed funds;



(d) the Lender has or will have upon payment with disbursed funds a perfected, first priority security interest in the Stored Materials; and

(e) the Stored Materials are insured for an amount equal to their replacement cost.

SECTION 5.28. Contributed Capital/Equity Capital. Borrower acknowledges and agrees that, absent the express written consent of Lender, all capital contributed by Borrower to the Project and any equity capital generated by the Project itself shall remain in the Project until the Loan is paid in full or until such time as any such distribution would not cause the Loan to constitute a high volatility commercial real estate (HVCRE) exposure pursuant to Part 217 of Chapter II of title 12 of the Code of Federal Regulations.

SECTION 5.29. Debt Service Coverage Ratio. As of December 31, 2019, and each December 31 during the term of the Loan, the Premier Related Entities shall have achieved a Debt Service Coverage Ratio of not less than 1.25 to 1.0, based on the trailing 12-month period. If the Premier Related Entities fail to achieve the Debt Service Coverage Ratio required herein as of such date, the Borrower shall pay down the outstanding principal balance of the Loan in an amount which, if subtracted from the outstanding principal balance of the Loan when calculating the Debt Service Coverage Ratio hereunder, would have resulted in a Debt Service Coverage Ratio that complies with the requirement of this Section 5.29. The Borrower shall deliver to the Lender a compliance certificate in a form required by the Lender and all other information necessary to test the Debt Service Coverage Ratio within one hundred twenty (120) days after each test date with the annual financial statements delivered to the Lender pursuant to Section 5.09(a).

SECTION 5.30. Post-Closing Items. The Borrower shall provide to the Lender all of the Post-Closing Items, which Post-Closing Items must be acceptable to the Lender and the Construction Consultant in all respects, within thirty (30) days after the date hereof. After the initial Advance of the Real Estate Loan made by the Lender at closing, no further Advances will be made by the Lender under the Note until the Post-Closing Items have been delivered to and approved by the Lender.

SECTION 5.31. Franchise Agreement. Within forty-five (45) days after receipt of a certificate of occupancy for the Project from the relevant Governmental Authority, the Borrower shall deliver to the Lender a fully executed copy of the franchise agreement for this Project from the Burger King parent company. The Project shall be operated in compliance with said franchise agreement at all times thereafter during the term of the Loan.

## ARTICLE VI.

### EVENTS OF DEFAULT AND REMEDIES

SECTION 6.01. Events of Default. The following shall constitute Events of Default under this Agreement:

(a) if the Borrower shall fail to pay to the Lender when due the principal or interest on the Loan or any other sum due under this Agreement, the Mortgage or any of the other Loan Documents; or



(b) if in the judgment of the Lender the proceeds of the Loan or any part thereof are being, or shall at any time have been, diverted to a purpose other than those permitted hereunder; or

(c) if the Borrower fails to comply with any of the other provisions of this Agreement or of the Note, the Mortgage or the other Loan Documents and such default shall continue unremedied for a period of thirty (30) days after the earlier of the date the Lender gives the Borrower written notice of such default or the date the Borrower becomes aware of such default; or

(d) if any statement, representation or warranty contained herein or in the Mortgage or any of the other Loan Documents or in any report, certificate or other instrument delivered to the Lender under this Agreement shall be untrue in any material respect at the time it was made; or

(e) if the Borrower or Premier Kings conveys or further encumbers all or any part of the Collateral, without the prior written consent of the Lender; or

(f) if any lien, statement of lien or suit to enforce a lien is filed against any of the Collateral and the Borrower or Premier Kings fails to have such lien satisfied or suit dismissed or to secure the payment of the amount claimed by such lien, statement of lien or suit by a bond, letter of credit or other security satisfactory to the Lender, within ten (10) days of the day: (1) such lien or statement of lien is filed in the public records of the county in which the Real Estate is located; or (2) such suit is filed in court; or

(g) if the Borrower or Premier Kings at any time prior to the completion of the Project abandons the Project, or ceases work thereon for a period of more than ten (10) consecutive calendar days, or fails diligently to prosecute the work on the Project; or

(h) if any Obligor fails to pay such Obligor's debts generally as they come due, or if a receiver, trustee, liquidator or other custodian is appointed for any Obligor or for any of the property of any Obligor, or if a petition in bankruptcy (whether for liquidation, reorganization, arrangement, wage earner's plan or otherwise) is filed by or against any Obligor, or if any Obligor applies for the benefits of, or takes advantage of, any law for relief of debtors, or enters into an arrangement or composition with, or makes an assignment for the benefit of, creditors; provided, however, that in the case of an involuntary bankruptcy filing or other proceeding, said filing or other proceeding involving an Obligor shall not be deemed an Event of Default hereunder unless such filing or other proceeding shall continue undismissed or unstayed for a period of thirty (30) consecutive calendar days; or

(i) if the Borrower becomes insolvent or dissolves, or if either of the Guarantors becomes insolvent, dies, dissolves, or is replaced or withdraws as a direct or indirect member of the Borrower, as applicable; or

(j) if any other event of default occurs under the Note, the Mortgage or any other Loan Document; or



(k) if either Guarantor attempts to terminate such Guarantor's obligations under the Guaranty Agreement; or

(l) if either Guarantor fails to provide the financial information required under the Guaranty Agreement; or

(m) if the Borrower fails to complete the Project in accordance with the Plans (except pursuant to change orders approved by the Lender) on or before the Completion Date; or

(n) if a default occurs under the Development Agreement that remains uncured after any applicable notice and/or cure period; or

(o) if a default occurs under the Ground Lease that remains uncured after any applicable notice and/or cure period; or

(p) if any time after the Completion Date, the Project shall cease to be operated as a Burger King restaurant in full compliance with all requirements of the Burger King parent company.

**SECTION 6.02. Remedies.** Upon the occurrence of any Event of Default hereunder, and after any applicable notice and right to cure as provided in Section 6.01 hereof, the Lender may at its option take any or all of the following actions: (a) refuse to make any further Advances; (b) declare the total outstanding Advances and all other indebtedness, obligations and liabilities of the Borrower to the Lender, whether now existing or hereafter incurred, contracted or arising, immediately due and payable; (c) declare the Note in default and subject to foreclosure and foreclose the Mortgage by suit in equity or under power of sale and foreclose any other of the Security Documents in such manner as provided for therein and by applicable law; (d) enter into possession of the Real Estate and the Project, perform any work and labor and purchase any materials and fixtures which the Lender deems necessary or desirable to complete the Project substantially in accordance with the Plans or to protect the Project from damage or destruction, and employ watchmen to protect the Project from injury; all sums so advanced or paid by the Lender shall be deemed paid to the Borrower and shall be secured by the Mortgage and other Security Documents; and (e) exercise any other remedies or rights which the Lender may have hereunder, under any other instruments executed in connection with this Loan or under applicable law. For the purposes set forth in this Section 6.02, the Borrower hereby constitutes and appoints the Lender its true and lawful attorney-in-fact, with full power of substitution in the premises, to complete the Project in the name of the Borrower, and hereby empowers the Lender to use any funds of the Borrower, including any funds which remain unadvanced under the Loan, for the purpose of completing the Project, and to perform all acts which in the judgment of the Lender are desirable or advisable to complete the Project, including, without limitation, the right to make additions, changes or corrections in the Plans; to employ contractors, subcontractors, agents, architects and inspectors; to pay, settle and compromise all bills and claims incurred in completing the Project and all existing bills and claims which may be liens against any of the Collateral; to execute all applications and certificates in the name of the Borrower which may be required by any of the contract documents entered into by the Borrower in connection with the construction of the Project; and to do any other act which the Borrower could do in its own behalf in order to



enable the Lender to complete the Project. This power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. In addition to the other remedies set forth above, during the continuation of any event which upon notice or lapse of time or both would become an Event of Default, the Lender shall have no obligation to make any further Advances hereunder.

SECTION 6.03. Hedge Agreement Cross-Default. The Borrower acknowledges and agrees that an Event of Default under the Loan Agreement shall also constitute an event of default under the Hedge Agreement. In addition to the Lender's rights set forth under the Hedge Agreement, upon the occurrence of an Event of Default under the Loan Agreement, the Lender has the right to demand payment of any indebtedness, liabilities, fees, costs, assessments, penalties, losses or obligations, now existing or hereafter arising, due or to become due, absolute or contingent, of the Borrower to the Lender under the Hedge Agreement (hereinafter "Swap Indebtedness"). Conversely, the Borrower acknowledges and agrees that an Event of Default under the Swap Indebtedness shall also constitute an Event of Default under the Loan Agreement. Upon the occurrence of an Event of Default under the Swap Indebtedness, the Lender has the right to exercise all of its rights and remedies under the Loan Agreement, including acceleration of the Note.

SECTION 6.04. Hedge Agreement Cross-Collateralization. The Borrower acknowledges and agrees that any and all Collateral granted to secure the Note shall also secure any and all Swap Indebtedness and hereby grants the Lender a security interest in and lien upon such Collateral to secure any and all Swap Indebtedness.

## ARTICLE VII.

### MISCELLANEOUS

SECTION 7.01. Notices. Any notice or other communication required or permitted to be given by this Agreement or the other Loan Documents or by applicable law shall be in writing and shall be deemed received (a) on the date delivered, if sent by hand delivery (to the person or department if one is specified below) with receipt acknowledged by the recipient thereof, (b) three (3) Business Days following the date deposited in U.S. mail, certified or registered, with return receipt requested, or (c) one (1) Business Day following the date deposited with Federal Express or other national overnight carrier, and in each case addressed as follows:

to the Borrower:

Premier Holdings of Georgia, LLC  
3300 Eastern Blvd.  
Montgomery, AL 36116

to the Lender:

IBERIABANK  
2340 Woodcrest Place  
Birmingham, AL 35209  
Attention: Donnie Dobbins



SECTION 7.02. Survival of Warranties; etc. All covenants, agreements, representations and warranties made in this Agreement, in the certificates delivered pursuant to this Agreement and in the Security Documents shall survive the making by the Lender of each Advance and the execution and delivery to the Lender of the Note and the Security Documents and shall continue in full force and effect so long as the Note is outstanding and unpaid and this Agreement has not been terminated by the Lender in writing. Whenever in this Agreement or in the Security Documents any party is referred to, such reference shall be deemed to include the successors and assigns of such party, except that the Borrower may not assign or transfer this Agreement or the Security Documents without the prior written consent of the Lender. All covenants, promises and agreements by or on behalf of the Borrower which are contained in this Agreement, the Note or the Security Documents shall bind the Borrower's successors and assigns and shall inure to the benefit of the successors and assigns of the Lender.

SECTION 7.03. Governing Law. This Agreement and the Note shall be construed in accordance with and governed by the laws of the State of Alabama.

SECTION 7.04. Non-Waiver. Neither any failure nor any delay on the part of the Lender in exercising any right, power or privilege under this Agreement, the Security Documents or the Note shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege.

SECTION 7.05. Non-Business Days. Should any installment of the principal of, or interest on, the Note become due and payable on other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day, and in the case of an installment of principal, interest shall be payable thereon at the rate per annum specified in this Agreement during such extension.

SECTION 7.06. Modification; etc. No modification, amendment or waiver of any provision of this Agreement, the Security Documents or the Note, and no consent to any departure by the Borrower therefrom, shall be effective unless the same shall be in writing and signed by the Lender, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to, or demand on, the Borrower in any case shall entitle the Borrower to any other or further notice or demand in the same, similar or other circumstances.

SECTION 7.07. Set-off. Upon the occurrence and during the continuance of any Event of Default, the Lender is hereby authorized at any time and from time to time, without notice to the Borrower (any such notice being expressly waived by the Borrower), to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Lender to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or the Security Documents, irrespective of whether or not the Lender shall have made any demand under this Agreement and although such obligations may be unmatured. The Lender agrees promptly to notify the Borrower after any such set-off and application, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Lender under this Section 7.07 are in addition to all other rights and remedies



(including, without limitation, other rights of set-off or pursuant to any banker's lien) which the Lender may have.

SECTION 7.08. Severability. Any provision of this Agreement, the Security Documents or any other Loan Document to which the Borrower is or is to be a party which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction.

SECTION 7.09. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original, but when taken together all such counterparts shall constitute but one agreement, and any party may execute this Agreement by executing any one or more of such counterparts.

SECTION 7.10. Participation. The Borrower understands that the Lender may from time to time enter into a participation agreement or agreements with one or more participants pursuant to which each such participant shall be given a participation in the Loan and that any such participant may from time to time similarly grant to one or more subparticipants subparticipations in the Loan. The Borrower agrees that any participant or subparticipant may exercise any and all rights of banker's lien or set-off with respect to the Borrower, as fully as if such participant or subparticipant had made a loan directly to the Borrower in the amount of the participation or subparticipation given to such participant or subparticipant in the Loan. For the purposes of this Section 7.10 only, the Borrower shall be deemed to be directly obligated to each participant or subparticipant in the amount of its participating interest in the amount of the principal of, and interest on, the Loan. Nothing contained in this Section 7.10 shall affect the Lender's right of set-off (under Section 7.07 or applicable law) with respect to the entire amount of the Loan, notwithstanding any such participation or subparticipation. The Lender may divulge to any participant or subparticipant all information, reports, financial statements, certificates and documents obtained by it from the Borrower or any other person under any provision of this Agreement or otherwise.

SECTION 7.11. Non-Liability of the Lender. The parties agree that notwithstanding anything to the contrary set forth elsewhere in this Agreement or any of the other Loan Documents:

(a) The Lender is not the agent, principal, co-venturer, partner or representative of the Borrower, and the Lender shall not be liable to materialmen, contractors, craftsmen, laborers or others for goods or services delivered by them to the Project, or for debts or claims accruing to them against the Borrower. There is to be no contractual relation, either express or implied, between the Lender and any materialmen, contractors, subcontractors, craftsmen, laborers, or any other person supplying any work, labor or materials to the Project by virtue of anything set forth in this Agreement or any of the other Loan Documents or otherwise.

(b) The Lender shall have no liability or obligation to any person in connection with the acquisition, construction, development or completion of the Project or any work performed thereon; and without limiting the generality of the foregoing, the Lender shall



not be or become liable for (i) the performance or default of any contractor or subcontractor, (ii) any failure to construct, complete, protect or insure the Project, or any part thereof, or for the payment of any cost or expenses incurred in connection therewith, (iii) the performance or nonperformance of any obligation of any Obligor to the Lender or to any other person, or (iv) any act or omission in connection with the inspection of the Project or failure or refusal to inspect the Project.

(c) The Lender shall not have, and hereby expressly disclaims, any obligation or responsibility to any other person for the management, conduct or operation of the business and affairs of the Obligors.

(d) Any term or condition of any of the Loan Documents permitting the Lender to take or refrain from taking any action with respect to the Loan, any Obligor, or any of the Collateral shall be deemed to be solely for the benefit of the Lender, and the Lender may exercise or refrain from exercising any of its rights and remedies under any of the Loan Documents as in its sole discretion it deems necessary or desirable in order to ensure the timely payment of the Loan and to maintain and preserve the security afforded by the Collateral and to otherwise further the interests of the Lender, and such rights and remedies may not be relied upon by any other person.

(e) Nothing in this Agreement (including, without limitation, the provisions of Section 2.02) shall impose on the Lender any duty to pay any bills related to the Project or to see that such bills are paid.

(f) The engagement of a Construction Consultant shall not impose on the Lender any duty or responsibility to the Borrower or any other party to inspect the Project or cause the Project to be inspected, nor shall it impose on the Lender or the Construction Consultant any obligation or liability with respect to the manner in which the Project is constructed.

#### SECTION 7.12. Binding Arbitration.

(a) AS DETAILED IN THE FOLLOWING PARAGRAPHS, UNDER THIS PROVISION, BOTH LENDER AND BORROWER EXPRESSLY WAIVE RIGHTS TO PURSUE OR RESOLVE DISPUTES BETWEEN THEM IN COURT OR IN A CLASS ACTION (REGARDLESS OF WHETHER THAT CLASS ACTION IS BROUGHT IN COURT OR IN ARBITRATION).

(b) DISPUTES, CLAIMS, OR CONTROVERSIES (HEREINAFTER "DISPUTES") BETWEEN OR AMONG THE PARTIES TO THIS AGREEMENT SHALL BE RESOLVED BY BINDING ARBITRATION. DISPUTES SHALL INCLUDE ALL CLAIMS, COUNTERCLAIMS, CROSS-CLAIMS, THIRD PARTY CLAIMS, INTERPLEADERS, OR CONTROVERSIES ARISING OUT OF OR RELATING TO THIS AGREEMENT, AND/OR ANY ACTION TAKEN (OR ANY OMISSION TO TAKE ANY ACTION) IN CONNECTION WITH THE FOREGOING. DISPUTES SHALL BE SUBJECT TO BINDING ARBITRATION REGARDLESS OF THE NATURE OF THE CAUSES OF ACTION ASSERTED OR THE RELIEF OR REMEDY SOUGHT. DISPUTES HEREUNDER INCLUDE NOT ONLY



DISPUTES THAT LENDER AND BORROWER MAY HAVE AGAINST EACH OTHER, BUT ALSO DISPUTES THAT LENDER AND BORROWER MAY HAVE AGAINST EACH OTHER'S AFFILIATES, PREDECESSORS, SUCCESSORS, ASSIGNS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AND REPRESENTATIVES.

(c) LENDER AND BORROWER AGREE THAT ARBITRATION REPLACES THE RIGHT TO GO TO COURT, AND THUS THE PARTIES WAIVE ANY RIGHT TO HAVE DISPUTES TRIED BEFORE A JUDGE OR A JURY.

(d) LENDER AND BORROWER ALSO AGREE THAT NEITHER PARTY WILL BE ABLE TO PURSUE DISPUTES AS A CLASS ACTION OR OTHER REPRESENTATIVE ACTION (SUCH AS AN ACTION IN THE FORM OF A PRIVATE ATTORNEY GENERAL) IN COURT OR IN ARBITRATION, AND THE PARTIES WAIVE THE RIGHT TO DO SO. IF THE PRECEDING SENTENCE IS HELD TO BE INVALID BY A COURT OF LAW, THEN ANY CLASS OR REPRESENTATIVE ACTION WILL NOT BE RESOLVED THROUGH ARBITRATION AND WILL BE RESOLVED IN COURT.

(e) Because this arbitration provision is made pursuant to transactions involving interstate commerce, the parties acknowledge and agree that it shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1, et seq., as the same may be amended from time to time.

(f) The party pursuing Disputes in arbitration must pursue the Disputes before the American Arbitration Association ("AAA") under the AAA Commercial Finance rules (the "Commercial Finance Rules"). The Commercial Finance Rules and related forms may be obtained from and Disputes may be filed at American Arbitration Association, 335 Madison Avenue, Floor 10, New York, NY 10017-4605, 800-778-7879, [www.adr.org](http://www.adr.org). Any arbitration hearing shall be held at a place chosen by the arbitrator(s) or AAA within the federal district in which Borrower's principal place of business is located, or at some other place to which Lender and Borrower agree in writing. Judgment upon any arbitration award may be entered in any court having jurisdiction.

(g) In arbitration, resolution of Disputes shall be based solely upon the law of the State of Alabama and, where applicable, the United States. The arbitrator or arbitrators may not add to, modify, invalidate, or ignore any provision of this agreement or the controlling law. Defenses based on statutes of limitation, estoppel, waiver, laches and similar doctrines, that would otherwise be applicable to an action brought by a party, shall be applicable in any such arbitration proceeding. In the event of any conflict between the Commercial Finance Rules and this arbitration provision, the terms of this arbitration provision control.

(h) IN THE EVENT THAT THE FOREGOING BINDING ARBITRATION PROVISION IS DEEMED UNENFORCEABLE, AND THUS LENDER AND BORROWER ARE REQUIRED TO LITIGATE IN COURT, BORROWER AND LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY PARTY OR ANY EXERCISE BY ANY PARTY OF THEIR RESPECTIVE RIGHTS UNDER THE LOAN DOCUMENTS OR



IN ANY WAY RELATING TO THE LOAN OR THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS AGREEMENT, AND ANY CLAIM OR DEFENSE ASSERTING THAT THIS AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR LENDER TO ENTER INTO THIS AGREEMENT.

(i) This arbitration and waiver of jury trial provision shall survive termination of this Agreement. If any portion of this provision is deemed invalid or unenforceable, the remaining portions shall nevertheless remain in force.

SECTION 7.13. Successors and Assigns, etc. Plural or singular words used in this Agreement to designate the Borrower shall be construed to refer to the person or persons, firm, partnership or corporation, whether one or more than one, obtaining the Loan from the Lender; all covenants and agreements made herein by the Borrower shall bind the heirs, personal representatives, successors and assigns of all those undersigned designated as the Borrower; and every option, right and privilege herein reserved or secured to the Lender shall inure to the benefit of the Lender's successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives, all as of the date first set forth above.

Premier Holdings of Georgia, LLC

By: 

Name: Manraj "Patrick" Sidhu

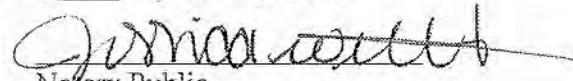
Title: Manager

STATE OF ALABAMA )

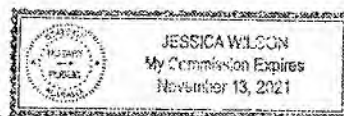
Montgomery COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Manraj "Patrick" Sidhu, whose name as Manager of Premier Holdings of Georgia, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this the 9 day of May, 2019.

  
Notary Public

AFFIX SEAL



My commission expires: \_\_\_\_\_

IBERIABANK

By: Donald W. Dobbins, Jr.

Name: Donald W. Dobbins, Jr.

Title: Senior Vice President

STATE OF ALABAMA )

JEFFERSON COUNTY )

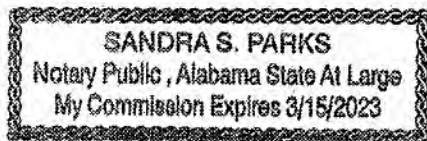
I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Donald W. Dobbins, Jr., whose name as Senior Vice President of IBERIABANK, a Louisiana state chartered bank, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said banking corporation.

Given under my hand and official seal this the 16 day of May, 2019.

Sandra S. Parks  
Notary Public

AFFIX SEAL

My commission expires: 3/15/23





**EXHIBIT A**

[Development Budget]

Land - Leased Site	
Building	\$650,000.00
Site Work	\$400,000.00
Equipment	\$256,000.00
Signs	\$70,000.00
Point Of Sale System	\$40,000.00
Menu Boards	\$25,000.00
Architect/Civil Work	\$35,000.00
Supplies and Inventory	\$10,000.00
HVAC	\$50,000.00
Seating and Décor	\$50,000.00
Televisions	\$1,500.00
DT System	\$10,000.00
Training/Office Furniture	\$125,000.00
Geotech/Soil Tests	\$8,000.00
Utility Costs/Impact Fee	\$20,000.00
Permits	\$4,500.00
Franchise Fee	\$50,000.00
<b>Total</b>	<b>\$1,805,000.00</b>

Schedule 4.03(e)

INSURANCE REQUIREMENTS

**I. General Requirements**

The General Requirements set forth herein shall be applicable to the insurance requirements outlined below in Paragraphs II and III.

- (A) Relating to Insurer: All insurance coverages required by the Loan Documents must be provided by insurance companies acceptable to the Lender that are rated at least an "A- IX" or better by Best's Insurance Guide.

Each insurance policy must (i) permit the Lender to pay premiums at the Lender's discretion and (ii) as respects any third party liability claim brought against the Lender, obligate the insurer to defend Lender as an additional insured thereunder.

- (B) Relating to Documentation of Coverage: The Borrower shall submit to Lender an ACORD 27 or 28 certificate, effective with the closing of the loan, evidencing all required insurance coverage and that must be furnished annually thereafter, prior to the expiration date of the preceding policy(ies). The Lender reserves the right to require a complete copy of the policy.

- (C) Cancellation and Modification Clause:

1. The insurer hereby agrees that its policy will not lapse, terminate, or be canceled, or be amended or modified to reduce limits or coverage terms unless and until Lender has received not less than thirty (30) days' prior written notice thereof at the following address:

IBERIABANK, its successors and assigns  
P. O. Box 12440  
New Iberia, LA 70562-2440

2. Notwithstanding the foregoing, in the event of cancellation due to non-payment of premium, the insurer shall provide not less than ten (10) days' Notice of Cancellation to:

IBERIABANK, its successors and assigns  
P. O. Box 12440  
New Iberia, LA 70562-2440

- (D) Mortgage Clause: All policies providing physical damage type coverages on the building or improvements shall show the mortgage interest as follows:

IBERIABANK, its successors and assigns  
P. O. Box 12440  
New Iberia, LA 70562-2440

- (E) Loss Payable Clause: All policies providing physical damage type coverages on the personal property or construction materials not yet a part of the improvements shall show a Loss Payee interest as follows:

Loss, if any, under this policy shall be payable to Lender, its successors and assigns, as their interests may appear



IBERIABANK, its successors and assigns  
P. O. Box 12440  
New Iberia, LA 70562-2440

## II. Types of Insurance – During the Construction Period

The Borrower will at all times keep the Project insured prior to completion of the improvements against loss or damage from such causes as are customarily insured against by prudent owners of similar facilities. Without limiting the generality of the foregoing, the Borrower will obtain or shall cause its contractor to obtain, and maintain in effect, the following amounts and types of insurance:

- (A) All Risks or Special Form Builders' Risk insurance (on a Completed Value Form). The deductible amount thereunder shall be borne by the Borrower in the event of a loss, and the deductible must not exceed \$25,000 per occurrence. Further, in the event of a loss, the Borrower shall abide by all provisions of the insurance contract, including proper and timely notice of the loss to the insurer, and the Borrower further agrees it will notify Lender of any loss in the amount of \$25,000 or greater and that no claim at or in excess of \$25,000 thereunder shall be settled without the prior written consent of the Lender, which consent shall not be unreasonably withheld or delayed by the Lender.

Subject to notice provisions contained above in the "Cancellation and Modification Clause", the Builders Risk policy shall contain a Standard Mortgage Holder Endorsement to guarantee to the benefit of Lender said coverages shall not be voided or canceled, without proper notice, by reason of (i) any act of negligence, or breach of any condition, declaration of warranty contained in any such policy by the Borrower or any third party, (ii) the occupation, operation or use of the Project for purposes more hazardous than those permitted by the terms of the policy, (iii) any foreclosure or other proceeding or notice of sale relating to the Project, or (iv) any change in the title to or ownership of all or any portion of the Project.

Debris Removal coverage shall be included in an amount deemed appropriate by the Borrower, but in no event less than \$250,000 for removal from a casualty loss and no less than \$10,000 for debris removal of pollutants.

- (B) Boiler and Machinery Equipment Insurance: If required by Lender, such form of coverage whether permanent or under the Builders Risk shall be in place at the appropriate time during the Project period in order to include and insure "Hot Testing" of the new equipment and systems for a minimum of thirty (30) days prior to Project completion and occupancy. A Boiler and Machinery Equipment policy shall remain in force after project completion throughout the term of the Loan as part of the required coverages enumerated in Paragraph III. Amount of insurance shall be in an amount equal to the replacement cost value of the equipment, and shall include coverage for expediting permanent repairs and permanent replacement. The deductible for any loss thereunder shall not exceed \$25,000 per occurrence.

- (C) Flood and Earthquake Insurance: If the flood determination performed by Lender shows that the real property securing the referenced loan is located in a Special Flood Hazard Area according to the Federal Emergency Management Agency, flood insurance will be required in the amount required by Lender and in accordance with the requirements of the National Flood Insurance Program (NFIP) prior to closing.

Lender requires that buildings located in a special flood hazard area be insured under a NFIP policy up to the maximum limit of coverage for each property type or through a private flood insurance policy or under a combination of both if necessary to obtain in the amount required by Lender. Any private flood insurance policy must provide coverage which is at least as broad as the coverage



provided under a standard NFIP policy, including when considering deductibles, exclusions, and conditions offered by the insurer.

Insurance must be purchased for each building, i.e., for an apartment complex consisting of 5 separate structures, each structure must be separately insured, however insurance cannot be written for more than replacement cost.

- Properties under Construction: For properties under construction, the NFIP provides that a policy should be obtained on the proposed structure upon commencement of the construction phase. Evidence of adequate flood insurance must be furnished prior to the closing of the Real Estate Loan with the exception of residential single family dwellings. Adequate flood insurance must be furnished on residential single family dwellings prior to any vertical site improvements.
- Residential Condominiums under Construction: A residential condo under construction will have to be insured under the "other residential" coverage. Once construction is complete and two units have been sold, the property must be covered by a Residential Condominium Building Association Policy (RCBAP) with maximum coverage of the lesser of \$250,000 per unit, the total loan amount, or replacement cost of the building. The conversion to the RCBAP should occur after the issuance of the Certificate of Occupancy. Maximum deductible for the RCBAP is \$25,000.

A general assessment of the seismic risk level should be made. A Probable Maximum Loss study conducted by a qualified engineer will provide an estimate of direct earthquake insurance, if any, to be determined by Lender.

- (D) Delay-Loss of Earning and Rents Insurance: Throughout the Project construction period until its completion, insurance against loss of earnings and rents as a result of delay (when delay is caused by an insured peril under the Builder's Risk Policy, Boiler and Machinery Policy and any other property insurance covering the Project) written in an "all risks" form, either as an endorsement to the insurance required under Paragraph II(A), or under a separate policy, in an amount sufficient (in the Lender's opinion) to cover mortgage payments for a period of at least six months.

- (E) Workers Compensation Insurance: Workers Compensation insurance covering all employees of the Borrower and its contractor and subcontractors for the Project to the extent required by Statutory Law, including Other States Coverage. Policy shall also provide Employer's Liability coverage for:

Bodily Injury by Accident - \$500,000 Each Accident.

Bodily Injury by Disease - \$500,000 Policy Limit

Bodily Injury by Disease - \$500,000 Each Employee

The Borrower shall require or shall cause its general contractor to require evidence of Workers Compensation coverage from each and every subcontractor in form and limits acceptable to the Lender.

- (F) LIABILITY INSURANCE.

COMMERCIAL GENERAL LIABILITY: An Insurance Service Office industry standard or equivalent Commercial General Liability insurance policy, including contractual liability, with limits of liability for bodily injury and property damage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, with the Borrower and Lender as additional insureds.

AUTOMOBILE LIABILITY: An Automobile Liability insurance policy with limits of liability for bodily injury and property damage of at least \$1,000,000 per accident.

UMBRELLA LIABILITY: Umbrella Liability insurance in the minimum amount of \$5,000,000 for each occurrence and aggregate combined single limit for all liability, with a \$10,000 self-insured retention for exposure not covered in underlying primary policies. The Umbrella Liability policy shall name in its underlying schedule the policies of Commercial General Liability and Automobile Liability.

(G) COMMERCIAL BLANKET EMPLOYEE DISHONESTY.

A Commercial Blanket Bond covering employees of the Borrower and the general contractor, including their officers, and the individual owners, of the insured business entity, whether a joint-venture, partnership, proprietorship or incorporated entity, against loss as a result of their dishonesty. Policy limit shall be in an amount of at least \$100,000, subject to a deductible of no more than \$10,000 per occurrence.

(H) CONTRACTOR'S EQUIPMENT.

The Borrower shall require or shall cause its general contractor to require, insurance to protect the contractor or its subcontractors for damage to, including loss use of any tools, equipment or vehicles whether licensed or not for road use, including owned, leased, hired, or borrowed equipment or vehicles. The Lender shall assume no responsibility for loss or damage to the above.

III. TYPES OF PERMANENT INSURANCE - AFTER THE CONSTRUCTION PERIOD

The Borrower will at all times keep the Project insured after completion of the improvements against loss or damage from such causes as are customarily insured against by prudent owners of similar facilities. Without limiting the generality of the foregoing, the Borrower will obtain and maintain in effect the following amounts and types of insurance throughout the term of the Loan:

(A) "ALL RISKS" OR "SPECIAL" FORM PROPERTY INSURANCE.

All Risks or Special Form Property insurance against loss or damage to the building and improvements, including but not limited to, perils of fire, lightning, water, wind, theft, vandalism and malicious mischief, plate glass breakage, and perils typically provided under an Extended Coverage Endorsement and other forms of broadened risk perils, and insured on a "replacement cost" value basis to the extent of the full replacement value of the Project. The deductible amount thereunder shall be borne by the Borrower in the event of a loss, and the deductible must not exceed \$25,000 per occurrence. Further, in the event of a loss, the Borrower shall abide by all provisions of the insurance contract, including proper and timely notice of the loss to the insurer, and the Borrower further agrees it will notify Lender of any loss in the amount of \$25,000 or greater and that no claim at or in excess of \$25,000 thereunder shall be settled without the prior written consent of the Lender, which consent shall not be unreasonably withheld or delayed by the Lender.

(B) BOILER AND MACHINERY EQUIPMENT INSURANCE.

If required by Lender, such permanent form of coverage shall be in place at the appropriate time during the Project period in order to include and insure "Hot Testing" of the new equipment and systems for a minimum of thirty (30) days prior to Project completion and occupancy. A Boiler and Machinery Equipment policy shall remain in force after Project completion throughout the term of the Loan. Amount of insurance shall be in an amount equal to the replacement cost value of the equipment, and shall include coverage for expediting permanent repairs and permanent replacement. The deductible for any loss thereunder shall not exceed \$25,000 per occurrence.

(C) FLOOD AND EARTHQUAKE INSURANCE.



If the flood determination performed by Lender shows that the real property securing the referenced loan is located in a special flood hazard area according to the Federal Emergency Management Agency, flood insurance will be required in the amount required by Lender and in accordance with the requirements of the National Flood Insurance Program prior to closing.

Lender requires that buildings located in a special flood hazard area be insured under a NFIP policy up to the maximum limit of coverage for each property type or through a private insurance policy or under a combination of both if necessary to obtain the amount required by Lender. Any private flood insurance policy must provide coverage which is at least as broad as the coverage provided under a standard NFIP policy, including when considering deductibles, exclusions, and conditions offered by the insurer.

Insurance must be purchased for each building, i.e., for an apartment complex consisting of 5 separate structures, each structure must be separately insured, however insurance cannot be written for more than replacement cost.

A general assessment of the seismic risk level should be made. A Probable Maximum Loss study conducted by a qualified engineer will provide an estimate of direct earthquake loss for a specific building, with the final amount of earthquake insurance, if any, to be determined by Lender.

(D) OTHER INSURANCE.

Loss of Earning and Rents Insurance: Insurance against loss of earnings and rents in an amount sufficient (in the Lender's opinion) to cover not less than 12 months' lost earnings and rents written in an "all risks" form, either as an endorsement to the insurance required under Paragraph III(A), or under a separate policy

Workers Compensation Insurance: Workers Compensation insurance covering all employees of the Borrower, or any contractor employed to run or maintain the facility to the extent required by Statutory Law, including Other States Coverage. Policy shall also provide Employer's Liability coverage for:

Bodily Injury by Accident - \$500,000 Each Accident

Bodily Injury by Disease - \$500,000 Policy Limit

Bodily Injury by Disease - \$500,000 Each Employee

The Borrower shall require any contractor hired to manage or maintain the facility to provide evidence of Workers Compensation coverage to Borrower in such form and with such limits deemed acceptable to Borrower.

Liability Insurance:

- Commercial General Liability: An Insurance Service Office industry standard or equivalent Commercial General Liability insurance policy, including contractual liability, with limits of liability for bodily injury and property damage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, with Lender as an additional insured.
- Automobile Liability: An Automobile Liability insurance policy with limits of liability for bodily injury and property damage of at least \$1,000,000 per accident.
- Umbrella Liability: Umbrella Liability insurance in the minimum amount of \$5,000,000 for each occurrence and aggregate combined single limit for all liability, with a \$10,000 self-insured retention for exposure not covered in underlying primary policies. The Umbrella



Liability policy shall name in its underlying schedule the policies of Commercial General Liability, Automobile Liability and Employer's Liability

Commercial Blanket Employee Dishonesty: A Commercial Blanket Bond covering all employees of the Borrower, including its officers, and the individual owner of the insured business entity, whether a joint-venture, partnership, proprietorship or incorporated entity, against loss as a result of their dishonesty. Policy limit shall be in an amount of at least \$100,000, subject to a deductible of no more than \$10,000 per occurrence.

Terrorism Insurance: Terrorism insurance should be obtained if the Project is judged to be at high risk from terrorist attacks. The requirement for terrorism insurance shall be within Lender's discretion.

Schedule 5.30

[Post-Closing Items]

1. Construction contract
2. Architect's contract
3. Engineer's contract
4. Plans
5. Construction schedule
6. Construction permits
7. Evidence of builder's risk insurance

## GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT (this "Guaranty") is executed as of the 17<sup>th</sup> day of May, 2019, by **Premier Kings of Georgia Inc.**, a Georgia corporation (the "Entity Guarantor") and **Manraj "Patrick" Sidhu**, a resident of Alabama and **Jaipal Gill**, a resident of Georgia (together, the "Individual Guarantor" and collectively with the Entity Guarantor, the "Guarantor"), in favor of **IBERIABANK**, a Louisiana state chartered bank (the "Lender").

### Recitals

A. Premier Holdings of Georgia, LLC, a Georgia limited liability company (the "Borrower"), has entered into a loan agreement (as modified, amended, supplemented and/or restated from time to time, the "Loan Agreement") with the Lender of even date herewith, providing, among other things, for loans by the Lender to the Borrower (i) in the original principal amount of \$1,030,000 (the "Real Estate Loan"), as evidenced by the Borrower's promissory note (as modified, amended, supplemented, renewed and/or restated from time to time, the "Real Estate Note"), dated of even date, and executed and delivered to the Lender and (ii) in the original principal amount of \$517,500 (the "Equipment Loan" and together with the Real Estate Loan, the "Loan"), as evidenced by the Borrower's promissory note (as modified, amended, supplemented, renewed and/or restated from time to time, the "Equipment Note" and together with the Real Estate Note, the "Note"), dated of even date, and executed and delivered to the Lender. Any capitalized term used but not otherwise defined in this Guaranty shall have the meaning ascribed to such term in the Loan Agreement.

B. To induce the Lender to make the Loan, Guarantor has agreed, among other things, to guarantee the payment and performance of the obligations and liabilities of the Borrower to the Lender with respect to the Loan pursuant to the terms and conditions hereafter set forth.

C. Guarantor understands that the Lender is relying upon the agreement of Guarantor as hereafter set forth as a material condition to the Lender's agreement to make the Loan to the Borrower.

### Agreement

NOW, THEREFORE, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and as a material inducement to Lender to extend credit to Borrower, the Guarantor hereby guarantees to Lender the prompt and full payment and performance of the indebtedness and obligations described below in this Guaranty (collectively called the "Guaranteed Obligation"), this Guaranty being upon the following terms and conditions:

1. Definitions. For purposes of this Guaranty, except as otherwise expressly provided or unless the context otherwise requires:

Port Wentworth, GA

4823-1695-1691.1



(a) Singular terms shall include the plural as well as the singular and vice versa.

(b) All references to other documents or instruments shall be deemed to refer to such documents or instruments as they may hereafter be extended, renewed, modified, or amended (except to the extent such extension, renewal, modification or amendment is restricted by this Guaranty).

2. Guaranty of Payment.

(a) Guarantor hereby unconditionally guarantees to Lender the payment, as and when the same shall be due and payable, whether by lapse of time, by acceleration of maturity or otherwise, and at all times thereafter, of all principal, interest, fees, costs, expenses, attorneys' fees, indemnification indebtedness and other sums of money now or hereafter due and owing pursuant to the terms of the Note or pursuant to the terms of the Loan Agreement, the Mortgage or any other of the Loan Documents now or hereafter existing (specifically including, without limitation, any Hedge Agreement), and all renewals, extensions, refinancings, modifications or amendments of such indebtedness or any part thereof together with costs of collection as set forth in Section 12 hereof (herein collectively called the "Indebtedness"). This Guaranty covers the Indebtedness whether presently outstanding or arising subsequent to the date hereof including all amounts advanced by Lender in stages or installments. The guaranty of Guarantor as set forth in this Section is a guaranty of payment and not of collection.

(b) Notwithstanding anything to the contrary contained in this Guaranty or any provision of any other Loan Document, the Guaranteed Obligation guaranteed hereunder by any Guarantor shall not extend to or include any Excluded Swap Transaction (as defined below) with respect to that Guarantor. For purposes hereof, "Excluded Swap Transaction" means, with respect to any Guarantor, any transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act ("Swap"), if, and to the extent that, such Guarantor is not an "eligible contract participant" under and as defined in Section 1a(18) of the Commodity Exchange Act (or CFTC rules promulgated thereunder) on the date such Swap is entered into or such transaction is or becomes illegal under the Commodity Exchange Act (or CFTC rules promulgated thereunder) or other applicable law.

3. Guaranty of Performance. Guarantor additionally hereby unconditionally guarantees to Lender the timely performance of all other obligations of Borrower under all of the Loan Documents, including, without limiting the generality of the foregoing, that:

(a) the Improvements will be constructed upon the Real Estate in accordance with the Loan Agreement and substantially in accordance with the Plans and Specifications; and

(b) the Improvements will be completed and ready for occupancy, including delivery of any certificates required by law or the Loan Agreement, on or before the date required in the Loan Agreement.

If any of the foregoing obligations of Borrower are not complied with, in any respect whatsoever, and without the necessity of any notice from Lender to Guarantor, Guarantor agrees



to (i) assume all responsibility for the completion of the Improvements and, at no cost to Lender, to cause the Improvements to be fully completed in substantial accordance with the Plans and Specifications and in accordance with the Loan Agreement; (ii) cause all bills to be paid in connection with the construction of the Improvements; and (iii) indemnify and hold Lender harmless from any and all loss, cost, liability or expense Lender may suffer by reason of any such event, including, without limitation, attorneys' fees. Lender shall accept performance by Guarantor of Borrower's obligations under the Loan Documents, and so long as all of said obligations are being performed by Borrower or Guarantor and there is no Event of Default, Lender will make Advances under the Loan Agreement to Borrower under and subject to the terms of the Loan Agreement. If, after the occurrence and during the continuance of an Event of Default, Lender, in its sole discretion, is dissatisfied with the progress of construction by Borrower and/or Guarantor, Lender may, at its option, after first having given notice to Guarantor at the address set forth below in the manner prescribed herein for giving notice, and provided that such Event of Default continues for a period of thirty (30) days following receipt of such notice, complete the Improvements in substantial accordance with the Plans and Specifications either before or after exercise of commencement of foreclosure proceedings or before or after any other remedy of Lender against Borrower or Guarantor, with such changes or modifications in the Plans and Specifications which Lender reasonably deems necessary and expend such sums as Lender, in its discretion, reasonably deems necessary and proper in order to so complete the Improvements in substantial accordance with the Plans and Specifications, and Guarantor hereby waives any right to contest any such reasonably necessary expenditures. The amount of any and all expenditures made by Lender before foreclosure for the foregoing purposes shall be due and payable to Lender, upon demand and shall accrue interest at the rate as provided in the Loan Documents. Lender has no, and shall have no, obligation to complete the Improvements or take any such action.

4. Primary Liability of Guarantor. This Guaranty is an absolute, irrevocable and unconditional guaranty of payment and performance. In the event of default by Borrower in payment or performance of the Guaranteed Obligation, or any part thereof, when such indebtedness or performance becomes due, either by its terms or as the result of the exercise of any power to accelerate, Guarantor, on demand and without presentment, protest, notice of protest, further notice of nonpayment or of dishonor or of default or nonperformance, or notice of acceleration or of intent to accelerate, or any other notice whatsoever, without any notice having been given to Guarantor previous to such demand of the acceptance by Lender of this Guaranty, and without any notice having been given to Guarantor previous to such demand of the creating or incurring of such indebtedness or of such obligation to perform, shall pay the amount outstanding pursuant to Section 2 hereof to Lender, or perform or observe the agreement, covenant, term or condition, as the case may be, and it shall not be necessary for Lender, in order to enforce such payment or performance by Guarantor, first to institute suit or exhaust Lender's remedies against Borrower or others liable on such indebtedness or for such performance (including any action against any other Guarantor hereof), to enforce its rights against any security which shall ever have been given to secure such indebtedness or performance, to join Borrower or any others liable on the Guaranteed Obligation in any action to enforce this Guaranty, or to resort to any other means of obtaining payment or performance of the Guaranteed Obligation. Suit may be brought or demand may be made against all parties who have signed this Guaranty, or against any one or more of them, separately or together, without



impairing the rights of Lender against any other party hereto. At any time Lender is entitled to exercise its remedies hereunder, Lender may, in its discretion elect to demand payment or performance. If Lender elects to demand performance, it shall at all times thereafter have the right to demand payment until all of the Indebtedness has been paid in full. If Lender elects to demand payment, it shall at all times thereafter have the right to demand performance until all of the Indebtedness has been paid in full. If Lender forecloses on any real property collateral securing the Indebtedness, the amount of the Indebtedness may be reduced only by the amount of the net proceeds to Lender resulting from the foreclosure sale, even if such collateral is worth more than the price for which the collateral is sold at such sale; and Lender may collect from Guarantor hereunder even if Lender, by foreclosing on the real property collateral, has destroyed any rights Guarantor may have to collect from Borrower or anyone else.

5. Certain Agreements and Waivers by Guarantor: Guarantor hereby agrees that neither Lender's rights and remedies nor Guarantor's obligations under the terms of this Guaranty shall be released, diminished, impaired, reduced or affected by any one or more of the following:

- (a) any limitation of liability or recourse in any other Loan Document;
- (b) the taking or accepting of any other security or guaranty for, or right of recourse with respect to, any or all of the Guaranteed Obligation;
- (c) any release, surrender, exchange, subordination, deterioration, waste, impairment or loss of, or any failure to create or perfect, any lien or security interest with respect to any security at any time existing or purported, believed or expected to exist in connection with any or all of the Guaranteed Obligation;
- (d) any partial release of the liability of Guarantor hereunder or any other Guarantor under a separate Guaranty, or if there is more than one person signing this Guaranty, the complete or partial release of any one or more of them hereunder;
- (e) the death, insolvency, bankruptcy, disability, dissolution, liquidation, termination, receivership, reorganization, change of form and/or name, structure or ownership, sale of all assets, or lack of limited liability company or other power of Borrower, any of the undersigned, or any party at any time liable for the payment or performance of any or all of the Guaranteed Obligation, whether now existing or hereafter occurring;
- (f) renewal, extension, modification or rearrangement of the payment or performance of any or all of the Guaranteed Obligation, either with or without notice to or consent of Guarantor, or any adjustment, indulgence, forbearance, or compromise that may be granted or given by Lender to Borrower or Guarantor from time to time;
- (g) any neglect, delay, omission, failure, or refusal of Lender to take or prosecute any action for the collection or enforcement of any of the Guaranteed Obligation or to foreclose or take or prosecute any action to foreclose upon any security therefor or to take or prosecute any action in connection with any Loan Document;



(h) any failure of Lender to notify Guarantor of any creation, renewal, extension, rearrangement, modification or assignment of the Guaranteed Obligation or any part thereof, or of any Loan Document, or of any release of or change in any security or of any other action taken or refrained from being taken by Lender against Borrower or any security or other recourse or of any new agreement between Lender and Borrower, it being understood that Lender shall not be required to give Guarantor any notice of any kind under any circumstances with respect to or in connection with the Guaranteed Obligation;

(i) the unenforceability of all or any part of the Guaranteed Obligation against Borrower, whether because the Guaranteed Obligation exceeds the amount permitted by law or violates any usury law, the act of creating the Guaranteed Obligation, or any part thereof, is ultra vires, the officers or persons creating same acted in excess of their authority, Borrower has any valid defense, claim or offset with respect thereto, or otherwise, it being agreed that Guarantor shall remain liable hereon regardless of whether Borrower or any other person be found not liable on the Guaranteed Obligation, or any part thereof, for any reason;

(j) any payment by Borrower or any other Guarantor to Lender is held to constitute a preference under the bankruptcy laws or if for any other reason Lender is required to refund such payment or pay the amount thereof to someone else; or

(k) the construction of the Project by Lender on its own behalf or on the account of Borrower in accordance with the Loan Documents.

It is the intent of Guarantor and Lender that the obligations and liabilities of Guarantor hereunder are absolute and unconditional under any and all circumstances and that until the Guaranteed Obligation or all amounts required to be paid by Guarantor under this Guaranty are fully and finally paid and performed, such obligations and liabilities shall not be discharged or released, in whole or in part, by any act or occurrence which might, but for the provisions of this Guaranty, be deemed a legal or equitable discharge or release of a guarantor.

6. Subordination; Subrogation. If, for any reason whatsoever, Borrower is now or hereafter becomes indebted to Guarantor:

(a) such indebtedness and all interest thereon and all liens, security interests and rights now or hereafter existing with respect to property of Borrower securing same shall, at all times, be subordinate in all respects to the Guaranteed Obligation and to all liens, security interests and rights now or hereafter existing to secure the Guaranteed Obligation. Notwithstanding anything to the contrary contained in this Guaranty or any payments made by any party hereunder, until the Guaranteed Obligation is paid in full and no longer subject to being recovered or set aside, Guarantor hereby permanently and irrevocably waives any right of subrogation in or under any of the Loan Documents or to participate in any way therein, or in any right, title or interest in and to any security or right of recourse for the Guaranteed Obligation;

(b) after the occurrence of a default (whether or not declared, but if not declared, only if Guarantor has actual knowledge of the occurrence of such default) under any of the Loan Documents, Guarantor shall not be entitled to enforce or receive payment, directly or



indirectly, of any such indebtedness of Borrower to Guarantor until the Guaranteed Obligation has been fully and finally paid and performed;

(c) Guarantor hereby assigns and grants to Lender a security interest, as security for the Guaranteed Obligation, in all such indebtedness and security therefor, if any, of Borrower to Guarantor now existing or hereafter arising, including any dividends and payments pursuant to debtor relief or insolvency proceedings referred to below. In the event of receivership, bankruptcy, reorganization, arrangement or other debtor relief or insolvency proceedings involving Borrower as debtor, Lender shall have the right to prove Lender's claim in any such proceeding so as to establish Lender's rights hereunder and shall have the right to receive directly from the receiver, trustee or other custodian (whether or not a default shall have occurred or be continuing under any of the Loan Documents), dividends and payments which are payable upon any obligation of Borrower to Guarantor now existing or hereafter arising, and to have all benefits of any security therefor, until the Guaranteed Obligation has been fully and finally paid and performed. If, notwithstanding the foregoing provisions, Guarantor should receive any payment, claim or distribution which is prohibited as provided above in this Section 6, Guarantor shall pay the same to Lender, immediately, Guarantor hereby agreeing that Guarantor shall receive the payment, claim or distribution in trust for Lender and shall have absolutely no dominion over the same except to pay it immediately to Lender; and

(d) Guarantor shall promptly upon request of Lender from time to time execute such documents and perform such acts as Lender may require to evidence and perfect its interest and to permit or facilitate exercise of Lender's rights under this Section, including but not limited to execution and delivery of financing statements, proofs of claim, further assignments and security agreements, and delivery to Lender of any promissory notes or other instruments evidencing indebtedness of Borrower to Guarantor. All promissory notes, accounts receivable ledgers or other evidences, now or hereafter held by Guarantor, of obligations of Borrower to Guarantor shall contain a specific written notice thereon that the indebtedness evidenced thereby is subordinated under and is subject to the terms of this Guaranty.

Nothing herein contained shall operate as a release or discharge, in whole or in part, of any claim of Guarantor against Borrower, by subrogation or otherwise, by reason of any act done or payment made by Guarantor pursuant to the provisions of this Guaranty; but all such claims, including claims for any indebtedness of Borrower to Guarantor, whether now existing or hereafter arising, shall be subordinate to the Guaranteed Obligation and the liens, security interests and rights of Lender under the Loan Documents.

7. Other Liability of Guarantor or Borrower. If Guarantor becomes liable for any indebtedness owing by Borrower to Lender, by endorsement or otherwise, other than under this Guaranty, such liability shall not be in any manner impaired or affected hereby, and the rights of Lender hereunder shall be cumulative of any and all other rights that Lender may ever have against Guarantor. If Borrower is or becomes indebted to Lender for other than the Indebtedness, any payment received or recovery realized upon any indebtedness of Borrower to Lender may, except to the extent paid by Guarantor on the Indebtedness or specifically required by law or agreement (including, without limitation, the Loan Agreement) of Lender, be applied to the Indebtedness.



8. Lender's Successors and Assigns. This Guaranty is for the benefit of Lender and its successors and assigns, and in the event of an assignment of the Indebtedness or any part thereof, the rights and benefits hereunder, to the extent applicable to the Indebtedness so assigned, may be transferred with such Indebtedness. Guarantor waives notice of any transfer or assignment of the Indebtedness, or any part thereof, and agrees that failure to give notice will not affect the liabilities of Guarantor hereunder.

9. Binding Effect. This Guaranty is binding not only on Guarantor, but on Guarantor's estate, heirs, personal representatives, successors and assigns. Upon the death of any of the undersigned, this Guaranty shall continue against his estate and against all survivors among the undersigned as to all of the Guaranteed Obligations, including that portion incurred or arising after such death. If this Guaranty is signed by more than one person, then all of the obligations of Guarantor arising herein shall be jointly and severally binding on the undersigned, and his heirs, personal representatives, successors and assigns, and the term "Guarantor" shall mean all such persons and each of them individually. Words importing persons herein shall include firms, associations, partnerships (including limited partnerships), joint ventures, trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

10. Invalid Provisions. If any provision of this Guaranty or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Guaranty nor the application of such provision to any other person or circumstance shall be affected thereby, but rather the same shall be enforced to the greatest extent permitted by law.

11. Attorney's Fees and Costs of Collection. Guarantor shall pay on demand the reasonable attorney's fees and all other costs and expenses which may be incurred by Lender in the enforcement of or preservation of Lender's rights under this Guaranty, which covenant shall survive any payment or discharge in full of the Indebtedness.

12. Payments. All sums payable under this Guaranty shall be paid in lawful money of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

13. Controlling Agreement. It is not the intention of Lender or Guarantor to obligate Guarantor to pay interest in excess of that legally permitted to be paid by Guarantor under applicable law. Should it be determined that any portion of the Guaranteed Obligation constitutes interest in excess of the maximum amount of interest which Guarantor (in such capacity) may lawfully be required to pay under applicable law, the obligation of Guarantor to pay such interest shall automatically be limited to the payment thereof in the maximum amount so permitted under applicable law. The provisions of this Section shall override and control all other provisions of this Guaranty and of any other agreement between Guarantor and Lender.

14. Warranties and Representations of Guarantor. Guarantor hereby represents and warrants that (a) Guarantor directly or indirectly owns an interest in Borrower and that this Guaranty may reasonably be expected to benefit Guarantor, in an amount not less than the



amount guaranteed hereunder; (b) this Guaranty is valid and is binding upon Guarantor; (c) Guarantor is not, and the execution, delivery and performance by Guarantor of this Guaranty will not cause Guarantor to be, in violation of or in default with respect to any law or in default (or provide cause for acceleration of indebtedness) under any agreement or restriction by which Guarantor is bound or affected; (d) except as expressly disclosed in writing to Lender, there is no action, suit or proceeding pending or to the knowledge of Guarantor threatened before or by any court or governmental authority against or affecting Guarantor which constitutes a material adverse effect on the financial condition of Guarantor or Guarantor's ability to fulfill its obligations under this Guaranty; (e) all financial statements and information heretofore furnished to Lender by Guarantor do, and all financial statements and information hereafter furnished to Lender by Guarantor will, fully and accurately in all material respects present the financial condition of Guarantor as of the dates therein, and, since the date of the most recent financial statements of Guarantor heretofore furnished to Lender, no material adverse effect has occurred with respect to the financial condition of Guarantor, nor, except as heretofore disclosed in writing to Lender, has Guarantor incurred any material liability, direct or indirect, fixed or contingent; (f) after giving effect to this Guaranty, Guarantor is solvent; (g) Lender has no duty at any time to investigate or inform Guarantor of the financial or business condition or affairs of Borrower, or any change therein; and (h) Guarantor acknowledges and agrees that Guarantor may be required to pay and perform the Guaranteed Obligation in full, subject to Section 2 hereof, without assistance or support from Borrower or any other party. Guarantor's representations and warranties are a material inducement to Lender to enter into the other Loan Documents and shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other event affecting Borrower, Guarantor, or any security for the Indebtedness.

15. Notices and Communications. All notices and other communications hereunder shall be in writing and shall be effective when sent by certified or registered mail, return receipt requested, or by overnight courier: (a) if to Guarantor, at the address set forth on the signature page of Guarantor, or at such other address as Guarantor shall have furnished to Lender, or (b) if to the Lender, addressed to 2340 Woodcrest Place, Birmingham, Alabama 35209, Attention: Donnie Dobbins, or at such other address as Lender shall have furnished to the Guarantor.

16. Consent to Jurisdiction, Waiver of Jury Trial.

(a) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR GUARANTOR ARISING OUT OF OR RELATING TO THIS GUARANTY OR ANY OTHER LOAN DOCUMENT MAY AT THE LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE STATE OF ALABAMA, AND GUARANTOR WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON THE VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND GUARANTOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING. FINAL JUDGMENT IN ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT SHALL BE CONCLUSIVE AND BINDING UPON GUARANTOR AND MAY BE ENFORCED IN ANY COURT TO THE JURISDICTION OF WHICH GUARANTOR IS SUBJECT, BY A SUIT UPON SUCH JUDGMENT, PROVIDED THAT SERVICE OF PROCESS IS EFFECTED UPON GUARANTOR IN ONE OF THE



MANNERS SPECIFIED IN THIS SECTION 16 OR AS OTHERWISE PERMITTED BY LAW. NOTHING IN THIS SECTION 16 SHALL AFFECT THE RIGHT OF LENDER OTHERWISE TO BRING PROCEEDINGS AGAINST GUARANTOR IN THE COURTS OF ANY JURISDICTION OR JURISDICTIONS.

(b) GUARANTOR AND THE LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY PARTY OR ANY EXERCISE BY ANY PARTY OF THEIR RESPECTIVE RIGHTS UNDER THIS GUARANTY OR ANY OTHER LOAN DOCUMENT OR IN ANY WAY RELATING TO THIS GUARANTY, THE LOAN OR THE PROJECT (INCLUDING, WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS AGREEMENT, AND ANY CLAIM OR DEFENSE ASSERTING THAT THIS AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE LENDER TO EXTEND THE LOAN.

(c) Guarantor hereby consents to process being served in any suit, action or proceeding of the nature referred to in this Section 16 by (i) the mailing of a copy thereof by registered or certified mail, postage prepaid, return receipt requested, to Guarantor at its or his address designated in or pursuant to Section 15 hereof and (ii) serving a copy thereof upon the agent, if any, designated and appointed by such Guarantor as its or his agent for service of process by or pursuant to this Section 16. Guarantor irrevocably agrees that such service (i) shall be deemed in every respect effective service of process upon Guarantor in any such suit, action or proceeding and (ii) shall, to the fullest extent permitted by law, be taken and held to be valid personal service upon Guarantor. Nothing in this Section 16 shall affect the right of the Lender to serve process in any manner otherwise permitted by law or limit the right of the Lender otherwise to bring proceedings against Guarantor in the courts of any jurisdiction or jurisdictions.

17. Cumulative Rights, etc. The exercise by Lender of any right or remedy hereunder or under any other Loan Document, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy. Lender shall have all rights, remedies and recourses afforded to Lender by reason of this Guaranty or any other Loan Document or by law or equity or otherwise, and the same (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Guarantor or others obligated for the Guaranteed Obligation, or any part thereof, or against any one or more of them, or against any security or otherwise, at the sole discretion of Lender, (c) may be exercised as often as occasion therefor shall arise, it being agreed by Guarantor that the exercise, discontinuance of the exercise of or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse, and (d) are intended to be, and shall be, nonexclusive. No waiver of any default on the part of Guarantor, or of any breach of any of the provisions of this Guaranty or of any other document shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers



granted herein or in any other document shall be construed as a waiver of such rights and powers, and likewise no exercise or enforcement of any rights or powers hereunder or under any other document shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. The granting of any consent, approval or waiver by Lender shall be limited to the specific instance and purpose and shall not constitute consent or approval in any other instance or for any other purpose. No notice to nor demand on Guarantor, in any case shall of itself entitle Guarantor, to any other or further notice or demand in similar or other circumstances. No provision of this Guaranty nor any right, remedy or recourse of Lender with respect hereto, nor any default or breach, can be waived, nor can this Guaranty or Guarantor be released or discharged in any way or to any extent, except specifically by a writing intended for that purpose (referring specifically to this Guaranty) executed by Lender.

18. Term of Guaranty. This Guaranty shall continue in full force and effect until Guarantor or Borrower has fully and finally paid all amounts (including, without limitation, the Indebtedness described in Section 2 hereof) and performed all obligations (including, without limitation, all obligations described in Section 3 hereof) required to be paid or performed by Guarantor under this Guaranty. Notwithstanding anything to the contrary contained in this Section or elsewhere in this Guaranty or in any other Loan Document, (a) if pursuant to any bankruptcy, insolvency or other debtor relief law or any order or decision thereunder Lender must rescind or restore any payment or part thereof received by Lender in satisfaction of the Indebtedness or any part thereof, the term "Indebtedness" as used herein includes such payment to the extent rescinded or restored, and, to the extent of the payment rescinded or restored, any prior return, cancellation, release or discharge by Lender of this Guaranty or of Guarantor shall be without effect and this Guaranty shall remain in full force and effect notwithstanding such return, cancellation, release or discharge, and (b) if any indemnification indebtedness is incurred pursuant to any indemnity contained in any Loan Document, the term "Indebtedness" as used herein includes such indemnification indebtedness, and, to the extent of such indemnification indebtedness, any prior return, cancellation, release or discharge by Lender of this Guaranty or of Guarantor shall be without effect and this Guaranty shall remain in full force and effect notwithstanding such return, cancellation, release or discharge.

19. Financial Reporting.

(a) The Entity Guarantor shall furnish to Lender:

(i) within one hundred twenty (120) days after the end of its fiscal year (being December 31 in each year), the balance sheet of the Entity Guarantor and its Affiliates as of the end of such year and the related statements of income and changes in financial position of the Entity Guarantor for such fiscal year, together with supporting schedules, all on a comparative basis with the prior fiscal year, in reasonable detail, prepared in accordance with generally accepted accounting principles consistently applied throughout the periods involved, and audited and certified by independent certified public accountants of recognized standing selected by Guarantor and satisfactory to Lender (the form of such certification also to be satisfactory to Lender), showing the financial condition, assets, liabilities and owners' equity of Guarantor at the close of such year and the results of the operations of the Entity Guarantor during such year;



(ii) within forty-five (45) days after the end of the first three fiscal quarters in each fiscal year, financial statements similar to those referred to in subsection (i), unaudited but certified by the chief financial officer of the Entity Guarantor, such balance sheet to be as of the end of each such quarter and such statement of income and changes in financial position to be for the period from the beginning of the fiscal year to the end of such quarter, in each case subject to audit and to year-end adjustments;

(iii) annually, within thirty (30) days of filing, a copy of the federal income tax return of the Entity Guarantor and its Affiliates for the prior fiscal year; and

(iv) as soon as practical, from time to time, such other information regarding the operations, business affairs and financial condition of Guarantor as Lender may reasonably request.

(b) The Individual Guarantor shall furnish to Lender:

(i) at least every thirteen (13) months (within thirty (30) days of the most recent statement), the personal financial statement of the Individual Guarantor for such year prepared in accordance with the books and records of the Individual Guarantor;

(ii) annually, within thirty (30) days of filing, a copy of the federal income tax return of the Individual Guarantor for the prior fiscal year; and

(iii) as soon as practical, from time to time, such other information regarding the financial condition of Guarantor as Lender may reasonably request.

20. Participations. Guarantor acknowledges and agrees that Lender may, from time to time, sell or offer to sell interests in the Loan to one or more assignees or participants pursuant to the terms of Section 7.10 of the Loan Agreement.

21. Gender; Titles; Construction. Within this Guaranty, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. Titles appearing at the beginning of any subdivisions hereof are for convenience only, do not constitute any part of such subdivisions, and shall be disregarded in construing the language contained in such subdivisions. The use of the words "herein," "hereof," "hereunder" and other similar compounds of the word "here" shall refer to this entire Guaranty and not to any particular section, paragraph or provision.

22. Time of Essence. Time shall be of the essence in this Guaranty with respect to all of Guarantor's obligations hereunder.

23. Execution. This Guaranty may be executed in multiple counterparts, each of which, for all purposes, shall be deemed an original, and all of which together shall constitute one and the same agreement; and if the term "Guarantor" includes more than one person, the failure of any one or more such persons to execute a counterpart thereof shall not impair or affect the enforceability of this Guaranty against any person who does sign this Guaranty.

24. Drafted Jointly. The parties have participated jointly in the negotiation and drafting of this Guaranty. In the event an ambiguity or question of intent or interpretation arises, there shall be no presumption or burden of proof which arises favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Guaranty.

25. Governing Law. This Guaranty shall be construed in accordance with and governed by the laws of the State of Alabama.

THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be executed by its respective duly authorized representative or have set their hand and seal as of the date first above written.

Premier Kings of Georgia, Inc.

By: 

Name: Manraj "Patrick" Sidhu

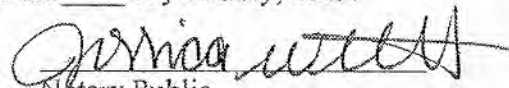
Title: President

STATE OF ALABAMA )

Montgomery COUNTY )

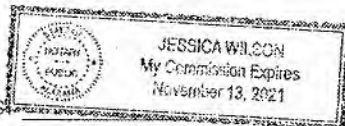
I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Manraj "Patrick" Sidhu, whose name as President of Premier Kings of Georgia, Inc., a Georgia corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 9 day of May, 2019.

  
Notary Public

AFFIX SEAL

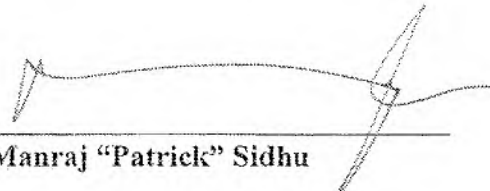
My commission expires



Address for Notices:

Premier Kings, Inc.  
3300 Eastern Blvd.  
Montgomery, AL 36116



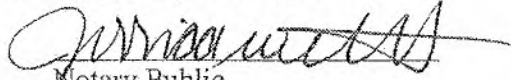
  
Manraj "Patrick" Sidhu

STATE OF ALABAMA )

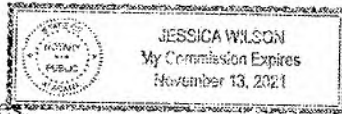
Montgomery COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Manraj "Patrick" Sidhu, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, executed the same voluntarily as of the day the same bears date.

Given under my hand and official seal this the 9 day of May, 2019.

  
Notary Public

AFFIX SEAL



My commission expires. \_\_\_\_\_

Address for Notices:

Manraj "Patrick" Sidhu  
3300 Eastern Blvd.  
Montgomery, AL 36116

*Jaipal Gill*

Jaipal Gill

STATE OF Alabama )  
Montgomery COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Jaipal Gill, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, executed the same voluntarily as of the day the same bears date.

Given under my hand and official seal this the 10 day of May, 2019.

*Jessica Wilson*  
Notary Public

AFFIX SEAL



My commission expires: \_\_\_\_\_

Address for Notices:

Jaipal Gill  
3300 Eastern Blvd.  
Montgomery, AL 36116

## GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT (this "Guaranty") is executed as of the 17<sup>th</sup> day of May, 2019, by **Premier Kings of Georgia Inc.**, a Georgia corporation (the "Entity Guarantor") and **Manraj "Patrick" Sidhu**, a resident of Alabama and **Jaipal Gill**, a resident of Georgia (together, the "Individual Guarantor" and collectively with the Entity Guarantor, the "Guarantor"), in favor of **IBERIABANK**, a Louisiana state chartered bank (the "Lender").

### Recitals

A. Premier Holdings of Georgia, LLC, a Georgia limited liability company (the "Borrower"), has entered into a loan agreement (as modified, amended, supplemented and/or restated from time to time, the "Loan Agreement") with the Lender of even date herewith, providing, among other things, for loans by the Lender to the Borrower (i) in the original principal amount of \$1,030,000 (the "Real Estate Loan"), as evidenced by the Borrower's promissory note (as modified, amended, supplemented, renewed and/or restated from time to time, the "Real Estate Note"), dated of even date, and executed and delivered to the Lender and (ii) in the original principal amount of \$517,500 (the "Equipment Loan" and together with the Real Estate Loan, the "Loan"), as evidenced by the Borrower's promissory note (as modified, amended, supplemented, renewed and/or restated from time to time, the "Equipment Note" and together with the Real Estate Note, the "Note"), dated of even date, and executed and delivered to the Lender. Any capitalized term used but not otherwise defined in this Guaranty shall have the meaning ascribed to such term in the Loan Agreement.

B. To induce the Lender to make the Loan, Guarantor has agreed, among other things, to guarantee the payment and performance of the obligations and liabilities of the Borrower to the Lender with respect to the Loan pursuant to the terms and conditions hereafter set forth.

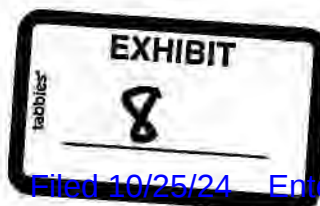
C. Guarantor understands that the Lender is relying upon the agreement of Guarantor as hereafter set forth as a material condition to the Lender's agreement to make the Loan to the Borrower.

### Agreement

NOW, THEREFORE, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and as a material inducement to Lender to extend credit to Borrower, the Guarantor hereby guarantees to Lender the prompt and full payment and performance of the indebtedness and obligations described below in this Guaranty (collectively called the "Guaranteed Obligation"), this Guaranty being upon the following terms and conditions:

1. Definitions. For purposes of this Guaranty, except as otherwise expressly provided or unless the context otherwise requires:

4823-1695-1691.1



Port Wentworth, GA



(a) Singular terms shall include the plural as well as the singular and vice versa.

(b) All references to other documents or instruments shall be deemed to refer to such documents or instruments as they may hereafter be extended, renewed, modified, or amended (except to the extent such extension, renewal, modification or amendment is restricted by this Guaranty).

2. Guaranty of Payment.

(a) Guarantor hereby unconditionally guarantees to Lender the payment, as and when the same shall be due and payable, whether by lapse of time, by acceleration of maturity or otherwise, and at all times thereafter, of all principal, interest, fees, costs, expenses, attorneys' fees, indemnification indebtedness and other sums of money now or hereafter due and owing pursuant to the terms of the Note or pursuant to the terms of the Loan Agreement, the Mortgage or any other of the Loan Documents now or hereafter existing (specifically including, without limitation, any Hedge Agreement), and all renewals, extensions, refinancings, modifications or amendments of such indebtedness or any part thereof together with costs of collection as set forth in Section 12 hereof (herein collectively called the "Indebtedness"). This Guaranty covers the Indebtedness whether presently outstanding or arising subsequent to the date hereof including all amounts advanced by Lender in stages or installments. The guaranty of Guarantor as set forth in this Section is a guaranty of payment and not of collection.

(b) Notwithstanding anything to the contrary contained in this Guaranty or any provision of any other Loan Document, the Guaranteed Obligation guaranteed hereunder by any Guarantor shall not extend to or include any Excluded Swap Transaction (as defined below) with respect to that Guarantor. For purposes hereof, "Excluded Swap Transaction" means, with respect to any Guarantor, any transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act ("Swap"), if, and to the extent that, such Guarantor is not an "eligible contract participant" under and as defined in Section 1a(18) of the Commodity Exchange Act (or CFTC rules promulgated thereunder) on the date such Swap is entered into or such transaction is or becomes illegal under the Commodity Exchange Act (or CFTC rules promulgated thereunder) or other applicable law.

3. Guaranty of Performance. Guarantor additionally hereby unconditionally guarantees to Lender the timely performance of all other obligations of Borrower under all of the Loan Documents, including, without limiting the generality of the foregoing, that:

(a) the Improvements will be constructed upon the Real Estate in accordance with the Loan Agreement and substantially in accordance with the Plans and Specifications; and

(b) the Improvements will be completed and ready for occupancy, including delivery of any certificates required by law or the Loan Agreement, on or before the date required in the Loan Agreement.

If any of the foregoing obligations of Borrower are not complied with, in any respect whatsoever, and without the necessity of any notice from Lender to Guarantor, Guarantor agrees



to (i) assume all responsibility for the completion of the Improvements and, at no cost to Lender, to cause the Improvements to be fully completed in substantial accordance with the Plans and Specifications and in accordance with the Loan Agreement; (ii) cause all bills to be paid in connection with the construction of the Improvements; and (iii) indemnify and hold Lender harmless from any and all loss, cost, liability or expense Lender may suffer by reason of any such event, including, without limitation, attorneys' fees. Lender shall accept performance by Guarantor of Borrower's obligations under the Loan Documents, and so long as all of said obligations are being performed by Borrower or Guarantor and there is no Event of Default, Lender will make Advances under the Loan Agreement to Borrower under and subject to the terms of the Loan Agreement. If, after the occurrence and during the continuance of an Event of Default, Lender, in its sole discretion, is dissatisfied with the progress of construction by Borrower and/or Guarantor, Lender may, at its option, after first having given notice to Guarantor at the address set forth below in the manner prescribed herein for giving notice, and provided that such Event of Default continues for a period of thirty (30) days following receipt of such notice, complete the Improvements in substantial accordance with the Plans and Specifications either before or after exercise of commencement of foreclosure proceedings or before or after any other remedy of Lender against Borrower or Guarantor, with such changes or modifications in the Plans and Specifications which Lender reasonably deems necessary and expend such sums as Lender, in its discretion, reasonably deems necessary and proper in order to so complete the Improvements in substantial accordance with the Plans and Specifications, and Guarantor hereby waives any right to contest any such reasonably necessary expenditures. The amount of any and all expenditures made by Lender before foreclosure for the foregoing purposes shall be due and payable to Lender, upon demand and shall accrue interest at the rate as provided in the Loan Documents. Lender has no, and shall have no, obligation to complete the Improvements or take any such action.

4. Primary Liability of Guarantor. This Guaranty is an absolute, irrevocable and unconditional guaranty of payment and performance. In the event of default by Borrower in payment or performance of the Guaranteed Obligation, or any part thereof, when such indebtedness or performance becomes due, either by its terms or as the result of the exercise of any power to accelerate, Guarantor, on demand and without presentment, protest, notice of protest, further notice of nonpayment or of dishonor or of default or nonperformance, or notice of acceleration or of intent to accelerate, or any other notice whatsoever, without any notice having been given to Guarantor previous to such demand of the acceptance by Lender of this Guaranty, and without any notice having been given to Guarantor previous to such demand of the creating or incurring of such indebtedness or of such obligation to perform, shall pay the amount outstanding pursuant to Section 2 hereof to Lender, or perform or observe the agreement, covenant, term or condition, as the case may be, and it shall not be necessary for Lender, in order to enforce such payment or performance by Guarantor, first to institute suit or exhaust Lender's remedies against Borrower or others liable on such indebtedness or for such performance (including any action against any other Guarantor hereof), to enforce its rights against any security which shall ever have been given to secure such indebtedness or performance, to join Borrower or any others liable on the Guaranteed Obligation in any action to enforce this Guaranty, or to resort to any other means of obtaining payment or performance of the Guaranteed Obligation. Suit may be brought or demand may be made against all parties who have signed this Guaranty, or against any one or more of them, separately or together, without



impairing the rights of Lender against any other party hereto. At any time Lender is entitled to exercise its remedies hereunder, Lender may, in its discretion elect to demand payment or performance. If Lender elects to demand performance, it shall at all times thereafter have the right to demand payment until all of the Indebtedness has been paid in full. If Lender elects to demand payment, it shall at all times thereafter have the right to demand performance until all of the Indebtedness has been paid in full. If Lender forecloses on any real property collateral securing the Indebtedness, the amount of the Indebtedness may be reduced only by the amount of the net proceeds to Lender resulting from the foreclosure sale, even if such collateral is worth more than the price for which the collateral is sold at such sale; and Lender may collect from Guarantor hereunder even if Lender, by foreclosing on the real property collateral, has destroyed any rights Guarantor may have to collect from Borrower or anyone else.

5. Certain Agreements and Waivers by Guarantor: Guarantor hereby agrees that neither Lender's rights and remedies nor Guarantor's obligations under the terms of this Guaranty shall be released, diminished, impaired, reduced or affected by any one or more of the following:

- (a) any limitation of liability or recourse in any other Loan Document;
- (b) the taking or accepting of any other security or guaranty for, or right of recourse with respect to, any or all of the Guaranteed Obligation;
- (c) any release, surrender, exchange, subordination, deterioration, waste, impairment or loss of, or any failure to create or perfect, any lien or security interest with respect to any security at any time existing or purported, believed or expected to exist in connection with any or all of the Guaranteed Obligation;
- (d) any partial release of the liability of Guarantor hereunder or any other Guarantor under a separate Guaranty, or if there is more than one person signing this Guaranty, the complete or partial release of any one or more of them hereunder;
- (e) the death, insolvency, bankruptcy, disability, dissolution, liquidation, termination, receivership, reorganization, change of form and/or name, structure or ownership, sale of all assets, or lack of limited liability company or other power of Borrower, any of the undersigned, or any party at any time liable for the payment or performance of any or all of the Guaranteed Obligation, whether now existing or hereafter occurring;
- (f) renewal, extension, modification or rearrangement of the payment or performance of any or all of the Guaranteed Obligation, either with or without notice to or consent of Guarantor, or any adjustment, indulgence, forbearance, or compromise that may be granted or given by Lender to Borrower or Guarantor from time to time;
- (g) any neglect, delay, omission, failure, or refusal of Lender to take or prosecute any action for the collection or enforcement of any of the Guaranteed Obligation or to foreclose or take or prosecute any action to foreclose upon any security therefor or to take or prosecute any action in connection with any Loan Document;



(h) any failure of Lender to notify Guarantor of any creation, renewal, extension, rearrangement, modification or assignment of the Guaranteed Obligation or any part thereof, or of any Loan Document, or of any release of or change in any security or of any other action taken or refrained from being taken by Lender against Borrower or any security or other recourse or of any new agreement between Lender and Borrower, it being understood that Lender shall not be required to give Guarantor any notice of any kind under any circumstances with respect to or in connection with the Guaranteed Obligation;

(i) the unenforceability of all or any part of the Guaranteed Obligation against Borrower, whether because the Guaranteed Obligation exceeds the amount permitted by law or violates any usury law, the act of creating the Guaranteed Obligation, or any part thereof, is ultra vires, the officers or persons creating same acted in excess of their authority, Borrower has any valid defense, claim or offset with respect thereto, or otherwise, it being agreed that Guarantor shall remain liable hereon regardless of whether Borrower or any other person be found not liable on the Guaranteed Obligation, or any part thereof, for any reason;

(j) any payment by Borrower or any other Guarantor to Lender is held to constitute a preference under the bankruptcy laws or if for any other reason Lender is required to refund such payment or pay the amount thereof to someone else; or

(k) the construction of the Project by Lender on its own behalf or on the account of Borrower in accordance with the Loan Documents.

It is the intent of Guarantor and Lender that the obligations and liabilities of Guarantor hereunder are absolute and unconditional under any and all circumstances and that until the Guaranteed Obligation or all amounts required to be paid by Guarantor under this Guaranty are fully and finally paid and performed, such obligations and liabilities shall not be discharged or released, in whole or in part, by any act or occurrence which might, but for the provisions of this Guaranty, be deemed a legal or equitable discharge or release of a guarantor.

6. Subordination; Subrogation. If, for any reason whatsoever, Borrower is now or hereafter becomes indebted to Guarantor:

(a) such indebtedness and all interest thereon and all liens, security interests and rights now or hereafter existing with respect to property of Borrower securing same shall, at all times, be subordinate in all respects to the Guaranteed Obligation and to all liens, security interests and rights now or hereafter existing to secure the Guaranteed Obligation. Notwithstanding anything to the contrary contained in this Guaranty or any payments made by any party hereunder, until the Guaranteed Obligation is paid in full and no longer subject to being recovered or set aside, Guarantor hereby permanently and irrevocably waives any right of subrogation in or under any of the Loan Documents or to participate in any way therein, or in any right, title or interest in and to any security or right of recourse for the Guaranteed Obligation;

(b) after the occurrence of a default (whether or not declared, but if not declared, only if Guarantor has actual knowledge of the occurrence of such default) under any of the Loan Documents, Guarantor shall not be entitled to enforce or receive payment, directly or



indirectly, of any such indebtedness of Borrower to Guarantor until the Guaranteed Obligation has been fully and finally paid and performed;

(c) Guarantor hereby assigns and grants to Lender a security interest, as security for the Guaranteed Obligation, in all such indebtedness and security therefor, if any, of Borrower to Guarantor now existing or hereafter arising, including any dividends and payments pursuant to debtor relief or insolvency proceedings referred to below. In the event of receivership, bankruptcy, reorganization, arrangement or other debtor relief or insolvency proceedings involving Borrower as debtor, Lender shall have the right to prove Lender's claim in any such proceeding so as to establish Lender's rights hereunder and shall have the right to receive directly from the receiver, trustee or other custodian (whether or not a default shall have occurred or be continuing under any of the Loan Documents), dividends and payments which are payable upon any obligation of Borrower to Guarantor now existing or hereafter arising, and to have all benefits of any security therefor, until the Guaranteed Obligation has been fully and finally paid and performed. If, notwithstanding the foregoing provisions, Guarantor should receive any payment, claim or distribution which is prohibited as provided above in this Section 6, Guarantor shall pay the same to Lender, immediately, Guarantor hereby agreeing that Guarantor shall receive the payment, claim or distribution in trust for Lender and shall have absolutely no dominion over the same except to pay it immediately to Lender; and

(d) Guarantor shall promptly upon request of Lender from time to time execute such documents and perform such acts as Lender may require to evidence and perfect its interest and to permit or facilitate exercise of Lender's rights under this Section, including but not limited to execution and delivery of financing statements, proofs of claim, further assignments and security agreements, and delivery to Lender of any promissory notes or other instruments evidencing indebtedness of Borrower to Guarantor. All promissory notes, accounts receivable ledgers or other evidences, now or hereafter held by Guarantor, of obligations of Borrower to Guarantor shall contain a specific written notice thereon that the indebtedness evidenced thereby is subordinated under and is subject to the terms of this Guaranty.

Nothing herein contained shall operate as a release or discharge, in whole or in part, of any claim of Guarantor against Borrower, by subrogation or otherwise, by reason of any act done or payment made by Guarantor pursuant to the provisions of this Guaranty; but all such claims, including claims for any indebtedness of Borrower to Guarantor, whether now existing or hereafter arising, shall be subordinate to the Guaranteed Obligation and the liens, security interests and rights of Lender under the Loan Documents.

7. Other Liability of Guarantor or Borrower. If Guarantor becomes liable for any indebtedness owing by Borrower to Lender, by endorsement or otherwise, other than under this Guaranty, such liability shall not be in any manner impaired or affected hereby, and the rights of Lender hereunder shall be cumulative of any and all other rights that Lender may ever have against Guarantor. If Borrower is or becomes indebted to Lender for other than the Indebtedness, any payment received or recovery realized upon any indebtedness of Borrower to Lender may, except to the extent paid by Guarantor on the Indebtedness or specifically required by law or agreement (including, without limitation, the Loan Agreement) of Lender, be applied to the Indebtedness.



8. Lender's Successors and Assigns. This Guaranty is for the benefit of Lender and its successors and assigns, and in the event of an assignment of the Indebtedness or any part thereof, the rights and benefits hereunder, to the extent applicable to the Indebtedness so assigned, may be transferred with such Indebtedness. Guarantor waives notice of any transfer or assignment of the Indebtedness, or any part thereof, and agrees that failure to give notice will not affect the liabilities of Guarantor hereunder.

9. Binding Effect. This Guaranty is binding not only on Guarantor, but on Guarantor's estate, heirs, personal representatives, successors and assigns. Upon the death of any of the undersigned, this Guaranty shall continue against his estate and against all survivors among the undersigned as to all of the Guaranteed Obligations, including that portion incurred or arising after such death. If this Guaranty is signed by more than one person, then all of the obligations of Guarantor arising herein shall be jointly and severally binding on the undersigned, and his heirs, personal representatives, successors and assigns, and the term "Guarantor" shall mean all such persons and each of them individually. Words importing persons herein shall include firms, associations, partnerships (including limited partnerships), joint ventures, trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

10. Invalid Provisions. If any provision of this Guaranty or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Guaranty nor the application of such provision to any other person or circumstance shall be affected thereby, but rather the same shall be enforced to the greatest extent permitted by law.

11. Attorney's Fees and Costs of Collection. Guarantor shall pay on demand the reasonable attorney's fees and all other costs and expenses which may be incurred by Lender in the enforcement of or preservation of Lender's rights under this Guaranty, which covenant shall survive any payment or discharge in full of the Indebtedness.

12. Payments. All sums payable under this Guaranty shall be paid in lawful money of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

13. Controlling Agreement. It is not the intention of Lender or Guarantor to obligate Guarantor to pay interest in excess of that legally permitted to be paid by Guarantor under applicable law. Should it be determined that any portion of the Guaranteed Obligation constitutes interest in excess of the maximum amount of interest which Guarantor (in such capacity) may lawfully be required to pay under applicable law, the obligation of Guarantor to pay such interest shall automatically be limited to the payment thereof in the maximum amount so permitted under applicable law. The provisions of this Section shall override and control all other provisions of this Guaranty and of any other agreement between Guarantor and Lender.

14. Warranties and Representations of Guarantor. Guarantor hereby represents and warrants that (a) Guarantor directly or indirectly owns an interest in Borrower and that this Guaranty may reasonably be expected to benefit Guarantor, in an amount not less than the



amount guaranteed hereunder; (b) this Guaranty is valid and is binding upon Guarantor; (c) Guarantor is not, and the execution, delivery and performance by Guarantor of this Guaranty will not cause Guarantor to be, in violation of or in default with respect to any law or in default (or provide cause for acceleration of indebtedness) under any agreement or restriction by which Guarantor is bound or affected; (d) except as expressly disclosed in writing to Lender, there is no action, suit or proceeding pending or to the knowledge of Guarantor threatened before or by any court or governmental authority against or affecting Guarantor which constitutes a material adverse effect on the financial condition of Guarantor or Guarantor's ability to fulfill its obligations under this Guaranty; (e) all financial statements and information heretofore furnished to Lender by Guarantor do, and all financial statements and information hereafter furnished to Lender by Guarantor will, fully and accurately in all material respects present the financial condition of Guarantor as of the dates therein, and, since the date of the most recent financial statements of Guarantor heretofore furnished to Lender, no material adverse effect has occurred with respect to the financial condition of Guarantor, nor, except as heretofore disclosed in writing to Lender, has Guarantor incurred any material liability, direct or indirect, fixed or contingent; (f) after giving effect to this Guaranty, Guarantor is solvent; (g) Lender has no duty at any time to investigate or inform Guarantor of the financial or business condition or affairs of Borrower, or any change therein; and (h) Guarantor acknowledges and agrees that Guarantor may be required to pay and perform the Guaranteed Obligation in full, subject to Section 2 hereof, without assistance or support from Borrower or any other party. Guarantor's representations and warranties are a material inducement to Lender to enter into the other Loan Documents and shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other event affecting Borrower, Guarantor, or any security for the Indebtedness.

15. Notices and Communications. All notices and other communications hereunder shall be in writing and shall be effective when sent by certified or registered mail, return receipt requested, or by overnight courier: (a) if to Guarantor, at the address set forth on the signature page of Guarantor, or at such other address as Guarantor shall have furnished to Lender, or (b) if to the Lender, addressed to 2340 Woodcrest Place, Birmingham, Alabama 35209, Attention: Donnie Dobbins, or at such other address as Lender shall have furnished to the Guarantor.

16. Consent to Jurisdiction. Waiver of Jury Trial.

(a) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR GUARANTOR ARISING OUT OF OR RELATING TO THIS GUARANTY OR ANY OTHER LOAN DOCUMENT MAY AT THE LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE STATE OF ALABAMA, AND GUARANTOR WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON THE VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND GUARANTOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING. FINAL JUDGMENT IN ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT SHALL BE CONCLUSIVE AND BINDING UPON GUARANTOR AND MAY BE ENFORCED IN ANY COURT TO THE JURISDICTION OF WHICH GUARANTOR IS SUBJECT, BY A SUIT UPON SUCH JUDGMENT, PROVIDED THAT SERVICE OF PROCESS IS EFFECTED UPON GUARANTOR IN ONE OF THE



MANNERS SPECIFIED IN THIS SECTION 16 OR AS OTHERWISE PERMITTED BY LAW. NOTHING IN THIS SECTION 16 SHALL AFFECT THE RIGHT OF LENDER OTHERWISE TO BRING PROCEEDINGS AGAINST GUARANTOR IN THE COURTS OF ANY JURISDICTION OR JURISDICTIONS.

(b) GUARANTOR AND THE LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY PARTY OR ANY EXERCISE BY ANY PARTY OF THEIR RESPECTIVE RIGHTS UNDER THIS GUARANTY OR ANY OTHER LOAN DOCUMENT OR IN ANY WAY RELATING TO THIS GUARANTY, THE LOAN OR THE PROJECT (INCLUDING, WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS AGREEMENT, AND ANY CLAIM OR DEFENSE ASSERTING THAT THIS AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE LENDER TO EXTEND THE LOAN.

(c) Guarantor hereby consents to process being served in any suit, action or proceeding of the nature referred to in this Section 16 by (i) the mailing of a copy thereof by registered or certified mail, postage prepaid, return receipt requested, to Guarantor at its or his address designated in or pursuant to Section 15 hereof and (ii) serving a copy thereof upon the agent, if any, designated and appointed by such Guarantor as its or his agent for service of process by or pursuant to this Section 16. Guarantor irrevocably agrees that such service (i) shall be deemed in every respect effective service of process upon Guarantor in any such suit, action or proceeding and (ii) shall, to the fullest extent permitted by law, be taken and held to be valid personal service upon Guarantor. Nothing in this Section 16 shall affect the right of the Lender to serve process in any manner otherwise permitted by law or limit the right of the Lender otherwise to bring proceedings against Guarantor in the courts of any jurisdiction or jurisdictions.

17. Cumulative Rights, etc. The exercise by Lender of any right or remedy hereunder or under any other Loan Document, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy. Lender shall have all rights, remedies and recourses afforded to Lender by reason of this Guaranty or any other Loan Document or by law or equity or otherwise, and the same (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Guarantor or others obligated for the Guaranteed Obligation, or any part thereof, or against any one or more of them, or against any security or otherwise, at the sole discretion of Lender, (c) may be exercised as often as occasion therefor shall arise, it being agreed by Guarantor that the exercise, discontinuance of the exercise of or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse, and (d) are intended to be, and shall be, nonexclusive. No waiver of any default on the part of Guarantor, or of any breach of any of the provisions of this Guaranty or of any other document shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers



granted herein or in any other document shall be construed as a waiver of such rights and powers, and likewise no exercise or enforcement of any rights or powers hereunder or under any other document shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. The granting of any consent, approval or waiver by Lender shall be limited to the specific instance and purpose and shall not constitute consent or approval in any other instance or for any other purpose. No notice to nor demand on Guarantor, in any case shall of itself entitle Guarantor, to any other or further notice or demand in similar or other circumstances. No provision of this Guaranty nor any right, remedy or recourse of Lender with respect hereto, nor any default or breach, can be waived, nor can this Guaranty or Guarantor be released or discharged in any way or to any extent, except specifically by a writing intended for that purpose (referring specifically to this Guaranty) executed by Lender.

18. Term of Guaranty. This Guaranty shall continue in full force and effect until Guarantor or Borrower has fully and finally paid all amounts (including, without limitation, the Indebtedness described in Section 2 hereof) and performed all obligations (including, without limitation, all obligations described in Section 3 hereof) required to be paid or performed by Guarantor under this Guaranty. Notwithstanding anything to the contrary contained in this Section or elsewhere in this Guaranty or in any other Loan Document, (a) if pursuant to any bankruptcy, insolvency or other debtor relief law or any order or decision thereunder Lender must rescind or restore any payment or part thereof received by Lender in satisfaction of the Indebtedness or any part thereof, the term "Indebtedness" as used herein includes such payment to the extent rescinded or restored, and, to the extent of the payment rescinded or restored, any prior return, cancellation, release or discharge by Lender of this Guaranty or of Guarantor shall be without effect and this Guaranty shall remain in full force and effect notwithstanding such return, cancellation, release or discharge, and (b) if any indemnification indebtedness is incurred pursuant to any indemnity contained in any Loan Document, the term "Indebtedness" as used herein includes such indemnification indebtedness, and, to the extent of such indemnification indebtedness, any prior return, cancellation, release or discharge by Lender of this Guaranty or of Guarantor shall be without effect and this Guaranty shall remain in full force and effect notwithstanding such return, cancellation, release or discharge.

19. Financial Reporting.

(a) The Entity Guarantor shall furnish to Lender:

(i) within one hundred twenty (120) days after the end of its fiscal year (being December 31 in each year), the balance sheet of the Entity Guarantor and its Affiliates as of the end of such year and the related statements of income and changes in financial position of the Entity Guarantor for such fiscal year, together with supporting schedules, all on a comparative basis with the prior fiscal year, in reasonable detail, prepared in accordance with generally accepted accounting principles consistently applied throughout the periods involved, and audited and certified by independent certified public accountants of recognized standing selected by Guarantor and satisfactory to Lender (the form of such certification also to be satisfactory to Lender), showing the financial condition, assets, liabilities and owners' equity of Guarantor at the close of such year and the results of the operations of the Entity Guarantor during such year;



(ii) within forty-five (45) days after the end of the first three fiscal quarters in each fiscal year, financial statements similar to those referred to in subsection (i), unaudited but certified by the chief financial officer of the Entity Guarantor, such balance sheet to be as of the end of each such quarter and such statement of income and changes in financial position to be for the period from the beginning of the fiscal year to the end of such quarter, in each case subject to audit and to year-end adjustments;

(iii) annually, within thirty (30) days of filing, a copy of the federal income tax return of the Entity Guarantor and its Affiliates for the prior fiscal year; and

(iv) as soon as practical, from time to time, such other information regarding the operations, business affairs and financial condition of Guarantor as Lender may reasonably request.

(b) The Individual Guarantor shall furnish to Lender:

(i) at least every thirteen (13) months (within thirty (30) days of the most recent statement), the personal financial statement of the Individual Guarantor for such year prepared in accordance with the books and records of the Individual Guarantor;

(ii) annually, within thirty (30) days of filing, a copy of the federal income tax return of the Individual Guarantor for the prior fiscal year; and

(iii) as soon as practical, from time to time, such other information regarding the financial condition of Guarantor as Lender may reasonably request.

20. Participations. Guarantor acknowledges and agrees that Lender may, from time to time, sell or offer to sell interests in the Loan to one or more assignees or participants pursuant to the terms of Section 7.10 of the Loan Agreement.

21. Gender; Titles; Construction. Within this Guaranty, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. Titles appearing at the beginning of any subdivisions hereof are for convenience only, do not constitute any part of such subdivisions, and shall be disregarded in construing the language contained in such subdivisions. The use of the words "herein," "hereof," "hereunder" and other similar compounds of the word "here" shall refer to this entire Guaranty and not to any particular section, paragraph or provision.

22. Time of Essence. Time shall be of the essence in this Guaranty with respect to all of Guarantor's obligations hereunder.

23. Execution. This Guaranty may be executed in multiple counterparts, each of which, for all purposes, shall be deemed an original, and all of which together shall constitute one and the same agreement; and if the term "Guarantor" includes more than one person, the failure of any one or more such persons to execute a counterpart thereof shall not impair or affect the enforceability of this Guaranty against any person who does sign this Guaranty.

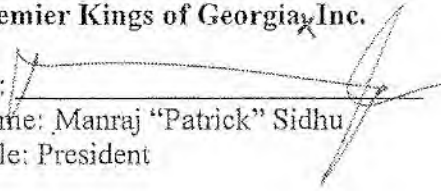
24. Drafted Jointly. The parties have participated jointly in the negotiation and drafting of this Guaranty. In the event an ambiguity or question of intent or interpretation arises, there shall be no presumption or burden of proof which arises favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Guaranty.

25. Governing Law. This Guaranty shall be construed in accordance with and governed by the laws of the State of Alabama.

THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be executed by its respective duly authorized representative or have set their hand and seal as of the date first above written.

Premier Kings of Georgia, Inc.

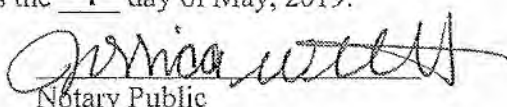
By:   
Name: Manraj "Patrick" Sidhu  
Title: President

STATE OF ALABAMA )

Montgomery COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Manraj "Patrick" Sidhu, whose name as President of Premier Kings of Georgia, Inc., a Georgia corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 9 day of May, 2019.

  
Notary Public

AFFIX SEAL

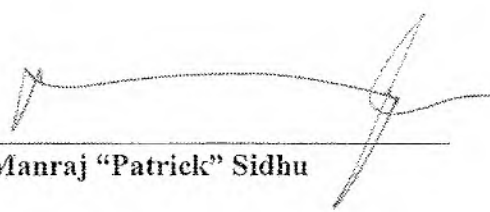
My commission expires



Address for Notices:

Premier Kings, Inc.  
3300 Eastern Blvd.  
Montgomery, AL 36116



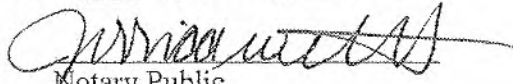
  
Manraj "Patrick" Sidhu

STATE OF ALABAMA     )

Montgomery COUNTY     )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Manraj "Patrick" Sidhu, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, executed the same voluntarily as of the day the same bears date.

Given under my hand and official seal this the 9 day of May, 2019.

  
Notary Public

AFFIX SEAL



My commission expires. \_\_\_\_\_

Address for Notices:

Manraj "Patrick" Sidhu  
3300 Eastern Blvd.  
Montgomery, AL 36116

*Jaipal Gill*

Jaipal Gill

STATE OF Alabama )  
Montgomery COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Jaipal Gill, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, executed the same voluntarily as of the day the same bears date.

Given under my hand and official seal this the 10 day of May, 2019.

*Jessica Wilson*  
Notary Public

AFFIX SEAL



My commission expires: \_\_\_\_\_

Address for Notices:

Jaipal Gill  
3300 Eastern Blvd.  
Montgomery, AL 36116





## ASSIGNMENT OF DEVELOPMENT AGREEMENT

THIS ASSIGNMENT OF DEVELOPMENT AGREEMENT (this "Assignment") is made as of the 17<sup>th</sup> day of May, 2019, by **Premier Holdings of Georgia, LLC**, a Georgia limited liability company ("Assignor"), in favor of **IBERIABANK**, a Louisiana state chartered bank, and its successors and assigns ("Lender").

### Recitals

A. Lender has agreed to make a mortgage loan to Assignor in the original principal amount of \$1,030,000 (the "Loan"), for the construction of a Burger King restaurant (the "Project"), located in Port Wentworth, Chatham County, Georgia.

B. The Loan is evidenced by a certain Loan Agreement by and between Assignor and Lender of even date herewith (as may be amended from time to time, the "Loan Agreement"), secured by a certain Deed to Secure Debt, Security Agreement and Assignment of Rents and Leases executed by Assignor in favor of Lender of even date herewith (as may be amended from time to time, the "Mortgage") granting, and creating, among other things, a first lien on the Project (which Loan Agreement and Mortgage, together with certain other documents executed and delivered in connection with the Loan, are hereinafter collectively referred to as the "Loan Documents"). Unless otherwise defined herein, capitalized terms shall have the meaning assigned to them in the Loan Agreement.

C. Assignor has entered into a Development Agreement with Premier Kings of Georgia, Inc., a Georgia corporation ("Premier Kings"), dated as of May 17, 2019 (the "Development Agreement"), pursuant to which Assignor will develop the Project for Premier Kings, a true and correct copy of which is attached hereto as Exhibit A and incorporated herein.

D. Lender has approved Assignor's execution of the Development Agreement pursuant to the terms of the Loan Agreement.

E. As a condition precedent to the making of the Loan, Lender requires that Assignor assign to Lender its rights and interest in any development agreement entered into by Assignor with the approval of Lender. The parties wish to establish the terms and conditions of such assignment.

### Agreement

NOW, THEREFORE, for and in consideration of the Loan and intending to be legally bound hereby, Assignor hereby agrees as follows:

1. Assignor does grant, assign, transfer and set over unto Lender, and grant to Lender a security interest in and to, all of Assignor's right, title and interest in and to the Development Agreement, as described above, for the performance of development of the Project, including without limitation all fees to which Assignor is entitled under the Development Agreement.



2. Assignor agrees that Lender does not assume any of the obligations or duties of Assignor under or with respect to the Development Agreement unless and until Lender shall have given Premier Kings written notice that Lender has affirmatively exercised its right to take possession of the Project following occurrence of an Event of Default under the Loan Documents. Lender may, in its absolute discretion, reassign its right, title and interest in the Development Agreement without any requirement for Assignor's consent. Assignor shall faithfully keep and perform, or cause to be kept and performed, all of the covenants, conditions and agreements contained in the Development Agreement, now or hereafter existing, on the part of Assignor to be kept and shall at all times do all things necessary to compel performance by Premier Kings of all obligations, covenants and agreements by Premier Kings to be performed under the Development Agreement.

3. Assignor represents and warrants that there have been no prior assignments of the Development Agreement, that the Development Agreement is a valid, enforceable agreement, that Assignor has full power and authority to execute and deliver this Assignment, that neither party is in default under the Development Agreement and that all covenants, conditions and agreements have been performed as required, except those not due to be performed until after the date of this Assignment. Assignor agrees that no change in the terms of the Development Agreement or termination of the Development Agreement shall be valid without the written approval of Lender. Assignor agrees not to assign or otherwise transfer its interest in the Development Agreement so long as this Assignment is in effect.

4. Assignor agrees that this Assignment shall constitute an absolute and present assignment and security interest provided that Lender shall have no right under this Assignment to enforce the provisions of the Development Agreement until Assignor is in default under the Note, the Mortgage, any Hedge Agreement or under any other instrument, document or agreement related to the Project. Upon the occurrence of any such default or event of default, Lender may, without affecting any of its rights or remedies against Assignor under any other instrument, document or agreement, exercise its rights under this Assignment in any manner permitted by law.

5. Assignor agrees to pay all costs and expenses (including without limitation attorneys' fees) which Lender may incur in exercising any of its rights under this Assignment.

6. Assignor agrees that this Assignment can be waived, modified, amended, terminated or discharged only explicitly in a writing signed by Lender, except that upon payment in full of the Note, this Assignment shall automatically become null and void. A waiver signed by Lender shall be effective only in a specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of Lender's rights or remedies under this Assignment. All rights and remedies of Lender shall be cumulative and may be exercised singularly or concurrently, at Lender's option, and the exercise or enforcement of any one such right or remedy shall neither be a condition to, nor bar the exercise or enforcement of, any other.

7. This Assignment, when executed by the parties hereto contains the complete and entire understanding of the parties with respect to the subject matter hereof, and no changes shall be recognized as valid unless they are made in writing and similarly executed.

8. This Assignment shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto. Assignor may not assign its interest in this Assignment without Lender's prior written consent. Lender may assign its interest in this Assignment without Assignor's consent or notice to Assignor.

9. Nothing herein contained shall constitute Lender as a joint venturer, partner or agent of Assignor or render Lender liable for any debts or obligations of Assignor, nor shall Lender be liable for any acts, omissions, representations or contracts of Assignor.

10. This Assignment shall be governed by and construed according to the laws of the State of Alabama.

11. This Assignment may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.



IN WITNESS WHEREOF, the undersigned has caused this Assignment to be executed by its duly authorized representative effective as of the date first written above.

**Premier Holdings of Georgia, LLC**

By: 

Name: Manraj "Patrick" Sidhu

Title: Manager

### ACKNOWLEDGMENT AND CONSENT

The undersigned Premier Kings hereby acknowledges and consents to the Assignment to which this Acknowledgment and Consent is attached and acknowledges and agrees with Lender that Lender may enforce the obligations of the Development Agreement with the same force and effect as if Lender were a party to the Development Agreement. Following an Event of Default under the Loan Documents, Lender may perform the obligations of Assignor, and Premier Kings shall (a) accept such performance in lieu of performance by Assignor in satisfaction of Assignor's obligations thereunder and (b) make any payments to Lender that are due and payable to Assignor.

Premier Kings has executed this Acknowledgment and Consent on the 17<sup>th</sup> day of May, 2019.

Premier Kings:

**Premier Kings of Georgia, Inc.**

By: 

Name: Manraj "Patrick" Sidhu

Title: President



**EXHIBIT A**  
[Development Agreement]

see attached

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made and entered into by and between Premier Holdings of Georgia, LLC, a Georgia limited liability company hereinafter called the "Developer") and Premier Kings of Georgia Inc., a Georgia corporation (hereinafter called the "Owner/Operator") on or about May 17, 2019.

### WITNESSETH:

WHEREAS, Developer and Owner/Operator desire to establish in writing their agreement concerning their relationship, obligations and rights with respect to the development of a Burger King restaurant on certain property located Chatham County, Georgia which is described on Exhibit "A" and to be known as Burger King Store No. 26868, 7304 Highway 21, Port Wentworth, Georgia 31407 (the "Premises").

WHEREAS, Developer and Owner/Operator acknowledge that this Development Agreement is made subject to the provisions hereof, and the terms and conditions of any bank loan, the proceeds of which will be used to construct the improvements on the Premises (hereinafter called the "Bank Loan").

WHEREAS, Developer and Owner/Operator acknowledge that the development of the Premises is made subject to the provisions hereof, all matters of record, and the terms and conditions of that certain franchise agreement entered into between Owner/Operator and Burger King Corporation (hereinafter called the "Franchise Agreement").

NOW, THEREFORE, in consideration of the payments hereinafter agreed to be paid and the mutual covenants and agreements hereinafter set forth and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Developer and Owner/Operator agree as follows:

1. Development of the Premises: Developer, for and in consideration of the fees, covenants, agreements and stipulations hereinafter mentioned, reserved and contained, to be paid, kept and performed by Owner/Operator, by these presents does hereby agree to construct a Burger King restaurant on the Premises described on Exhibit "A" for the use and benefit of the Owner/Operator upon the terms and conditions hereinafter set forth and in compliance with the Project # [REDACTED] 26-04 including all plans and specifications (and appendices and addendums thereto) for the Project, as provided, updated, and supplemented by Hendon + Huckestein Architects, PC (the "Plans and Specifications"), which are incorporated herein by reference (collectively, the "Project").

2. Term: The term of the Development Agreement shall commence on the date hereof and shall terminate twenty (20) years from the date hereof (the "Termination Date").

3. Development Fee. Owner/Operator agrees to pay to Developer, without deduction, set off or abatement, and without previous notice or demand therefor, a monthly development fee on the first day of each month commencing on June 1, 2019, and continuing through the Termination Date, equal to (a) the Developer's debt service payment associated with the development of the Project, including without limitation under the Bank Loan, plus (b) an administrative/overhead/profit fee of \$100.00.

4. Costs and Expenses. Each Party agrees to pay its own costs and expenses incurred in connection with the proposals, responses, and negotiation of the transactions contemplated herein, including all costs and expenses incurred in connection with the preparation of any studies or reports, surveys, or approvals for this Agreement or otherwise.

5. Assignment. This Agreement is not assignable, except that the Developer shall have the right at any time to assign all its rights and obligations in and to the Project and to transfer this Agreement or any part thereof to any affiliate of the Developer that agrees to assume assigned obligations of the Developer in and to the

00787242

6



Project; and if so assigned, the Developer shall continue to be responsible for the performance of the obligations of the Developer under this Agreement.

6. Section Titles and Headings. The section titles and headings are for convenience only and do not define, modify, or limit any of the terms and provisions hereof.

7. Survival of Representations and Warranties. The representations, warranties, and covenants made by each of the Parties hereto and contained herein shall survive the performance of any obligations to which such representations, warranties, and covenants relate.

8. Waivers. Waiver of any of the obligations of any Party under this Agreement shall be effective only when stated in writing and signed by the waiving Party. No delay or omission to exercise any right or power by any Party shall be construed to be a waiver. In the event any provision is waived by a Party, such waiver shall not be deemed to waive any other provision.

9. Time is of the Essence. The Parties acknowledge and agree that time is of the essence in performing their respective duties under this Agreement.

10. Notices. All notices required by, or arising out of, or related to this Agreement shall be sent by United States Mail, first class postage affixed, addressed to the receiving Party as described below:

PREMIER HOLDINGS OF GEORGIA, LLC  
3300 Eastern Blvd  
Montgomery AL 36116

PREMIER KINGS OF GEORGIA, INC.  
3300 Eastern Blvd  
Montgomery AL 36116

or to such other address as the receiving Party shall have most recently forwarded to the sending Party pursuant to the provisions of this Section.

11. Entire Agreement; Amendment. This Agreement is the entire agreement and supersedes all prior and collateral communications and agreements of the Parties relating to the subject matter. This Agreement may be amended only by a written modification executed by each of the Parties' duly authorized representatives. The terms and provisions of this Agreement shall run with the land for as long as this Agreement remains in effect and shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

12. Severability. In case any one or more of the provisions contained herein should be invalid, illegal or unenforceable in any respect and for any reason whatsoever, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, and in the event any such provision is held to be invalid, illegal or unenforceable, those Parties affected by such event shall exercise their best efforts to agree upon a provision in substitution for such invalid, illegal or unenforceable provision that is as near in economic benefit as possible to the provision found to be invalid, illegal or unenforceable.

13. No Third-Party Beneficiaries. Other than as set forth in this Agreement, this Agreement shall not confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assigns.



14. Governing Law. The governing law of this Agreement shall be the law of the State of Alabama without regard to conflicts of law provisions.

15. Construction. In this Agreement, unless the context indicates otherwise, the singular includes the plural and the plural the singular, references to statutes, sections or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section or regulation referred to; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation" or "but not limited to" or words of similar import; references to exhibits, attachments or appendices are to those of this Agreement unless otherwise indicated and shall be deemed to include all subsequent modifications thereto; references to agreements and other contractual instruments shall be deemed to include all exhibits, attachments and appendices attached thereto and all subsequent amendments and other modifications to such instrument; and references to Parties include their respective successors and permitted assigns.

16. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

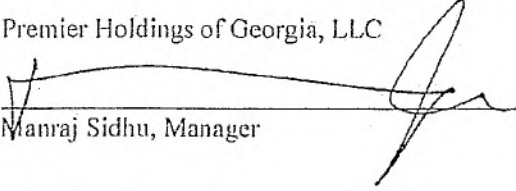
[Execution begins on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be executed in their respective names by their respective authorized representatives as of the day and year first above written.

DEVELOPER:

Premier Holdings of Georgia, LLC

Manraj Sidhu, Manager



OWNER/OPERATOR:

Premier Kings of Georgia Inc.

Manraj Sidhu, President

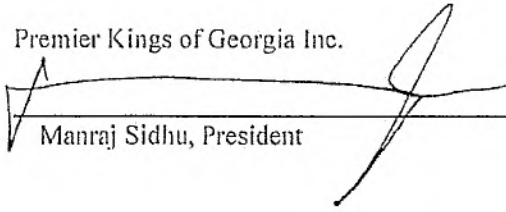


Exhibit "A"

LEGAL DESCRIPTION

ALL THAT TRACT or parcel of land lying and being in the 8<sup>th</sup> GMD of Chatham County, Georgia, being Lot B, Waterford Shoppes, Phase 1, as more particularly depicted on a plat recorded in Plat Book 37-S, Page 71, Records of Chatham County, Georgia, which plat is incorporated herein by reference hereto.

TOGETHER WITH those easement rights arising under that certain Declaration of Easements, Restrictions and Maintenance Responsibilities (Shopping Center and Outparcel Property) by Port Wentworth Retail Investors, LLC, a North Carolina limited liability company, dated as of September 19, 2005, filed for record September 20, 2005 at 11:01 a.m., recorded in Deed Book 294-Q, Page 361, Records of Chatham County, Georgia; as amended by that certain Amended and Restated Declaration of Easements, Restrictions and Maintenance Responsibilities (Shopping Center and Outparcel Property) by Port Wentworth Retail Investors, LLC, a North Carolina limited liability company, dated as of March 19, 2007, filed for record March 21, 2007 at 11:23 a.m., recorded in Deed Book 322-U, Page 457, aforesaid Records; as further amended by that certain First Amendment to Amended and Restated Declaration of Easements, Restrictions and Maintenance Responsibilities (Shopping Center and Outparcel Property) by Port Wentworth Retail Investors, LLC, a North Carolina limited liability company, dated February 21, 2008, filed for record February 26, 2008 at 10:31 a.m., recorded in Deed Book 337-V, Page 103, aforesaid Records; as assigned by that certain Assignment and Assumption of Declarant's Rights by and between Port Wentworth Retail Investors, LLC, a North Carolina limited liability company and Port Wentworth Fee Owner, LLC, a Delaware limited liability company, dated as of May 31, 2013, filed for record June 5, 2013 at 9:57 a.m., recorded in Deed Book 387-Z, Page 942, aforesaid Records.



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

In re:	)	
	)	
PREMIER KINGS, INC., <i>et al.</i> ,	)	Chapter 11
	)	CASE NO. 23-02871 (TOM11)
Debtor.	)	(Jointly Administered)
	)	
PREMIER HOLDINGS OF GEORGIA, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Adv. Proc. No. 24-00016-TOM
RRG OF JACKSONVILLE, LLC	)	
	)	
Defendant.	)	
	)	
	)	
	)	

AFFIDAVIT OF LAURA KENDALL

STATE OF NORTH CAROLINA

MECKLENBURG COUNTY

Before me, the undersigned authority, personally appeared [insert name], who is known to me, and being by me duly sworn, deposes and says as follows:

1. I am Laura Kendall. I am Senior Managing Director for Aurora Management Partners Inc. ("Aurora"). I make this affidavit (this "Affidavit") in response to Premier Holdings of Georgia, LLC's *Subpoena to Testify at a Deposition in a Bankruptcy Case (or Adversary Proceeding)* and *Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Bankruptcy Case (or Adversary Proceeding)* (together, the "Subpoenas").

65533/0002-48257798v2



2. I am an authorized custodian of Aurora's business records (including access to electronically stored data) with respect to its work in the above-captioned bankruptcy cases of Premier Kings, Inc., Premier Kings of Georgia, Inc., and Premier Kings of North Alabama, Inc. (collectively, the "Debtors"). The records were created contemporaneously with the related events and recorded by an authorized person with knowledge of the subject events. These records are kept in the ordinary course of Aurora's regularly conducted business activity, which is Aurora's customary practice. I have reviewed Aurora's files for these cases, and the summary herein is based on this review. All documents attached hereto are true and correct copies of the business records described above. All facts set forth herein are either: (a) facts of which I have personal knowledge; or (b) an accurate summary of Aurora's business records as described above.

3. Aurora received the Subpoenas on July 10, 2024. This Affidavit constitutes Aurora's response to the Subpoenas.

4. The Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on October 3, 2023 (the "Bankruptcy").

5. By Order entered November 29, 2023 [Docket No. 267], the Court approved the retention and employment of Aurora as the Debtors' Chief Restructuring Officer,

6. As part of the Bankruptcy, the Debtors sold substantially all of the Debtors' assets, and assigned the Debtors' rights and interests in certain non-residential real property leases, to several purchasers, including RRG of Jacksonville, LLC ("RRG"), pursuant to an Order entered on December 13, 2023 (the "Sale Order").

7. Prior to the sale to RRG, Aurora created and maintained a drop box (the "Drop Box") to house documents related to the Debtors and the Debtors' assets. The Debtors' investment bankers, Raymond James & Associates, Inc. ("Raymond James") was provided permission to

access the documents in the Drop Box to prepare marketing materials, due diligence materials, etc. for use in communicating with interested buyers and for use in facilitating the sales contemplated in the Sale Order, including the sale to RRG.

8. A Development Agreement for Store 26868 was included in the Drop Box, as evidenced by the below screen shot of the contents of the Drop Box:

Premier Kings - BK Leases - Store 26868 - 7304 Highway 21, Fort Worth, TX and contained 3 documents:

- 26868 - 11.15.2024 Development Agreement
- 26868 - Premier Kings of GA, Inc. 1st QSOB, 18
- 26868 - Premier Kings of GA, Inc. Ground Lse. QSOB, 18

9. No buyers under the Sale Order, including RRG, accessed the Drop Box.

10. At no point did Aurora have any contact with RRG regarding Store 26868 or the Development Agreement.

DATED this the 7th day of August, 2024.

  
Affiant

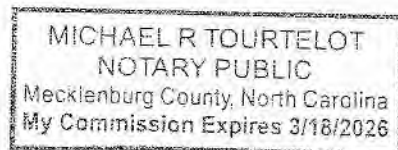
STATE OF NORTH CAROLINA

MECKLENBURG COUNTY

I, Michael R Tourtelot, a Notary Public in and for said County in said State, hereby certify that Laura Carrick Randall whose name is signed to the foregoing Affidavit, and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand and seal, this 7<sup>th</sup> day of August, 2024.

[SEAL]



  
NOTARY PUBLIC  
My Commission Expires: March 18, 2026



**Fill in this information to identify the case:**

Debtor Premier Kings of Georgia, Inc.

United States Bankruptcy Court for the: Northern District of Alabama  
(State)

Case number 23-02874



## Official Form 410

### Proof of Claim

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. Who is the current creditor?	<u>Premier Holdings of Georgia, LLC</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor: _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	<b>Where should notices to the creditor be sent?</b> See summary page  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should payments to the creditor be sent? (if different)</b> <u>Premier Holdings of Georgia, LLC</u> <u>c/o Jay Gill</u> <u>755 Tate Overlook</u> <u>Marietta, Georgia 30064, United States</u>
	Contact phone: <u>205-458-5178</u> Contact email: <u>hjamison@burr.com</u>	Contact phone: <u>770-630-0862</u> Contact email: <u>jaygill116@yahoo.com</u>
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on <u>MM / DD / YYYY</u>	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

**Part 2:** Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____
7. How much is the claim?	\$ <u>1,752,094.91</u> Does this amount include interest or other charges? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples. Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.  <u>See summary page</u>
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. <b>Nature or property:</b> <input type="checkbox"/> Real estate: If the claim is secured by the debtor's principle residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____  <b>Basis for perfection:</b> _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  <b>Value of property:</b> \$ _____ <b>Amount of the claim that is secured:</b> \$ _____ <b>Amount of the claim that is unsecured:</b> \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)  <b>Amount necessary to cure any default as of the date of the petition:</b> \$ _____  <b>Annual Interest Rate</b> (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ <u>189,069.25</u>
11. Is this claim subject to a right of setoff?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Identify the property: <u>Moneys due and owing</u>



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No

☐ Yes. Check all that apply:

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Amount entitled to priority

\$ \_\_\_\_\_

☐ Up to \$3,350\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ \_\_\_\_\_

☐ Wages, salaries, or commissions (up to \$15,150\* earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ \_\_\_\_\_

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ \_\_\_\_\_

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ \_\_\_\_\_

☐ Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.

\$ \_\_\_\_\_

\* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim entitled to administrative priority pursuant to 11 U.S.C. 503(b)(9)?

☒ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

### Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☒ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 01/02/2024  
MM / DD / YYYY

/s/Jay Gill  
Signature

Print the name of the person who is completing and signing this claim:

Name Jay Gill  
First name Middle name Last name

Title Authorized Signatory

Company Premier Holdings of Georgia, LLC  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address Burr and Forman, LLP c/o Heather Jamison, 402 North 20th Street, Suite 3400, Birmingham, Alabama, 35203, United States

Contact phone 205-458-5170 Email hjamison@burr.com



# KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (866) 927-7089 | International (310) 751-2656

<b>Debtor:</b> 23-02874 - Premier Kings of Georgia, Inc. <b>District:</b> Northern District of Alabama, Birmingham Division		
<b>Creditor:</b> Premier Holdings of Georgia, LLC Burr and Forman, LLP c/o Heather A. Jamison 420 North 20th Street, Suite 3400 Birmingham, Alabama, 35203 United States <b>Phone:</b> 205-458-5170 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> hjamison@burr.com		<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>  <b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>  <b>Filing Party:</b> Authorized agent
<b>Disbursement/Notice Parties:</b> Premier Holdings of Georgia, LLC c/o Jay Gill 755 Tate Overlook  Marietta, Georgia, 30064 United States <b>Phone:</b> 770-630-0862 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> jaygill16@yahoo.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>		<b>Amends Claim:</b> No <b>Acquired Claim:</b> No
<b>Basis of Claim:</b> Past due rents owing under commercial leases, rejection damages, FF and E loans, amounts loaned.		<b>Last 4 Digits:</b> No <b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> 1,752,094.91		<b>Includes Interest or Charges:</b> No
<b>Has Priority Claim:</b> No		<b>Priority Under:</b>
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> Yes, 189,069.25 <b>Subject to Right of Setoff:</b> Yes, Moneys due and owing		<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>

**Submitted By:**

Jay Gill on 02-Jan-2024 12:51:57 p.m. Eastern Time

**Title:**

Authorized Signatory

**Company:**

Premier Holdings of Georgia, LLC

**Optional Signature Address:**

Burr and Forman, LLP c/o Heather Jamison  
402 North 20th Street, Suite 3400

Birmingham, Alabama, 35203

United States

**Telephone Number:**

205-458-5170

**Email:**

hjamison@burr.com

Premier Kings of Georgia, Inc.

Case Number 23-02874

**ADDENDUM TO PROOF OF CLAIM**

As of the petition date, Premier Holdings of Georgia, LLC (the “Claimant”) held a claim for past due rents owing under commercial leases, rejection damages, amounts loaned, and FF&E loans of no less than \$1,752,094.91 (the “Claim”). Supporting calculations are attached hereto as Exhibit “A,” the supporting documents are attached hereto as Exhibit “B.”

Claimant reserves its rights, inter alia, (i) to increase the amount of the Claim (from time to time) for any reason including, but not limited to, to account for reconciliations which have occurred at a later date pursuant to the Claimant’s lease, (ii) to any leases which may be rejected at any point in the future, and/or (iii) to modify, supplement, or further amend (from time to time) the Claim, including the amount and priority of the Claim or any portion thereof and/or the entity against which the Claim is asserted. Specifically, Claimant reserves the right to assert additional administrative claims in the Debtor’s bankruptcy case. Claimant further reserves all additional rights under applicable law.



**EXHIBIT A**

**PREMIER HOLDINGS OF GEORGIA, LLC**

Premier Kings of Georgia, Inc.

Case No. 23-02872 (TOM11)

**Damages Related to Leases:**

Store No.	Past Due as of Petition Date	Balance of FFE Loan	Rejection Damages	Total by Store
25426	\$0.00	\$184,357.00	\$0.00	\$184,357.00
25607	\$28,482.56	\$0.00	\$0.00	\$28,482.56
25882	\$21,546.00	\$0.00	\$295,718.85	\$317,264.85
25937	\$27,076.36	\$0.00	\$0.00	\$27,076.36
26113	\$11,316.67	\$185,730.58	\$0.00	\$197,047.25
26748	\$22,653.52	\$0.00	\$0.00	\$22,653.52
26749	\$26,753.80	\$0.00	\$0.00	\$26,753.80
26868	\$22,003.48	\$328,816.00	\$0.00	\$350,819.48
27690	\$29,236.86	\$139,469.00	\$0.00	<u>\$168,705.86</u>

Total Damages Related to Leases: \$1,323,160.68

Accounts Receivable: \$428,934.23

**TOTAL CLAIM: \$1,752,094.91**

## Rejection Damages Calculations:

25882	(a) Rent over one (1) year from Petition Date	\$129,276.00
	(b) 15% of remaining rent under lease	\$295,718.85
	Greater of (a) or (b):	\$295,718.85

**EXHIBIT B**



Intercompany receivables, as calculated by accountants for the Claimant: \$428,934.23.

\*The documentation supporting this calculation is confidential, but may be provided upon request and upon the execution of an appropriate non-disclosure agreement.

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

**MOTION OF THE DEBTORS AND DEBTORS-IN-POSSESSION FOR  
ENTRY OF AN ORDER ENFORCING AUTOMATIC STAY**

Premier Kings, Inc., and its debtor affiliates, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the "Debtors"), by their undersigned proposed counsel and pursuant to sections 105(a), 541(a), and 362(a) of Title 11 of the United States Code (the "Bankruptcy Code") and Rule 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), hereby move (the "Motion") for entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Proposed Order"), (a) declaring that the prosecution of the Memphis Action (defined below) constitutes a violation of section 362(a) of the Bankruptcy Code, (b) enjoining First Horizon ("First Horizon" or the "Bank") from prosecuting the Memphis Action insofar as it pertains to the Equipment (defined below), the Debtors' Stores (as defined below), or the Debtors, (c) requiring that any further or future action asserting a right to possess or control the Equipment or the Debtors' Stores, or otherwise concerning the Equipment, the Debtors' Stores, or the Debtors, be brought in this Court, and (d) granting such other and further relief as the Court deems just and proper.

<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. The Debtors have filed a motion for joint administration with the Court.

## PRELIMINARY STATEMENT

The Debtors request relief in this Motion to ensure that First Horizon and its attorneys cease their efforts to seize control of four of the Debtors' stores, which are currently the subject of two separate stalking horse purchase agreements, through litigation they initiated on Thursday, November 1, 2023 in the Chancery Court for the State of Tennessee, 30<sup>th</sup> Judicial District, Shelby County (the "Tennessee Court"). First Horizon not only filed a Complaint but also requested and obtained an emergency hearing held in the morning of November 3, 2023 on the Bank's request for appointment of receiver over the Debtors' Stores, including a request for the immediate surrender of the real and personal property used to operate the Debtors' stores, as well as other assets owned by the Debtors' landlord, Premier Holding, LLC and Premier Holdings of Georgia, LLC. Thanks to the ability and willingness of the Debtors' counsel, Eric Ray, to drive to Memphis in the middle of the night to prevent the Tennessee Court from interfering with the Debtors' bankruptcy estate administration, the Tennessee Court did not grant the relief requested by the Bank but did schedule another hearing on the Bank's request for appointment of a receiver which is to be held on Tuesday, November 7, 2023.

First Horizon's extreme actions are a transparent attempt to circumvent this Court's exclusive jurisdiction over the Debtors' Stores. The Bank took its wrongful actions knowing of the Debtors' bankruptcy, and knowing that the Debtors' Stores, which were included in the Bank's Complaint for relief, are the subject of pending stalking horse sale agreements. The Bank's counsel include lawyers who practice bankruptcy law and should know better.

The Bank filed its Complaint in the Tennessee Court even though the Tennessee Court has no jurisdiction over the Debtors' Stores, which are located in Alabama and Georgia, and as a matter of law a state court of Tennessee has no jurisdiction over real and personal property located outside of Tennessee. In taking this action, First Horizon ignored its own loan



documents with Premier Holdings, which provide for any disputes to be resolved by binding arbitration. To avoid further harm from the Bank's actions in violation of the automatic stay arising from the Debtors' bankruptcy, the Debtors now ask for the Court to make clear to First Horizon that the automatic stay applies to the Bank and its agents.

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157(b) and 1334, and the General Order of Reference from the United States District Court for the Northern District of Alabama dated July 16, 1984, as amended July 17, 1984. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A).

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

3. The statutory predicates for the relief sought herein are Sections 105(a), 541(a), and 362(a) of the Bankruptcy Code and Bankruptcy Rule 9014.

### **BACKGROUND**

#### **I. Introduction.**

4. On October 25, 2023 (the "Petition Date"), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code.

5. The Court entered its Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief on October 30, 2023 [Doc. No. 84].

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

7. No official committee of unsecured creditors has been appointed.

8. No request for a trustee or examiner has been made in these chapter 11 cases.

9. Information regarding the Debtors' businesses, capital structure, and the circumstances leading to the commencement of these chapter 11 cases is set forth in the

Declaration of David M. Baker in Support of First-Day Motions [Doc. No. 20]. Those facts are incorporated herein by reference.

## II. Relevant Factual Background.

10. On November 1, 2023, First Horizon filed its *Verified Complaint for Breach of Contract, Appointment of Receiver, and Other Injunctive and Equitable Relief* against Premier Holdings, LLC, Premier Holdings of Georgia, LLC, and Jaipal Gill in the Tennessee Court (the “Memphis Complaint”), giving rise to Case No. 23-1418-2 (the “Memphis Action”). A true and correct copy of the Memphis Complaint, without its over 850 pages of exhibits, is attached hereto as Exhibit B.<sup>2</sup>

11. The defendants to the Memphis Complaint include certain non-debtor affiliates of the Debtors—Premier Holdings, LLC and Premier Holdings of Georgia, LLC (the “Affiliate Defendants”)—which are obligors on certain loan and security agreements with First Horizon, and which pledged certain collateral to First Horizon, including certain fixtures and kitchen equipment such as fryers, ovens, refrigerators, and other essential equipment, presently used in the operation of certain of the Debtors’ restaurants (the “Equipment”).

12. The Equipment in question is located at the stores identified in the Memphis Complaint as the “Montgomery, Alabama Burger King” (Exhibit B, p. 3), the “Harpersville, Alabama Burger King” (Exhibit B, p. 4), the “Nahunta, Georgia Burger King” (Exhibit B, p. 6), and the “Port Wentworth, Georgia Burger King” (Exhibit B, p. 8). In this Motion, these four stores are referred to as the “Debtors’ Stores.”

13. The Equipment and the Debtors’ Stores identified in the Memphis Complaint are subject to a stalking horse purchase agreement between the Debtors and each of Bulldog

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<sup>2</sup> Including exhibits, the Memphis Complaint is 900 pages. The exhibits are therefore not included herewith to avoid the burden on the Court and interested parties of reviewing such a voluminous filing, but the exhibits will be made available upon request.



Restaurants, LLC (Store Numbers 21645 and 27281) and RRG of Jacksonville, LLC (or its nominee(s)) (Store Numbers 27690 and 26868), respectively.<sup>3</sup> Both of the aforementioned stalking horse agreements are subject to higher and better bids pursuant to the proposed Bidding Procedures<sup>4</sup> and any Auction that is conducted, and subject to the Court's ultimate approval following consideration of the Debtors' Sale Motion.<sup>5</sup>

14. Through the Memphis Action, First Horizon requested, *inter alia*, "immediate possession of all the Collateral under the express terms of the Security Agreements" (Count Four), to have a receiver appointed over the Equipment and the Affiliate Defendants' operations and activities (Count Five), and, among other things, a temporary restraining order and permanent injunction directing the Affiliate Defendants to surrender possession of the Equipment and the Debtors' Stores to First Horizon (Count Six).<sup>6</sup> See Exhibit B, Counts Four, Five, and Six.

15. On November 3, 2023, an emergency hearing (the "Emergency Hearing") was held on the Memphis Action, which was attended by Mr. Ray for the Debtors. Counsel for Premier Holdings did not appear at the hearing. After hearing argument, Chancellor Kyle of the Tennessee Court continued the hearing on the Bank's request for appointment of a receiver to November 7, 2023 and asked the parties to work to reach a consensual resolution concerning the Equipment and the Debtors' Stores.

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<sup>3</sup> The stalking horse agreements were filed under notice with the Court on October 27, 2023 [Doc. No. 47].

<sup>4</sup> [Doc. No. 42].

<sup>5</sup> [Doc. No. 43].

<sup>6</sup> Count Six is erroneously named as a duplicate Count Five.



16. In order to keep this Court apprised of matters concerning administration of the Debtors' estates and to prevent any further interference by First Horizon with the Debtors' estates and with the pending sale process, the Debtors now file this Motion.

### **RELIEF REQUESTED**

17. By this Motion, the Debtors seek entry of an order, substantially in the form attached hereto, (a) declaring that the prosecution of the Memphis Action constitutes a violation of section 362(a) of the Bankruptcy Code, (b) enjoining First Horizon from prosecuting the Memphis Action insofar as it pertains to the Equipment, the Debtors' Stores, or in any way would affect the Debtors, (c) requiring that any further or future action asserting a right to possess or control the Equipment or the Debtors' Stores or otherwise concerning the Equipment, the Debtors' Stores, or the Debtors, be brought in this Court, and (d) granting such other and further relief as the Court deems just and proper.<sup>7</sup>

### **BASIS FOR RELIEF REQUESTED**

18. Pursuant to section 362(a)(3) of the Bankruptcy Code, the Debtors' voluntary petitions operated as a stay of "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate."

19. In turn, section 541(a) of the Bankruptcy Code defines property of the estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case," "wherever located and by whomever held."

20. Here, the Debtors are in possession of all of the Equipment and real property which are the subject of the Memphis Complaint, and which First Horizon has requested be

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<sup>7</sup> The Debtors reserve the right to seek additional relief for damages and attorneys' fees incurred in connection with responding to the Memphis Complaint, attending the Emergency Hearing, and filing this Motion, including with regard to any forthcoming adversary proceeding concerning the relief requested herein.

surrendered to a state court receiver. While the Memphis Complaint does not name the Debtors as defendants, it represents a flagrant disregard and violation of Section 362(a)(3) which prohibits “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate”. 11 U.S.C. §362(a)(3); In re Morgan, No. 13-05178-TOM-7, 2014 WL 3733966, at \*2 (Bankr. N.D. Ala. July 11, 2014) (“The automatic stay of actions against property of the estate continues until the property is no longer property of the estate. 11 U.S.C. § 362(c)(1). Unless the court orders otherwise, property that has not been administered in the case and that has not been abandoned under section 554 remains property of the estate.”).

21. Moreover, the Debtors assert equitable ownership of the Equipment, as among other reasons, the Equipment has been listed on the Debtors’ personal property tax returns and the Debtors have paid personal property tax on the Equipment. Importantly, however, the possessory interest, which is undisputed, is enough to render the Equipment and the Debtors’ Stores property of the estate subject to the automatic stay of section 362(a) of the Bankruptcy Code. See Goguette v. U.S. Bank Nat’l Ass’n, 716 F. App’x 847, 849 (11th Cir. 2017).

22. On its face, the Memphis Action seeks to establish First Horizon’s right to exercise possession and control over the Equipment by virtue of Counts Four, Five, and Six. This is a textbook violation of the automatic stay. Moreover, counsel for First Horizon was aware of the Debtors’ bankruptcy filing and of the automatic stay. Indeed, the purpose of the Memphis Action appears to be to end-run this Court’s jurisdiction and to exercise control over property of the Debtors’ estates while thwarting the proposed sale process. The Memphis Complaint was filed in a Tennessee court having no jurisdiction over the Debtors’ Stores or the Equipment, all of which are located in either Alabama or Georgia. The Memphis Action was filed *after* the Petition Date and sought relief at the Emergency Hearing with almost no notice to



the Debtors—the Memphis Action was initiated on November 1, 2023 and the Emergency Hearing was held on November 3, 2023. Counsel for the Affiliate Defendants was not able to appear at the Emergency Hearing and counsel for the Debtors was only able to appear because local counsel in Birmingham, Alabama was fortunately able to drive nearly 4 hours on short notice to attend. Importantly, if the relief requested in the Memphis Action were granted, First Horizon would have been granted a receivership and the right to possess and control critical property of the Debtors’ estates, which would have undermined this Court’s jurisdiction over the Debtors’ assets and the sale process.

23. Such a result would be a direct violation of the Bankruptcy Code and this Court’s exclusive jurisdiction to administer these Chapter 11 cases.

24. First Horizon clearly needs clear direction from this Court that it is prohibited from pursuing the actions taken in the Tennessee Court and that its actions to date are in clear violation of the automatic stay.

### **NOTICE**

25. The Debtors will provide notice of this Motion to: (a) plaintiff in the Memphis Action, First Horizon, c/o Clarence Wilbon, Esq., Danielle E. Douglass, Esq., and Thomas W. Lawless, Esq.; (b) the Office of the Bankruptcy Administrator for the Northern District of Alabama; (c) the holders of the forty (40) largest unsecured claims against the Debtors on a consolidated basis; (d) counsel to BKCI; (e) counsel to Wells Fargo Bank, National Association, as Administrative Agent for the Lender Group; (f) the United States Attorney’s Office for the Northern District of Alabama; (g) the Internal Revenue Service; (h) the office of the Attorney General for the State of Alabama; (i) the Securities and Exchange Commission; and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.



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

Dated: November 6, 2023  
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@hklaw.com](mailto:jesse.vogtle@hklaw.com)  
[etray@hklaw.com](mailto:etray@hklaw.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  
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(410) 230-0660  
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[gleibowitz@coleschotz.com](mailto:gleibowitz@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

PROPOSED ORDER

**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

**ORDER ENFORCING AUTOMATIC STAY AGAINST FIRST HORIZON BANK**

Upon consideration of the motion (the “Motion”)<sup>2</sup> of the Debtors for entry of an Order enforcing the automatic stay; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A); and it appearing that venue of this proceeding and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, and their creditors; and after due deliberation and good and sufficient cause appearing therefor;

**IT IS FOUND AND DETERMINED THAT:**

1. The Equipment and the Debtors’ Stores are property of the Debtors’ estates under section 541(a) of the Bankruptcy Code.

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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 not otherwise defined herein are shall be given the meaning ascribed to them in the Motion.



2. By prosecuting the Memphis Action, First Horizon violated the automatic stay provided by section 362(a) of the Bankruptcy Code.

3. First Horizon Bank and its agents, including its attorneys, violated the automatic stay by the filing of the Memphis Complaint and other actions taken to date in the Tennessee Court.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

4. The Motion is GRANTED; and

5. First Horizon Bank and its agents, including its attorneys, are hereby enjoined from prosecuting the Memphis Action, including without limitation requesting appointment of a receiver for the Equipment or the Debtors' Stores, and seeking any other relief that would in any way interfere with the Debtors' pending sales of the Debtors' Stores and Equipment.

6. This Court shall retain its exclusive jurisdiction over any claims by First Horizon Bank with respect to the Equipment and the Debtors' Stores, and any other actions by First Horizon Bank that in any way would affect the administration of the Debtors' estates.

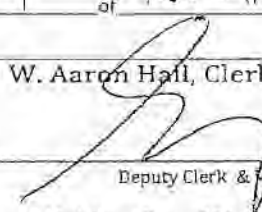
Dated: \_\_\_\_\_, 2023  
Birmingham, Alabama

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TAMARA O. MITCHELL  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT B**

**The Memphis Complaint  
(without Exhibits)**

STATE OF TENNESSEE 30th JUDICIAL DISTRICT CHANCERY COURT	<b>SUMMONS**</b>	DOCKET NUMBER CH- <u>23-1418-d</u>
Plaintiff  <u>First Horizon Bank</u>	Defendant  <u>Premier Holdings, LLC, et al,</u>	
TO: (NAME AND ADDRESS OF DEFENDANT) <u>Premier Holdings, LLC</u> <u>2660 Eastchase Lane, Ste 300</u> <u>Montgomery, AL 36117</u>		Method of Service: <input type="checkbox"/> Shelby County Sheriff <input checked="" type="checkbox"/> Private Process Server <input type="checkbox"/> Out of County Sheriff* <input type="checkbox"/> Secretary of State* <input type="checkbox"/> Comm. Of Insurance* <input type="checkbox"/> Certified Mail <input type="checkbox"/> Other *Attach Required Fees
You are summoned to defend a civil action filed against you in the Chancery Court of Shelby County, Tennessee. Your defense to this action must be made within thirty (30) days from the date this summons is served upon you. You must file your defense with the Clerk of the Court and send a copy to the Plaintiff/Plaintiffs attorney at the address listed below. If you fail to defend this action within thirty (30) days of service, judgment by default may be rendered against you for the relief sought in the complaint. Questions regarding this summons and the attached documents should be addressed to the Attorney/Plaintiff listed below.		
Attorney for Plaintiff or Plaintiff if filing Pro Se: (Name, address & telephone number) <u>Clarence A. Wilbon</u> <u>Adams and Reese LLP</u> <u>6075 Poplar Avenue, Ste 700</u> <u>Memphis, TN 38119</u>	ISSUED <u>1</u> of <u>November</u> , 20 <u>23</u>  <u>W. Aaron Hall, Clerk and Master</u> By:  Deputy Clerk & Master 140 Adams, Room 308 Memphis, TN 38102	
TO THE SHERIFF: _____ _____	Came to hand _____ day of _____ Sheriff	
<b>CERTIFICATION (IF APPLICABLE)</b>		
I, W. Aaron Hall, Clerk & Master of the Chancery Court in the State of Tennessee, Shelby County, do certify this to be a true and correct copy of the original summons issued in this case.		W. Aaron Hall, Clerk & Master By: _____ D. C. & M.

\*\*Submit one original and one copy for each defendant to be served.

⚠ If you need accommodations because of a disability, please call the ADA Coordinator at (901)222-2357.

For questions regarding scheduling or filing, please contact the court.

**Notice of Personal Property Exemption:**  
 TO THE DEFENDANT(S):

Tennessee law provides a ten thousand dollar (\$10,000.00) personal property exemption from execution or seizure to satisfy a judgment. If a judgment should be entered against you in this action and you wish to claim property as exempt, you must file a written list, under oath, of the items you wish to claim as exempt with the clerk of the court. The list may be filed at any time and may be changed by you thereafter as necessary; however, unless it is filed before the judgment becomes final, it will not be effective as to any execution or garnishment issued prior to the filing of the list. Certain items are automatically exempt by law and do not need to be listed; these include items of necessary wearing apparel (clothing) for yourself and your family and trunks or other receptacles necessary to contain such apparel, family portraits, the family Bible, and school books. Should any of these items be seized you would have the right to recover them. If you do not understand your exemption right or how to exercise it, you may wish to seek the counsel of a lawyer. Please state docket number on list.



<b>RETURN OF SERVICE OF SUMMONS</b>	
I hereby certify that I <u>HAVE</u> served the within summons:	
By delivering on the _____ day of _____, 20____ at _____ am/pm a copy of the summons and a copy of the Complaint to the following Defendant _____	
at _____	
Signature of person accepting service _____	By: _____ Sheriff or other authorized person to serve process
<b>RETURN OF NON-SERVICE OF SUMMONS</b>	
I hereby certify that I <u>HAVE NOT</u> served the within summons:	
To the named defendant _____ because _____	
is (are) not to be found in this county after diligent search and inquiry for the following reason(s): _____	
This _____ day of _____, 20____	
By: Sheriff or other authorized person to serve process	
<b>RETURN ON SERVICE OF SUMMONS BY MAIL</b>	
I hereby certify and return that on the _____ day of _____, 20____, I sent, postage prepaid, by registered return receipt mail or certified return receipt mail, a certified copy of the summons and a copy of the complaint in case CH-_____ to the defendant _____. On the _____ day of _____, 20____, I received the return receipt, which had been signed by _____ on the _____ day of _____, 20____. The return receipt is attached to this original summons to be filed by the Chancery Court Clerk & Master.	
Sworn to and subscribed before me on this _____ day of _____, 20____.  Signature of _____ Notary Public or _____ Deputy Court Clerk: _____  My Commission Expires: _____	Signature of Plaintiff, Plaintiff's attorney or other person authorized by statute to serve process.  _____
<div style="text-align: center;">             ATTACH RETURN              RECEIPT HERE              (IF APPLICABLE)           </div>	

**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE  
30TH JUDICIAL DISTRICT, SHELBY COUNTY**

FIRST HORIZON BANK,

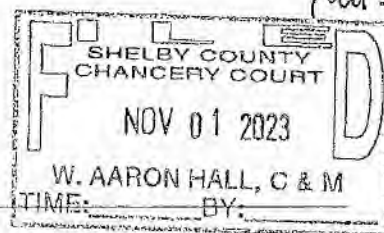
Plaintiff,

vs.

PREMIER HOLDINGS, LLC;  
PREMIER HOLDINGS OF GEORGIA, LLC;  
and JAIPAL GILL;

Defendants.

CASE NO. \_\_\_\_\_



**VERIFIED COMPLAINT FOR BREACH OF CONTRACT, APPOINTMENT OF  
RECEIVER, AND OTHER INJUNCTIVE AND EQUITABLE RELIEF**

Plaintiff, First Horizon Bank ("First Horizon"), as successor-in-interest to IBERIABANK, states the following for its Complaint against Defendants Premier Holdings, LLC; Premier Holdings of Georgia, LLC; and Jaipal Gill (collectively the "Premier Obligors" or the "Defendants"):

**I. THE PARTIES**

1. Plaintiff, First Horizon is the banking subsidiary of First Horizon Corporation, a national corporation of regional banking organized and existing under the laws of the United States, with its principal place of business located at 165 Madison Avenue, Memphis, Tennessee 38103.

2. Defendant, Premier Holdings, LLC ("Premier Holdings") is an Alabama limited liability company with its principal place of business located at 2660 Eastchase Lane, Suite 300, Montgomery, Alabama 36117. Premier Holdings' only member, Manraj Sidhu, died on May 24, 2022. The LLC interest of Premier Holdings is now held by Joginder Sidhu as the Personal



Representative of the Estate of Minraj Sidhu, currently pending as case no. 22-00416 in the Probate Court of Montgomery County, Alabama.

3. Defendant, Premier Holdings of Georgia, LLC (“Premier Holdings of Georgia”) is a Georgia limited liability company with its principal place of business located at 7078 Peachtree Industrial Blvd., Suite 800, Peachtree Corners, Georgia 30071. Premier Holdings of Georgia’s only member, Minraj Sidhu, died on May 24, 2022. The LLC interest of Premier Holdings of Georgia is now held by Joginder Sidhu as the Personal Representative of the Estate of Manraj Sidhu, currently pending as case no. 22-00416 in the Probate Court of Montgomery County, Alabama.

4. Defendant Jaipal Gill (“Gill”) is an individual resident of Georgia.

## **II. JURISDICTION AND VENUE**

5. This Court has personal jurisdiction over this cause pursuant to, *inter alia*, Tenn. Code Ann. §§ 16-11-102, 16-11-103, 20-2-222 and 20-2-223.

6. Venue is proper in this Court pursuant to, *inter alia*, Tenn. Code Ann. § 20-4-101.

## **III. PRELIMINARY STATEMENT**

7. This action arises from Premier Obligors’ breach and default of the terms of certain loan agreements, promissory notes, security agreements, mortgages, and guaranty agreements executed by Defendants in favor of First Horizon. First Horizon made demand for payment of all amounts currently due from Premier Obligors on July 7, 2023, but payment has not been received. Pursuant to the governing documents and applicable law, First Horizon seeks monetary damages and the appointment of a receiver to manage, operate and ultimately liquidate the remaining collateral pledged and assigned to First Horizon by Premier Obligors, as well as other extraordinary relief.

8. The appointment of a receiver in this matter will (i) protect First Horizon’s interest in the collateral real and personal property (“Collateral”) (which was pledged to induce First Horizon to



make the loans underlying Defendants' obligations to First Horizon and also serves as the primary source for repaying the loans); (ii) protect the Collateral from waste; (iii) preserve the value of the Collateral; (iv) and will allow First Horizon and the Court to properly account for and collect the income derived from the Collateral and any operations of the Premier Entities.

9. First Horizon also seeks temporary and permanent injunctions restraining and enjoining the Premier Entities and their officers, directors, employees, agents, managers, shareholders, principals, and/or owners (of all or any portion of an interest in the Premier Entities), or anyone acting on behalf of or in concert with the Premier Entities, from transferring, disposing, wasting, and/or converting all or any portion of any rents, royalties, issues, profits, revenue, income, or other proceeds of any kind whatsoever, derived, generated, or related to or from the Collateral, and any other property securing the indebtedness owed.

#### **IV. FACTUAL ALLEGATIONS**

##### **MONTGOMERY, ALABAMA BURGER KING**

10. First Horizon provided construction financing to Premier Holdings for the construction of a Burger King restaurant in Montgomery, Alabama, which consisted of one loan to finance the purchase of the leasehold interest and the construction of the restaurant building (the "Montgomery Loan").

11. On September 4, 2015, to evidence the Montgomery Loan, Premier Holdings executed a Promissory Note (the "Montgomery Note") to First Horizon in the maximum amount of \$1,040,000.00, bearing interest at a fixed rate equal to 4.250% per annum, and with an original maturity date of September 5, 2022, as amended on March 31, 2020.

12. To induce First Horizon to make the underlying loan, the Montgomery Note is secured by a leasehold construction mortgage and an assignment of construction contracts executed September 4, 2015 by Premier Holdings thereby pledging to First Horizon all of Premier Holdings'

right, title, and interest in, to, and under its leasehold interest in the real property commonly known as 4010 Atlanta Highway, Montgomery, Alabama 36109, including all buildings, improvements, and fixtures on, and royalties and profits arising from, the collateral property.

13. The Montgomery Note was made subject to an existing Commercial Guaranty executed April 10, 2015 by Premier Kings, Inc. (the "Montgomery Guaranty"), thereby unconditionally guaranteeing full payment and performance of Premier Holdings' obligations relating to indebtedness then existing and thereafter arising "on an open and continuing basis."

14. On November 14, 2022, Premier Holdings, Premier Kings, Inc., and First Horizon executed an Extension Agreement (the "Montgomery Loan Extension") thereby extending the Montgomery Loan's maturity date to September 5, 2023.

15. The Montgomery Loan has matured and the Premier Obligors have failed to pay the outstanding principal balance and all other amounts due and owing to First Horizon under the Loan Documents.

16. A true and correct copy of First Horizon Bank's loan agreement, promissory note, leasehold construction mortgage, assignment of construction contracts, financing statement, amendment, extension agreement, and commercial guaranty relating to the Montgomery Loan are attached hereto as composite **Exhibit A** and incorporated herein by reference.

#### **HARPERSVILLE, ALABAMA BURGER KING**

17. First Horizon provided purchase money financing to Premier Holdings for the purchase of a Burger King restaurant in Harpersville, Alabama, which consisted of one loan to finance the purchase of the real property and construction of the restaurant building (the "Harpersville Real Estate Loan"), and a second loan to finance the purchase of all furniture, fixtures, and equipment inside the restaurant (the "Harpersville Equipment Loan," and collectively with the Harpersville Real Estate Loan, the "Harpersville Loans").



18. On November 27, 2018, evidencing the Harpersville Loans, Premier Holdings executed two Promissory Notes to First Horizon in the maximum amounts of \$1,242,000.00 (the "Harpersville Real Estate Note") and \$392,500.00 (the "Harpersville Equipment Note" and collectively with the Harpersville Real Estate Note, the "Harpersville Notes") bearing interest at a variable rate equal to the LIBOR Rate (as defined in the Harpersville Loan Agreement dated November 27, 2018) plus 2.25% per annum.

19. To induce First Horizon to make the underlying loan, the Harpersville Notes are secured by a mortgage, security agreement, and assignment of rents and leases executed November 27, 2018 by Premier Holdings thereby pledging to First Horizon all of Premier Holdings' right, title, and interest in and to the real property commonly known as 5482 US-280, Harpersville, Alabama 35078, including all buildings, improvements, and fixtures on, and royalties, leases, rents, and profits arising from, the collateral property.

20. As further security for the Harpersville Loans, First Horizon required two guarantors agree to ensure payment and performance of Premier Holdings under the Harpersville Loans. Manraj Sidhu, deceased, and Premier Kings, Inc. executed a Guaranty Agreement on November 27, 2018 thereby unconditionally guaranteeing the prompt and full payment and performance of Premier Holdings under the Harpersville Notes (the "Harpersville Guaranty").

21. On December 27, 2019, Premier Holdings executed and delivered to First Horizon Amended, Restated, and Increased promissory notes thereby increasing the original principal amounts of the Harpersville Real Estate Loan to \$1,355,387.20 and the Harpersville Equipment Loan to \$460,022.54 (collectively, the "Amended and Restated Harpersville Notes").



22. Pursuant to the Harpersville Loan Agreement, the Harpersville Real Estate Note's maturity date is November 27, 2025, and the Harpersville Equipment Note's maturity date is November 27, 2023.

23. Pursuant to the Harpersville Loan Agreement, the rate charged upon the Harpersville Loans converted from LIBOR plus 2.25% to the 1-month Chicago Mercantile Exchange ("CME") Term Secured Overnight Funding Rate ("SOFR") plus 2.36448%, effective July 5, 2023, by virtue of the LIBOR-Conversion letter issued by First Horizon to Premier Holdings on May 26, 2023 (the "Harpersville LIBOR-Conversion letters").

24. A true and correct copy of First Horizon's loan agreement, promissory notes, amended and restated promissory notes, mortgage, security agreement, financing statement, guaranty agreement, and Harpersville LIBOR-Conversion letters relating to the Harpersville Burger King Loans are attached hereto as composite **Exhibit B** and incorporated herein by reference.

#### **NAHUNTA, GEORGIA BURGER KING**

25. First Horizon provided purchase money financing to Premier Holdings of Georgia for the purchase of a Burger King restaurant in Nahunta, Georgia, which consisted of one loan to finance the purchase of the real property and construction of the restaurant building (the "Nahunta Real Estate Loan"), and a second loan to finance the purchase of all furniture, fixtures, and equipment inside the restaurant (the "Nahunta Equipment Loan," and collectively with the Nahunta Real Estate Loan, the "Nahunta Loans").

26. On March 1, 2019, evidencing the Nahunta Loans, Premier Holdings of Georgia executed two Promissory Notes to First Horizon in the maximum amounts of \$1,365,200.00 (the "Nahunta Real Estate Note") and \$517,500.00 (the "Nahunta Equipment Note" and collectively with the Nahunta Real Estate Note, the "Nahunta Notes") bearing interest at a variable rate equal to the

LIBOR Rate (as defined in the Nahunta Loan Agreement dated March 1, 2019) plus 2.25% per annum.

27. To induce First Horizon to make the underlying loan, the Nahunta Notes are secured by a deed to secure debt, security agreement, assignment of rents and leases, and assignment of contracts executed March 1, 2019 by Premier Holdings of Georgia thereby pledging to First Horizon all of Premier Holdings of Georgia's right, title, and interest in and to the real property commonly known as 13200 West Cleveland Street, Nahunta, Georgia 31553, including all buildings, improvements, and fixtures on, and royalties, leases, rents, and profits arising from, the collateral property.

28. As further security for the Nahunta Loans, First Horizon required several guarantors agree to ensure payment and performance of Premier Holdings of Georgia under the Nahunta Loans. Manraj Sidhu, deceased, Premier Kings of Georgia, Inc., and Defendant Jaipal Gill executed a Guaranty Agreement on March 1, 2019 thereby unconditionally guaranteeing the prompt and full payment and performance of Premier Holdings of Georgia under the Nahunta Notes (the "Nahunta Guaranty").

29. The Nahunta Loans would not have been made but for the Nahunta Guaranty executed by the guarantors, including Defendant Gill.

30. Pursuant to the Nahunta Loan Agreement as amended on October 23, 2019, the Nahunta Real Estate Note's maturity date is March 1, 2026, and the Nahunta Equipment Note's maturity date is March 1, 2024. All outstanding principal and interest was to be due in a balloon payment on the maturity dates of the Nahunta Loans.

31. Pursuant to the Nahunta Loan Agreement, the rate charged upon the Nahunta Loans converted from LIBOR plus 2.25% to the 1-month CME Term SOFR plus 2.36448%, effective July



5, 2023, by virtue of the LIBOR-Conversion letter issued by First Horizon to Premier Holdings of Georgia on May 26, 2023 (the "Nahunta LIBOR-Conversion letter").

32. A true and correct copy of First Horizon's loan agreement (as amended), promissory notes, deed to secure debt, security agreement, assignment of rents and leases, assignment of contracts, financing statement, guaranty agreement, and Nahunta LIBOR-Conversion letter relating to the Nahunta Loans are attached hereto as composite **Exhibit C** and incorporated herein by reference.

#### **PORT WENTWORTH, GEORGIA BURGER KING**

33. First Horizon provided purchase money financing to Premier Holdings of Georgia for the purchase of a Burger King restaurant in Port Wentworth, Georgia, which consisted of one loan to finance the purchase of the leasehold interest and construction of the restaurant building (the "Port Wentworth Real Estate Loan"), and a second loan to finance the purchase of all furniture, fixtures, and equipment inside the restaurant (the "Port Wentworth Equipment Loan," and collectively with the Port Wentworth Real Estate Loan, the "Port Wentworth Loans").

34. On May 17, 2019, evidencing the Port Wentworth Loans, Premier Holdings of Georgia executed two Promissory Notes to First Horizon in the maximum amounts of \$1,030,000.00 (the "Port Wentworth Real Estate Note") and \$517,500.00 (the "Port Wentworth Equipment Note" and collectively with the Port Wentworth Real Estate Note, the "Port Wentworth Notes") bearing interest at a variable rate equal to the LIBOR Rate (as defined in the Port Wentworth Loan Agreement dated May 17, 2019) plus 2.25% per annum.

35. To induce First Horizon to make the underlying loan, the Port Wentworth Notes are secured by a leasehold accommodation deed to secure debt, security agreement, assignment of rents and leases executed May 17, 2019 by Premier Kings of Georgia, Inc., as amended on October



22, 2019, thereby pledging to First Horizon all of its right, title, and interest in and to the real property commonly known as 7306 GA-21, Port Wentworth, Georgia 31407, including all buildings, improvements, and fixtures on, and royalties, leases, rents, and profits arising from, the collateral property.

36. As further security for the Port Wentworth Loans, First Horizon required several guarantors agree to ensure payment and performance of Premier Holdings of Georgia under the Port Wentworth Loans. Manraj Sidhu, deceased, Premier Kings of Georgia, Inc., and Defendant Gill executed a Guaranty Agreement on May 17, 2019 thereby unconditionally guaranteeing the prompt and full payment and performance of Premier Holdings of Georgia under the Port Wentworth Notes (the "Port Wentworth Guaranty").

37. Pursuant to the Port Wentworth Loan Agreement, the Port Wentworth Real Estate Note's maturity date is May 16, 2026 and the Port Wentworth Equipment Note's maturity date is May 16, 2024.

38. Pursuant to the Port Wentworth Loan Agreement, the rate charged upon the Port Wentworth Loans converted from LIBOR plus 2.25% to the 1-month CME Term SOFR plus 2.36448%, effective July 5, 2023, by virtue of the LIBOR-Conversion letter issued by First Horizon to Premier Holdings of Georgia on May 26, 2023 (the "Port Wentworth LIBOR-Conversion letter").

39. A true and correct copy of First Horizon's loan agreement (as amended), promissory notes (as amended), deed to secure debt, security agreement, assignment of rents and leases (as amended), financing statement, guaranty agreement, and Port Wentworth LIBOR-Conversion letter relating to the Port Wentworth Loans are attached hereto as composite **Exhibit D** and incorporated herein by reference.

40. The Montgomery, Harpersville, Nahunta, and Port Wentworth Loan Documents (collectively the “Loan Documents”) are governed by the laws of the State of Alabama.

#### **EVENTS OF DEFAULT JEOPARDIZING COLLATERAL**

41. Premier Obligors have defaulted on the terms of the Loan Documents by failing to pay principal and interest on the above-referenced loans when due; failing to cure the defaults existing by virtue of the death of Guarantor Manraj Sidhu; failing to cure the defaults existing by virtue of Guarantors Premier Kings, Inc. and Premier Kings of Georgia, Inc. filings petitions for relief under the Bankruptcy Code on October 25, 2023, and failing to comply with a number of other terms and covenants under the Loan Documents (the “Defaults”).

42. First Horizon notified the Premier Obligors about these Defaults, which were never cured.

43. Premier Obligors’ failure to cure these Defaults constitutes Events of Default and breaches of the Premier Obligors’ obligations under the Loan Documents.

44. Consequently, on July 7, 2023, First Horizon, pursuant to its rights and remedies under the Loan Documents, declared the Notes immediately payable and demanded payment from Premier Holdings, Premier Holdings of Georgia, the Estate of Manraj Sidhu, and Jaipal Gill.<sup>1</sup> In response thereto, Premier Holdings, with First Horizon’s consent, sold the real estate, furniture, fixtures, and equipment of one of Premier Holdings’ restaurants not referenced herein. Premier Holdings paid off the real estate and equipment loans secured by the assets sold with the proceeds thereof; however, since the July 7, 2023 demands, only partial payments have been made on the loans referenced herein. The Premier Obligors still owe First Horizon the outstanding indebtedness under

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<sup>1</sup> Payment was also demanded from Guarantors Premier Kings, Inc. and Premier Kings of Georgia, Inc. on July 7, 2023, one-hundred and eleven days before the Premier Kings-entities filed their respective voluntary petitions for Chapter 11 Bankruptcy.



the Loan Documents evidencing the loans described herein. True and correct copies of the July 7, 2023 demands are attached hereto as composite **Exhibit E** and incorporated herein by reference.

45. As of February 10, 2023 and according to a sworn proof of claim filed in the Probate Court of Montgomery County, Alabama, Premier-related entities owed \$5,050,326.00 to Burger King Company, LLC for past-due royalties, advertising contributions, and other sums owed under their Burger King Franchise Agreements. To the extent any of the amount amounts claimed by Burger King relate to the Montgomery, Harpersville, Nahunta, and/or Port Wentworth Burger Kings, Premier Holdings and Premier Holdings of Georgia have further defaulted under their Loan Agreements with First Horizon by failing to ensure compliance with Borrowers' covenants related to their Burger King Franchise Agreements. *See, e.g.*, Exhibit B, Loan Agreement, §§ 5.23 & 5.31. A true and correct copy of the Burger King Company, LLC Claim is attached hereto and incorporated herein by reference as **Exhibit F**.

46. On March 14, 2023, an affiliate of the Premier Obligors – Premier Cajun Kings, LLC (“PCK”), which owned approximately 30 Popeyes Louisiana Kitchen restaurants – filed a voluntary petition in the U.S. Bankruptcy Court for the Northern District of Alabama for relief under Chapter 11 of the Bankruptcy Code, reporting approximately \$50,000,000.00 in liabilities.

47. PCK's Chief Restructuring Officer, David M. Baker, filed his Declaration in Support of First-Day Motions setting forth the dire financial condition of PCK and its 30 stores. A true and correct copy of Mr. Baker's Declaration is attached hereto and incorporated herein by reference as **Exhibit G**.

48. The Bankruptcy Court approved a sale of substantially all of PCK's assets; however, the proceeds were not sufficient to allow the bankruptcy case to continue through Chapter 11. On July 13, 2023, PCK's bankruptcy case was converted to a case under Chapter 7 of the



Bankruptcy Code. A true and correct copy of the Voluntary Conversion Notice is attached hereto and incorporated herein as **Exhibit H**.

49. As mentioned above, on October 25, 2023, Premier Kings, Inc. and Premier Kings of Georgia, Inc. (the “Premier Kings Guarantors”) each filed voluntary petitions for the relief under Chapter 11 of the Bankruptcy Code. In Premier Kings, Inc.’s voluntary petition, it estimated to have between 200 and 299 creditors, between \$10,000,000 and \$50,000,000 in assets, and between \$50,000,000 and \$100,000,000 in liabilities. In Premier Kings of Georgia, Inc.’s voluntary petition, it also estimated to have between 200 and 299 creditors, between \$10,000,000 and \$50,000,000 in assets, and between \$50,000,000 and \$100,000,000 in liabilities. The voluntary petitions of the Premier Kings Guarantors are attached hereto and incorporated herein as *composite* **Exhibit I**.

50. According to a lawsuit filed by Iqbal “Peter” Sidhu, PCK and the Premier Kings Guarantors are not the only Premier-affiliates to suffer financially due to alleged mismanagement, illegal conversion of property, civil conspiracy, and other wrongful conduct. A true and correct copy of the Amended Complaint filed by Peter Sidhu is attached hereto and incorporated herein as **Exhibit J**.

51. On October 3, 2023, Trisura Specialty Insurance Company – which insures Premier Holdings, Premier Holdings of Georgia, Premier Kings, and Premier Kings of Georgia, as well as the Montgomery, Harpersville, Nahunta, and Port Wentworth Burger Kings stores which secure the loans made the basis of this lawsuit – filed suit against Gill and Premier-affiliate entity Premier Kings of North Alabama, LLC regarding its duty to defend against allegations of breach of contract, conversion, unjust enrichment, civil conspiracy, and for an accounting. A true and correct copy of the Amended Complaint filed by Trisura Specialty Insurance Company is attached hereto and incorporated herein as **Exhibit K**.

52. As of October 31, 2023, Premier Holdings is indebted to First Horizon in the principal amount of \$4,532,130.56 plus late fees, accrued interest and default interest thereon, late fees, expenses of collection, including attorneys' fees and the cost of this action (the "Premier Holdings Indebtedness").

53. As of October 31, 2023, Premier Holdings of Georgia is indebted to First Horizon in the principal amount of \$4,532,130.56 plus late fees, accrued interest and default interest thereon, late fees, expenses of collection, including attorneys' fees and the cost of this action (the "Premier Holdings of Georgia Indebtedness," and collectively with the Premier Holdings Indebtedness, the "Indebtedness").

54. Pursuant to the terms of the Loan Documents, Premier Holdings, Premier Holdings of Georgia, the Estate of Manraj Sidhu, and Jaipal Gill are jointly and severally obligated to pay the entire outstanding Indebtedness evidenced by the Notes, plus accruing interest, pre-judgment interest, post-judgment interest, attorneys' fees, and the costs of this action.

55. Unless First Horizon is granted the relief requested herein, its ability to collect the Indebtedness, as well as its rights in and the value of the Collateral, may irreparably be impaired.

## **V. CAUSES OF ACTION**

### **COUNT ONE BREACH OF NOTES BY PREMIER HOLDINGS, LLC**

56. First Horizon repeats and realleges paragraphs 1-55 of this Complaint as though fully set forth herein.

57. The Montgomery Note, Harpersville Notes, and all accompanying loan documents, constitute valid and binding legal contracts between Premier Holdings and First Horizon.

58. First Horizon is entitled to enforce those contracts, and Premier Holdings is obligated to First Horizon for payment and satisfaction of all obligations thereunder.



59. Premier Holdings has breached its obligations to First Horizon by, among other things, failing to cure Events of Defaults and failing to pay First Horizon the full amount due and owing under the terms of the Notes upon demand.

60. As a direct and proximate result of Premier Holdings' breach of the Notes, First Horizon has been damaged and is entitled to compensatory damages, including without limitation, default interest, late fees, attorneys' fees, costs of collection and of this cause incurred by First Horizon in collecting the Indebtedness.

**COUNT TWO**  
**BREACH OF NOTES BY PREMIER HOLDINGS OF GEORGIA, LLC**

61. First Horizon repeats and realleges paragraphs 1-60 of this Complaint as though fully set forth herein.

62. The Nahunta Notes, Port Wentworth Notes, and all accompanying loan documents, constitute valid and binding legal contracts between Premier Holdings of Georgia, LLC and First Horizon.

63. First Horizon is entitled to enforce those contracts, and Premier Holdings of Georgia is obligated to First Horizon for payment and satisfaction of all obligations thereunder.

64. Premier Holdings of Georgia has breached its obligations to First Horizon by, among other things, failing to cure Events of Defaults and failing to pay First Horizon the full amount due and owing under the terms of the Notes upon demand.

65. As a direct and proximate result of Premier Holdings of Georgia's breach of the Notes, First Horizon has been damaged and is entitled to compensatory damages, including without limitation, default interest, late fees, attorneys' fees, costs of collection and of this cause incurred by First Horizon in collecting the Indebtedness.



**COUNT THREE**  
**BREACH OF GUARANTY AGREEMENTS BY JAIPAL GILL**

66. First Horizon repeats and realleges paragraphs 1-65 of this Complaint as though fully set forth herein.

67. The Nahunta Guaranty, Port Wentworth Guaranty, and all accompanying loan documents, constitute valid and binding legal contracts between Gill and First Horizon.

68. First Horizon is entitled to enforce those contracts, and Gill is obligated to First Horizon for payment and performance of all obligations guaranteed thereunder.

69. Gill has breached his obligations to First Horizon by, among other things, failing to cure Events of Defaults and failing to pay First Horizon the full amounts due and owing under the terms of the Notes upon demand pursuant to the Nahunta and Port Wentworth Guaranty Agreements.

70. As a direct and proximate result of Gill's breach of the Guaranty Agreements, First Horizon has been damaged and is entitled to compensatory damages, including without limitation, default interest, late fees, attorneys' fees, costs of collection and of this cause incurred by First Horizon in collecting the Indebtedness.

**COUNT FOUR**  
**RECOVERY OF PERSONAL PROPERTY AND**  
**ENFORCEMENT OF SECURITY AGREEMENT**

71. First Horizon repeats and realleges paragraphs 1-70 of this Complaint as though fully set forth herein.

72. Premier Obligors secured the repayment of Notes by pledging to First Horizon the property described in the Security Agreements related to the Montgomery, Harpersville, Nahunta, and Port Wentworth Loans.

73. The Security Agreements grant First Horizon the right to "sell, transfer, pledge, convey, make any agreement with respect to, or otherwise deal with any of the Collateral as fully and

completely as though [First Horizon] were the absolute owner thereof for all purposes." *See, e.g.*, Exhibit B, Harpersville Security Agreement, p. 7 at § 5.1(m).

74. The Security Agreements further authorize First Horizon to take "all acts and things which [First Horizon] deems necessary to protect, preserve, maintain, or realize upon the Collateral and [First Horizon's] security interest therein." *See, e.g.*, Exhibit B, Harpersville Security Agreement, p.7 at § 5.1(n).

75. First Horizon is entitled to immediate possession of all of the Collateral under the express terms of the Security Agreements.

#### **COUNT FIVE APPOINTMENT OF A RECEIVER**

76. First Horizon repeats and realleges paragraphs 1-75 of this Complaint as though fully set forth herein.

77. Any interruption or temporary closure of the business of Premier Obligors could diminish the value of the Collateral pledged to First Horizon and, potentially, damage the parties to this litigation.

78. Any interruption or termination of the Premier Obligors' Burger King Franchise Agreements could also diminish the value of the Collateral pledged to First Horizon and, potentially, damage the parties to this litigation.

79. This Court has the authority, pursuant to Tenn. Code Ann. § 29-1-103, "to appoint receivers for the safekeeping, collection, management, and disposition of property in litigation in such court, whenever necessary to the ends of substantial justice."<sup>2</sup>

80. Defendants are justly indebted to First Horizon for the Premier Obligors' Indebtedness, and Premier Obligors have agreed that First Horizon has the right to have a receiver

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<sup>2</sup> The appointment of a receiver under Alabama law is justified pursuant to Ala. Code § 6-6-620.



appointed in this action under the terms of the Loan Documents. *See, e.g.,* Exhibit B, Mortgage, §15(c) at p. 10.

81. Unless a receiver is appointed, there is imminent danger that the Collateral pledged as security for repayment of the Defendants' Indebtedness will be lost, destroyed, or diminished in value.

82. Appointment of a receiver is necessary for First Horizon to obtain an accurate accounting regarding the Collateral, and to preserve, protect, and maximize the value of the Collateral.

83. Preservation of the value of the Collateral is necessary to maintain a reasonable expectation of repayment of the amounts due and owing under the Loan Documents.

84. First Horizon reasonably believes that its security in the Collateral is endangered and is likely to be rendered inadequate or lost without the immediate appointment of a receiver.

85. The potential harm to First Horizon if a receiver is not appointed is irreparable and First Horizon has no adequate remedy at law to remedy the harm.

86. The potential harm to First Horizon outweighs any conceivable harm to the Premier Obligors.

87. Without immediate relief, the *status quo* may result in the loss of a significant source of repayment of the substantial sums owed under the Loan Documents. Accordingly, equitable considerations weigh in favor of the Court's appointment of a receiver of the Collateral.

88. The proposed scope and powers of the receivership is for the Collateral and related operations and activities of Premier Obligors (collectively the "Receivership Assets and Operations") in order to marshal, preserve, maintain and liquidate the Receivership Assets and Operations.



89. Pursuant to Tenn. R. Civil P. 66 and Tenn. Code Ann. § 29-1-103, First Horizon requests that this Court appoint David Anthony, of Exo Legal PLLC, as receiver of the Receivership Assets and Operations.

90. Mr. Anthony has extensive experience in serving as a receiver over assets like the Receivership Assets and Operations, is qualified to serve as receiver of the Collateral, and is knowledgeable about the Receivership Assets and Operations. *See* Affidavit of David Anthony (attached hereto as Exhibit K).

**COUNT FIVE  
TEMPORARY RESTRAINING ORDER**

91. First Horizon repeats and realleges paragraphs 1-90 of this Complaint as though fully set forth herein.

92. Pursuant to the provisions of the Loan Documents, the Premier Obligors are required to repay the Indebtedness, but have failed and refused to honor their obligations to do the same.

93. Under the terms of the Loan Documents, First Horizon has the right to take possession of the Collateral and to receive the proceeds derived from the Collateral.

94. First Horizon reasonably believes that its interest in the Collateral is endangered and likely to be lost or rendered inadequate without entry of injunctive relief preventing the Premier Obligors from transferring, disposing, wasting, and converting all or any portion of any rents, royalties, issues, profits, revenue, income, or other proceeds of any kind whatsoever, derived, generated, or related to or from the Collateral, and any other property securing the Indebtedness.

95. Therefore, in addition to the rights granted to First Horizon under the Loan Documents, equity dictates that First Horizon be granted a temporary restraining order and, upon hearing, a preliminary and permanent injunction:

- a. Prohibiting the Premier Obligors, and their members, officers, directors, employees, agents, managers, shareholders, principals, and/or owners (of all or any portion of an interest in any of the Premier Obligors), or anyone acting on or under the Premier Obligors' behalf or at Premier Obligors' direction, from transferring, disposing, wasting, and converting all or any portion of any rents, royalties, issues, profits, revenue, income, or other proceeds of any kind whatsoever, derived, generated, or related to or from the Collateral, and any other property securing the Indebtedness owed;
- b. Directing the Premier Obligors to provide an accounting to First Horizon for all royalties, issues, profits, revenue, income, or other proceeds of any kind whatsoever, derived, generated, or related to or from the Collateral, and any other property securing the indebtedness owed, that Premier Obligors have collected since July 7, 2023;
- c. Directing the Premier Obligors to remit any and all royalties, issues, profits, revenue, income, or other proceeds of any kind whatsoever, derived, generated, or related to or from the Collateral and operations and activities of the Premier Obligors related thereto, and any other property securing the Indebtedness owed to the duly appointed receiver;
- d. Surrender possession of the Collateral and each facility where the same is located or stored in order to allow the Receiver to operate the same;
- e. Directing the Premier Obligors to disclose to First Horizon all assets or property of value which has been transferred from the Premier Obligors to any third person, independent entity, related entity, or insider since January 1, 2022; and
- f. Directing the Premier Obligors to disclose all financial accounts controlled by any insider of the Premier Obligors, to include any partner, director, officer, or person in control, or any relative of any partner, director, officer, or person in control, as to the entity obligors; or any relative, partner, or corporation of which Gill is a director, officer, or person in control as to Defendant Gill.

96. First Horizon will suffer immediate and irreparable injury, loss, and damage unless the Premier Obligors and those under the Premier Obligors' control and direction are restrained and enjoined as requested hereunder.

97. Moreover, First Horizon is likely to prevail on the merits of this Complaint and the balance of equities favors entry of the requested equitable relief.



98. The injuries, losses and damages to First Horizon cannot be remedied by money damages alone.

99. Because First Horizon has no adequate remedy at law and there is a substantial likelihood that it will prevail on the merits of this Complaint, the equitable relief sought herein is appropriate.

**COUNT FIVE  
TEMPORARY AND PERMANENT INJUNCTION**

100. First Horizon repeats and realleges paragraphs 1-99 of this Complaint as though fully set forth herein.

101. First Horizon has first priority perfected security interests and secured positions in the Collateral.

102. Based on the Premier Obligors' failure to meet their obligations under the Loan Documents and the Premier Kings Guarantors filing for bankruptcy on October 25, 2023, First Horizon has a good faith and reasonable basis for being gravely concerned about the protection and preservation of the Collateral.

103. First Horizon's concern is further justified given that Premier-affiliated entity – Premier Cajun Kings, LLC – filed for bankruptcy on March 14, 2023 (initially under Chapter 11 of the Bankruptcy Code and later converted to Chapter 7), estimating liabilities of up to \$50,000,000.00 and assets below \$10,000,000.00.

104. First Horizon's concern is also justified given the numerous lawsuits that have been filed against the Premier Obligors (and against the non-party Premier Kings Guarantors) alleging breaches of various contracts, further jeopardizing First Horizon's security interest in the Collateral.<sup>3</sup>

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<sup>3</sup> See, e.g., *Lyndon Southern Insurance Company v. Premier Kings, Inc.* (N.D. Ala., Case No. 2:21-cv-00622); *CTO20 Perimeter, LLC v. Premier Holdings of Georgia, LLC* (State Court of DeKalb County, Ga., Case No. 23A04211); *J.I.L. Enterprises v. Premier Holdings of Georgia* (Circuit Court of Jefferson County, Ala., Case No. 68-cv-23-



105. Absent entry of a temporary injunction restraining and enjoining the Premier Obligors from collecting, transferring or disposing of any of the Collateral, First Horizon reasonably believes that the Collateral may be transferred, disposed, wasted, expended, converted and/or destroyed in violation of the Loan Documents, thereby causing irreparable harm to First Horizon.

106. As manifested in the foregoing factual allegations, First Horizon is likely to prevail on the merits of this action.

107. First Horizon has sustained and will continue to sustain immediate and irreparable injury as a result of the Premier Obligors' voluntary and intentional actions concerning its obligations under the Loan Documents, and its failure and refusal to honor those obligations.

108. With respect to such conduct, First Horizon has no adequate remedy at law.

109. The balance of the equities favors the issuance of a temporary injunction in favor of First Horizon.

110. Accordingly, First Horizon requests that this Court enter a temporary injunction requiring the Premier Obligors, its principals and agents to:

- a. Preserve intact all Collateral, and any income derived therefrom, currently in their possession or subsequently received pending the appointment of a receiver;
- b. Immediately pay, upon appointment of a receiver, all income in the possession or subsequently received from the Collateral or the Premier Obligors' operations and activities to the receiver;
- c. Surrender possession of the real and personal property Collateral in order to allow the receiver to control and manage the same as well as the operations and activities of the Premier Obligors; and
- d. Turn over to the receiver all books, records, and accounts relating to and/or affecting the Collateral.

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900073); and *River Bank & Trust v. Premier Holdings, LLC* (Circuit Court of Montgomery County, Ala., Case No. 03-cv-23-901062).

111. Upon the hearing of this cause, First Horizon requests that the Court issue a permanent injunction prohibiting the Premier Obligors and its officers, directors, employees, agents, managers, representatives, shareholders, principals, and/or owners (of all or any portion of an interest in the Premier Obligors) and those under the control and direction of the Premier Obligors from transferring, disposing, wasting, and converting all or any portion of any of the Collateral and directing the Premier Obligors to turn over to the receiver all Collateral in their possession or subsequently received.

#### **PRAYER FOR RELIEF**

**WHEREFORE, PREMISES CONSIDERED,** First Horizon prays that judgment be entered in its favor and against the Defendants as follows:

1. That First Horizon be awarded judgment against Premier Holdings in the amount of \$4,532,130.56, plus late fees, further accruing interest, collection costs, attorneys' fees and all cost incurred in connection with this action;
2. That First Horizon be awarded judgment against Premier Holdings of Georgia and Jaipal Gill, jointly and severally, in the amount of \$4,532,130.56, plus late fees, further accruing interest, collection costs, attorneys' fees and all cost incurred in connection with this action;
3. Appointment of David Anthony, of Exo Legal PLLC, as receiver (the "Receiver" of the receivership Assets and Operations;
4. Authorize, but not require the Receiver to maintain or operate the businesses of the Premier Obligors and to take such actions which the Receiver, in his discretion, deems appropriate, including without limitation those actions necessary to complete the processing, collection, preservation and liquidation of the Receivership Assets and Operations;
5. Authorize the Receiver to take physical possession of the Receivership Assets and Operations and to manage, operate and protect the Receivership Assets and Operations, and to take such actions as deemed reasonable and necessary by the Receiver to take possession of the Receivership Assets and Operations, wherever located, to exercise full and exclusive control over, to prevent waste, and to preserve, manage, secure, safeguard and sell the Receivership Assets and Operations. By management and operation of the Receivership Assets and



Operations the Receiver shall collect, marshal, preserve and liquidate all of the Receivership Assets and Operations and any proceeds of the foregoing;

6. Authorize the Receiver to obtain, as necessary, all of the Premier Obligors' tangible and electronic business records and documents pertaining to the Receivership Assets and Operations, all notes and correspondence pertaining to the Receivership Assets and Operations, all computer databases, files, ledgers, journals, and all accounting records pertaining to the Receivership Assets and Operations, and to the extent that the Premier Obligors have employees who are able, and at the sole expense of the Receiver, order the Premier Obligors to reasonably cooperate in providing such technical assistance as necessary to allow the Receiver to obtain all computer databases and files pertaining to the Receivership Assets and Operations and proceeds of the foregoing, including but not limited to providing computer software manuals, technical instructions, software, and other assistance as necessary to enable the Receiver to perform its duties hereunder;
7. Order that the Receiver shall have all of the powers and authority usually held by receivers and reasonably necessary to accomplish the purposes herein stated, including without limitation, the specific powers to:
  - a. Take from the Premier Obligors and all persons or entities in active participation with the Premier Obligors, including without limitation, the Premier Obligors' officers, managers, employees, agents, representatives, attorneys, accountants, lenders, contractors, subcontractors, and all who claim under them (hereafter called "Premier Obligors and Premier Obligors' Representatives"), or all persons or entities acting in participation with the Premier Obligors, immediate possession and control of the Receivership Assets and Operations, to the exclusion of the Premier Obligors or Premier Obligors' Representatives or all persons or entities as acting in active constant participation with the Premier Obligors. Specifically, the Receiver shall have the power to take possession of the Receivership Assets and Operations and the Premier Obligors' Books and Records, computers and equipment, and all files, client files, customer files, agreements and any and all other documents and tangible things used in and for the operation of the Properties or pertaining thereto;
  - b. Administer the Receivership Assets and Operations and all personal property used or associated therewith, regardless of where such property is located, including but not limited to inventory, equipment, general intangibles, accounts receivables, accounts receivable proceeds, deposit accounts, savings accounts, money market accounts, and all other demand deposit accounts that contain the proceeds of accounts and accounts receivable, checks, drafts, notes, accounts receivable, records, contracts, claims, leases, and



files; furthermore, the Receiver shall take control of all deposit accounts maintained by the Premier Obligors or Receivership Assets and Operations containing the proceeds of accounts and account receivables and manage and preserve the Receivership Assets and Operations as reasonably necessary to maximize the value and prevent diminution in value;

- c. Complete the processing of the Premier Obligors' inventory, materials, and equipment and sell or dispose of such inventory, materials, and equipment in a reasonable manner without further order of the Court, as deemed reasonably necessary by the Receiver, in his discretion. To collect in a timely fashion and liquidate in a commercially reasonable manner all of the Receivership Assets and Operations. The Receiver shall have, in the Receiver's reasonable discretion and with the written approval of First Horizon, the authority to market, execute agreements to sell, or otherwise dispose of the Receivership Assets and Operations.
- d. The power to limit access to all of the Premier Obligors' Books and Records relating to the Properties wherever located, as necessary to preserve and protect the Receivership Assets and Operations;
- e. To take all actions necessary to collect receivables and claims arising from the Receivership Assets and Operations Property;
- f. To take possession of all deposit accounts of the Premier Obligors or Premier Obligors' Representatives containing funds therein relating to the Receivership Assets and Operations;
- g. To open, transfer and change all trade accounts relating to the Receivership Assets and Operations so that all such accounts are in the name of the Receiver and make disbursements and payment of expenses incurred by the Receiver in accordance with this Order;
- h. To the extent First Horizon advances funds, if it elects to do so, or from receipts or from any other funds available to the Receiver, to collect and liquidate the Receivership Assets and Operations in the event that the Receiver determines that such collection efforts are appropriate;
- i. To hire such employees as an expense of the receivership estate, on a contract basis, wherever possible, or as employees where required by applicable state or federal law, either directly or through personnel, necessary to manage, preserve and liquidate the Receivership Assets and Operations;

- j. To use the personnel hired to assist the Receiver in the performance of its duties hereunder and to hire counsel as necessary to carry out the duties of the Receiver under this Order;
- k. To make, enforce, modify, negotiate and enter into such contracts or agreements as the Receiver may deem reasonably appropriate to collect, manage, preserve and liquidate the Receivership Assets and Operations; provided that no contract or agreement shall extend beyond the termination of the receivership without the permission of the Court;
- l. To commence such action as may be necessary in its name as the Receiver to collect any amounts due to the Premier Obligors related to the Receivership Assets and Operations, and to pursue and collect payments due, and other amounts which may be owed by account debtors of the Premier Obligors, accrued as of the date of this Order or hereafter accruing, and if the Receiver so elects, to be added or substituted as First Horizon in any such actions already commenced by the Premier Obligors or Premier Obligors' Representatives;
- m. To obtain, review and analyze the Receivership Assets and Operation's past records, including without limitation accounting records, banking records, and any other books or documents necessary to determine whether there are potential claims or rights against other persons and entities, and potential agreements arising out of the ownership and operation of the Receivership Assets and Operations or otherwise to perform the duties of the Receiver;
- n. To obtain and renew all insurance policies that the Receiver deems reasonably necessary to manage and preserve the Receivership Assets and Operations and the receivership estate and the interest of the Receiver and the parties to this action;
- o. To notify any insurers of the Receivership Assets and Operations of the pendency of these proceedings and that, subject to the prior rights of any person or entity possessing a lien on the Receivership Assets and Operations, any proceeds paid under such property shall be paid to the Receiver; the Receiver may contact any insurer and renew any insurance policy on the Receivership Assets and Operations as necessary to preserve and protect the receivership estate and the Receivership Assets and Operations;
- p. To pay obligations incurred prior to the entry of the Order by the Premier Obligors or Premier Obligors' Representatives, or other persons or entities charged with the responsibility of maintaining and operating the Receivership Assets and Operations (i) if such



obligations are deemed by the Receiver to be necessary or advisable for the continued maintenance, collection, and liquidation of the Receivership Assets and Operations; and (ii) the Receiver has obtained First Horizon's written consent to pay such obligation.

- q. To use any proceeds and receipts from the Receivership Assets and Operations and such funds as may be advanced by First Horizon for the payment of reasonable and necessary expenses of the receivership and of the Property;
- r. To borrow from First Horizon on such other reasonable terms as may be acceptable to the Receiver, funds that may meet the needs of the receivership estate in excess of the income from the receivership estate, including the right to issue receiver certificates in exchange for funds advanced by First Horizon during the term of this receivership, and such receiver certificates shall be a first and prior lien and preference claim upon the receivership estate or a portion of it at the Receiver's election. Any amounts advanced to the Receiver by First Horizon may be added to the indebtedness owing by the Premier Obligors under the terms of the Loan Documents;
- s. To deal with, hire or terminate present or future employees of the Premier Obligors or the receivership estate in connection with the Receivership Assets and Operations including the hiring of legal counsel and accountants as reasonable and necessary to fulfill the duties and responsibilities hereunder. The Receiver may pay reasonable fees and expenses incurred by legal counsel, accountants, collectors, agents, collection attorneys or agencies, or other professionals in connection with the Receivership Assets and Operations from the collections made by the Receiver. The Receiver may, but is not obligated to, employ any employees or independent contractors of the Premier Obligors as the Receiver in its sole and absolute discretion deems appropriate to assist in the processing of inventory, collection, maintenance, and liquidation of the Receivership Assets and Operations;
- t. To apply for, obtain and renew as necessary all licenses and permits required for the collection, maintenance, or liquidation of the Receivership Property and Operations, including all trademarks, copyrights, patent, licenses, permits, sales and use tax licenses, tax license and permits, and other intellectual property rights that may be needed or required for the preservation of the Receivership Property and Operations. The Receiver may apply for and obtain appropriate forms from the IRS to use the taxpayer identification



numbers of the Premier Obligors if necessary to collect any of the Property;

- u. To institute such legal actions as the Receiver reasonably deems necessary including actions necessary to enforce this Order to protect the Receivership Assets and Operations and to recover possession of the Receivership Assets and Operations from any persons or entities who may now or in the future be wrongfully possessing or occupying the Receivership Assets and Operations or any part thereof, in this or any other jurisdictions; and
- v. To do such other lawful acts not inconsistent with this Order as the Receiver reasonably deems necessary to manage and preserve the receivership estate and to perform such other functions and duties as may from time to time be required and authorized by this Court, by the laws of the State of Tennessee or by the laws of the United States of America.

8. Order the Premier Obligors' Representatives be enjoined from:

- a. Taking any action with respect to the Receivership Assets and Operations without the Receiver's express written consent and withdrawing any funds from any First Horizon or other depository account relating to the Receivership Assets and Operations;
- b. Terminating, or causing to be terminated, any license, permit, contract or agreement relating to the Receivership Assets and Operations or the operation of any of the businesses on such property;
- c. Remaining in possession of the Receivership Assets and Operations or otherwise interfering with the operation of the Property or the Receiver's discharge of its duties hereunder;
- d. Destroying any of the Premier Obligors' Books and Records, deleting any information from computers or computer records or databases, or taking any other action to destroy or remove materials or information of or concerning the Receivership Assets and Operations; or
- e. Taking any other action that may interfere with the performance of the duties by the Receiver.

9. Grant First Horizon and/or the duly appointed Receiver injunctive relief which, among other things:

- a. Enjoins the Premier Obligors and its officers, directors, employees, agents, managers, representatives, shareholders, principals, and/or owners (of all or any portion of an interest in the Premier Obligors) under the control and direction of the Premier Obligors from interfering with the duties and rights of the Receiver and/or First Horizon;
- b. Directs payment of any revenue, income, profits, or other proceeds related to or received for the Collateral to the Receiver and/or First Horizon;
- c. Provides all other relief as requested herein and as may be necessary to preserve and protect the Collateral and aid in the duties conferred on the Receiver and/or First Horizon by this Court to prevent the unauthorized transferring, disposing, wasting, and converting of all or any portion of the Collateral.

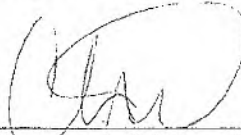
10. That the Court enter judgment in favor of First Horizon against Defendants for the principal amounts due under the Loan Documents, plus interest accrued through the date of any judgment, plus interest which shall accrue after the date of such judgment entered in this case, until such judgment is satisfied in full, including default interest, plus any and all costs, fees, attorneys' fees and expenses, to the fullest extent to which First Horizon is entitled under the Loan Documents;

11. That this Court, if requested, direct the Receiver to administer the Collateral in a manner which will not jeopardize the operation of the Collateral, while maximizing the amount realized by First Horizon from the Collateral; and

12. For any such other, further relief, both general and specific, to which First Horizon may be entitled.

**THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF.**

Respectfully Submitted,



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*Attorneys for Plaintiff*



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA

In re: )  
 )  
PREMIER KINGS, INC., *et al.*,<sup>1</sup> ) Chapter 11  
 )  
Debtors. ) CASE NO.: 23-02871-TOM-11  
 )  
 ) Jointly Administered  
 )

**LIMITED OBJECTION OF PREMIER HOLDINGS, LLC, PREMIER HOLDINGS OF GEORGIA, LLC, PREMIER KINGS HOLDINGS, LLC, PREMIER KINGS HOLDINGS OF ALABAMA, LLC, AND PREMIER KINGS HOLDINGS OF GEORGIA, LLC TO THE MOTION OF THE DEBTORS AND DEBTORS-IN-POSSESSION FOR ENTRY OF AN ORDER (I) APPROVING BIDDING PROCEDURES FOR THE SALE OF ALL OR SUBSTANTIALLY ALL THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTEREST; (II) APPROVING BID PROTECTIONS FOR STALKING HORSE BIDDERS; (III) APPROVING PROCEDURE FOR ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (IV) SCHEDULING AN AUCTION FOR, AND HEARING TO APPROVE, THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS; (V) APPROVING THE FORM AND MANNER OF SALE NOTICE; AND (VI) GRANTING RELATED RELIEF**

COME NOW, Premier Holdings, LLC, Premier Holdings of Georgia, LLC, Premier Kings Holdings, LLC, Premier Kings Holdings of Alabama, LLC, and Premier Kings Holdings of Georgia, LLC (collectively, "Holdings"), and submits this its limited objection (this "Objection") to the *Motion of the Debtors and Debtors-In-Possession for Entry of an Order (I) Approving Bidding Procedures for the Sale of All or Substantially All the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances, and Interest; (II) Approving Bid Protections for Stalking Horse Bidders; (III) Approving Procedure for Assumption and Assignment of Executory Contracts and Unexpired Leases; (IV) Scheduling an Auction for, and Hearing to Approve, the*

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<sup>1</sup> The Debtors in these cases are: Premier Kings, Inc.; Premier Kings of Georgia, Inc., and Premier Kings of North Alabama, LLC. The Court has entered an order for joint administration on October 30, 2023 [Doc. No. 84].

*Sale of All or Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests; (V) Approving the Form and Manner of Sale Notice; and (VI) Granting Related Relief* [Doc. No. 42] (the "Motion") filed by Premier Kings, Inc., Premier Kings of Georgia, Inc., and Premier Kings of North Alabama, LLC (collectively, the "Debtors"). In support of this Objection, the Holdings specifically joins in any objections filed in opposition to the Motions to the extent such objections are not inconsistent with the position set forth herein, and states as follows:

### **JURISDICTIONAL INFORMATION**

1. On or about October 25, 2023 (the "Petition Date"), Debtors filed for bankruptcy protection under Chapter 11 of 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"). Debtors continue to operate its business and manage its property as debtors-in-possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.

2. This Court has jurisdiction over the Motions and this Objection pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of Debtors' Chapter 11 case, the Motions, and this Objection in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

### **BACKGROUND FACTS**

3. Holdings and Debtors are parties to over fifty (50) commercial real property leases and over thirty (30) personal property leases.

4. On or about October 26, 2023, the Debtor filed the Motion and requested this Court enter an order, among other things, approving certain sales procedures for a portion of the assets of the Debtor.



### **LIMITED OBJECTION**

5. In paragraph 25 of the Motion, Debtors propose to serve the counterparties with the Cure Notice<sup>2</sup> containing a proposed Cure Amount, and the proposed deadline for counterparties to object to the Cure Amount is December 6, 2023. There is no deadline for Debtors' service of the Cure Notice. Debtors should be required to serve the Cure Notice by such a date that the counterparties will have sufficient time to review the Cure Notice and, if necessary, to object to the Cure Amount.

6. Similarly, in paragraph 30 of the Motion, the deadline for an Adequate Assurance Objection is 4:00 p.m. (Central Time) on December 6, 2023. Paragraph 28 of the Motion provides that Debtors shall serve the Adequate Assurance Information no later than December 6, 2023. Accordingly, under the deadlines proposed by Debtors, it is possible that the Adequate Assurance Information will be served later than the counterparties' deadline to file an Adequate Assurance Objection. Debtors should be required to serve the Adequate Assurance Information by such a date that the counterparties will have sufficient time to review the information provided and, if necessary, file an Adequate Assurance Objection.

7. Paragraph 31 of the Motion proposes that the Successful Bidder be permitted to add or subtract leases from the sale, presumably after Proposed Sale Hearing. However, there is no deadline for notice to the counterparties of any Excluded Contract or Subsequently Added Contract; nor is there a corresponding deadline for Debtor to provide Cure Notice, Adequate Assurance Information, and objections thereto. To the extent that there is an Excluded Contract or Subsequently Added Contract after the deadline to object to the Cure Amount and the Adequate Assurance Objection, Debtors should have a deadline by which to notify the

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.



counterparties to any Exclude Contract or Subsequently Added Contract. Additionally, in the event there is a Subsequently Added Contract, Debtor should have a deadline by which to provide a Cure Notice and Adequate Assurance Information, and counterparties should have sufficient time to review the information provided and, if necessary, object to the Cure Amount and/or file an Adequate Assurance Objection.

8. Additionally, Exhibits B-1 and B-2 to the Motion do not have the name of the lease counterparties. Holdings requests that, in the future, this information be provided in any such exhibits.

9. The exhibits attached to the Motion also contain the deadlines, or lack thereof. Holdings objects to those exhibits to the extent of this Objection.

10. Although an objection is not yet due to the *Motion of the Debtors and Debtors-in-Possession for Entry of an Order (i) Approving Asset Purchase Agreements and Authorizing the Sale of All or Substantially All of the Debtors' Assets under 11 U.S.C. §§ 363(b) and 363(m); (ii) Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests Pursuant to 11 U.S.C. § 363(f); (iii) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Pursuant to 11 U.S.C. § 365; and (iv) Granting Related Relief* [Doc. No. 43] (the "Sale Motion"), Holdings hereby provides notice that some of the personal property which Debtors seek to sell is not owned by Debtors, but is owned by Holdings. A more detailed objection to the Sale Motion will be made on or before the deadline to object to the Sale Motion.

### **CONCLUSION**

For all of the foregoing reasons, the Holdings requests this Court enter an order sustaining this Objection and granting such other and further relief as this Court deems just and appropriate.

DATED this the 13th day of November, 2023.

/s/ Max Moseley

Max Anderson Moseley

**KUMAR, PRABHU, PATEL, & BANERJEE**

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Attorney for Premier Holdings, LLC, et al.

**CERTIFICATE OF SERVICE**

Service of the foregoing shall be made via e-mail, and if e-mail is not available via U.S. mail, upon the Master Service List as attached to the *Certificate of Service* [Doc. No. 156], with the addition of any other parties requiring service as set forth in the *Order (i) Authorizing the Debtors to File a Consolidated List of Unsecured Creditors for Giving Notice in Lieu of Submitting a Separate List for Each Debtor, (ii) Authorizing the Debtors to Implement Certain Notice and Case Management Procedures, and (iii) Granted Related Relief* [Doc. No. 86], on this the 13th day of November, 2023.

Max Moseley

OF COUNSEL

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

<b>IN RE:</b>	§	
	§	
<b>PREMIER KINGS, INC., et al.</b>	§	<b>CASE NO. 23-02871</b>
	§	
<b>DEBTORS.</b>	§	<b>CHAPTER 11</b>

**FIRST HORIZON BANK'S LIMITED OBJECTION TO DEBTORS' MOTION FOR  
ORDER APPROVING BIDDING PROCEDURES**

First Horizon Bank ("First Horizon") hereby files its Objection to Debtors' Motion for Order Approving Bidding Procedures (the "Bidding Procedures Motion") [ECF Doc. 42] as follows:

1. First Horizon adopts and joins any other Objections filed in opposition to Debtors' Motion for Order Approving Bidding Procedures filed by any creditor or interested party to the extent not inconsistent with its objection stated herein.
2. First Horizon specifically objects to the Motion's proposed date for the Auction of December 4, 2023 for the following reasons:
  - a. Under both this Court's Case Management Procedures Order [ECF Doc. 86] and the Debtors' proposed orders to Debtors' Motion for Order Approving Bidding Procedures [ECF Doc. 42], interested parties and creditors may file their objections to the Motion for Order Approving Asset Purchase Agreements (the "APA Motion") [ECF Doc. 43] by 4:00 pm ct on December 6, 2023.
  - b. Accordingly, First Horizon, other interested parties, and/or creditors have until December 6, 2023 to object to the proposed sales; however, if the Debtors' Bidding Procedures Motion is granted as written, the Auction would occur before this Court has adjudicated timely submitted objections to the APA Motion.
  - c. This is likely to cause confusion for potential bidders, creditors, and debtors alike.

Accordingly, First Horizon Bank respectfully requests that this Court clarify the conflicting deadlines as set forth above.



Dated: November 13, 2023

Respectfully Submitted,

/s/ Danielle E. Douglas  
Danielle E. Douglas

/s/ Clarence Wilbon  
Clarence Wilbon  
*Counsel for First Horizon Bank*

**OF COUNSEL:**

ADAMS AND REESE LLP  
1901 Sixth Avenue North, Suite 1110  
Birmingham, Alabama 35203  
(205) 250-5000  
(205) 250-5034 (facsimile)  
danielle.douglas@arlaw.com

**CERTIFICATE OF SERVICE**

I certify that I have, this 13th day of November, 2023, filed the foregoing using the Court's CM/ECF system, which will automatically serve a copy of the foregoing on all counsel of record.

/s/ Danielle E. Douglas  
OF COUNSEL

**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

**ORDER ENFORCING AUTOMATIC STAY AGAINST FIRST HORIZON BANK**

Upon consideration of the Motion (the “Motion”)<sup>2</sup> of the Debtors for Entry of an Order Enforcing the Automatic Stay [Dkt. No. 134], the Response to Motion filed by First Horizon Bank [Dkt. No. 166] and Reply filed by the Official Committee of Unsecured Creditors [Dkt. No. 178]; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A); and it appearing that venue of this proceeding and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; the Court having conducted an evidentiary hearing on November 13, 2023; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, and their creditors; and after due deliberation and good and sufficient cause appearing therefor;



<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 not otherwise defined herein shall be given the meaning ascribed to them in the Motion.

**IT IS FOUND AND DETERMINED THAT:**

1. The Debtors are in possession of the Equipment and the Debtors' Stores, more fully described in the state court lawsuit brought by First Horizon Bank; and the Equipment and the Stores may very well be property of the Debtors' estates under section 541(a) of the Bankruptcy Code.

2. The Debtors' Stores are open and operating, utilizing the Equipment for daily operations, and subject to Asset Purchase Agreements.

3. The Debtors use of the Debtors' Stores and Equipment renders the assets inextricably intertwined with the bankruptcy cases and sale of assets in those cases.

4. First Horizon Bank filed the herein referenced state court lawsuit in Tennessee despite that the state of Tennessee appears to have no connection whatsoever to the real estate, Equipment, or Debtors' operations.

5. The Bankruptcy Court is more accustomed to making determinations about ownership and the extent, priority, and validity of liens than the Tennessee Court, and it is familiar with the parties and issues. Therefore, this Bankruptcy Court is the best forum for determination of ownership of the assets and determination of any disputes regarding lien priorities. Further, the Bankruptcy Code and rules allow for First Horizon, as necessary, to investigate payments between the Debtors and the Affiliate Defendants.

6. The Tennessee state court lawsuit has the potential, if not the likelihood, to interfere and interrupt with this chapter 11 reorganization and any rulings or findings by that court could have a negative and/or preclusive impact on the administration of the bankruptcy estates. In addition, that lawsuit, if allowed to proceed, could very well interfere with the Debtors' breathing spell afforded to debtors under 11 U.S.C. § 362, a crucial element of a chapter bankruptcy.



7. The fact that the Debtors are not parties to the Tennessee state court lawsuit is not controlling as the issues are inextricably intertwined with this chapter 11 and could be litigated to a dissimilar result if allowed to proceed.

8. Regarding alleged issues raised by First Horizon Bank regarding financial issues related to their loans, the filing of monthly operating reports in the cases provides creditors and the Bankruptcy Administrator an opportunity to review the Debtors' operations for improprieties. Furthermore, it is well established that the Bankruptcy Code and Bankruptcy Rules provide other means for First Horizon to seek financial information in these cases, such as by use of a Rule 2004 examination.

9. Debtors allege that First Horizon Bank and its agents, including its attorneys, violated the automatic stay under 11 U.S.C. § 362(a) by filing the lawsuit in Tennessee, attending hearings, and prosecuting the case which seeks, among other things, the immediate surrender of property of the Debtors' estates under 11 U.S.C. § 541, as well as the appointment of a state court receiver over certain of the Debtors' assets, and an injunction. *See generally, In re Jefferson County*, 491 B.R. 277 (Bankr. N.D. Ala. 2013) (Court must look at broad purpose and spirit of chapter 11 including § 362); *In re Walter Energy, Inc.*, 911 F.3d 1121 (11<sup>th</sup> Cir 2018).

10. The automatic stay of 11 U.S.C. § 362 is a statutory injunction and since the Debtors' Motion seeks to enforce that injunction, an adversary proceeding is not required. (*See In re Jefferson County*, 491 B.R. 277 (Bankr. N.D. Ala. 2013).

11. There is no question that in the Eleventh Circuit, chapter 11 cases wherein a debtor seeks a 363 sale of its assets, as in this case, like a chapter 11 with a liquidating plan, is still considered a reorganization under chapter 11 of the Bankruptcy Code.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED**

**THAT:**

1. The Motion is **GRANTED**; and
2. First Horizon and its agents, including its attorneys, are hereby enjoined from prosecuting the state court lawsuit commenced in Tennessee, or any other similar action, including without limitation, requesting (i) surrender of Equipment or the Debtors' Stores, (ii) appointment of a receiver for the Equipment or the Debtors' Stores, and/or (iii) seeking an injunction or any other relief that would in any way interfere with the administration of these cases or the Debtors' pending sales of the Debtors' Stores and Equipment.
3. This Court shall retain its exclusive jurisdiction over any claims by First Horizon with respect to the Equipment and the Debtors' Stores, and any other actions by First Horizon that in any way would affect the administration of the Debtors' estates.

Dated: November 22, 2023  
Birmingham, Alabama

/s/TAMARA O. MITCHELL  
TAMARA O. MITCHELL  
UNITED STATES BANKRUPTCY JUDGE



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



In re: )  
 )  
PREMIER KINGS, INC., *et al.*,<sup>1</sup> ) Chapter 11  
 )  
Debtors. ) CASE NO.: 23-02871-TOM-11  
 )  
 ) Jointly Administered  
 )

**LIMITED OBJECTION OF PREMIER HOLDINGS, LLC, PREMIER HOLDINGS OF GEORGIA, LLC, PREMIER KINGS HOLDINGS, LLC, PREMIER KINGS HOLDINGS OF ALABAMA, LLC, AND PREMIER KINGS HOLDINGS OF GEORGIA, LLC TO THE MOTION OF THE DEBTORS AND DEBTORS-IN-POSSESSION FOR ENTRY OF AN ORDER (I) APPROVING ASSET PURCHASE AGREEMENTS AND AUTHORIZING THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS UNDER 11 U.S.C. §§ 363(B) AND 363(M); (II) AUTHORIZING THE SALE OF ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS PURSUANT TO 11 U.S.C. § 363(F); (III) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES PURSUANT TO 11 U.S.C. § 365; AND (IV) GRANTING RELATED RELIEF**

COME NOW, Premier Holdings, LLC, Premier Holdings of Georgia, LLC, Premier Kings Holdings, LLC, Premier Kings Holdings of Alabama, LLC, and Premier Kings Holdings of Georgia, LLC (collectively, "Holdings"), and submits this its limited objection (this "Objection") to the *Motion of the Debtors and Debtors-In-Possession for Entry of an Order (I) Approving Asset Purchase Agreements and Authorizing the Sale of All or Substantially All of the Debtors' Assets Under 11 U.S.C. §§ 363(B) and 363(M); (II) Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests Pursuant to 11 U.S.C. § 363(F); (III) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Pursuant to 11 U.S.C. § 365; and (IV) Granting Related Relief* [Doc. No. 43] (the

<sup>1</sup> The Debtors in these cases are: Premier Kings, Inc.; Premier Kings of Georgia, Inc.; and Premier Kings of North Alabama, LLC. The Court has entered an order for joint administration on October 30, 2023 [Doc. No. 84].



“Motion”) filed by Premier Kings, Inc., Premier Kings of Georgia, Inc., and Premier Kings of North Alabama, LLC (collectively, the “Debtors”) to the extent that Debtors propose to sell any assets owned by Holdings. In support of this Objection, the Holdings specifically joins in any objections filed in opposition to the Motion to the extent such objections are not inconsistent with the position set forth herein, and states as follows:

### **JURISDICTIONAL INFORMATION**

1. On or about October 25, 2023 (the “Petition Date”), Debtors filed for bankruptcy protection under Chapter 11 of 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”). Debtors continue to operate its business and manage its property as debtors-in-possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.

2. This Court has jurisdiction over the Motions and this Objection pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of Debtors’ Chapter 11 case, the Motions, and this Objection in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

### **SUMMARY OF LIMITED OBJECTION**

3. Debtors request this Court approve the Motion to sell assets of Debtors free and clear of liens. But, even by Debtors’ own statements in a recent adversary complaint filed against Holdings, Debtors are unsure as to whether Debtors own all of the assets they seek to sell or if Holdings is the owner and lessor of a significant portion of furniture, fixtures, and equipment that Debtors seek to sell.

4. For a portion of the furniture, fixtures, and equipment that Debtors seek to sell, such assets were purchased by Holdings and installed in premises leased by Holdings to Debtors. Many of the applicable leases preserve Holdings’ ownership interest in these assets and, most importantly, Holdings has not transferred title of these assets to Debtors. Debtors argue that these

assets belong to Debtors because they are removeable trade fixtures, because Debtors paid personal property taxes on the assets, and because Debtors listed said personal property in its federal tax returns. Debtors' arguments are without support.

### **BACKGROUND FACTS**

5. Holdings and Debtors are parties to over fifty (50) commercial real property leases for the operation of Burger King Restaurants, over thirty (30) of which (the "Leases") include certain furniture, fixtures, and equipment (the "FF&E") which were purchased by Holdings with funds loaned to Holdings (the "Loans"), which Loans are secured by the FF&E. The Leases containing the FF&E are located in Alabama, Georgia, and Tennessee. Holdings maintains that it holds an ownership interest in the FF&E as evidenced by the terms of the Leases, the existence of the Loans, and because Holdings has not transferred ownership of the FF&E to Debtors.<sup>2</sup> A list of the restaurants in which Holdings claims an interest in the FF&E is attached hereto as Exhibit "A."

6. Holdings incurred debts under the Loans to (a) acquire real property in which Debtors could operate Burger King restaurants and (b) equip said restaurants with the FF&E necessary to operate Burger King restaurants in the various premises. Holdings leased the fully built and equipped Burger King restaurants to the Debtors via the Leases. Under the terms of the Leases, Debtors made "debt service" payments in the form of monthly rent, which payments were intended to cover Holdings' monthly payments for the real property and the FF&E.

7. The Leases each take one of a few forms, but the Leases all contain provisions stating that Holdings leases to Debtors certain real estate premises, along with all improvements. Additionally, in the Leases, Debtors have the obligation to maintain the premises, improvements,

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<sup>2</sup> As of the time of this filing, Holdings has complied with this Court's *Order Shortening the Time for Premier Holdings, et al. to Respond to Discovery Requests* [Doc. No. 264].



furniture, fixtures, personalty, appliances, equipment, and the link, and to restore any improvements if necessary.

8. The Leases also state that Holdings leases to Debtors all existing improvements in the restaurants, and further, that any improvements placed or installed in the premises by Debtors become the property of Holdings.

9. On or about October 26, 2023, Debtors filed the Motion and requested this Court enter an order, among other things, authorizing and approving the sale, assumption, and assignment of certain assets and leases, including the FF&E.

10. On or about November 29, 2023, Debtors filed a complaint against Holdings initiating an adversary proceeding in this Court, Case 23-00047-TOM (the “Adversary Proceeding” or “A.P.”) [A.P. Doc. No. 1] in which Debtors request that this Court enter a declaratory judgment establishing the ownership of the FF&E. In the Adversary Proceeding, the FF&E at issue are described by Debtors as “personal property, including without limitation ovens, microwaves, fryers, freezers, and other kitchen and restaurant equipment” [A.P. Doc. 1, para. 19].

11. Debtors claim an ownership interest in the FF&E for the following reasons:

- a. Because the FF&E allegedly is a removeable trade fixture and personal property owned by Debtors [A.P. Doc. No. 1, para. 18];
- b. Because Debtors’ personal property tax returns listed an itemized statement of the FF&E [A.P. Doc. No. 1, para. 19]; and
- c. Because Debtors’ federal income taxes identify the FF&E as owned by Debtors [A.P. Doc. No. 1, para. 19].

12. Holdings maintains that it owns the FF&E. Debtors even admit that they are not confident that they own the FF&E because Debtors stated in the Adversary Proceeding, “[t]here is a bona fide dispute regarding [Holdings]’ interests in the [FF&E] in the Burger Kings restaurants owned and operated by the Debtors and lease by [Holdings] and whether such assets



are property of the estate under section 541 of the Bankruptcy Code.”<sup>3</sup> Holdings disputes that there is any bona fide dispute of the FF&E to the extent such could result in a sale of the FF&E without first resolving the ownership interests in the FF&E.<sup>4, 5</sup>

### LIMITED OBJECTION

13. Bankruptcy Code § 363(b)(1) states that “The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, **property of the estate** . . . .”

11 U.S.C. § 363(b)(1) (emphasis added).<sup>6</sup>

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<sup>3</sup> This statement is self-serving as Debtors apparently intend to argue that Debtors are entitled to sell the FF&E pursuant to Bankruptcy Code § 363(f)(4) which states that “[t]he trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, **only if . . . such interest is in bona fide dispute**. . . .” 11 U.S.C. § 363(f)(4) (emphasis added). Again, Holdings disputes that there is any bona fide dispute of the FF&E to the extent such could result in a sale of the FF&E without first resolving the ownership interests in the FF&E.

<sup>4</sup> More specifically, Bankruptcy Code § 363(f)(4) is intended to deal with bona fide disputes as to debtor’s **interests** in the assets to be sold, but not to deal with disputes as to the **ownership** of the assets to be sold. See *In re Worcester Country Club Acres, LLC*, \_\_ B.R. \_\_, 2023 WL 7353963, \*5 (Bankr. D. Mass. November 7, 2023)(“Because ownership of the [assets] and the existence as to the [other claims of ownership] must be adjudicated in order to determine if they are property of the Debtor’s bankruptcy estate, they cannot be sold under § 363(b) or (c) and pursuant to § 363(f)(4) prior to a resolution of those issues.”). Even if the sale could proceed, in determining whether a bona fide dispute exists, Debtors must provide evidence that there is an objective basis for a dispute. See *In re Robotic Vision Systems, Inc.*, 322 B.R. 502, 506 (Bankr. D. N.H. 2005)(finding that there was no bona fide dispute, the court stated that “[a]t a minimum, a party must articulate in a pleading or in an argument an objective basis sufficient under the facts and circumstances of the case for the court to determine that a bona fide dispute exists”). Holdings recognizes that Judge Sledge addressed Bankruptcy Code § 363(f)(4) in the *Gulf States Steel* case, but this case involved a dispute over a lien, not ownership of the asset. See *In re Gulf States Steel, Inc. of Alabama*, 285 B.R. 497, 506 (Bankr. N.D. Ala. 2002).

<sup>5</sup> Moreover, the mere existence of the Adversary Proceeding filed by Debtors to determine the ownership of the FF&E acts to prevent the sale, at least to the extent that Debtors seek to sell the FF&E free and clear of other liens or interests. This particular issue has been addressed by the Eleventh Circuit Court of Appeals in *In re Saber*, 264 F.3d 1317 (11th Cir. 2001). In the *Saber* case, a trustee requested the sale of an asset while its ownership status was pending in an adversary proceeding. See *id.* at 1321-22. Although the trustee believed the adversary proceeding was concluded, no final order had been entered. See *id.* at 1322-23. The lower bankruptcy court authorized the sale pursuant to Bankruptcy Code § 363(f)(4). See *id.* at 1321. The Eleventh Circuit noted that the bankruptcy court’s failure to conclude the adversary proceeding resulted in a cloud on title of the property sold. See *id.* at 1321. The Eleventh Circuit declined to hear the appeal, however, because the adversary proceeding was not concluded. *Saber*, 264 F.3d at 1324.

14. Bankruptcy Code § 541(a)(1) provides that “[t]he commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held: . . . all legal or equitable interests of the debtor as of the commencement of the case.” 11 U.S.C. § 541(a)(1) (*see also United States v. Whiting Pools*, 462 U.S. 198, 103 S. Ct. 2309, 76 L. Ed. 2d 515 (1983)).

15. The issue then turns on how to determine the specific property in which the debtor can claim an ownership interest. In *Butner v. U.S.*, 440 U.S. 48, 99 S. Ct. 914, 59 L. Ed. 2d 136 (1979), the United States Supreme Court held that “[p]roperty interests are created and defined by state law. Unless some federal interest required a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding.” *Butner*, 440 U.S. at 55; *see also In re Builders Group & Development Corp.*, 502 B.R. 95, 113 (Bankr. D. Puerto Rico 2013) (explaining that *Butner* requires that “[a] bankruptcy court must look to state law or other applicable non-bankruptcy law to determine whether a debtor has a pre-petition property interest in rents”).

16. As explained further below, (a) the applicable states’ law and the Leases establish that Holdings owns the FF&E, (b) the FF&E does not constitute removeable trade fixtures, and (c) neither Debtors’ alleged payment of personal property taxes on the FF&E nor its alleged listing of the FF&E on its federal tax returns act to transfer ownership of the FF&E from Holdings to Debtors.

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<sup>6</sup> Holdings submits that Bankruptcy Code § 363(h) does not apply in this situation because Holdings and Debtors are not “co-owners” of the FF&E; instead, Holdings is the sole owner of the FF&E.



A. Applicable State Law, As Well As The Leases Establish That Holdings Owns The FF&E.

17. First, applicable state law provides that the FF&E attached to the real property that is subject to the Leases becomes property of Holdings. Second, the Leases state that Holdings leases to Debtors all existing improvements in the restaurants, and further, that any improvements placed or installed in the premises by Debtors become the property of Holdings. Applicable state law supports both positions.

18. Under all applicable state law, the attached FF&E becomes a fixture which is part of the real property, and thus owned by Holdings.

- a. Under Alabama law, “[a]n improvement, generally speaking, is anything that enhances the value of the land.” *Mazel v. Bain*, 133 So.2d 44, 45 (Ala. 1961). Further, Alabama law states that a fixture is “an article which was once a chattel, but which, by being physically annexed or affixed to the realty, has become accessory to it and parcel of it.” *Sharp v. Sharp*, 540 So.2d 1373, 74-75 (Ala. 1989). Fixtures belong to the owner of the real property. *See Sycamore Management Group, LLC v. Coosa Cable Company, LLC*, 42 So.3d 90, 95 (Ala. 2010).
- b. Similarly, under Georgia law, “real property includes not only the land but all improvements thereon[, and] unlike items of personalty, the realty and the improvements thereon cannot be separated from each other.” *905 Bernina Avenue Cooperative, Inc. v. Smith/Burns LLC*, 802 S.E.2d 373, 380 (Ga. App. 2017) (citing *Fulton County Bd. of Assessors v. McKinsey & Co.*, 224 Ga.App. 593, 594 (1), 481 S.E.2d 580 (1997) (citation and punctuation omitted)). Further, under Georgia law, “[f]ixtures are also included in this classification, defined as



‘anything which is intended to remain permanently in its place even if it is not actually attached to the land.’” *905 Bernina*, 802 S.E.2d at 380 (citing OCGA § 44-1-6(a); *Fulton County Bd. of Assessors*, 481 S.E.2d 580 (Ga. App. 2017)). Thus, also in Georgia, fixtures belong to the owner of the real property, which here is Holdings.

- c. When a determination is made as to whether an item is a fixture in Tennessee, “[t]he usual test is said to be the intention with which a chattel is connected with realty. If it is intended to be removable at the pleasure of the owner, it is not a fixture.” *Harry J. Whelchel Co. v. King*, 610 S.W.2d 710, 713-14 (internal citations omitted). Holdings did not intend, nor did any contract contemplate that the FF&E could be removeable at Debtors’ whim. Thus, Tennessee law also considers the FF&E to be a fixture.

19. As explained below, the FF&E is not a removable trade fixture. Accordingly, any improvements or fixtures belong to the owner of the real property, which, in this case, is Holdings. The FF&E, as described by Debtors, includes ovens, microwaves, fryers, freezers, and other kitchen and restaurant equipment, all of which have been affixed to the various leased premises. As such, under applicable law, the FF&E belongs to Holdings.

20. The Leases state that Holdings leased to Debtors all existing improvements in the restaurants, and further, that any improvements placed or installed in the premises by Debtors become the property of Holdings. Moreover, the Leases all contain provisions stating that Holdings leases to Debtors certain real estate premises, along with all improvements. Furthermore, Debtors have the obligation to maintain the premises, improvements, furniture,

fixtures, personalty, appliances, equipment, and the link, and to restore any improvements if necessary. The Leases are due to be enforced as written under all applicable state law.

- a. Under Alabama law, “in accord with seven Justices in *Homa–Goff* and in accord with the endorsement of the liberty of contract expressed in Ala. Const. 1901, § 22,6 confirm that parties are free to negotiate a contract to whatever standard they please, particularly where there is an arm's length negotiation of a commercial lease or assignment by commercial entities.” *Shoney's LLC v. Mac East, LLC*, 27 So.3d 1216, 1221 (Ala. 2009) (citing *Homa-Goff Interiors v. Cowden*, 350 So.2d 1035 (Ala. 1977)). Thus, Alabama law will enforce commercial lease contracts according to their terms and, in this case, the Leases do not provide in any way that Debtors shall own the FF&E.
- b. Under Georgia law, similarly, “A lease, like any other contract, is to be construed to give full effect to the intentions of the parties.” *Piedmont Center 15, LLC v. Aquent, Inc.*, 649 S.E.2d 733, 735 (Ga. App. 2007).
- c. Similarly, courts in Tennessee take into account whether a commercial lease is entered into between two sophisticated parties. *See Briggs & Stratton Power Products Group, LLC v. Osram Sylvania, Inc.*, 2017 WL 5992361, \*8 (Tenn. App. December 4, 2017).

21. As such, applicable state law as to the Leases provide that the Leases shall be interpreted by their terms. Because the Leases state that Holdings leases to Debtors all existing improvements in the restaurants, and further, that any improvements placed or installed in the premises by Debtors become the property of Holdings; therefore, the FF&E belongs to Holdings according to the terms of the Leases and applicable law. *See* 30 A.L.R.3d 998 (“Generally, the



term ‘improvements’ may be said to comprehend everything that tends to add to the value or convenience of a building or a place of business, whether it be a store, manufacturing establishment, warehouse, or farming premises; it certainly includes repairs of every description; it necessarily includes much more than the term ‘fixtures’; and, indeed, it is difficult to conceive any addition, alteration, or repair made by the tenant upon the premises for his own convenience, which may not be properly included in the term ‘improvements.’”).

22. Also, the Leases gave no ownership interests in the FF&E to Debtors. Holdings purchased the FF&E and entered into the Leases with Debtors so that Debtors might operate Burger King restaurants. Applicable law and the Leases indicate that it was the intention of Holdings for the FF&E to remain the property of Holdings throughout the term of the Leases and following the termination of said Leases. Thus, Holdings is the owner of the FF&E.

**B. The FF&E Is Not A Removeable Trade Fixture Under Applicable State Law.**

23. In the Adversary Proceeding, Debtors claim ownership of the FF&E because the FF&E, allegedly, consists of removeable trade fixtures and personal property owned by Debtors [A.P. Doc. No. 1, para. 18]. However, applicable state law does not consider the FF&E to be a trade fixture subject to removal by Debtors.

- a. Alabama law provides that “[u]nder the general rule of common law, everything annexed to the freehold estate was treated as a part of it.” *See Pipkin v. Sun State Oil, Inc.* 273 So.3d 828, 837 (Ala. 2018) (citing *Walker v. Tillis*, 66 So. 54 (Ala. 1914)). This common law rule is subject to an exception in that, “[a] tenant can remove trade fixtures at the end of a lease term even when the lease states that improvements and fixtures are not to be removed.” *Id.*; *see also LaFarge Building Materials, Inc. v. Stribling*, 880 So.2d 415 (Ala. 2003). A “trade fixture” is

defined as “an article annexed to realty **by a tenant** for purposes of carrying on the tenant’s trade or business.” *See Sycamore Management Group*, 42 So.3d at 94 (Ala. 2010) (emphasis added). Because Holdings purchased the FF&E and installed the FF&E in premises leased to Debtors, the FF&E cannot be trade fixtures. *See Id.*

- b. Likewise, “[i]n Georgia, trade fixtures are defined as articles annexed to the realty **by a tenant** for the purpose of carrying on a trade.” *Lay Bros., Inc. v. Golden Pantry Food Stores, Inc.*, 610 So.2d 160, 163 (Ct. App. Ga. 2005) (citing *Armour & Co. v. Block*, 147 Ga. 639, 645 S.E. 228 (1918); *Ory v. Tate*, 211 Ga. 256, 258(1), 85 S.E.2d 36 (1954)) (emphasis added). Again, because Debtors did not own nor annex the articles, they also cannot be trade fixtures under Georgia law.
- c. In defining trade fixtures, Tennessee courts have adopted the definition set forth in Black’s Law Dictionary, which states that trade fixtures are “[a]rticles placed in or attached to rented buildings **by the tenant**, to prosecute the trade or business for which he occupies the premises, or to be used in connection with such business, or promote convenience and efficiency in conducting it.” *International Flight Center v. Cit of Murfreesboro*, 45 S.W.3d 565, 572(1) (Tenn. App. 2000) (citing Black’s Law Dictionary 574 (5th ed. 1979)) (emphasis added). Yet again, because Debtors did not place or attach the FF&E, the FF&E cannot be trade fixtures.

24. Thus, under all applicable state law, the FF&E does not meet the definition of trade fixtures, and cannot be removed by Debtors.



C. **Even If The FF&E Is On Debtors' Personal Property Tax Returns And/Or If The FF&E Is Identified on Debtors' Federal Tax Returns, Such Would Not Act To Transfer Title Of The FF&E From Holdings To Debtors.**

25. As an initial matter, Holdings has been provided no evidence that the FF&E at issue is indeed on Debtors' personal property tax returns nor identified on Debtors' federal tax returns.

26. Assuming *arguendo* that the FF&E is listed on Debtors' personal property tax returns or identified on Debtors' federal tax returns, such a listing does not grant Debtors an ownership interest in the FF&E. All of the Leases are triple net leases, which means that Debtors pay the costs of maintenance, insurance, and taxes related to the Premises. Thus, even if Debtors have paid personal property taxes on all FF&E in the restaurants pursuant to the terms of the Leases, it is because Debtors are contractually required to do so and not because Debtors own the FF&E.

27. Moreover, "[p]ayment of taxes is but one incident of property ownership," meaning that the payment, or non-payment of property taxes in and of itself does not give Debtors ownership of the FF&E. *See Houston v. U.S. Gypsum Co.*, 652 F.2d 467, 474 (5th Cir. 1981) (applying Mississippi law in determining a claim for adverse possession). Thus, Debtors' claim of ownership due to Debtors' alleged payment of property taxes or identification on tax returns of the FF&E does not transfer ownership of the FF&E from Holdings to Debtors.

**CONCLUSION**

For all of the foregoing reasons, Holdings requests this Court enter an order sustaining this Objection, prohibiting the sale of the FF&E, and granting such other and further relief as this Court deems just and appropriate.

DATED this the 4th day of December, 2023.

/s/ Heather A. Jamison

Heather A. Jamison

Chloe E. Champion

*Counsel for Premier Holdings, LLC, Premier Holdings of Georgia, LLC, Premier Kings Holdings, LLC, Premier Kings Holdings of Alabama, LLC, and Premier Kings Holdings of Georgia, LLC*

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### CERTIFICATE OF SERVICE

Service of the foregoing shall be made via e-mail, and if e-mail is not available via U.S. mail, upon the Master Service List with the addition of any other parties requiring service as set forth in the *Order (i) Authorizing the Debtors to File a Consolidated List of Unsecured Creditors for Giving Notice in Lieu of Submitting a Separate List for Each Debtor, (ii) Authorizing the Debtors to Implement Certain Notice and Case Management Procedures, and (iii) Granted Related Relief* [Doc. No. 86], on this the 4th day of December, 2023.

/s/ Heather A. Jamison

OF COUNSEL

**EXHIBIT A**

<b>STORE NUMBER</b>	<b>ADDRESS</b>	<b>LANDLORD</b>	<b>TENANT</b>
22803	1630 Federal Drive, Montgomery, AL	Premier Kings Holding of Alabama, LLC	Premier Kings, Inc.
22834	1484 Forestdale Blvd, Forestdale, AL	Premier Kings Holding of Alabama, LLC	Premier Kings, Inc.
22937	8670 Hwy 72 W, Madison, AL	Premier Kings Holdings of Alabama, LLC	Premier Kings of North Alabama, LLC
23135	850 N Eastern Blvd, Montgomery, AL	Premier Kings Holdings, LLC	Premier Kings, Inc.
23235	3035 Jeff Rd NW, Harvest, AL	Premier Kings Holding of Alabama, LLC	Premier Kings of North Alabama, LLC
23237	43137 US Hwy 72, Stevenson, AL	Premier Kings Holding of Alabama, LLC	Premier Kings of North Alabama, LLC
23806	2430 Osborne Rd, Saint Marys, GA	Premier Kings Holdings of Georgia, LLC	Premier Kings of Georgia, Inc.
24123	20 Springville Station Blvd., Springville, AL	GEWSI 2 LLC	Premier Kings, Inc.
24563	123 Premier Drive, Geneva, AL	Premier Kings Holdings, LLC	Premier Kings, Inc.
24565	6752 US Hwy 431 S, Headland, AL	Premier Kings Holdings, LLC	Premier Kings, Inc.
25565	30024 State Hwy 19, Locust Fork, AL	Premier Holdings, LLC	Premier Kings, Inc.
25607	1010 Hospitality Dr., Greensboro, GA	Premier Holdings of Georgia, LLC	Premier Kings of Georgia, Inc.
25743	122 Carl Cannon Blvd., Jasper, AL	Premier Holdings, LLC	Premier Kings, Inc.
25882	106 N Duval Street, Claxton, GA	Premier Holdings of Georgia, LLC	Premier Kings of Georgia, Inc.
25937	4660 Hw 17, Richmond Hill, GA	Premier Holdings of Georgia, LLC	Premier Kings of Georgia, Inc.
26579	22182 Hwy 216, McCalla, AL	Premier Holdings, LLC	Premier Kings, Inc.

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26748	515 Carrolton Street, Temple, GA	Premier Holdings of Georgia, LLC	Premier Kings of Georgia, Inc.
26749	13708 East Oglethorpe Hwy, Midway, GA	Premier Holdings of Georgia, LLC	Premier Kings of Georgia, Inc.
26868	7304 Hwy 21, Port Wentworth, GA	Port Wentworth Fee Owner, LLC	Premier Kings of Georgia, Inc.
27281	5482 Hwy 280, Harpersville, AL	Premier Holdings, LLC	Premier Kings, Inc.
27690	13200 W Cleveland St., Nahunta, GA	Premier Holdings of Georgia, LLC	Premier Kings of Georgia, Inc.
28954	204 East Hwy 278, Piedmont, AL	Premier Holdings, LLC	Premier Kings of North Alabama, LLC
29043	4240 Florence Blvd., Florence, AL	Premier Holdings, LLC	Premier Kings of North Alabama, LLC
29513	103 North Military Street, Loretto, TN	Premier Holdings, LLC	Premier Kings of North Alabama, LLC

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



In re:

(Chapter 11)

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

Case No. 23-02871-TOM

Debtors.

Jointly Administered

**FIRST HORIZON BANK'S LIMITED OBJECTION TO  
DEBTORS' SALE MOTION**

First Horizon Bank ("First Horizon") files this Limited Objection thereby objecting on a limited basis, to the Motion for Order Approving Sale of Debtors' Assets Free and Clear of all Liens, Claims, Encumbrances, and Interests (the "Motion") filed by Premier Kings, Inc., Premier Kings of North Alabama, LLC, and Premier Kings of Georgia, Inc. (the "Debtors").

**Preliminary Statement**

First Horizon does not object to the Sale in its entirety. However, Debtors are attempting to include in the sale certain assets (as defined below) in which First Horizon holds first-position security interests that were granted to it by First Horizon's Borrowers – Premier Holdings, LLC and Premier Holdings of Georgia, LLC (collectively and separately referred to as "Premier Holdings" or "Holdings" where appropriate). First Horizon submits its Limited Objection to ensure that Debtors do not use the Sale to improperly transfer these assets – namely equipment used in the Harpersville, Alabama; Montgomery, Alabama (on Atlanta Highway)<sup>2</sup>; Nahunta, Georgia; and Port Wentworth stores (First Horizon's "Collateral") – free and clear of First Horizon's security interests without First Horizon's voluntary release of its liens.

<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> Debtors have represented that real property is not included in the proposed APAs. In First Horizon's mortgage granted to it by Premier Holdings in the Montgomery store, the Holdings not only grants First Horizon a mortgage in its leasehold interest in the real property, but also grants First Horizon a security interest in all Rents from the property and "all existing or subsequently erected or affixed . . . improvements and fixtures." See Exhibit A, p. 1. To the extent Debtors intend to sell any such personal property as part of the APAs, First Horizon objects to the sale of any personal property that constitutes collateral granted to it by Holdings because Premier Holdings – and not Debtors – hold legal title thereto.



Additionally, Debtors have commenced an adversary proceeding (the “AP”) against Premier Holdings in which they claim to own First Horizon’s Collateral. First Horizon submits that Debtors do not own First Horizon’s Collateral, and objects to Debtors’ attempt to modify non-debtor parties’ contractual or property rights in a manner that is not supported by applicable state or federal law. Indeed, First Horizon has valid and binding contracts with Premier Holdings, the actual owner of First Horizon’s Collateral that establish (i.) Premier Holdings used the proceeds of its loans from First Horizon to purchase the Collateral; and thus, that Debtors do not own the Collateral; and (ii.) First Horizon has a superior security interest in the Collateral – a security interest that Debtors cannot alter as a matter of law.

### **Factual Background**

**The Loans to Premier Holdings.** First Horizon provided purchase money financing to Premier Holdings, LLC for the purchase of a Burger King restaurant in Harpersville, Alabama, which consisted of one loan to finance the purchase of the real property and construction of the restaurant building (the “Harpersville Burger King Real Estate Loan”), and a second loan to finance the purchase of all furniture, fixtures, and equipment used to operate the restaurant (the “Harpersville Burger King Equipment Loan,” and collectively with the Harpersville Burger King Real Estate Loan, the “Harpersville Burger King Loans”). First Horizon perfected its security interests by properly recording its mortgage and filing its UCC-1 financing statement. A true and correct copy of First Horizon’s promissory notes, mortgage, security agreement, and financing statement relating to the Harpersville Burger King Loans are attached hereto as composite **Exhibit A**.

First Horizon provided construction financing to Premier Holdings, LLC for the construction of a Burger King restaurant located at 4010 Atlanta Highway in Montgomery, Alabama, which consisted of one loan to finance the purchase of the leasehold interest and the construction of the restaurant building (the “Montgomery Burger King Real Estate Loan”). First Horizon perfected its security interests by properly recording its mortgage and filing its UCC-1 financing statement. A



true and correct copy of First Horizon's promissory note, leasehold construction mortgage, assignment of construction contracts, and financing statement relating to the Montgomery Burger King Real Estate Loan are attached hereto as composite **Exhibit B**.

**The Loans to Premier Holdings of Georgia.** First Horizon provided purchase money financing to Premier Holdings of Georgia, LLC for the purchase of a Burger King restaurant in Nahunta, Georgia, which consisted of one loan to finance the purchase of the real property and construction of the restaurant building (the "Nahunta Burger King Real Estate Loan"), and a second loan to finance the purchase of all furniture, fixtures, and equipment used to operate the restaurant (the "Nahunta Burger King Equipment Loan," and collectively with the Nahunta Burger King Real Estate Loan, the "Nahunta Burger King Loans"). First Horizon perfected its security interests by properly recording its mortgage and filing its UCC-1 financing statement. A true and correct copy of First Horizon's promissory notes, deed to secure debt, security agreement, and financing statement relating to the Nahunta Burger King Loans are attached hereto as composite **Exhibit C**.

First Horizon provided purchase money financing to Premier Holdings of Georgia, LLC for the purchase of a Burger King restaurant in Port Wentworth, Georgia, which consisted of one loan to finance the purchase of the leasehold interest and construction of the restaurant building (the "Port Wentworth Burger King Real Estate Loan"), and a second loan to finance the purchase of all furniture, fixtures, and equipment used to operate the restaurant (the "Port Wentworth Burger King Equipment Loan," and collectively with the Port Wentworth Burger King Real Estate Loan, the "Port Wentworth Burger King Loans"). First Horizon perfected its security interests by properly recording its mortgage and filing its UCC-1 financing statement. A true and correct copy of First Horizon's promissory notes, leasehold accommodation deed to secure debt, security agreement, and financing statement relating to the Port Wentworth Burger King Loans are attached hereto as composite **Exhibit D**.

Debtors' former single member and manager, Manraj Sidhu, decedent, personally guaranteed the loans extended to Premier Holdings. Debtors – as Holdings' lessee – also executed unconditional guaranties ensuring payment and performance of the loans made to Premier Holdings. All of the loans mentioned herein are in default due to the death of the guarantor and for non-payment. Notices of default, demand for payment, and reservation of rights letters were sent to Premier Holdings, the Estate of Manraj Sidhu, and Debtors on July 7, 2023 (over three months before Debtors filed their voluntary petitions under Chapter 11 of the Bankruptcy Code on October 25, 2023) thereby accelerating the loans and declaring all amounts owed under the loan documents immediately due and payable.

**Holdings' and Debtors' Separate Existence.** Significantly, Holdings and Debtors are separate and distinct legal entities. Holdings maintains active written leases with Debtors, and previously received monthly rent payments from Debtors. Each Holdings entity and each Debtor also maintain separate books and accountings. First Horizon is unaware of Debtors and Holdings ever consolidating or merging into one entity and Premier Holdings and Debtors have continued to represent that they are separate and distinct entities in this action.

**The Bankruptcy Action.** On or about October 25, 2023 (the "Petition Date"), Debtors filed for bankruptcy protection under Chapter 11 of 1 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"). Debtors continue to operate their businesses and manage their property as debtors-in-possession under Bankruptcy Code §§ 1107(a) and 1108.

On October 26, 2023, Debtors filed the Motion seeking an Order: 1) approving certain asset purchase agreements (collectively, the "APAs," and individually, "APA") and authorizing the sale of all or substantially all of the debtors assets under 11 U.S.C. §§ 363(B) and 363(M); 2) authorizing the sale of assets free and clear of all liens, claims, encumbrances, and interests pursuant to 11 U.S.C. § 363(F) (the "Sale"); 3) approving the assumptions and assignment of certain executory contracts and unexpired leases pursuant to 11 U.S.C. § 365; and 4) granting



related relief (the “Motion”) [Doc. 43]. First Horizon’s Collateral is included in the proposed APAs.

On November 29, 2023, Debtors filed a complaint against Premier Holdings initiating an adversary proceeding (Case No. 23-00047-TOM, the “AP”) in which Debtors requests this Court to enter an Order declaring Debtors the owners of various furniture, fixtures, and equipment (“FF&E”), including First Horizon’s Collateral. On December 4, 2023, Premier Holdings filed its limited objection [Doc. 293] to the Motion asserting that Holdings has legal title to the FF&E, including First Horizon’s Collateral, and objecting to the Sale of those assets free and clear of Holdings’ ownership interests because there is no basis under either bankruptcy or applicable non-bankruptcy law to permit such Sale.

### **Legal Argument**

First Horizon’s limited objection is asserted pursuant to 11 U.S.C. §§ 105, 363, and 1109, and Federal Rules of Bankruptcy Procedure 4001, 6004, and 9014. First Horizon requests the Court to prohibit Debtors from selling equipment and property interests that they do not own, and that are subject to the first-position priority liens, that were granted to First Horizon by its borrowers – Premier Holdings.

#### **1. Debtors cannot sell what they do not own.**

Debtors, pursuant to 11 U.S.C. § 363, seek to sell substantially all of their assets, and inexplicably the assets of others – free and clear of liens. The fundamental issue with Debtors’ proposed Sale is that it includes property that does not constitute property of the estate. By its very nature, § 363 may only be used by Debtors to sell “property of the estate.” 11 U.S.C. §§ 363(b)(1) & 363(f). It is “self-evident that the [Debtors-in-possession] can only sell property of the estate,” *In re Southwest Florida Heart Group, P.A.*, 342 B.R. 639, 644 (2006) (citing case law).

Property of the bankruptcy estate includes “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 542(a)(1); *see also In re Suter*, 181

B.R. 116, 119 (Bankr. N.D. Ala. 1994). “Bankruptcy does not create interests in property that did not otherwise exist.” *In re Suter*, 181 B.R. at 119 (citing *In re Louisiana World Exposition, Inc.*, 832 F. 2d 1391, 1399 (5th Cir. 1987)). “Property interests are created and defined by state law,” and unless “some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding.” *In re Strickland*, No. 18-01289-JCO-13, 2018 WL 4620643, at \*1 (Bankr. S.D. Ala. 2018) (citing *Butner v. U.S.*, 440 U.S. 48, 55 (1979)).

The Debtors’ interest in First Horizon’s Collateral in use in the subject stores is limited to their leasehold interests. *See* Exhibits A-C, ¶¶ 3.1 on pp. 3 & Schedules 3.1 (naming Debtors as third-party lessees in possession of First Horizon’s Collateral). Although a leasehold interest is property of Debtors’ estates, a leasehold interest *is not* an ownership interest that can be sold free and clear under 11 U.S.C. § 363(f). *In re Southwest Florida Heart Group, P.A.*, 342 B.R. at 644. First Horizon does not dispute that Debtors are in possession of the Collateral by virtue of their leasehold interests, but that fact does not “form the basis upon which this Court can authorize a Section 363(f) sale free and clear of [Holdings’] ownership interest[s],” and in turn First Horizon’s priority security interests. *Id.* at 644.

Debtors also are prohibited from making any claims of equitable ownership or other rights in First Horizon’s Collateral. The Debtors have neither offered nor sought Court authority to make adequate assurance or adequate protection payments to First Horizon for the use of its Collateral. As such, Debtors are estopped from making equitable claims of ownership because they have already taken positions inconsistent with 11 U.S.C. §§ 362, 363, and 365 as to the Collateral.

As a matter of law, Debtors cannot sell what they do not own. As the Debtors do not own First Horizon’s Collateral, their Motion should be denied with regard to First Horizon’s Collateral. Accordingly, First Horizon respectfully requests that the Court sustain its objection to the Sale of its Collateral, which currently is being used to operate the Harpersville, Montgomery, Nahunta, and Port Wentworth stores. First Horizon further requests that both Premier Holdings’ ownership



interests in the Collateral and First Horizon's security interests in the Collateral be properly preserved and carved out of the APAs.

### **Reservation of Rights**

First Horizon reserves all rights, including but not limited to, the right to withhold its consent to entry by the Bankruptcy Court of any final order in any "non-core proceeding," the right to object to the Court's jurisdiction over First Horizon's claims, contracts, or property rights, the right to assert all claims or rights against other jointly or severally liable parties, the right to assert any other rights, claims, defenses, or objections available under state law, the Bankruptcy Code, or other applicable law, and the right to amend or supplement this objection on any basis. First Horizon also reserves the right to demand adequate protection from Debtors under 11 U.S.C. § 363(e).

### **Conclusion**

For the foregoing reasons, First Horizon respectfully requests that this Court enter an order sustaining this objection, prohibiting Debtors from selling First Horizon's Collateral under 11 U.S.C. § 363(f), and granting such other and further relief as this Court deems just and appropriate.

DATED: December 6, 2023

Respectfully Submitted,

/s/ Danielle E. Douglas  
Danielle E. Douglas

/s/ Clarence Wilbon  
Clarence Wilbon  
*Counsel for First Horizon Bank*

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## CERTIFICATE OF SERVICE

I certify that I have, this 6th day of December, 2023, filed the foregoing using the Court's CM/ECF system, which will automatically serve a copy of the foregoing on all counsel of record. I further certify that I have served a copy of the foregoing on the following by electronic mail:

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/s/ Danielle E. Douglas  
OF COUNSEL



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.

Case No. 23-02871-TOM-11

Joint Administration



**ORDER (I) APPROVING ASSET PURCHASE AGREEMENTS AND AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS UNDER 11 U.S.C. §§ 363(B) AND 363(M); (II) AUTHORIZING THE SALE OF ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS PURSUANT TO 11 U.S.C. § 363(F); (III) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES PURSUANT TO 11 U.S.C. § 365; AND (IV) GRANTING RELATED RELIEF**

Upon consideration of the Motion of the Debtors and Debtors-in-Possession for Entry of an Order (I) Approving Asset Purchase Agreements and Authorizing the Sale of All or Substantially All of the Debtors' Assets Under 11 U.S.C. §§ 363(b) and 363(m); (II) Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Encumbrances and Interests Pursuant to 11 U.S.C. § 363(f); (III) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Pursuant to 11 U.S.C. § 365; and (IV) Granting Related Relief [Doc. No. 43] (the "Sale Motion") filed on October 26, 2023 by the debtors and debtors-in-possession in the above-captioned jointly administered chapter 11 cases (the "Debtors"), seeking entry of this Order (the "Order") (i) approving the Stalking Horse Agreements, subject to higher and better bids (as modified or supplemented by this Order), providing for the Sale of certain assets of the Debtors designated as the Assets in the Purchase Agreements under 11 U.S.C. §§ 363(b)

<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.

and (m); (ii) authorizing the Sale of the Assets free and clear of all liens, claims, encumbrances, and other interests under 11 U.S.C. § 363(f); (iii) approving the assumption and assignment of the real property leases, franchise agreements and other contracts, if any to be assumed and assigned under the respective Purchase Agreements (hereinafter referred to as the “Assumed Contracts”) as set forth in the Purchase Agreements; and (iv) granting related relief.<sup>2</sup> The Court previously entered its *Order (I) Approving Bidding Procedures for the Sale of All or Substantially All the Debtors’ Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests; (II) Approving Bid Protections for Stalking Horse Bidders; (III) Approving Procedures for Assumption and Assignment of Executory Contracts and Unexpired Leases; (IV) Scheduling an Auction for, and Hearing to Approve, the Sale of All or Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests; (V) Approving the Form and Manner of Sale Notice; and (VI) Granting Related Relief* [Doc. No. 232] (the “Bidding Procedures Order”) on November 20, 2023, wherein the Court: (i) approved certain bidding and sale procedures (the “Bidding Procedures”) in regard to the auction (the “Auction”) and sale of substantially all of the Debtors’ assets; (ii) approved certain bid protections (the “Bid Protections”) for the Stalking Horse Bidders; (iii) approved procedures for assumption and assignment of the Assumed Contracts; (iv) scheduled the Auction and Sale Hearing; and (v) approved the form and manner of notice concerning the Sale Notice and the Cure Notice. Pursuant to the Bidding Procedures Order, the Auction was held on December 4, 2023.

The Debtors filed a notice with the Court attaching each of the Stalking Horse Agreements [Doc. No. 47], and identifying (i) the Assets being sold, (ii) the identities of the Stalking Horse

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Sale Motion or Purchase Agreements, as applicable.



Bidders for each group of Assets, and (iii) the consideration for the proposed sales. A summary of two of the Stalking Horse Agreements was also attached to the Bidding Procedures Motion, identifying the material financial terms of each proposed Sale.

The Debtors conducted the Auction and after consultation with the Lender Group and the Creditors' Committee, determined that certain Asset Purchase Agreements, fully executed copies of which, as amended, are attached hereto as Exhibits 1 through 4, and which for purposes of this Order shall include all exhibits, schedules and ancillary documents related thereto (collectively, and as amended by agreement between the parties thereto, the "Winning Purchase Agreements"), by and among the Sellers, on the one hand, and each of Mosaic Gold Crown Group, LLC ("Mosaic"), Burger King Company LLC ("BKC"), RRG of Jacksonville, LLC ("RRG") and Bulldog Restaurants, LLC ("Bulldog" and together with Mosaic, BKC, and RRG, the "Winning Purchasers" or the "Winning Bidders") on the other hand, are the highest or otherwise best offers for the sale of the respective Assets therein. Debtors also determined, after consultation with the Lender Group and the Creditors' Committee, that certain Asset Purchase Agreements, fully executed copies of which are attached hereto as Exhibits 5 and 6, and which for purposes of this Order shall include all exhibits, schedules and ancillary documents related thereto (collectively, and as may be amended by agreement between the parties thereto pursuant to the terms of this Order, the "Back-Up Purchase Agreements" and collectively together with the Winning Purchase Agreements for all purposes hereunder, the "Purchase Agreements"), by and among the applicable Sellers, on the one hand, and each of Newell-Berg Alliance AL, LLC and Newell-Berg Alliance TN II, LLC ("Newell-Berg") and BKC on the other hand in their respective capacities as the Back-Up Bidder for its Back-Up Purchase Agreements (the "Back-Up Purchasers" or the "Back-Up Bidders" and collectively with the Winning Purchasers for all purposes hereunder, the

“Purchasers” or “Buyers”); are the second highest or otherwise best offers for the applicable Assets.

Following the Auction, to the extent applicable and in accordance with the Bidding Procedures Order, the Debtors filed a notice with the Court [Doc. No. 297] disclosing (i) the identities of the Winning Bidders and Back-Up Bidders, (ii) the consideration for the proposed sales, and (iii) the region of stores purchased.

The Court conducted a hearing on December 11, 2023 to consider approval of the sale of the Assets to the respective Winning Purchasers and Back-Up Purchasers pursuant to their respective Purchase Agreements (the “Sale”), and all parties-in-interest were heard or had the opportunity to be heard regarding the approval of the Purchase Agreements executed by the Buyers and the transactions contemplated thereby (the “Transactions”). During the hearing, all parties that filed written objections to the Sale on account of an alleged lien or interest in the Assets (the “Objecting Parties”), other than First Horizon Bank, indicated assent to the reservation and limitation of their rights to the “Designated Proceeds”, as defined below.

The Court having reviewed the Sale Motion and the bases for the relief requested therein, and any responses or objections to the Sale Motion, including the objection filed by “Holdings”, as defined below [Doc. No. 293], as amended and supplemented (the “Holdings Objections”) and objections filed by multiple lenders of Holdings, and having considered the Debtors’ responses to these objections and the evidence and arguments proffered and/or presented in connection therewith at the Sale Hearing; and having also considered the agreements and stipulations made in Court relating to the Holdings Objections and the objections of the Holdings lenders, and having determined that the legal and factual bases set forth in the Sale Motion and presented at the Sale Hearing establish just cause for the relief granted herein and finding that the relief requested in the



Sale Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and the Court further having considered all documents and pleadings filed and of record in the chapter 11 case and all applicable law, upon all of the proceedings had before this Court, and after due deliberation and sufficient cause appearing therefor, it is

**HEREBY FOUND AND DETERMINED THAT:**<sup>3</sup>

**Findings of Fact and Conclusions of Law**

A. The findings of fact and conclusions of law herein constitute the Court's findings of fact and conclusions of law for the purposes of Rule 7052 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), made applicable pursuant to Bankruptcy Rule 9014. To the extent any findings of facts are conclusions of law, they are adopted as such. To the extent any conclusions of law are findings of fact, they are adopted as such. The findings of fact and conclusions of law set forth herein are augmented by any additional findings of fact or conclusions of law made on the record at the Sale Hearing, which oral findings and conclusions are incorporated herein by this reference.

**Jurisdiction, Venue and Core Proceeding**

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.

**Statutory Predicates**

C. The statutory bases for the relief requested in the Sale Motion are sections 105, 363, 365 and 1107 of title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (the "Bankruptcy Code") and Bankruptcy Rules 2002, 6004 and 9014. The consummation of the Transactions contemplated

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<sup>3</sup> This Order and the Findings of Fact and Conclusions of Law contained herein apply to all of the above-captioned jointly administered chapter 11 cases.

by the Sale Motion, the Purchase Agreements and this Order are legal, valid and properly authorized under all such provisions of the Bankruptcy Code and the Bankruptcy Rules, and all of the applicable requirements of such sections and rules have been complied with in all respects or waived by this Court pursuant to this Order.

**Notice; Opportunity to Object**

D. As evidenced by the certificates of service filed with the Court, proper, timely, adequate and sufficient notice of the Auction, Sale Motion, Sale Hearing, Sale and Purchase Agreements, and all Transactions contemplated therein or in connection therewith, and all deadlines related thereto, was given to all known creditors and other parties in interest and no further notice was required or need be provided. A reasonable opportunity to object or be heard regarding the relief requested in the Sale Motion and granted by this Order has been afforded to those parties entitled to notice pursuant to the Bankruptcy Code and the Bankruptcy Rules.

**Notice**

E. Actual written notice of the matters described in paragraph D above was given to all interested persons, including without limitation: (a) all known creditors of the Debtors, (b) all equity holders of the Debtors, (c) entities known to have expressed an interest in a transaction with respect to some or all of the Assets; (d) all entities known to have asserted any lien, claim, interest, or encumbrance in or upon any of the Assets; (e) all entities known to have asserted any lien, claim, interest, or encumbrance in or upon the furniture, fixtures and equipment located in the Stores; (f) the Internal Revenue Service and all state and local taxing authorities in the states in which the Debtors have or may have any tax liability; (g) the Securities and Exchange Commission; (h) counsel to the Lender Group; (i) counsel to BKC; (j) counsel to the Creditors' Committee; (k) the Office of the Bankruptcy Administrator for the Northern District of Alabama; (l) those parties who have filed the appropriate notice requesting notice of all pleadings filed in these chapter 11 cases and, (m) as



pertains the Assumed Contracts and Cure Notice, all counterparties to the Assumed Contracts. The foregoing constitutes proper, timely, adequate and sufficient notice under the particular circumstances of these chapter 11 cases, and no further notice was required or need be provided.

**Adequate Marketing; Highest or Best Offer**

F. The sale of the Assets to the respective Buyers and the authorization for the Debtors to implement the sale of the Assets to the respective Buyers pursuant to the Purchase Agreements are duly authorized pursuant to sections 363(b)(1) and 363(f) of the Bankruptcy Code and Bankruptcy Rule 6004(f). As demonstrated by (a) the evidence proffered or adduced at the Sale Hearing and (b) the representations of counsel made on the record at the Sale Hearing, the Debtors marketed the Assets and conducted all aspects of the Auction and Sale process in good faith. The marketing process undertaken by the Debtors and its advisers was adequate and appropriate under the circumstances of these chapter 11 cases. The Transactions embodied in the Purchase Agreements constitute offers within the range of reasonableness for the Assets and for reasonably equivalent value, and have been approved by David Baker of Aurora Management Partners Inc., as the Chief Restructuring Officer (“CRO”) for the Debtors.

**Corporate Authority**

G. Each Debtor, through the CRO, and in accordance with this Court’s Order approving the Debtors’ retention of the CRO, entered November 29, 2023 [Doc. No. 269], (a) has full corporate power and authority to execute the Purchase Agreements, and the Sale to the Buyers has been duly and validly authorized by all necessary corporate or similar actions, (b) has all of the corporate power and authority necessary to consummate the Sale and all Transactions contemplated by the Purchase Agreements and this Order, (c) has taken all corporate action necessary to authorize and approve the Purchase Agreements and the consummation of the Sale and all Transactions

contemplated thereby, and (d) requires no consents or approvals, other than those expressly provided for in the Purchase Agreements, to consummate the Sale and all Transactions contemplated thereby.

### **Property of the Estate**

H. The Debtors claim ownership of the Assets sold pursuant to the Purchase Agreements, including the equipment and personal property located in the Stores. Holdings has claimed ownership of certain of the Assets located in the Stores leased by Holdings to the Debtors. The Court therefore finds that there is a bona fide dispute with respect to the ownership of certain equipment, furniture and fixtures in Stores leased by Holdings to the Debtors, and furthermore confirms that Holdings and its lenders (other than First Horizon Bank with respect to one location), agrees to resolve their objections for purposes of the Court's approval of the Sale, as set forth below by reserving their claims against the "Disputed Claims Reserve", as defined below. The Court therefore finds that the Sale can be approved free and clear of all liens, claims, encumbrances, and interests pursuant to 11 U.S.C. §§363(f)(2), (f)(3), (f)(4), and (f)(5).

### **Sale in Best Interests**

I. Approval of the Purchase Agreements and consummation of the Sale of the Assets to the Buyers pursuant to the Purchase Agreements and this Order are in the best interests of the Debtors' estates, their creditors, and other parties in interest.

### **Business Justification**

J. The Debtors have demonstrated good, sufficient, and sound business purposes and justifications and compelling circumstances for this Court to approve the Purchase Agreements and consummation of the Sale of the Assets pursuant to section 363(b) of the Bankruptcy Code prior to and outside of a plan of reorganization. Entry into the Purchase Agreements and the consummation of the Transactions pursuant to this Order are sound exercises of the Debtors' business judgment.



**Opportunity to Object**

K. Based on the Debtors' representations and the Court's records,, the Court finds that a reasonable opportunity to object or be heard with respect to the Sale Motion, the Sale (and the Transactions contemplated thereby), the Purchase Agreements, the Sale Hearing, and any asserted rights or interests under any contract has been afforded to all known parties.

**Arm's-Length Sale**

L. The Purchase Agreements were negotiated, proposed, and entered into by the Debtors and each of the Buyers without collusion, in good faith, and on an arm's-length basis. The Buyers are not insiders or affiliates of the Debtors. The Debtors and the Buyers have not engaged in any conduct that would cause or permit the Purchase Agreements to be avoided under section 363(n) of the Bankruptcy Code.

**Good Faith Purchasers**

M. Each of the Buyers are purchasers in good faith as that term is used in the Bankruptcy Code and are entitled to the protections of section 363(m) of the Bankruptcy Code. The terms and conditions of the Sale as set forth in the Purchase Agreements were negotiated, proposed, and agreed to by the Debtors and Buyers as parties thereto without collusion, in good faith, and from arm's-length bargaining positions. The Debtors have followed in good faith the procedures for notice and sale as set forth in the Bidding Procedures Order. Buyers are not an "insider" or "affiliate" of the Debtors (as each such term is defined in the Bankruptcy Code). Neither the Debtors nor Buyers have engaged in any conduct that would prevent the application of section 363(m) of the Bankruptcy Code to the Sale and the transactions contemplated by the Agreement. Specifically, Buyers have not acted in a collusive manner with any person, including the Debtors and the consideration provided by Buyers for the Assets was not controlled by any agreement among Buyers and the other potential bidders.

### **Effect of Closing**

N. As of the Closing, pursuant and subject to the terms of the Purchase Agreements, the transfer of the Assets pursuant to the Sale will effect a legal, valid, enforceable, and effective transfer of the Assets and will vest the Buyers with all of the Debtors' rights, title, and interests in and to the Assets, including operatorship thereof, free and clear of all liens, claims, interests, and encumbrances other than as set forth in the Purchase Agreements.

### **Substitution**

O. As of the Closing, the Buyers are hereby substituted for all purposes as a party to all Assumed Contracts in the place of the applicable Debtor. The Buyers shall have any and all rights, benefits, and obligations of the applicable Debtors under all such Assumed Contracts in the place of such Debtors, without interruption or termination of any kind, and all terms applicable to the Debtors shall apply to the Buyers as if such Assumed Contracts were amended to replace the Debtors with the Buyers.

### **Free and Clear**

P. The Buyers would not have entered into the Purchase Agreements and would not consummate the Sale, thus adversely affecting the Debtors, the Debtors' estates and their creditors, if (a) the Assets and (b) the assumption and assignment of the Assumed Contracts were not free and clear of all liens, claims, encumbrances, and interests other than as set forth in the Purchase Agreements, to the greatest extent permitted by the Bankruptcy Code and applicable, non-bankruptcy law. A sale of the Assets other than one that is free and clear of all liens, other than as set forth in the Purchase Agreements, would yield substantially less value for the Debtors, with less certainty, than the Sale as contemplated. The Debtors may sell the Assets free and clear of all liens, claims, interests and encumbrances as set forth in the Purchase Agreements, because, in each case,



one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. All parties in interest, including without limitation, holders of liens, claims, interests and encumbrances, and any counterparties to the Assumed Contracts, that did not object or who withdrew their objection to the Sale, Sale Motion, assumption and assignment of the Assumed Contracts or the associated Cure Cost have either: (a) consented to the relief granted herein pursuant to section 363(f)(2) of the Bankruptcy Code, including without limitation BKC with respect to the assumption and assignment of the Franchise Agreements to the applicable Purchasers, (b) such interest is a lien and the Purchase Price is greater than the aggregate value of all liens, pursuant to section 363(f)(3) of the Bankruptcy Code; or (c) such lien, claim, interest and encumbrance is in bona fide dispute pursuant to section 363(f)(4) of the Bankruptcy Code. Any (a) holders of liens, claims, interests and encumbrances, (b) non-Debtor counterparties to Assumed Contracts who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their liens, claims, interests and encumbrances, if any, attach to the portion of the Purchase Price attributable to the property against or in which they assert a lien, claim, interest or encumbrance, in the order of their priority, with the same validity, force and effect that they now have as against such property, subject to any rights, claims, and defenses the Debtors may possess with respect thereto.

Q. Accordingly, the transfer of the Assets to Buyers pursuant to the Sale under the Agreements will, upon the occurrence of the Closings, vest in Buyers all rights, title, and interest of the Debtors in the Assets, free and clear of any and all liens, claims, interests and encumbrances. The Assets shall be sold free and clear of all of the following (collectively, the "Encumbrances"): mortgages, security interests, conditional sale or other retention agreement, pledges, liens (as that term is defined in section 101(37) of the Bankruptcy Code), claims (as that term is defined in section

101(5) of the Bankruptcy Code), obligations, guaranties, debts, rights, contractual commitments, interests, judgments, demands, easements, charges, encumbrances, defects, options, rights of first refusal, other encumbrances, liens, and restrictions of any kind or nature whether imposed by agreement, understanding, law, equity, or otherwise, including, without limitation, (i) encumbrances that purport to give any party a right or option to effect any forfeiture, modification or termination of the Debtors' rights or interests in the Assets or the Buyers rights or interests in the Assets or (ii) in respect of taxes, in each case accruing, arising or relating to a period prior to the Closing. Notwithstanding the foregoing, nothing herein shall be deemed to modify the terms of an Assumed Contract. The transfer of the Assets to Buyers pursuant to the Sale will be a legal, valid, and effective transfer of the Assets, shall vest Buyers with all right, title, and interest of the Debtors to the Assets free and clear of any liens, claims, interests, and encumbrances; provided that all such liens, claims, interests, and encumbrances of the Objecting Parties shall attach to the "Disputed Claims Reserve", as defined below, with the same validity and priority as existed under applicable law pursuant to section 363(e) of the Bankruptcy Code.

#### **Successor Liability**

R. Neither the Buyers nor any of their affiliates are successors to any Debtor or any Debtor's estate by reason of any theory of law or equity, and neither the Buyers nor any of their affiliates shall assume or in any way be responsible for any liability or obligation of the Debtors and/or their estates, except to the extent set forth in the Purchase Agreements. Further, no Purchaser shall be deemed, as a result of any action taken in connection with the Purchase Agreements, the consummation of the Transactions contemplated by the Purchase Agreements, or the transfer, operation, or use of the Assets to (a) be a legal successor, or otherwise be deemed a successor to the Debtors (other than, for the Purchasers, with respect to any Assumed Liabilities), (b) have, de facto



or otherwise, merged with or into the Debtors, or (c) be an alter ego or a mere continuation or substantial continuation of the Debtors or the enterprise of the Debtors including, without limitation, within the meaning of any foreign, federal, state, or local revenue law, pension law, ERISA, tax law, labor law, products liability law, employment law, environmental law, or other law, rule, or regulation (including, without limitation, filing requirements under any such laws, rules or regulations).

#### **No Sub Rosa Plan**

S. The Sale of the Assets outside of a chapter 11 plan pursuant to the Purchase Agreements neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a chapter 11 plan for the Debtors. The Sale does not constitute a *sub rosa* chapter 11 plan.

#### **Prompt Consummation**

T. Time is of the essence in consummating the Sale. To maximize the value of the Assets, it is essential that the Sale occur within the time constraints set forth in the Purchase Agreements. Accordingly, there is cause to waive the stays contemplated by Bankruptcy Rules 6004(h) and this Order shall be effective immediately upon entry.

#### **Assumption and Assignment**

U. Each provision of the Assumed Contracts and Franchise Agreements to be assigned to the Purchasers that purports to prohibit, restrict or condition, or could be construed as prohibiting, restricting or conditioning, assignment of any Assumed Contracts or Franchise Agreements to be assigned to the Purchasers, or any applicable non-bankruptcy law that purports to prohibit, restrict or condition, or could be construed as prohibiting, restricting or conditioning, such assignment, has been satisfied, including because BKC has consented to the assumption and assignment of the

Debtors' Franchise Agreements to the Purchasers for the Transactions contemplated in their respective Purchase Agreements pursuant to the terms hereof, or is otherwise unenforceable under Bankruptcy Code section 365 solely in connection with the Transactions. Upon assumption by the Debtors and assignment to the Buyers, the Assumed Contracts and Franchise Agreements shall be deemed valid and binding, in full force and effect in accordance with their terms, subject to the provisions of this Sale Order, and, under section 365(k) of the Bankruptcy Code, the Debtors shall be relieved from any further liability, except as provided herein and in the Purchase Agreements.

**Adequate Assurance**

V. The Purchasers have demonstrated adequate assurance of future performance of all Assumed Contracts and Franchise Agreements to be assumed and assigned to the Purchasers, within the meaning of Bankruptcy Code section 365.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. The Sale Motion is GRANTED as set forth herein.
2. All objections to the relief sought in the Sale Motion that have not been withdrawn, waived, or settled are hereby overruled on the merits. Notwithstanding the foregoing, this Order shall be without prejudice to the claims and interests of Premier Holdings, LLC and its affiliates<sup>4</sup> and its lenders that assert a lien or interest in Assets located within Stores leased by Holdings to the Debtors (as well as the Debtors' rights to dispute and object to such claims) with respect to payment from the "Disputed Claims Reserve", as defined herein, based on their respective claims of ownership or liens on the Assets being sold free and clear of all liens, claims, encumbrances

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<sup>4</sup> Premier Holdings, LLC and its affiliates, Premier Holdings of Georgia, LLC, Premier Kings Holdings, LLC, Premier Kings Holdings of Alabama, LLC and Premier Kings Holdings of Georgia, LLC are hereby referred to individually and collectively as "Holdings").



and interests under this Order. The “Disputed Claims Reserve” means the sum of \$650,000.00 to be held by the Debtors, and with respect to which the liens and claims of Holdings and its lenders shall attach with the same validity, priority and extent as they may have had prior to the closing of the sales pursuant to this Order. The Debtors, Holdings or an interested party may request the Court schedule an evidentiary hearing on the claims against the Disputed Claims Reserve for a date as soon as the Court’s calendar permits; such request shall be made either by written request filed into the ECF database in this chapter 11 case or by contacting the Court’s Courtroom Deputy. Further, any such request shall be made in time to allow fourteen days notice of a hearing; so long as the request is made timely and as noted herein, the Court will make every effort to hold any such hearing at the first available time and prior to January 31, 2024. Upon entry of this Order, Holdings and its lenders shall no longer maintain any lien, claim, interest, or encumbrance against or upon any of the equipment or other personal property in any of the Stores to be sold to the Buyers, and Holdings’ and its lenders’ remedies and/or recoveries, if any, with respect to any asserted lien, claim, interest or encumbrance, in or against any of the Assets, shall be limited to the Disputed Claims Reserve (subject to the Debtors’ rights to dispute and object to such claims and interests). To the extent that the Court determines that Holdings is not entitled to all or a portion of the Disputed Claims Reserve, the remaining portion of the Disputed Claims Reserve shall be paid to the Prepetition Agent.

3. The Court finds that notice of the Sale Hearing was fair and equitable under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code, Bankruptcy Rules 2002 and 6004 and the Bidding Procedures Order.

#### **Approval of the Purchase Agreements**

4. The Purchase Agreements, including all the terms and conditions thereof, are hereby approved.

5. Pursuant to section 363(b) of the Bankruptcy Code, the Debtors are authorized and directed to perform their obligations under and to comply with the terms of the Purchase Agreements, and to consummate the Sale, pursuant to and in accordance with the terms and conditions of the Purchase Agreements. The Debtors are hereby authorized to consummate the Sale pursuant to and in accordance with the terms and conditions of the Agreements and this Order without any further corporate authorization.

6. In the event that, for any reason, a Successful Bidder should fail to Close on any of the Transactions contemplated by its Purchase Agreement, then the Debtors are authorized to consummate the Sale as contemplated by the Purchase Agreement executed by any such applicable Back-Up Bidder, and the provisions of this Order shall apply to any such transaction contemplated thereby with full force and effect. In such an event, the term "Purchase Agreements," as used herein, shall be construed to include any Bidder Purchase Agreement executed by one of the Back-Up Bidders, and the term "Buyers," as used herein, shall be construed to include each such Back-Up Bidder.

7. The Debtors are further authorized and directed to pay, without further order of this Court, whether before, at or after the Closing, any expenses or costs that are required to be paid by them in order to consummate the transactions contemplated by the Purchase Agreements or perform their obligations under the Purchase Agreements.

8. The Debtors and the Buyers, and each of their respective officers, employees, and agents, are authorized and empowered to take all actions and execute and deliver any and all documents and instruments that either the Debtors or the Buyers deem necessary or appropriate to implement and effectuate the terms of the Purchase Agreements and this Order.



9. This Order and the Purchase Agreements shall be binding in all respects upon all creditors of and equity holders in the Debtors and any and all other parties in interest in these chapter 11 cases, including without limitation, any and all holders of liens, claims (including holders of any rights or claims based on any putative successor or transferee liability), encumbrances, and interests in and to the Assets, all counterparties to the Assumed Contracts, the Buyers, the Debtors, all successors and assigns of the Buyers, and any trustee, liquidating or litigation trustee, wind-down administrator or similar person, or any successors to any of the foregoing, appointed in these chapter 11 cases by the Court or any Debtor, including pursuant to a chapter 11 plan, or upon conversion to chapter 7 under the Bankruptcy Code.

10. The Purchase Agreements, this Order and the Debtors' obligations therein and herein shall not be altered, impaired, or otherwise affected by any chapter 11 plan proposed or confirmed in these chapter 11 cases, any order confirming any chapter 11 plan or any subsequent order of this Court, without the prior written consent of the Buyers. Nothing contained in any chapter 11 plan confirmed in these chapter 11 cases or the confirmation order confirming any such chapter 11 plan, or any subsequent order of this Court, shall conflict with the provisions of the Purchase Agreements or this Order.

11. The Purchase Agreements and any related agreements, documents, or instruments may be modified, amended, or supplemented by the parties thereto in a writing signed by the parties, and in accordance with the terms thereof, without further order of this Court, provided that any such modification, amendment, or supplement does not have a materially adverse effect on the Debtors' estates.

#### **Transfer of the Assets**

12. The Buyers shall assume and be liable for only the liabilities expressly assumed pursuant to their respective Purchase Agreement. Except as expressly permitted or otherwise

specifically provided for in the Purchase Agreements or this Order, pursuant to sections 105, 363, and 365 of the Bankruptcy Code and/or any other applicable section of the Bankruptcy Code, upon Closing, the Assets shall be transferred to the Buyers free and clear of all liens, claims, interests, and encumbrances, other than as set forth in the Purchase Agreements.

13. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Assets to the respective Buyer in accordance with the Purchase Agreements and this Order or the right of the Debtors to consent to and implement the Sale of the Assets to the respective Buyer pursuant to the Purchase Agreements and this Order. Following Closing, except for persons entitled to enforce Assumed Liabilities as set forth in the Purchase Agreements, all persons and entities (including but not limited to (i) the Debtors and/or their respective successors (including any trustee), (ii) creditors, (iii) current and former employees and shareholders, (iv) administrative agencies, (v) governmental units, (vi) federal, state and local officials, including those maintaining any authority relating to any environmental, health and safety laws, and (vii) the successors and assigns of each of the foregoing) holding liens, claims, encumbrances, and interests in the Assets or against the Debtors in respect of the Assets of any kind or nature whatsoever shall be, and hereby are, forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing any liens, claims, encumbrances, and interests against the Buyers or any affiliate of the Buyers or any of their respective property, successors and assigns, or the Assets, as an alleged successor or on any other grounds. No person shall assert, and the Buyers and the Assets shall not be subject to, any defaults, breaches, counterclaims, offsets, defenses (whether contractual or otherwise, including without limitation, any right of recoupment), liabilities, claims, and interests or basis of any kind or nature whatsoever to delay, defer, or impair any right of the Buyers or the Debtors, or



any obligation of any other person, under or with respect to, any of the Assets, with respect to any act or omission that occurred prior to the Closing or with respect to any other agreement or any obligation of the Debtors that is not an Assumed Liability as set forth in the Purchase Agreements.

14. Upon the Closing of the Sale, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of the Assets and the Debtors' rights, title, and interests therein, and a bill of sale transferring good and marketable title in the Assets to the respective Buyer free and clear of all liens, claims, interests, and encumbrances, except for as set forth in the Purchase Agreements. Each and every federal, state, and local governmental agency, quasi-agency, or department is hereby authorized and directed to accept any and all documents and instruments necessary and appropriate to consummate the Sale.

15. The transfer of the Assets to the respective Buyers pursuant to the Purchase Agreements and this Order shall constitute legal, valid, and effective transfers of the Assets at the Closing and shall vest the Buyers with all of the Debtors' rights, title, and interests in such Assets, including operatorship thereof, if applicable, free and clear of all liens, claims, encumbrances, and interests other than as set forth in the Purchase Agreements.

16. The provisions of this Order authorizing the sale of the Assets free and clear of free and clear of liens, claims, interests, and encumbrances shall be self-executing, and neither the Debtors nor Buyers shall be required to execute or file releases, termination statements, assignments, consents or other instruments in order to effectuate, consummate, and implement the provisions of this Sale Order. However, if any person that has filed financing statements, mortgages, mechanic's liens, lis pendens, or other documents, instruments or agreements evidencing liens, claims, encumbrances, and interests in the Assets has not delivered to the

Debtors, prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all liens, claims, interests and encumbrances, which the person has with respect to the Assets or otherwise, then (a) the Debtors and the Buyers, collectively and individually, are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of such person with respect to the Assets and (b) the Debtors and the Buyers are hereby authorized to file, register, or otherwise record a certified copy of this Order with any governmental authority and all governmental authorities are authorized and directed to accept the same, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all liens, claims, interests, and encumbrances in the Assets.

17. Nothing in this Order or the Purchase Agreements releases, nullifies, precludes, or enjoins the enforcement of any police power by, or any regulatory liability to, any governmental authority. To the greatest extent provided by the Bankruptcy Code, no governmental authority may deny, revoke, suspend, or refuse to renew any permit, governmental authority, or grant relating to the Assets or the operation of the business represented thereby on account of the filing or pendency of these chapter 11 cases or the consummation of the transactions contemplated by the Purchase Agreements, including without limitation, the Sale and the assumption and assignment of the Assumed Contracts.

#### **Assumption and Assignment of Assumed Contracts**

18. Pursuant to section 365 of the Bankruptcy Code, the Debtors are authorized to assume and assign the Assumed Contracts to the respective Buyers pursuant to the Purchase Agreements.

19. The Assumed Contracts set forth in the Purchase Agreements, as they may be amended prior to Closing, shall be deemed to be assumed by the Debtors and assigned to the



Buyers effective as of Closing, except as a Purchase Agreement or amendment to an Assumed Contract executed by the parties thereto prior to Closing may provide otherwise.

20. In accordance with section 365 of the Bankruptcy Code, effective upon the Closing and upon transfer of the Assumed Contracts and Franchise Agreements to the respective Buyer, (a) the Buyers shall have all of the rights of the Debtors thereunder and each provision of such Assumed Contracts and Franchise Agreements shall remain in full force and effect for the benefit of the Buyers notwithstanding any provision in any such contract, lease, or in applicable law that prohibits, restricts or limits in any way such assignment or transfer, including as to BKC because BKC has consented to the assumption and assignment of the Debtors' Franchise Agreements to the Purchasers for the Transactions contemplated in their Respective Purchase Agreements, and (b) none of the Assumed Contracts or Franchise Agreements may be terminated, or the rights of any party modified in any respect, including pursuant to any "change of control" clause, by any other party thereto as a result of the Buyers' purchase of the Assets and the assumption of the Assumed Contracts and Franchise Agreements.

21. All options to renew the Assumed Contracts and Franchise Agreements that have not expired and can be exercised as of the date of this Order are hereby assigned by the Debtors to the respective Buyers and can be validly exercised by the respective Buyers pursuant to and in accordance with the terms of the Assumed Contracts and Franchise Agreements.

22. The assignment by the Debtors of the Assumed Contracts and Franchise Agreements to the respective Buyers shall not constitute a default under any of the Assumed Contracts or Franchise Agreements, including as to BKC because BKC has consented to the assumption and assignment of the Debtors' Franchise Agreements to the Buyers for the Transactions contemplated in their respective Purchase Agreements. Any provisions in any

Assumed Contracts that prohibit or condition the assignment of such Assumed Contract or allows the party to such Assumed Contract to terminate, recapture, impose any penalty, condition, on renewal or extension, or modify any term or condition upon the assignment of such Assumed Contract constitute unenforceable anti-assignment provisions that are void and of no force and effect, including as to BKC because BKC has consented to the assumption and assignment of the Debtors' Franchise Agreements to the Buyers for the Transactions contemplated in their respective Purchase Agreements. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to the respective Buyers of the Assumed Contracts and Franchise Agreements have been satisfied.

23. Other than the payment of Cure Amounts, there shall be no assignment fees, increases, rent-acceleration, or any other fees or amounts charged to the Buyers or the Debtors as a result of the assumption and assignment of the Assumed Contracts or Franchise Agreements.

24. On or as promptly after the Closing as is practical, the Cure Amounts to which no objections have been filed, or to which the Debtors and an applicable non-Debtor contract counterparty have agreed as to the allowed Cure Amount (collectively, the "Undisputed Cure Amounts"), shall be paid by the Debtors from the Purchase Price. On or as promptly after the determination by the Court of any disputed Cure Amounts (collectively, the "Disputed Cure Amounts"), and together with the Undisputed Cure Amounts, the "Cure Amounts") as is reasonably practical, shall be paid by the Debtors from the proceeds of the Purchase Price promptly after the resolution of such Disputed Cure Amounts by the Court or by the parties' agreement. The Debtors shall pay or otherwise satisfy all undisputed monetary obligations that arise and accrue from the Petition Date through and including the Closing Date (the "Post-Petition Amounts").<sup>5</sup> Under such

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<sup>5</sup> This Order shall not prejudice any landlord's right to assert a claim for any Cure Amounts under their respective Assumed Contract arising or becoming due after the entry of this Order and prior to Closings of



circumstances, the recourse of the counterparty to the applicable Assumed Contract is limited to payment of the undisputed portion of the Cure Amount as of the Closing, payment of any portion of the Disputed Cure Amount to which the counterparty is entitled following resolution of the dispute regarding the Cure Amount and payment of Post-Petition Amounts.

25. The payment of the Undisputed Cure Amounts, the Disputed Cure Amounts and the Post-Petition Amounts (a) shall be deemed to discharge the Debtors' obligation to cure any defaults under the Assumed Contracts and Franchise Agreements under section 365 of the Bankruptcy Code; (b) shall effect a cure of all defaults existing as of the date that such Assumed Contracts are assumed as required by section 365 of the Bankruptcy Code; and (c) compensate, or provide adequate assurance of prompt compensation to, any counterparty to any of the Assumed Contracts for any actual pecuniary loss resulting from any default under any of the Assumed Contracts.

26. All counterparties to the Assumed Contracts shall cooperate and expeditiously execute and deliver, upon the reasonable requests of the Buyers and without any cost or expense to the Buyers for, any instruments, applications, consents, or other documents which may be required or requested by any public or quasi-public authority or other party or entity to effectuate the applicable transfers in connection therewith.

#### **Additional Provisions**

27. As of and after the Closing, all persons are hereby authorized and directed to execute such documents and take all other actions as may be necessary to release their liens, claims, encumbrances, and interests in, to, or against the Assets, as such liens, claims, encumbrances, and

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Sales nor their right to assert a claim with respect to Debtors' indemnification obligation under an Assumed Contract even if an event occurs prior to a Closing of the applicable sale and even if unknown at the time of Closing.

interests may have been recorded or may otherwise exist, and such liens, claims, and encumbrances shall attach to the applicable allocated portion (if any) of the Sale proceeds in the same priority they currently enjoy with respect to the applicable Assets prior to the Closing.

28. This Order (a) shall be effective as a determination that, upon the Closing, all liens, claims, interests, and encumbrances existing as to the Assets prior to the Closing, other than as set forth in the Purchase Agreements, have been unconditionally released, discharged and terminated and that the conveyances described herein have been effected and (b) shall be binding upon and shall govern the acts of all persons, including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, federal, state, and local officials and all other persons who may be required by operation of law, the duties of their office or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to the Assets.

29. Except as expressly permitted or otherwise specifically provided for in the Purchase Agreements or this Order, the Buyers and their affiliates and their respective successors and assigns shall have no liability or responsibility for any liability or other obligation of the Debtors arising under or related to the Assets or otherwise. Without limiting the generality of the foregoing, and except as otherwise specifically provided herein and in the Purchase Agreements, the Buyers and their affiliates shall not be liable for any liens, claims, interests and encumbrances against the Debtors or any of their predecessors, other than as set forth in the Purchase Agreements, and the Buyers and their affiliates and their respective successors and assigns shall have no successor or vicarious liabilities of any kind or character, including but not limited to, any theory of antitrust, warranty, product liability, environmental, successor or transferee liability, labor law, ERISA, de



facto merger or substantial continuity, whether known or unknown, as of the Closing, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors or any obligations of the Debtors, including but not limited to, liabilities on account of any taxes arising, accruing or payable under, out of, in connection with or in any way relating to the operation of the Debtors' business prior to the Closing or any claims under the WARN Act or any claims related to wages, benefits, severance, or vacation pay owed to employees or former employees of the Debtors other than any such liabilities that are set forth in the Purchase Agreements.

30. Neither the Buyers nor any of their affiliates nor any of their respective successors or assignees shall assume or in any way be responsible for any liability or obligation of the Debtors or the Debtors' estates, except as otherwise expressly provided in the Purchase Agreements. Further, no Purchaser shall be deemed, as a result of any action taken in connection with the Purchase Agreements, the consummation of the Transactions contemplated by the Purchase Agreements, or the transfer, operation, or use of the Assets to (a) be a legal successor, or otherwise be deemed a successor to the Debtors (other than, for the Purchasers, with respect to any Assumed Liabilities), (b) have, de facto or otherwise, merged with or into the Debtors, or (c) be an alter ego or a mere continuation or substantial continuation of the Debtors or the enterprise of the Debtors including, without limitation, within the meaning of any foreign, federal, state, or local revenue law, pension law, ERISA, tax law, labor law, products liability law, employment law, environmental law, or other law, rule, or regulation (including, without limitation, filing requirements under any such laws, rules or regulations).

31. Following the Closing, no holder of any liens, claims, interests, or encumbrances in or against the Assets shall interfere with the Buyers' title to or use and enjoyment of such Assets based on or related to such liens, claims, interests, or encumbrances, or any actions that the Debtors

may take in these chapter 11 cases or any successor cases, and all persons asserting any lien, claim or encumbrance with respect to any of the Assets, upon Closing, shall be forever prohibited and enjoined from commencing any action in any judicial or other proceeding against Buyers, their successors or assigns, with respect to any liabilities of the Debtors or other obligors with respect to the Assets.

32. All persons that are in possession of some or all of the Assets are hereby directed at their sole cost and expense to surrender possession of such Assets to the respective Buyer on the Closing Date, unless the Buyer otherwise agrees.

33. The consideration provided by the Buyers for the Assets under their respective Purchase Agreements constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession or the District of Columbia. The Court's approval of the Sale Motion and the Purchase Agreements are in the best interests of the Debtors, the Debtors' estates and creditors, and all other parties in interest in these chapter 11 cases.

34. This Court retains jurisdiction to enforce and implement the terms and provisions of the Purchase Agreements, all amendments thereto, any waivers and consents thereunder, and each of the agreements and other documents executed and/or delivered in connection therewith in all respects as the same relate to the Debtors, including but not limited to, retaining jurisdiction to (a) compel delivery of the Assets or performance of any other obligations owed to the Buyers; (b) compel delivery of the Purchase Price or performance of other obligations owed to the Debtors; (c) resolve any disputes arising under or related to the Purchase Agreements; (d) interpret, implement, and enforce the provisions of this Order; (e) protect the Buyers and their affiliates and their respective successors and assigns from and against (i) any liens, claims, interests, or



encumbrances in, to, or against the Assets and (ii) any creditors or other parties in interest regarding the turnover of the Assets that may be in their possession; and (f) resolve any disputes relating to the Disputed Cure Amounts and other matters concerning the assumption and assignment of the Assumed Contracts.

35. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. In the absence of any person obtaining a stay pending appeal, the Debtors and the Buyers, at the Buyers' option, are free to close the Sale under the Purchase Agreements at any time prior to this Order becoming a Final Order. The Sale is undertaken by the Buyers in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale to the Buyers (including the assumption and assignment of the Assumed Contracts), unless such authorization is duly stayed pending such appeal. The Buyers in these cases are buyers in good faith of the Assets and are entitled to all the protections afforded by section 363(m) of the Bankruptcy Code.

36. With respect to the Purchase Agreement with Bulldog, all furniture, Equipment (as defined therein) and other personal property included in the Assets purchased by Bulldog shall be transferred to Bulldog at Closing free and clear of all liens, claims, interests, and encumbrances, including without limitation, any liens, claims, interests and encumbrances of any landlord or any landlord's lender. In the event Bulldog exercises its rights under Section 5.4 of its Purchase Agreement to exclude a store lease from the leases to be assumed and assigned under its Purchase Agreement ("Excluded Store Lease"), before Bulldog can remove from the premises of the Excluded Store Lease any equipment or other personal property sold to Bulldog under the Purchase

Agreement and located in or on the Excluded Store Lease premises, Bulldog shall give the landlord for the Excluded Store Lease seven (7) business days' written notice of the itemized list of Assets Bulldog wishes to remove from the premises and the landlord shall notify Bulldog in writing within that time period if the landlord objects to the removal of any such Assets, to be identified in an itemized list, based on the landlord's assertion that any of the itemized Assets to be removed constitute fixtures rather than removable equipment or other personal property. Before Bulldog can remove any disputed item from the Excluded Store Lease premises, it shall either obtain an Order of this Court or a written agreement between Bulldog and the landlord.

#### **Payments From Closing**

37. After Closing of the Sale, the Debtors are authorized and directed to use the sale proceeds as follows:

- (1) To pay all closing costs for the Sale and transactions as set forth on a settlement statement, consistent with the terms of the Purchase Agreements, including, without limitation, payment of the Break Up Fee and Expense Reimbursement due to be paid to Newell-Berg upon the Closing of Winning Purchase Agreement;
- (2) To pay Cure Amounts for all Assumed Contracts and Franchise Agreements to be assumed and assigned;
- (3) If there is a timely objection by a counterparty to an Assumed Contract related to the Cure Amount, reserve cash in an amount equal to pay the disputed portion of the applicable Cure Amount;
- (4) To pay the fees and expenses of the escrow agent for the Sales, and other professionals whose fees have been authorized and approved by the Court to be paid at closing; and
- (5) To fund the Disputed Claims Reserve, which the Debtors shall maintain in one of their Debtor-In-Possession Accounts; such amount shall be funded in increments of \$25,000.00 as each of the applicable stores is sold up to \$650,000.00;



- (6) To fund the \$300,000 to be retained by the Debtors' estates to fund prosecution of agreed upon causes of action against parties other than the lenders represented by the Prepetition Agent, as to which the Prepetition Agent and the Creditors' Committee shall agree; such amount shall be funded in increments of \$75,000.00 upon the Closing of each sale up to the \$300,000;
- (7) The Debtors shall reserve an amount necessary to fund an orderly wind-down of the Debtors' estates after closings of the Sale ("Wind-Down Amount"), provided that such Wind-Down Amount shall be in an amount that is mutually acceptable to the Pre-Petition Agent (at the direction of the Required Prepetition Lenders) and the Debtors, and 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;
- (8) The Debtors are authorized and directed to use the proceeds of the Sale to make the payments to McLane Foodservice, Inc., McLane Foodservice Distribution, Inc. and/or their affiliates required by (a) the Second Order Authorizing Debtors and Debtors-in-Possession (I) to Pay Prepetition Claims of Certain Critical Vendors and (II) Granting Related Relief [Doc. No. 194] (the "Second Critical Vendor Order"), or (b) any order approving the relief granted in the Second Critical Vendor Order. Such payments shall be made first from the proceeds of the sale of unencumbered assets (if any); if no such proceeds are available, such payments shall be made from the proceeds of the sale of other assets; and
- (9) To distribute to the Prepetition Agent the net sale proceeds remaining after the disbursements and funding of the foregoing amounts, free and clear of all liens, claims, encumbrances, and interests.

To the extent any proceeds are retained by the Debtors pursuant to any of the provisions set forth above, all liens of the Prepetition Agent shall attach to such retained proceeds, with the same validity, priority, and effect that they now have as against the Debtors' assets. As a condition to the retention of the funds set forth in Paragraph 36(6) above, the Creditors' Committee shall

dismiss with prejudice the Complaint filed by the Creditors' Committee on December 6, 2023 promptly after the entry of this Order.

**Miscellaneous**

38. The terms and provisions of the Purchase Agreements and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, the Debtors' estates and creditors, the Buyers and their affiliates and their respective, successor and assigns, and all affected third parties, including but not limited to, all persons asserting liens, claims, and encumbrances in, to, or against the Debtors and/or Assets, notwithstanding any subsequent appointment of any trustee, liquidating or litigation trustee, wind-down administrator or similar person, or any successors to any of the foregoing, appointed in these chapter 11 cases by the Court or any Debtor, including pursuant to a chapter 11 plan, or upon conversion to chapter 7 under the Bankruptcy Code, as to which such person such terms and provisions likewise shall be binding.

39. To the extent of any conflict between the Purchase Agreements and this Order, the terms and provisions of this Order shall govern.

40. The failure to specifically reference any particular provision of the Purchase Agreements or other related documents in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Purchase Agreements and other related documents be authorized and approved in their entirety.

Dated: December 13, 2023  
Birmingham, Alabama

/S/ TAMARA O. MITCHELL  
TAMARA O. MITCHELL  
UNITED STATES BANKRUPTCY JUDGE



**ASSET PURCHASE AGREEMENT**

**by and among**

**PREMIER KINGS OF GEORGIA, INC., as Seller**

**and**

**RRG OF JACKSONVILLE, LLC, OR ITS NOMINEE(S), as Buyer**

**October 25, 2023**

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## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “**Agreement**”) dated as of October 25, 2023 (the “**Effective Date**”) is by and between Premier Kings of Georgia, Inc., a Georgia corporation (“**Seller**”), and RRG of Jacksonville, LLC, a Florida limited liability company, or its nominee(s) (“**Buyer**”). Buyer and Seller are each referred to herein individually as a “**Party**” and collectively as the “**Parties**”. Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in Article 14.

### RECITALS

**WHEREAS**, Seller currently operates a number of retail fast food restaurants at various locations. The Seller’s restaurants include those listed in Exhibit A (each individual restaurant being a “**Store**” and collectively, the “**Stores**”), under the name “Burger King” pursuant to the Franchise Agreements held by Seller, and the businesses operated pursuant to the Franchise Agreement are collectively referred to herein as the “**Business**”;

**WHEREAS**, Seller leases certain real property and improvements for the operations of the Stores (each individual property being a “**Leased Property**” and collectively, the “**Leased Properties**”) pursuant to lease agreements governing the Leased Properties listed on Exhibit B (each individual lease being an “**Existing Lease**” and collectively, the “**Existing Leases**”);

**WHEREAS**, pursuant to this Agreement, Seller desires to (i) assign to Buyer and Buyer desires to assume from Seller, the Designated Leases (defined herein) and the Assumed Contracts (defined herein), in each case subject to the terms and conditions thereof unless otherwise provided herein or as agreed to by Buyer and the third-parties to the Designated Leases and Assumed Contracts, and (ii) sell and transfer to Buyer, and Buyer desires to purchase and assume from Seller, all of Seller’s right, title, and interest in the Assets (defined herein); and

**WHEREAS**, Seller has advised the Buyer that Seller intends to file a voluntary petition (the “**Petition**”) for relief under Title 11 of the United States Code, 11 U.S.C. §101 et seq. (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Northern District of Alabama (the “**Bankruptcy Court**”) in order to preserve and maximize the value of their Business through a Bankruptcy Court sale process as set forth below.

### AGREEMENT

**NOW, THEREFORE**, for and in consideration of the recitals and of the promises and mutual covenants, agreements, representations and warranties contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree as follows:

### ARTICLE 1 PURCHASE AND SALE OF ASSETS; EXCLUDED ASSETS



Section 1.1 Assets to be Sold. At the Effective Time (as defined in Section 5.5 below), on the terms and subject to the conditions set forth in this Agreement, Seller will sell, assign, transfer, convey and deliver to Buyer, and Buyer agrees to purchase, accept, acquire, assume, and take assignment and delivery from Seller, the following assets (collectively, the "**Assets**");

(a) Leased Property. All of Seller's right, title and interest in, or the assumption and assignment to Buyer where applicable, the Leased Properties pursuant to the schedule of assumed leases set forth on Schedule 1.3(a)-2 (the "**Designated Leases**" and the "**Designated Leased Properties**"), along with all of Seller's right, title and interest, if any, in and to all buildings, improvements, easements, appurtenances, rights and privileges belonging or appertaining to the Designated Leased Properties;

(b) Equipment. All of Seller's rights, title, and interest in and to, or to the extent leased by Seller, the assignment and assumption of the Equipment located at the Stores on the Effective Date and on the Closing Date. For purposes of this Agreement, "**Equipment**" means all furniture, furnishings, fixtures, signage, security systems, point-of-sale systems, kitchen equipment, computer equipment, small wares, counters, shelving, racks, slat walls, display cases, décor, tables, seating, signs, promotional materials, new and unused uniforms, timers, printers, menu boards, kitchen controllers, cameras, DVRs, other equipment and machinery and replacement or spare parts, in each case, within the four walls of each Store, including such Equipment that is either owned or leased by Seller.

(c) Inventory. All unexpired inventory (including without limitation, food, food products, beverages, packaging, cups, lids, straws, napkins, paper products and other supplies, including cleaning and marketing supplies) of Seller held for use or sale by Seller in connection with the operation of the Business at the Effective Time (the "**Inventory**"). Following the close of business on the day which is immediately prior to the Closing Date, Buyer and Seller together shall audit the Inventory at the Stores as set forth in Section 3.4(d);

(d) Leases and Contracts. All of Seller's right, title, and interest in those certain contracts, service agreements, disposal agreements, leases (specifically including the Leases and Equipment leases), license agreements, commitments, purchase orders, business arrangements, and other contracts, and all amendments, modifications and assignments thereof, which directly and exclusively relate to the operation of the Designated Leased Properties or the Business and which (and only to the extent that) Buyer expressly agrees to assume as provided and defined in Section 1.2 (the "**Designated Contracts**");

(e) Permits. To the extent assignable, all of the permits, approvals, authorizations, registrations, licenses, certificates of occupancy, variances, orders, rulings, and decrees or permissions from any Governmental Entity or any entity or Person which directly and exclusively relate to the operation of the Designated Leased Properties or the Business or the ownership of the Assets (the "**Permits**"); and



(f) Other Assets. All telephone and fax numbers for the Stores, warranties and guarantees, and any other assets of Seller located within the four walls of each Store immediately prior to the Effective Time or necessary for the ongoing operation of the Business, to the extent owned or lease by Seller, other than the Excluded Assets as described in Section 1.2.

Section 1.2 **Assignable Contracts; Designated Contracts.**

(a) Schedule 1.2(a)-1 lists all Contracts, other than Leases (collectively, the “**Assignable Contracts**”), that Buyer may elect to assume and have Seller assign to Buyer. Buyer shall have until that date which is five (5) Business Days prior to the date scheduled for hearing on the entry of the Sale Order (such date being referred to herein as the “**Contract Designation Date**”) to designate which of such Assignable Contracts it wishes to assume and have Seller assign to Buyer at the Closing (collectively, the “**Designated Contracts**”). Schedule 1.2(a)-2 shall contain a list of all of the Designated Contracts, which shall be prepared by Buyer and delivered to Seller promptly following the Contract Designation Date. Any amendment to Schedule 1.2(a)-2 pursuant to the foregoing provisions of this Section 1.2(a), shall be served by Seller on the parties who have been added to or deleted from Schedule 1.2-2.

(b) With respect to each Designated Contract, on the Closing Date, Seller shall (i) assume such Designated Contract, and (ii) subject to Buyer paying any amounts necessary to cure any default under such Designated Contract or necessary to effect any consent to assignment thereof (collectively, the “**Cure Costs**”) and providing adequate assurance of performance to the counterparty thereto to the extent required by the Bankruptcy Court, assign such Designated Contract to Buyer pursuant to an Order of the Bankruptcy Court (which may be the Sale Order). Seller shall provide Buyer with a credit against the Purchase Price equal to the aggregate amount of all Cure Costs. Effective on the Closing Date, Buyer shall assume each such Designated Contract.

(c) The Sale Order shall provide that, as of the Closing, Seller shall assign to Buyer the Designated Contracts and the Designated Contracts shall be identified by (i) the name and date of the Designated Contracts (if available), (ii) the other party to the Designated Contract, and (iii) the address of such party for notice purposes, all included on an exhibit attached to either the motion filed in connection with the Sale Order or a motion for authority to assume and assign such Designated Contracts or a notice filed pursuant to the Bidding Procedures Order.

(d) In the case of Permits, Designated Contracts and other commitments included in the Assets that cannot be transferred or assigned effectively without the consent of any third party, which consent has not been obtained prior to the Closing (after giving effect to the Sale Order and the Bankruptcy Code), Seller shall, subject to any approval of the Bankruptcy Court, use commercially reasonable efforts to cooperate with Buyer in endeavoring to obtain each such consent.

Section 1.3 **Assignable Leases; Designated Leases**



(a) Schedule 1.3(a)-1 lists all Leases (collectively, the “**Assignable Leases**”) that Buyer may elect to assume and have Seller assign to Buyer. Buyer shall have until that date which is five (5) Business Days prior to the date scheduled for hearing on the entry of the Sale Order (such date being referred to herein as the “**Lease Designation Date**”) to designate which of such Assignable Leases it wishes to assume and have Seller assign to Buyer at the Closing (collectively, the “**Designated Leases**”). Schedule 1.3(a)-2 shall contain a list of all of the Designated Leases, which shall be prepared by Buyer and delivered to Seller promptly following the Lease Designation Date. Any amendment to Schedule 1.3(a)-2 pursuant to the foregoing provisions of this Section 1.3(a), shall be served by Seller on the parties who have been added to or deleted from Schedule 1.3-2.

(b) With respect to each Designated Lease, on the Closing Date, Seller shall (i) assume such Designated Lease, and (ii) subject to Buyer paying any amounts necessary to cure any default under such Designated Lease or necessary to effect any consent to assignment thereof (collectively, the “**Cure Costs**”) and providing adequate assurance of performance to the counterparty thereto to the extent required by the Bankruptcy Court, assign such Designated Lease to Buyer pursuant to an Order of the Bankruptcy Court (which may be the Sale Order). Seller shall provide Buyer with a credit against the Purchase Price equal to the aggregate amount of all Cure Costs. Effective on the Closing Date, Buyer shall assume each such Designated Lease.

(c) The Sale Order shall provide that, as of the Closing, Seller shall assign to Buyer the Designated Leases and the Designated Leases shall be identified by (i) the address of the real property for each Designated Lease, (ii) the other party to the Designated Lease, and (iii) the address of such party for notice purposes, all included on an exhibit attached to either the motion filed in connection with the Sale Order or a motion for authority to assume and assign such Designated Leases or a notice filed pursuant to the Bidding Procedures Order.

(d) In the case of Designated Leases that cannot be transferred or assigned effectively without the consent of any third party, which consent has not been obtained prior to the Closing (after giving effect to the Sale Order and the Bankruptcy Code), Seller shall, subject to any approval of the Bankruptcy Court, use commercially reasonable efforts to cooperate with Buyer in endeavoring to obtain such consent.

Section 1.4 **Franchise Agreements**. Seller and the Business operate at the Stores pursuant to Franchise Agreements with Franchisor. Buyer and Seller shall use commercially reasonable efforts to cause Franchisor and Buyer to enter into new franchise agreements with Buyer with respect to the Stores (“**New Franchise Agreements**”) on terms reasonably satisfactory to Buyer. If Buyer does not obtain the New Franchise Agreements prior to the hearing to consider entry of the Sale Order, Buyer may, by written notice to Seller, terminate this Agreement.

Section 1.5 **Excluded Assets**. Notwithstanding anything in this Agreement to the contrary, Buyer will not acquire from Seller any of Seller’s assets listed on Schedule 1.5 (the “**Excluded Assets**”). The Parties, upon mutual agreement, may amend the Schedules and



Exhibits included herewith at any time on or before the Closing Date in order to include or exclude any additional Assets or Excluded Assets.

## ARTICLE 2 ASSUMPTION OF LIABILITIES

### Section 2.1 Assumed Liabilities.

(a) In consideration for the transfer of the Assets by Seller, Buyer shall assume only those executory liabilities, obligations or commitments of Seller for payment and performance pursuant to the Designated Leases and Designated Contracts, in each case solely to the extent arising or to be performed after the Effective Time (collectively, the "*Assumed Liabilities*").

(b) ANYTHING CONTAINED HEREIN TO THE CONTRARY NOTWITHSTANDING, EXCEPT FOR THE ASSUMED LIABILITIES SPECIFICALLY DESCRIBED IN SECTION 2.1(a), BUYER SHALL NOT AND BUYER DOES NOT ASSUME ANY LIABILITIES, TAXES, OR OBLIGATIONS (FIXED OR CONTINGENT, KNOWN OR UNKNOWN, MATURED OR UNMATURED, OR OTHERWISE) OF SELLER, WHETHER OR NOT ARISING OUT OF OR RELATING TO ANY OF THE ASSETS, THE BUSINESS, OR ANY OTHER BUSINESS OF SELLER, ALL OF WHICH LIABILITIES, TAXES, AND OBLIGATIONS SHALL, AT AND AFTER THE CLOSING, REMAIN THE EXCLUSIVE RESPONSIBILITY OF SELLER.

Section 2.2 Excluded Liabilities. All of the Excluded Liabilities will remain the sole responsibility of Seller. The term "**Excluded Liabilities**" collectively means each and every Liability of Seller other than the Assumed Liabilities, including, without limitation, all accounts payable, employment taxes, employee benefits, compensation, severance, insurance, personal injuries, property damage, taxes, obligations and liabilities under any Contract which Buyer does not expressly assume in writing, or any other liabilities of Seller, the Business and/or the Stores, whether absolute or contingent, known or unknown, accrued or unaccrued, asserted or unasserted, or otherwise, arising out of applicable law, transactions, actions, or omissions occurring prior to the Closing.

## ARTICLE 3 PURCHASE PRICE AND ADJUSTMENT

Section 3.1 Purchase Price. The consideration to be paid by Buyer to Seller on the Closing Date for the Assets shall be via wire transfer of good and collected funds in the amount of \$15,525,000.00 (the "**Initial Purchase Price**"), as adjusted in accordance with the provisions of Section 3.4 (all such amounts collectively, the "**Purchase Price**"), *minus* the amount of the Good Faith Deposit (defined herein), to Seller in immediately available funds by wire transfer to an account designated by Seller. Seller shall use a portion of the Purchase Price equal to the aggregate amount of all Cure Costs to pay such Cure Costs at Closing.



Section 3.2 **Good Faith Deposit**. Upon the execution and delivery of this Agreement, Buyer shall deposit a cash payment equal to ten percent (10%) of the Initial Purchase Price (the "Good Faith Deposit") which shall be placed in a non-interest-bearing account with Flagstar Bank N.A. (the "Escrow Agent"). If Buyer fails to make the Good Faith Deposit within two (2) Business Days after the Effective Date, then Seller shall have the right to terminate this Agreement and Buyer shall have no further rights hereunder. The Good Faith Deposit and Escrow Agent's duties hereunder shall be further subject to a separate escrow agreement the form of which is attached hereto as Exhibit E. Upon Closing of the sale of the Assets under this Agreement, the Good Faith Deposit shall be released to Seller and applied to the Purchase Price at Closing.

Section 3.3 **Tax Allocations**. Seller and Buyer agree that (i) the Purchase Price will be allocated for state and federal income tax purposes as agreed in good faith by Buyer and Seller and shall be based on appraisals or agreed values of the Assets, and (ii) after the Closing, neither party will take any position or action in connection with complying with the Internal Revenue Code (the "Code") and the regulations promulgated thereunder, inconsistent with such allocations. Both Parties shall utilize such allocations for all Tax reporting purposes and shall defend any examination or audit relating thereto in a manner consistent with such allocation. Such allocation shall be reflected, as well, on Form 8594 (Asset Acquisition Statement under Section 1060), which Seller and Buyer shall each file separately with the Internal Revenue Service pursuant to the requirements of Section 1060 of the Code. Any adjustment to the Purchase Price shall be allocated as provided by Treasury Regulation Section 1.1060-1(c). If the Parties are unable to timely and reasonably agree upon such allocations, each Party may report allocation of the Purchase Price in their respective reasonable discretion.

Section 3.4 **Adjustment of the Purchase Price**. The Purchase Price will be adjusted at the Closing as follows:

(a) **Tax Prorations between Buyer and Seller**. All ad valorem property and personal taxes payable upon the Assets will be prorated between Seller and Buyer for the tax year in which the Closing is held on the basis of the tax statements for such year; provided, however, that if tax statements for the current year are not available as of the Closing Date, the tax proration between Seller and Buyer will be made on the basis of 106% of the taxes for the immediately prior tax year. Notwithstanding anything to the contrary, the tax proration made at Closing will be a final proration between Buyer and Seller.

(b) **Store Bank Accounts and Deposits in Transit**. In addition to the Purchase Price and payment for Inventory provided below, Buyer shall pay at Closing a good faith estimate of cash amounts held as "store banks" as daily operating cash for amounts generated prior to the Effective Time but held in the cash registers or other repositories at the Stores or on behalf of the Stores at the Effective Time with a true up post-Closing at an amount determined in accordance with this Section 3.4(c), and Seller shall be entitled to retain all cash generated prior to the Effective Time but held in transit for deposit, whether at the Stores or otherwise. Following the close of business the day prior to the Closing Date, Buyer and Seller together shall audit the cash registers and other



repositories at the Stores or on behalf of the Stores to determine the amount of cash held as “store banks” at the Effective Time. Buyer shall pay to Seller, or Seller shall pay to Buyer, as appropriate, without offset for any reason, the difference between the actual cash amount in the store banks and the estimate paid at Closing within thirty (30) days following the Closing.

(c) Inventory Audit and Payment. In addition to the Purchase Price and the payment for “store banks” as provided above, at Closing, the Purchase Price shall be adjusted for Inventory in accordance with this Section 3.4(c). After the close of business on the date that is immediately prior to the Closing Date, Buyer and Seller together shall audit the Inventory and from said audit determine the amount and value (based on Seller’s actual cost without mark-up) of all Inventory on hand (the “**Inventory Audit Value**”). At the Closing, the Purchase Price shall be increased by an amount equal to the difference between (i) the Inventory Audit Value *plus* any additional deliveries of Inventory to the Stores between the time of the Inventory audit and the Effective Time and (ii) the estimated value of Inventory to be consumed at the Stores between the time of the Inventory audit and the Effective Time (as determined using Seller’s historical operational data for the Stores).

(d) Expenses. Operational expenses directly related to the Assets and the Business, including, without limitation, Assumed Contract expenses, Designated Lease expenses, beverage rebates, utilities and rent (including sales tax on rent), will be prorated with Seller being responsible for those expenses accruing prior to the Effective Time and Buyer being responsible for those expenses accruing at or after the Effective Time. Utilities shall be paid by Seller to the Closing Date and the accounts closed or assigned to Buyer effective as of Closing. If the closing or assigning of Seller’s operating accounts with utility and other providers, and opening of Buyer’s operating accounts with same, is impractical or would cause an interruption in service (the Parties shall work in good faith to ensure a smooth transition and avoid any interruption in service), utilities, deposits and similar expenses shall be adjusted as of Closing and settled within thirty (30) days after Closing.

(e) Security Deposits. At the option of Seller, Seller shall either (i) retain all rights to any security deposits paid by Seller and held by landlords, Franchisor, or utilities under any Existing Leases, the Franchise Agreements, or other agreements, or (ii) at Closing Seller shall assign such security deposits to Buyer and the Buyer shall pay to Seller an amount equal to the amount of such security deposits.

## ARTICLE 4 BANKRUPTCY COURT MATTERS

### Section 4.1 Competing Bids and Break-Up Fee.

(a) Competing Bids. This Agreement is subject to approval by the Bankruptcy Court and the consideration by Seller of higher or better competing bids (each a



**“Competing Bid”**). Buyer shall have the right to bid against any Competing Bids consistent with the bid procedures (collectively, the **“Bid Procedures”**) set forth in the Bid Procedures Order (defined herein).

(b) Break-Up Fee/Expense Reimbursement.

(i) In consideration for Buyer serving as the stalking-horse bidder, and this Agreement being subject to termination in the event Seller receives and accept a higher or better bid for the Assets consistent with the Bid Procedures (an **“Alternative Transaction”**), then, so long as this Agreement is not terminated prior to the Closing by Buyer or due to Buyer’s uncured material breach and regardless of whether Buyer makes any matching or competing bids, but subject to subsection (d) below, Seller shall pay to Buyer a stalking-horse bidder fee, in an amount equal to \$388,125.00 (the **“Break-Up Fee”**), plus the documented, out-of-pocket reasonable costs and expenses of Buyer, including reasonable attorneys’ fees, not to exceed \$150,000.00 (collectively, the **“Expense Reimbursement”**). The Break-Up Fee was determined by multiplying the Purchase Price by 2.5% and the Expense Reimbursement was determined as a fixed amount, irrespective of Purchase Price. If Seller agrees to a break-up fee or an expense reimbursement amount with any other buyer in connection with the sale of other stores or assets of Seller that exceeds the Break-Up Fee (2.5% of the Purchase Price) or the Expense Reimbursement (\$150,000.00) hereunder, the Break-Up Fee and/or the Expense Reimbursement hereunder, as applicable shall be increased pro rata in accordance with such other break-up fee or expense reimbursement. Notwithstanding anything contained herein to the contrary, the Break-Up Fee and the Expense Reimbursement shall only be paid at the closing of an Alternative Transaction.

(ii) The Parties intend that the Break-Up Fee and Expense Reimbursement shall be treated as a super-priority administrative expense in the Bankruptcy Case, senior to all unsecured claims and other administrative expenses; provided, however, in no event will the Break-Up Fee and Expense Reimbursement be paid in the absence of the entry of a sale order approving an Alternative Transaction. Seller hereby acknowledges and agrees that: (A) the approval of the Break-Up Fee and Expense Reimbursement is an integral part of the Transaction contemplated by the Transaction Documents; (B) in the absence of Seller’s obligation to pay the Break-Up Fee and Expense Reimbursement, Buyer would not have entered into this Agreement or any of the other Transaction Documents; (C) the entry of Buyer into this Agreement and the other Transaction Documents are necessary for preservation of the estate of Seller, and is beneficial to Seller because, in Seller’s business judgment, it will enhance Seller’s ability to maximize the value of its assets for the benefit of its creditors; and (D) the Break-Up Fee and Expense Reimbursement is reasonable in relation to Buyer’s costs and efforts and to the magnitude of the Transaction, and to Buyer’s lost opportunities resulting from the time spent pursuing the Transaction.



(iii) Notwithstanding anything to the contrary contained in this Agreement, Seller's obligations under this Section 4.1 shall survive the expiration or termination of this Agreement.

(c) The Sale Motion and Bid Procedures. Within the earlier of (i) fourteen (14) Business Days following the complete execution of this Agreement or (ii) two (2) Business Days after the date of the Petition, Seller shall file with the Bankruptcy Court the Petition and one or more motions (the "**Sale Motion**") seeking the Bankruptcy Court's issuance of:

(i) a bidding procedures order which is subject to review and comment (but not approval) by the Buyer (the "**Bid Procedures Order**")

(ii) a sale order in form and substance reasonably satisfactory to the Buyer (the "**Sale Order**").

The Sale Motion shall include procedures for the assumption of and assignment to Buyer of the Assumed Contracts and Designated Leases. The Bid Procedures Order will include provisions for approval of the Break-Up Fee and Expense Reimbursement as well as provisions governing the submission of Competing Bids. The form of the Bid Procedures Order and Sale Motion are subject to review and comment (but not approval) by the Buyer. Seller shall serve all counterparties to leases and contracts that are being assumed by the Seller and assigned to Buyer under this Agreement a notice of proposed assumption and assignment of unexpired leases and executory contract and cure which shall include a deadline for counterparty objections and a procedure for resolution of objections. Cure amounts, whether agreed to by counterparties or set by the Court shall be paid from the Purchase Price. Bankruptcy Court approval of the Seller's assumption and assignment of executory contracts and unexpired leases to Buyer shall be incorporated in the Sale Order. The form of the notice to lease and contract counterparties shall be subject to review and comment (but not approval) by Buyer.

(d) Auction. In the event that Seller receives one or more Competing Bids that Seller determines, in accordance with the Bid Procedures Order in Seller's sole discretion, is a qualified bid higher or better than the Purchase Price provided under this Agreement, then Seller shall schedule and conduct an auction to be conducted in the manner set forth in the Bid Procedures Order, during which Buyer and any qualified bidder will be permitted to submit higher and better bids (the "**Auction**"). At minimum, to become a qualified bidder a competing bidder must make a good faith deposit equal to or greater than the Good Faith Deposit, provide evidence that, in Seller's sole discretion, the competing bidder should be qualified as a franchisee by the Franchisor, and offer an overbid price with an asset purchase agreement in a form similar to this Agreement with a mark-up showing the changes made to this Agreement. At the conclusion of the Auction, Seller shall select the winning bid based on Seller's determination, in their sole discretion, of which bid is the highest or best bid. Seller also may select, in the Seller's sole discretion, the second best bid, which shall be designated as the "**Back-up Bidder**", with the understanding that if for any reason the winning bidder fails to close as required



by the applicable purchase agreement approved by the Bankruptcy Court, the Back-up Bidder shall be authorized and obligated to close on its bid for the purchase of the Assets approved by the Bankruptcy Court.

(e) Sale Order. Subject to Buyer being designated as the successful bidder (the “**Successful Bidder**”), Seller shall use commercially reasonable efforts to obtain entry of the Sale Order. The Sale Order shall not be subject to the stay in Bankr. R. Civ. P. 6004(h) and 6006(d) and shall be enforceable and effective immediately and shall include a finding that Buyer is a “good faith” purchaser under Section 363(m) of the Bankruptcy Code. The Sale Order shall also include findings and conclusions that (i) notice of the Sale Motion and Sale Procedures Order have been provided to all entities who claim an interest or lien in the Assets, all Governmental Entities who may have claims against Seller, all utilities serving Seller and the Assets, all persons entitled to notice under Bankr. R. Civ. P. 9010 and 2002 and all entities that expressed an interest in purchasing the Assets, (ii) Buyer is not assuming any debts, liabilities or obligations of Seller accrued as of the Closing Date except as otherwise set forth in this Agreement, (iii) Buyer is not a mere continuation of Seller or Seller’s bankruptcy estate and there is no continuity of enterprise between Seller and Buyer and Buyer is not a successor of Seller, (iv) the transactions effecting the sale of the Assets by Seller to Buyer does not constitute a consolidation, merger or de facto merger of Buyer and Seller or Seller’s bankruptcy estate, (v) the Sale Order shall be binding upon Seller and its successors and assigns, including any successor Chapter 7 or 11 Trustee and (vi) the Assets are being sold and transferred to Buyer free and clear of all liens, claims, encumbrances, lis pendens, rights of possession, contracts, covenants, options or other rights to acquire an interest in the Assets.

(f) Back-up Bidder. In the event Buyer is not determined to be the Successful Bidder under the Bid Procedures Order process and the Successful Bidder fails to close, Buyer agrees, after receiving notice of such failure, to consummate the Transaction in accordance with the terms of this Agreement, as modified pursuant to any increase in the Purchase Price made by Buyer during the bidding process, as the Back-Up Bidder.

## ARTICLE 5 CLOSING

### Section 5.1 Closing; Risk of Loss.

(a) Consummation of the Transaction contemplated by this Agreement (the “**Closing**”) will be held at a location, time, manner, and date (the “**Closing Date**”) to be agreed upon by the Parties, provided that in all events Closing shall be completed by no later than 30 days after entry of the Sale Order, unless otherwise determined by the Bankruptcy Court.

(b) The risk of loss for the Assets will be borne by Seller until the Closing and by Buyer after the Closing.

Section 5.2 **Buyer's Closing Expenses.** Except as otherwise provided in this Agreement, Buyer will pay the following Closing expenses:

- (a) Fees for any type of inspection or audit that may be required by Buyer to determine whether the Assets are suitable for the purposes for which Buyer, or its assigns may intend;
- (b) Fees of Buyer's attorneys, accountants, consultants and other advisors, except to the extent any portion of these amounts shall be payable to Buyer as part of the Break Up Fee;
- (c) All costs, fees and expenses attributable to Buyer's financing;
- (d) All transfer fees, extension fees, and other fees, charges or requirements of Franchisor, including but not limited to all scopes of work (or similar property improvements required by the Franchisor) and all franchise related fees and charges arising out of the Transaction contemplated in this Agreement, excluding any such fees outstanding or otherwise in arrears and any associated penalties, late fees, or reinstatement fees of the Franchisor as provided under the Franchise Agreements as of the Closing Date;
- (e) Any and all sales, use, transfer, mortgage, documentary and like taxes and/or stamps required to be paid in connection with the Transaction contemplated hereby;
- (f) all recording costs and fees necessary to transfer title of the Assets to Buyer and any fees and costs incurred by Seller in connection with Seller satisfying, curing and/or removing any Liens on the Assets; and
- (g) Costs for all other items for which Buyer is responsible under this Agreement.

For the avoidance of doubt, Buyer shall not be responsible for any investment banking or broker fees, commissions, or payments of any kind claimed by any professional previously engaged by Seller.

Section 5.3 **Seller's Closing Expenses.** Except as otherwise provided in this Agreement, Seller will pay the following Closing expenses:

- (a) Fees of Seller's attorneys, investment bankers, accountants, consultants and other professionals and advisors;
- (b) Fees of the Escrow Agent to administer the Good Faith Deposit; and
- (c) Costs for all other items for which Seller are expressly responsible under this Agreement.



Section 5.4 **Waiver of all other Warranties.** Except as expressly provided in Article 6 and any express warranties of title contained in the closing documents contemplated in Section 5.6, the Assets will be conveyed "as is, where is", with all faults, and without any warranties, express or implied, including but not limited to warranties of title, condition, fitness for a particular purpose or habitability. Buyer acknowledges that other than as specifically provided in this Agreement, Seller has made no representation, warranty or guaranty, express or implied, oral or written, past, present or future, of, as to, or including: (a) the condition or state of repair of the Assets, including, without limitation, any condition arising in substances (which includes all substances listed as such by applicable law, all pollutants or asbestos and naturally-occurring but harmful substances such as methane or radon) on, in, under, above, upon or in the vicinity of the Assets; (b) the quality, nature, adequacy, and physical condition of the Assets, including but not limited to, the structural elements, environmental issues, appurtenances, and access; (c) the quality, nature, adequacy and physical condition of soils and geology and the existence of ground water; (d) the existence, quality, nature, adequacy and physical conditions of utilities serving the Leased Property or Assets; (e) the development potential of the Leased Property, its habitability, merchantability, or the fitness, suitability or adequacy of the Assets for any particular purpose; (f) the zoning or other legal status of the Leased Property; (g) the Leased Property or its operations" (including the Business) compliance with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions, and restrictions of any Governmental Entity. Seller and Buyer agree that this provision shall survive the execution of this Agreement and the Closing of the sale of the Assets. Other than the express representations and warranties specifically provided in Article 5, Buyer hereby acknowledges and declares reliance solely on its own examination, inspection and evaluation of the Assets, and not on any warranties or representation, whether express or implied or written or oral, from Seller. Except for any claims arising out of a breach of the express representations and warranties set forth in Article 5 (subject to the limitations set forth in Article 10), Buyer shall have absolutely no right or cause of action against Seller, whether in tort, contract, quasi contract or otherwise, to assert in any controversy or litigation any claim or demand arising from the sale or purchase of, or in any way related to or in connection with, the assets. Buyer hereby expressly waives and renounces its ability to rescind the sale of the assets or seek a reduction in the purchase price for any reason whatsoever under any applicable law. All implied warranties with respect to the Assets, including those related to title and fitness for a particular purpose, will be, and are hereby disclaimed by Seller in any controversy, claim, demand, or litigation arising from or in connection with the Assets, except with respect to a default under this Agreement, or breach of any warranty or representation made by Seller herein. Seller hereby reserves the right to include, in Seller's sole discretion, language to the effect of the foregoing waiver of warranties in any documents conveying the Assets to Buyer as contemplated in this Agreement.

Section 5.5 **Effective Time.** Notwithstanding the actual time of the Closing, the transfer of the Assets will be effective as of 12:01 a.m. Eastern Time on the Closing Date (the "Effective Time"). Proportions and similar adjustments, however, shall be made as of 11:59 p.m. on the date preceding the Closing Date.

Section 5.6 **Execution and Delivery of Documents.** At or prior to the Closing and subject to the conditions to Closing set forth in Article 10, Seller and Buyer will execute and



deliver to the other all documents, instruments, certificates and schedules required under this Agreement, including, but not limited to, the following:

(a) Seller will execute and deliver to Buyer in a form reasonably acceptable to Buyer:

(i) the Bill of Sale in the form attached hereto as Exhibit C, transferring the Assets to Buyer;

(ii) the Assignment and Assumption Agreement in the form attached hereto as Exhibit D, effecting the assignment to and assumption by Buyer of the Designated Contracts and the Designated Leases;

(iii) all written consents required to be obtained or given by any Person in order to consummate the Transaction;

(iv) a completed certification of non-foreign status pursuant to Section 1.1445-2(b)(2) of the Treasury Regulations, and, if applicable, any certificate, affidavit or other documentation required to establish that no Tax withholding is required under applicable Law; and

(v) such other documents or instruments, in form and substance reasonably acceptable to Buyer, as Buyer may deem reasonably necessary, or as may be required to consummate the Transaction.

(b) Buyer will deliver to Seller:

(i) Signed counterparts, as applicable, of the documents required in Section 5.5(a)(i) and (ii);

(ii) The Purchase Price, as adjusted pursuant to Article 3 or other provisions of this Agreement, by cash or wire transfer, in accordance with a closing statement agreed between Seller and Buyer;

(iii) A certified copy of resolutions of Buyer's members and managers authorizing this Agreement, the Transaction Documents and the Transaction; and

(iv) A certificate of active status or good standing of Buyer issued by the Secretary of State of Florida.

(c) Buyer and Seller will execute and deliver to one another:

(i) A closing statement setting forth the calculation of the adjustments to the Purchase Price described in Article 3;

(ii) Internal Revenue Service Form 8594, Asset Acquisition Statement, or similar required form attesting to the Asset allocations; and



(iii) Any documents reasonably requested by Seller or Buyer to effectuate the Transactions contemplated by this Agreement.

Section 5.7 **Simultaneous Delivery.** All payments, documents and instruments to be delivered on the Closing Date will be regarded as having been delivered simultaneously, and no document or instrument will be regarded as having been delivered until all documents and instruments being delivered on the Closing Date have been delivered.

Section 5.8 **Further Acts.** Seller and Buyer agree to (a) furnish such further information, (b) execute and deliver to the other such other documents and instruments, and (c) do such other acts and things, all as the other party reasonably requests, for the purpose of carrying out the intent of this Agreement and transfer and assignment of the Assets.

## ARTICLE 6 REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer as of the Effective Date of this Agreement and as of immediately prior to the Closing as follows:

Section 6.1 **Organization and Qualification.** PK and PKNA each (a) is an Alabama corporation and limited liability company respectively, duly formed, validly existing and in good standing under the laws of the State of Alabama; (b) has all corporate powers to own its properties and to carry on the Business as owned and operated as of the date of this Agreement; and (c) is duly qualified and is in good standing in all jurisdictions in which the nature of the Business make such qualification necessary, in each case, except where the failure to have such power or authority would not have a Material Adverse Effect on the Assets, Property, results or operations or conditions (financial or otherwise) of the Business, taken as a whole. PKG (a) is a Georgia corporation, duly formed, validly existing and in good standing under the laws of the State of Georgia; (b) has all corporate powers to own its properties and to carry on the Business as owned and operated as of the date of this Agreement; and (c) is duly qualified and is in good standing in all jurisdictions in which the nature of the Business make such qualification necessary, in each case, except where the failure to have such power or authority would not have a Material Adverse Effect on the Assets, Property, results or operations or conditions (financial or otherwise) of the Business, taken as a whole.

### Section 6.2 **Due Authorization; Enforceability.**

(a) The execution, delivery and performance of this Agreement by Seller and the consummation of the Transaction contemplated by this Agreement have been duly and effectively authorized by the governing authority of Seller, as well as by all other requisite corporate action.

(b) This Agreement and the agreements contemplated by this Agreement have been, and when executed will be, duly executed, delivered and performed by Seller; and, assuming the due authorization, execution and delivery of this Agreement and the agreements contemplated by this Agreement by Buyer, this Agreement constitutes, and



when executed will constitute, a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.

Section 6.3 **No Violation.** The execution of this Agreement and the agreements contemplated by this Agreement by Seller will not: (a) cause Seller to violate any (i) law, (ii) rule or regulation of any Governmental Entity or (iii) order, writ, judgment, injunction, decree, determination or award; (b) violate or be in conflict with, or result in a breach of or constitute (with or without notice or lapse of time or both) a default under, Seller's organizational documents; or (c) result in the creation or imposition of any Lien upon any of the Assets.

Section 6.4 **Compliance with Laws.** Except as disclosed on Schedule 6.4, to Seller's Knowledge, Seller is not in violation or default, and in carrying out the Transactions described in this Agreement will not come into material violation or default, under any present laws, ordinances, regulations, orders or decrees applicable to the Business, Seller or the Assets that could reasonably be expected to have a Material Adverse Effect.

Section 6.5 **Foreign Person.** Seller is not a foreign person under Sections 1445 and 7703 of the Internal Revenue Code of 1986, as amended and regulations promulgated thereunder.

Section 6.6 **Existing Leases.** Seller has made available to Buyer true and correct copies of all Existing Leases. Except as disclosed on Schedule 6.6, Seller has not received written notice of any default or breach on the part of Seller of any of the Existing Leases which has not been cured.

Section 6.7 **Contracts.** Seller has made available to Buyer copies of the Assumed Contracts. Except as disclosed on Schedule 6.7, Seller is not in default or breach of any Assumed Contract and Seller have not received written notice of any default or breach on the part of Seller under any Assumed Contract which has not been cured.

Section 6.8 **Permits.** Seller has made available to Buyer copies of all Permits. To the Knowledge of Seller, the Permits are in full force and effect except where Seller is in the process of renewing or reinstating periodic or lapsed Permits, and there is no outstanding violation of any Permit that could reasonably be expected to have a Material Adverse Effect.

Section 6.9 **Legal Proceedings.** Except as listed in Schedule 6.9, there is not pending or, to the Knowledge of Seller, threatened, any legal, administrative, arbitration or other proceeding or investigation ("**Proceeding**") related to the Business or the Assets, and Seller has no Knowledge of any circumstances that could be expected to give rise to any Proceeding against Seller or Buyer that could reasonably be expected to have a Material Adverse Effect.

Section 6.10 **Equipment.** As of the Effective Time, the Equipment included in the Assets will be present at each Store and no Equipment shall have been removed from a Store since the Effective Date.



Section 6.11 Employees.

(a) Within five (5) days following Buyer's delivery of the Good Faith Deposit into escrow, Seller shall provide Buyer with a true and complete list of all persons presently employed by Seller at the Stores, or who dedicate all or substantially all of their time to the operation of the Stores such as the director of area operations, district managers, and maintenance technicians (including any such person who is absent from employment due to illness, vacation, injury, military service, or other authorized absence) (such persons, together with any additional employees hired by Seller in connection with the Business prior to the Closing, the "**Employees**") indicating their: (i) employer; (ii) job title or position; (iii) principal place of employment; (iv) date of commencement of service and seniority or service date if different than the date of commencement of service; (v) status as full-time or part-time; (vi) status as exempt or non-exempt; (vii) base wages or salary; (viii) other remuneration, including any bonus received or earned by any of them during the present and immediately preceding calendar year and a description of all perquisites, bonuses, and benefits (including vacation, severance, and fringe benefits) they receive or are eligible to receive; (ix) benefit elections in effect; and (x) leave status if absent from active employment.

(b) With respect to the Employees, except as set forth on Schedule 6.1 I: (i) all Employees are retained "at will"; (ii) to the Knowledge of Seller, no Employee intends to terminate his or her employment with Seller prior to the Closing or not accept employment with Buyer at the Closing; (iii) to the Knowledge of Seller, there is not in existence any pending or threatened strike, slowdown, work stoppage, picketing, interruption of work, lockout or any other similar dispute or controversy, labor-related organizational effort, election activities or request or demand for negotiations, recognition or representation, or grievance, arbitration, administrative hearing, formal claim or charge of unfair labor practice, other union- or labor-related action or other claim, workers' compensation claim, claim or investigation of wrongful discharge, claim or investigation of employment discrimination or retaliation, claim or investigation of sexual harassment, or other employment dispute of similar nature, against Seller; (iv) Seller is not a party to or bound by any collective bargaining agreement, other labor agreement, arrangement, or understanding, work rules, practice, or arbitration award with any labor union or any other similar organization, and (v) none of the Employees is subject to or covered by any collective bargaining agreement, arrangement, or understanding, work rules or practice, or arbitration award, or is represented by any labor organization.

(c) With respect to each Employee, Seller has copies of such Employee's Form I-9 (Employment Eligibility Verification Form) and all other records, documents, or other papers which are required to be retained with the Form I-9 by the employer pursuant to such immigration Laws.

(d) To the Knowledge of Seller, all Employees are properly treated as "exempt" or "non-exempt" from overtime requirements under applicable law.



(e) Seller has never implemented any plant closing or mass layoff of employees that could implicate the Worker Adjustment and Retraining Notification Act of 1988, as amended, or any other law.

Section 6.12 **Insurance.** Seller maintains various property, liability, and other insurance policies under which the Assets are insured. All such policies are in full force and effect (and all premiums due and payable thereon have been or will be paid in full on a timely basis), and no written notice of cancellation, termination, or revocation or other notice that any such policy is no longer in full force or effect or that the issuer of any such policy is not willing or able to perform its obligations thereunder has been received by Seller. There are no claims by Seller pending under any such policies as to which coverage has been denied by the insurer.

Section 6.13 **Commissions.** Except as set forth on Schedule 6.13, Seller has not incurred or become liable for any broker's commission or finder's fees related to the Transaction contemplated by this Agreement.

Section 6.14 **Exclusivity of Representations and Warranties; As-Is Sale.** EXCEPT AS EXPRESSLY SET FORTH IN ARTICLE 6 OR ANY EXPRESS WARRANTIES OF TITLE IN THE CLOSING DOCUMENTS CONTEMPLATED BY SECTION 5.6, THE REPRESENTATIONS AND WARRANTIES MADE BY SELLER IN THIS AGREEMENT ARE IN LIEU OF AND ARE EXCLUSIVE OF ALL OTHER REPRESENTATIONS AND WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS EXPRESSLY SET FORTH IN ARTICLE 5 OR ANY WARRANTIES OF TITLE IN THE CLOSING DOCUMENTS CONTEMPLATED BY SECTION 4.6, SELLER HEREBY DISCLAIM ANY SUCH OTHER OR IMPLIED REPRESENTATIONS OR WARRANTIES, NOTWITHSTANDING THE DELIVERY OR DISCLOSURE TO BUYER OR ITS MEMBERS, MANAGERS, EMPLOYEES, AGENTS OR REPRESENTATIVES OF ANY DOCUMENTATION OR OTHER INFORMATION (INCLUDING ANY FINANCIAL PROJECTIONS OR OTHER SUPPLEMENTAL DATA). BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER HAS NOT MADE, AND HEREBY SPECIFICALLY NEGATES AND DISCLAIMS, ANY REPRESENTATIONS, WARRANTIES, COVENANTS OR AGREEMENTS OF ANY KIND OR CHARACTER REGARDING ANY ASPECT OF THE ASSETS. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY LAW THE SALE PROVIDED FOR HEREIN IS MADE ON AN "AS-IS, WHERE-IS" BASIS AS TO CONDITION WITH ALL FAULTS.

## ARTICLE 7 REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller that as of the Effective Date of this Agreement and as of immediately prior to the Closing as follows:

Section 7.1 **Organization and Qualification.** Buyer (a) is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Florida; (b) has



all necessary limited liability company powers to own its properties and to carry on its business as owned and operated as of the date of this Agreement; and (c) is duly qualified and is in good standing in all jurisdictions in which the nature of its business makes such qualification necessary.

Section 7.2 **Due Authorization.**

(a) The execution, delivery and performance of this Agreement by Buyer and the consummation of the Transaction contemplated by this Agreement have been duly and effectively authorized by the managers of Buyer, as well as by all other requisite company action.

(b) This Agreement and the agreements contemplated by this Agreement have been, and when executed will be, duly executed and delivered by Buyer; and, assuming the due authorization, execution and delivery of this Agreement and the agreements contemplated by this Agreement by Seller, this Agreement constitutes, and when executed will constitute, a valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except (a) to the extent enforceability may be limited by applicable bankruptcy, insolvency, reorganization or other laws affecting the enforceability of creditor's rights generally and (b) that the availability of equitable remedies, including specific performance, is subject to the discretion of the court before which any proceeding thereof may be brought.

Section 7.3 **No Violation.** Buyer's execution, delivery and performance of this Agreement and the agreements contemplated by this Agreement will not: (a) cause Buyer to violate any (i) law, (ii) rule or regulation of any Governmental Entity, or (iii) order, writ, judgment, injunction, decree, determination or award; or (b) violate or be in conflict with, or result in a breach of or constitute (with or without notice or lapse of time or both) a default under, Buyer's organizational documents.

Section 7.4 **Consents and Approvals of Governmental Entities and Other Persons.** No consent, approval or authorization of, or declaration, filing or registration with, any Governmental Entity or any other Person applicable to Buyer is required in connection with the execution and delivery of this Agreement and the consummation of the Transaction contemplated by this Agreement.

Section 7.5 **Commissions.** Buyer has not incurred or become liable for any broker's commission or finder's fees related to the Transaction contemplated by this Agreement.

Section 7.6 **Buyer's Inspection.** Prior to the Closing, Buyer and/or Buyer's agent has had a reasonable opportunity to inspect the Assets and the Stores and is familiar with the Equipment located in each such Store on the Effective Date.

**ARTICLE 8**  
**COVENANTS AND ACTIONS PENDING CLOSING**



Section 8.1 **Conduct of Business.** Between the date of this Agreement and the Closing Date, Seller will:

(a) except with respect to Store #1691 which is temporarily closed, maintain the operation of the Business and conduct the Business in the ordinary course and in accordance with past business practices, including without limitation using commercially reasonable efforts to maintain all employee staffing and adequate levels of good and saleable inventory, and in compliance with Franchisor's requirements;

(b) maintain and repair all the tangible Assets in accordance with commercially reasonable practices;

(c) comply with all applicable laws, rules and regulations in all material respects applicable to the Business or the Assets;

(d) maintain insurance in the ordinary course of business with respect to the Assets until the Effective Time;

(e) except with respect to Store #1691 which is temporarily closed, advertise and market the Stores and Business consistent with historical business practices;

(f) not sell or dispose of any of the Assets other than in the ordinary course of the operation of the Business;

(g) comply with all Designated Leases and Designated Contracts; and

(h) not incur, assume, guarantee, create or otherwise become liable with respect to any indebtedness, borrowed money, or similar obligation, except in the ordinary course of business consistent with past practices, with respect to the Property, Equipment (regardless of who owns such equipment and how that equipment is owned), Stores, Business, or the Assets, subject to the further exceptions set forth on Schedule 8.1.

Section 8.2 **Consents; Additional Agreements.** Buyer and Seller agree to cooperate and promptly take, or cause to be taken, all action, and to cooperate and promptly do, or cause to be done, all things reasonably necessary, proper or advisable to consummate and make effective as promptly as practicable the Transaction contemplated by this Agreement, including: (i) the removal of any legal impediment to the consummation or effectiveness of such Transaction; and (ii) the obtaining of all necessary waivers, releases, consents, assignments, and approvals of all third parties and Governmental Entities, and the making of all necessary filings.

Section 8.3 **Confidentiality.** Until the Petition is filed with the Bankruptcy Court, Buyer and Seller each will hold, and will cause its respective officers, agents and employees to hold, in confidence, and not disclose to others, the terms of this Agreement, the Transaction contemplated by this Agreement, and all plans, documents, contracts, records, data analysis, compilations, forecasts, and studies and other informational material received or prepared by either of them with respect to the Assets and the Business (collectively the "**Information**")



except: (a) to the extent that such Information (i) is otherwise available from third persons without restrictions on its further use or disclosure or (ii) is required by order of any Governmental Entity, any law, regulation or any reporting obligation of Buyer or Seller; (b) to the extent such information is or becomes publicly known other than through a violation of this paragraph by the party in question; (c) to the extent such information is provided to persons who are assisting in the consummation of the Transaction contemplated hereby, or is required to be given to such third party in order to obtain any consents, approval, authorizations or disclosures contemplated by this Agreement (including, without limitation, the disclosure to representatives or employees of the Franchisor, landlord, Seller's lenders and professionals, or any Governmental Entity); or (d) to the extent otherwise required or approved by the Bankruptcy Court.

Section 8.4 **Right of First Refusal.** No later than five (5) Business Days after the date of the Sale Motion, Seller, with Buyer's cooperation, will provide all required information and notice to Franchisor in order that Franchisor may timely elect or waive its right of first refusal.

Section 8.5 **Contact with Employees, Customers and Suppliers.** Prior to the Closing, except as otherwise mutually agreed, Buyer and its representatives shall not contact or communicate with any of the employees, customers, landlords, developers and suppliers of Seller in connection with the Transaction contemplated by this Agreement, except with the prior consent of Seller, not to be unreasonably withheld; provided, however: (i) Buyer may contact or communicate with the Franchisor in connection with this Transaction, and (ii) Seller shall allow Buyer reasonable access to the key employees of Seller (as mutually agreed upon by the Parties), provided that Seller shall be allowed to have its representative(s) present at any such meeting. Nothing herein shall be deemed to prevent Buyer's representatives currently involved in the business operations of Seller from continuing their business activities consistent with past practices.

Section 8.6 **Evidence of Buyer's Ability to Perform.** Prior to the execution of this Agreement, Buyer shall have provided Seller with written evidence, in form and substance reasonably acceptable to Seller, of Buyer's financial ability to: (i) close the contemplated transaction under this Agreement; and (ii) perform Buyer's obligations under the Assumed Contracts.

Section 8.7 **Access to Seller's Information.** Prior to Closing, Seller shall provide Buyer and its representatives access to the Stores, the Leased Property and the Business, subject to reasonable prior notice during normal business hours, and any and all reasonably requested financial, legal, operational and other books and records, and any other such information reasonably requested by Buyer that is in Seller possession.

## ARTICLE 9 PROVISIONS RESPECTING EMPLOYEES



Section 9.1 **Seller's Employees.** Immediately upon Closing, Seller will notify all Employees that the Assets have been sold to Buyer and that their employment with Seller is terminated. Buyer and Seller agree that Buyer may, but is not obligated to, offer to the Employees employment with Buyer, on such terms as Buyer may determine. This Section 9.1 does not establish, as to any Employee, a contract of employment for a definite term or any term or any contractual right that his or her employment can only be terminated for just cause, and no Employee has any rights under this Agreement as a third-party beneficiary or otherwise. Any such offers of employment from Buyer shall be subject to Buyer's standard employment practices and policies, including Form I-9 compliance. Seller shall pay promptly after the Effective Time and in compliance with applicable laws, but in no event later than fourteen (14) days after the Closing Date, all wages, salaries, and benefits (including all severance amounts and other amounts due). Seller will retain responsibility for all wages, salary, severance benefits, insurance, accrued vacations, unpaid sick and holiday pay, and other obligations of any kind whatsoever, of the Employees, including, without limitation, obligations and liabilities under Seller's employment benefit plans, which accrue prior to and through the Effective Time (but not those which accrue subsequent to the Effective Time). Seller shall be responsible for compliance with all applicable laws affecting the Employees through the Effective Time (including any Laws affecting the termination of such Employees) and for all employment related Liabilities arising from or relating to the employment prior to the Effective Time or termination of such Employees by Seller. Seller shall retain, bear, and discharge, as appropriate, all Liabilities, and Buyer shall not have any Liability whatsoever, with respect to the employee benefit plans of Seller. Notwithstanding Seller's termination of the Employees as of the Effective Time, Seller agree to maintain any employee benefit plan relating to medical, vision, dental, or other health-related plans that by its terms continue in effect through the last day of the calendar month in which the Closing occurs.

Section 9.2 **Employment Matters.** Seller shall be responsible for all employees' wages, accrued bonuses, pension benefits, vacation time, F.I.C.A. unemployment and other taxes and benefits due as the employer of the employees at the Stores which have accrued and have been earned prior to the Closing Date, and Buyer shall be responsible for such compensation and benefits for those employees (in accordance with Buyer's policies and plans) Buyer hires to the extent accrued or earned from and after the Closing Date. Subject to Buyer's review and reasonable satisfaction of the employee information provided to Buyer pursuant to Section 6.11, and subject to Buyer's standard employment practices and policies, Buyer presently intends to hire substantially all of Seller's employees set forth in the information provided to Buyer pursuant to Section 6.11; however, the foregoing does not establish, as to any person, an offer of employment.

## ARTICLE 10 CONDITIONS TO CLOSING



Section 10.1 Conditions Applicable to Buyer and Seller. The respective obligations of each Party to consummate the Transaction contemplated by this Agreement are subject to the satisfaction or waiver on or prior to the Closing Date of the following conditions:

(a) Sale Order. The Bankruptcy Court shall have entered the Sale Order and the Sale Order shall not be subject to any stay.

(b) Franchisor. Franchisor shall have timely waived its right of first refusal and agreed to enter into New Franchise Agreements with Buyer.

(c) Conditions to Seller's Obligations. Each and every obligation of Seller under this Agreement to be performed at or before the Closing will be subject to the satisfaction, at or prior to the Closing, of the following conditions, unless waived in writing by Seller:

(i) The representations and warranties of Buyer contained in this Agreement shall be true and correct as of the date of this Agreement and shall be true and correct in all material respects as of immediately prior to the Closing (other than representations and warranties which address matters only as of a particular date, in which case such representations and warranties shall be true and correct, on and as of such particular date), with the same force and effect as if then made, and Seller shall have received a certificate to that effect from Buyer.

(ii) Buyer shall have performed or complied in all material respects with all agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

(iii) All third parties on all Assumed Contracts and Designated Leases shall have consented in writing to an assignment of such contracts to Buyer with Buyer's assumption thereof, if any such consent is required under applicable law.

(d) Conditions to Buyer's Obligations. Each and every obligation of Buyer under this Agreement to be performed at or before the Closing will be subject to the satisfaction, at or before the Closing, of the following conditions, unless waived in writing by Buyer:

(i) The representations and warranties of Seller contained in this Agreement shall be true and correct as of the date of this Agreement and shall be true and correct in all material respects as of immediately prior to the Closing (other than representations and warranties which address matters only as of a particular date, in which case such representations and warranties shall be true and correct, on and as of such particular date), with the same force and effect as if then made, and Buyer shall have received a certificate to such effect from Seller.

(ii) Seller shall have performed or complied in all material respects with all agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

(iii) the Sale Order shall become a Final Order on or before January 8, 2024 (the “**Outside Date**”);

(iv) Seller shall have tendered delivery of all items required to be delivered by Seller under this Agreement;

(v) The Assumed Contracts and Designated Leases shall have been assigned to Buyer in a form and manner consistent with this Agreement; and

(vi) No Proceeding that is not stayed by the Bankruptcy Court shall be pending before any Governmental Entity seeking or threatening to restrain or prohibit the consummation of the Transaction, or seeking to obtain substantial Damages in respect thereof, or involving a claim that consummation thereof would result in the violation of any applicable law.

## ARTICLE 11 TERMINATION

Section 11.1 **Termination.** This Agreement may be terminated at any time as follows:

(a) **Mutual Agreement.** By mutual written consent of Seller and Buyer;

(b) **Termination by Either Buyer or Seller.** This Agreement may be terminated at any time prior to the Closing Date by either Buyer or Seller if any Governmental Entity shall have issued an Order permanently restraining, enjoining, or otherwise prohibiting the consummation of the Transaction and either (i) thirty (30) days shall have elapsed from the issuance of such Order and such Order has not been removed or vacated, or (ii) such Order shall have become final and non-appealable.

(c) **Termination by Seller.** This Agreement may be terminated with no further liability hereunder at any time prior to the Closing Date by Seller as follows:

- a. if there has been a material breach by Buyer, which breach Buyer has failed to cure within five (5) Business Days following its receipt of written notice thereof from Seller;
- b. so long as Seller is not in default of its obligations hereunder, if any condition precedent of Seller specified in Section 10.1(c) shall not have been satisfied or waived or, in the reasonable judgment of Seller, shall have become reasonably unlikely to be satisfied by the Closing Date, unless the failure of such condition to have been satisfied was caused primarily by a material breach by Seller;
- c. if the Closing shall not have occurred on or before 5:00 p.m. Eastern Time on the Outside Date, but only to the extent the Closing has not occurred as of the Outside Date for reasons other than Seller's failure to meet its obligations hereunder.



(d) Termination by Buyer. This Agreement may be terminated at any time prior to the Closing Date by Buyer as follows:

- a. if the Sale Order does not become a Final Order duly entered by the Outside Date;
- b. if there has been a material breach by any Seller, which breach such Seller has failed to cure within five (5) Business Days following its receipt of written notice thereof from Buyer;
- c. so long as Buyer is not in default of its obligations hereunder, if any condition precedent of Buyer specified in Section 10.1(d) shall not have been satisfied or waived or, in the reasonable judgment of Buyer, shall have become reasonably unlikely to be satisfied, unless the failure of such condition to have been satisfied was caused primarily by a material breach by Buyer;
- d. if the Bankruptcy Court enters any Order approving any Alternative Transaction or confirming any chapter 11 plan involving any Alternative Transaction and the Buyer is not the Back-Up Bidder;
- e. if Buyer and Franchisor have not entered into the New Franchise Agreement by the Outside Date;
- f. if the Bankruptcy Case shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code, or a Chapter 11 trustee has been appointed, and, with respect to any of the foregoing, the trustee or Seller (as applicable) does not timely indicate its willingness to fulfill the obligations in this Agreement; or
- g. if the Closing shall not have occurred on or before 5:00 p.m. Eastern Time on the Outside Date, but only to the extent the Closing has not occurred as of the Outside Date for reasons other than Buyer's failure to meet its obligations hereunder.

(e) In the event of the termination of this Agreement pursuant to the provisions of this Article 11, no Party will have any liability of any nature whatsoever to the other under this Agreement, including liability for Damages, unless such Party is in default of its obligations under this Agreement, in which event the Party in default will be liable to the other Party for such default as set forth below. In addition, (i) if termination occurs pursuant to Section 11.1(a), (b) or (d), Buyer shall be entitled to a return of the Good Faith Deposit within ten (10) Business Days following such termination; and (ii) if termination occurs pursuant to Section 11.1(c), Seller shall be entitled to payment of the Good Faith Deposit within ten (10) Business Days following such termination. Buyer and Seller agree to execute and deliver to the Escrow Agent joint instructions with respect to disbursement of the Good Faith Deposit no later than five (5) Business Days after termination of this Agreement.



Section 11.2 **Default**. In the event the sale contracted for herein is not consummated due to breach or default on the part of Buyer of its obligations under this Agreement, and without fault on the part of Seller, then Seller's remedies hereunder shall be limited to the right to terminate this Agreement pursuant to Section 10.1(c) upon written notice to the Buyer and retain the Good Faith Deposit, and Seller may not otherwise seek recovery of damages or specific performance.

## ARTICLE 12 SURVIVAL OF AGREEMENTS; POST-CLOSING OBLIGATIONS

Section 12.1 **Survival of Representations, Warranties and Covenants**. The representations and warranties contained in this Agreement shall not survive the Closing.

Section 12.2 **Certain Rebates, Excluded Assets**. For rebates included in the Excluded Assets which are actually received by Buyer after the Closing, Buyer shall remit to Seller, Seller's pro-rated portion thereof based on the percentage of the 2023 calendar year occurring prior to Closing. Any rebate pre-payments or mutually agreed rebates received by Seller prior to or after the Closing for any period following the Closing Date shall be remitted to Buyer, including pursuant to Section 3.4(e). All such payments, remissions and reconciliation shall occur within thirty (30) days after the date on which any such rebate is received by a Party.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

Section 13.1 **Further Assurance and Assistance**. Each Party agrees that after the Closing Date it will, from time to time, upon the reasonable request of the other, execute, acknowledge and deliver in proper form any instrument of conveyance or further assurance reasonably necessary or desirable to transfer to Buyer the Assets and to otherwise carry out the terms of this Agreement.

Section 13.2 **Amendment and Modification**. This Agreement may be amended, modified or supplemented only by mutual written consent of all of the Parties.

Section 13.3 **Waiver of Compliance**. The failure by any Party at any time to require performance of any provision of this Agreement will not affect its right later to require such performance. No waiver in any one or more instances will (except as stated therein) be deemed to be a further or continuing waiver of any such condition or breach in other instances or a waiver of any condition or breach of any other term, covenant, representation or warranty.

Section 13.4 **Expenses**. All costs and expenses incurred in connection with this Agreement and the Transaction contemplated hereby will be paid by the Party incurring such expenses, except as provided elsewhere in this Agreement.

Section 13.5 **Notices**. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed given if delivered personally, delivered via email (with confirmation and where there is reasonable certainty that such email may be relied upon as valid), mailed by certified mail (postage prepaid, return receipt requested), or



delivered by national courier service to the Parties at the following addresses (or at such other address for a party as shall be specified by like notice) and shall be effective upon receipt (or upon the next succeeding Business Day if received after 5:00 p.m. local time on a Business Day or if received on a Saturday, Sunday or United States holiday). All notices and other communications shall be made as follows:

If to Buyer: RRG of Jacksonville, LLC  
525 South Flagler Drive, Suite 201  
West Palm Beach, FL 33401  
Attention: Michael L. Schmickle  
and Randy Pianin  
E-Mail: mschmickle@pbcap.com  
rpianin@royalrg.com

With a copy (which shall not constitute notice to Buyer) to:  
Nelson Mullins Riley & Scarborough LLP  
1905 Corporate Blvd. NW, Suite 310  
Boca Raton, Florida 33431  
Attention: Matthew M. Thompson  
E-Mail: matthew.thompson@nelsonmullins.com

If to Seller: Premier Kings, Inc., et al.  
c/o Aurora Management Partners  
112 South Tryon Street, Suite 1770  
Charlotte, NC 28284  
Attention: David M. Baker  
Email: dbaker@auroramp.com

With a copy (which shall not constitute notice to Seller) to:  
Cole Schotz P.C.  
1201 Wills Street, Suite 320  
Baltimore, MD 21231  
Attention: Gary Leibowitz, Esquire  
And Irving E. Walker, Esquire  
Email: gleibowitz@coleschotz.com  
iwalker@coleschotz.com

or to such other addresses as may be specified pursuant to notice given by either Party in accordance with the provisions of this Section 13.5.

Section 13.6 **Time**. Time is of the essence of this Agreement, provided that if any date upon which some action, notice or response is required of any party hereunder occurs on a day that is not a Business Day, such action, notice or response shall not be required until the next succeeding Business Day.

Section 13.7 **Assignability of Agreement.** This Agreement and the rights and obligations of the parties hereunder may not be transferred, assigned, pledged or hypothecated by any party without the prior written consent of the other party hereto. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Notwithstanding the foregoing, it is understood and agreed by the Parties that Buyer intends to establish affiliated entities for structuring, tax, and liability purposes, each of which may enter into the various agreements as contemplated in this Agreement, provided that Buyer shall remain liable to Seller under this Agreement in any event.

Section 13.8 **Governing Law; Consent to Jurisdiction; Waiver of Jury Trial.**

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Alabama, regardless of the laws that might otherwise govern under applicable principles of conflicts of law. The Parties each hereby irrevocably submit to the exclusive jurisdiction of the federal courts of Alabama for any claims or matters arising under or relating to this Agreement. Each Party also agrees not to bring any action or proceeding arising out of or relating to this Agreement in any court other a federal court of Alabama.

(b) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BUYER AND SELLER HEREBY IRREVOCABLY AND EXPRESSLY WAIVE ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER DOCUMENTS AND AGREEMENTS DELIVERED IN CONNECTION HERewith, THE TRANSACTION OR THE ACTIONS OF BUYER OR SELLER IN THE NEGOTIATION, ADMINISTRATION, OR ENFORCEMENT HEREOF OR THEREOF.

Section 13.9 **Attorneys' Fees.** In the event of any dispute, litigation or other proceeding between the Parties to enforce any of the provisions of this Agreement or any right of either Party hereunder, the unsuccessful party to such dispute, litigation or other proceeding shall pay to the successful party all costs and expenses, including reasonable attorneys' fees, incurred at trial, on appeal, and in any arbitration, administrative or other proceedings, all of which may be included in and as a part of the judgment rendered in such litigation. This Section 13.9 shall survive the Closing or a prior termination hereof.

Section 13.10 **Counterparts, Electronic Signatures.** This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. This Agreement and any other documents to be delivered in connection herewith may be electronically signed, and any electronic signatures or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility. All Schedules and Exhibits attached hereto and referred to herein are hereby incorporated herein by reference and made a part of this Agreement for all purposes as if fully set forth herein.



Section 13.11 **Headings**. The headings of the Sections and Articles of this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

Section 13.12 **No Reliance**. No third party is entitled to rely on any of the representations, warranties and agreements contained in this Agreement. Buyer and Seller assume no liability to any third party because of any reliance on the representations, warranties and agreements of Buyer or Seller contained in this Agreement.

Section 13.13 **Severability**. If any term or other provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. Upon such a determination, the parties hereto shall negotiate in good faith to modify this Agreement so as to affect the original intent of the parties as closely as possible in a reasonably acceptable manner in order that the Transaction contemplated hereby may be consummated as originally contemplated to the fullest extent possible.

Section 13.14 **Interpretation**. Unless the context requires otherwise, all words used in this Agreement in the singular number shall extend to and include the plural, all words in the plural number shall extend to and include the singular, and all words in either gender shall extend to and include both genders.

Section 13.15 **Force Majeure**. In no event shall Buyer be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, failure of suppliers of materials, accidents, war, invasion, epidemic, pandemic, acts or war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software or hardware) services. Reasonable diligence shall be used to remove the condition that prevents performance and shall not be entitled to suspend performance of its obligations in any greater scope or for any longer duration than is required by the event.

## ARTICLE 14 DEFINITIONS

Section 14.1 **Definitions**. For purposes of this Agreement, the following terms have the meanings specified below:

"**Affiliate**" of a Person (as defined herein) means any Person that directly or indirectly controls, is controlled by or is under common control with such Person and each of such Person's executive officers, directors and partners. For the purpose of this definition, "control" of a Person means the power to direct, or to cause the direction of, the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise, and the terms and phrases "controlling," "controlled by" and "under common control with" have correlative meanings.



**"Business Day"** means any day on which national banks located in the State of Alabama, are generally open to the conduct of banking business and excluding Saturdays and Sundays.

**"Contracts"** means all contracts, leases, subleases, deeds, mortgages, licenses, instruments, notes, commitments, purchase orders, customer orders, undertakings, indentures, joint ventures, and all other agreements, commitments, and legally binding arrangements, whether written or oral, and with respect to any of the foregoing, all amendments, supplements, extensions, addenda, or restatements relating thereto.

**"Damages"** means any and all actions, suits, proceedings (including any investigation or inquiries), losses, damages, costs, expenses, liabilities, obligations, and claims of any kind or nature whatsoever, including, without limitation, reasonable attorneys' fees and other legal costs and expenses.

**"Final Order"** means a judgment or Order of the Bankruptcy Court (or any other court of competent jurisdiction) entered by the clerk of the Bankruptcy Court (or such other court) on the docket in the Bankruptcy Case (or the docket of such other court), which has not been modified, amended, reversed, vacated or stayed (other than such modifications or amendments that are consented in writing to by Buyer) and as to which (a) the time to appeal, petition for certiorari, or move for a new trial, stay, reargument or rehearing has expired and as to which no appeal, petition for certiorari or motion for new trial, stay, reargument or rehearing shall then be pending or (b) if an appeal, writ of certiorari, new trial, stay, reargument or rehearing thereof has been sought, such judgment or Order of the Bankruptcy Court (or other court of competent jurisdiction) shall have been affirmed by the highest court to which such judgment or Order was appealed, or certiorari shall have been denied, or a new trial, stay, reargument or rehearing shall have expired, as a result of which such judgment or Order shall have become final in accordance with Rule 8002 of the Federal Rules of Bankruptcy Procedure; provided that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedures, or any analogous rule under the Federal Rules of Bankruptcy Procedure, may be filed relating to such judgment or Order, shall not cause such judgment or Order not to be a Final Order.

**"Franchise Agreements"** mean the certain Franchise Agreements by and between Franchisor and Seller for each of the locations listed in Exhibit F.

**"Franchisor"** means Restaurant Brands International, Inc. and/or Burger King Corporation and/or Burger King Company LLC, as applicable.

**"Governmental Entity"** means any foreign, federal, state or local government or any court, administrative or regulatory agency or commission or other governmental or quasi-governmental authority or agency having jurisdiction.

**"Knowledge of Seller" or "Seller's Knowledge"** means the current actual knowledge of Joginder Sidhu, on the date hereof and on the Closing Date, and does not include constructive knowledge or inquiry knowledge.

**"Liability" or "Liabilities"** means each and every demand, claim, action, loss (including any diminution in value), liability, judgment, damage, cost and expense of any kind or nature



whatsoever, including, without limitation, reasonable attorneys' fees and other legal costs and expenses.

**"Liens"** means all liens, claims, encumbrances, charges, mortgages, pledges and other similar security interests or restriction.

**"Material Adverse Effect"** means a material and adverse effect on the Assets, or financial condition, properties, business or results of operations of the Business, taken as a whole, or on the ability of Seller to perform its obligations under this Agreement or to consummate the Transaction contemplated herein; provided, however, that effects relating to (a) any adverse change, effect, event, occurrence, state of facts or development attributable to conditions affecting the industry in which Seller participates, the U.S. economy as a whole or the capital markets in general or the markets in which Seller and its parent company operate which does not materially and disproportionately affect Seller and its parent company, taken as a whole; (b) any adverse change, effect, event, occurrence, state of facts or development attributable to the reaction of employees, customers or suppliers of Seller to the public announcement of the Transaction contemplated by this Agreement, (c) any adverse change, effect, event, occurrence, state of facts or development arising from or relating to any change required by generally accepted accounting principles, in accounting requirements or principles or any change in applicable laws, rules or regulations or the interpretation thereof which does not materially and disproportionately affect Seller and its parent company, taken as a whole; or (d) the failure of Seller and its parent company to meet any projected financial or other results, in each case, shall not be deemed to constitute a "Material Adverse Effect" and shall not be considered in determining whether a "Material Adverse Effect" has occurred.

**"Person"** means an individual, a partnership, a limited liability company, a joint venture, a corporation, a trust, an unincorporated organization, a division or operating group of any of the foregoing, a government or any department or agency thereof, or any other entity.

**"Transaction"** means transactions contemplated by this Agreement and any of the Transaction Documents.

**"Transaction Documents"** means this Agreement and any and all of the agreements, contracts, certificates, orders, consents, approval, agreements and commitments executed and/or delivered in connection with transactions contemplated by this Agreement.

Section 14.2 **Entire Agreement**. This Agreement, including the agreements referred to in this Agreement, the Schedules and Exhibits attached to this Agreement and other documents referred to in this Agreement which form a part of this Agreement, contains the entire understanding of the parties to this Agreement in respect of the subject matter contained in this Agreement. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to in this Agreement. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

[Signatures on Following Pages]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in multiple original counterparts as of the date first above written.

**SELLER:**

**PREMIER KINGS OF GEORGIA, INC.**

DocuSigned by:  
*David Baker*  
By: \_\_\_\_\_  
Name: David M. Baker  
Title: Chief Restructuring Officer

**BUYER:**

**RRG OF JACKSONVILLE, LLC**

DocuSigned by:  
*Randy Pianin*  
By: \_\_\_\_\_  
Name: Randy Pianin  
Title: Manager

65533/0001-46290727v5  
4883-5714-6244 v.7  
65533/0001-46290727v8

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### **List of Exhibits and Schedules**

Exhibit A	List of Stores
Exhibit B	Existing Leases
Exhibit C	Form of Bill of Sale
Exhibit D	Form of Assignment and Assumption Agreement
Exhibit E	Form of Escrow Agreement
Exhibit F	Franchise Agreements
Schedule 1.2(a) -1	Assignable Contracts
Schedule 1.2(a) - 2	Designated Contracts
Schedule 1.3(a) -1	Assignable Leases
Schedule 1.3(a) - 2	Designated Leases
Schedule 1.5	Excluded Assets
Schedule 6.4	Compliance with Law
Schedule 6.6	Lease Defaults
Schedule 6.7	Contract Defaults
Schedule 6.9	Legal Proceedings
Schedule 6.11	Employees
Schedule 6.13	Commissions
Schedule 8.1	Pre-Closing Conduct of Business Covenant Exceptions

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# Exhibit A

## List of Store Locations

Store#	Operating Entity	Address	City	State	Zip Code
1197	Premier Kings of Georgia, Inc.	250 Monument Road	Jacksonville	FL	32225
1724	Premier Kings of Georgia, Inc.	5922 Merrill Road	Jacksonville	FL	32277
2873	Premier Kings of Georgia, Inc.	1940 S. 8th Street	Fernandina Beach	FL	32034
6985	Premier Kings of Georgia, Inc.	11031 Old St. Augustine Rd	Jacksonville	FL	32257
7068	Premier Kings of Georgia, Inc.	13180 Atlantic Blvd	Jacksonville	FL	32225
7121	Premier Kings of Georgia, Inc.	10142 Phillip's Hwy	Jacksonville	FL	32256
8907	Premier Kings of Georgia, Inc.	1162 Boone St Ext E	Kingsland	GA	31548
9942	Premier Kings of Georgia, Inc.	9090 Merrill Road	Jacksonville	FL	32225
10422	Premier Kings of Georgia, Inc.	542370 US Highway 1	Callahan	FL	32011
11309	Premier Kings of Georgia, Inc.	462581 SR 200	Yulee	FL	32097
13106	Premier Kings of Georgia, Inc.	13404 Sutton Park Dr.	Jacksonville	FL	32224
15498	Premier Kings of Georgia, Inc.	13049 North Main St	Jacksonville	FL	32218
16751	Premier Kings of Georgia, Inc.	184 S. Hwy 17	East Palatka	FL	32131
17831	Premier Kings of Georgia, Inc.	11761 Beach Blvd Ste 15	Jacksonville	FL	32246
19411	Premier Kings of Georgia, Inc.	2455 SR 207	St Augustine	FL	32084
23806	Premier Kings of Georgia, Inc.	2430 Osborne Rd	St Mary's	GA	31558
1691	Premier Kings of Georgia, Inc.	5015 New Jesup Hwy	Brunswick	GA	31520
322	Premier Kings of Georgia, Inc.	601 Martin Luther King Blvd	Savannah	GA	31401
521	Premier Kings of Georgia, Inc.	7923 White Bluff Road	Savannah	GA	31406
1226	Premier Kings of Georgia, Inc.	14 W. DeRenne Ave	Savannah	GA	31405
1404	Premier Kings of Georgia, Inc.	11711 Abercorn Street	Savannah	GA	31419
1471	Premier Kings of Georgia, Inc.	1295 Ribaut Rd	Beaufort	SC	29902
1551	Premier Kings of Georgia, Inc.	4241 Augusta Road	Garden City	GA	31408
1724	Premier Kings of Georgia, Inc.	1710 Memorial Drive	Waycross	GA	31501
2397	Premier Kings of Georgia, Inc.	998 Sunset Blvd	Jesup	GA	31545
3048	Premier Kings of Georgia, Inc.	18770 Whyte Harder Blvd	Hardeeville	SC	29927
5571	Premier Kings of Georgia, Inc.	415 US Highway 80 E	Pooler	GA	31322
10241	Premier Kings of Georgia, Inc.	Highway 251 Magnolia Bluff Way	Darien	GA	31305
10893	Premier Kings of Georgia, Inc.	815 Elma G. Miles Parkway	Hinesville	GA	31313
12107	Premier Kings of Georgia, Inc.	115 Golden Isles Plaza	Brunswick	GA	31520
12792	Premier Kings of Georgia, Inc.	3527 Highway 84 West	Blackshear	GA	31516
12906	Premier Kings of Georgia, Inc.	8257 E Main St	Ridgeland	SC	29936
13243	Premier Kings of Georgia, Inc.	154 S. Main St	Baxley	GA	31513
14209	Premier Kings of Georgia, Inc.	201 Museum St	Hilton Head Island	SC	29926
14614	Premier Kings of Georgia, Inc.	602 Fair Road	Statesboro	GA	30458
15760	Premier Kings of Georgia, Inc.	4268 Ogeechee Road	Savannah	GA	31405
23049	Premier Kings of Georgia, Inc.	496 Jimmy Detloach Parkway	Savannah	GA	31407
23155	Premier Kings of Georgia, Inc.	3 Baylor Brook Dr	Okatie	SC	29909
24560	Premier Kings of Georgia, Inc.	5918 Ogeechee Road	Savannah	GA	31419
25882	Premier Kings of Georgia, Inc.	106 N Duval St	Claxton	GA	30417
25937	Premier Kings of Georgia, Inc.	4660 Hwy 17	Richmond Hill	GA	31324
26749	Premier Kings of Georgia, Inc.	13708 East Oglethorpe Hwy	Midway	GA	31320
26868	Premier Kings of Georgia, Inc.	7306 Hwy 21	Port Wentworth	GA	31407
27690	Premier Kings of Georgia, Inc.	13200 W Cleveland Street	Nahunta	GA	31553

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# Exhibit B

## Leased Properties

Store Number	Store Address	City	State	Zip Code	Lessor/Sublessor	Lessor Address	Lessee/Op Entity	Date of Lease or Sublease	As Amended or Assigned	Expiry of Primary Term or Current Option Period
322	601 Martin Luther King Blvd	Savannah	GA	31401	Crown Premier Properties, LLC	10 Mall Court, Suite A, Savannah, GA 31411 ATTN: Fonda Salgueiro	PKGA	1/26/97	1/18/16 1/20/16 6/18/19	6/17/39
521	7923 White Bluff Road	Savannah	GA	31406	Burger King Corporation	5707 Blue Lagoon Drive Miami FL 33126 ATTN: Robin Shafer	PKGA	1/19/21		10/31/41
1197	250 Monument Road	Jacksonville	FL	32225	Burger King Corporation	5707 Blue Lagoon Drive Miami FL 33126 ATTN: Robin Shafer	PKGA	10/13/16	1/31/18	12/31/36
1226	14 W. DeRenne Ave	Savannah	GA	31405	Crown Premier Properties, LLC	10 Mall Court, Suite A Savannah, GA 31411 ATTN: Fonda Salgueiro	PKGA	6/18/19		6/29/39
1403	11711 Abercorn Street	Savannah	GA	31419	Burger King Corporation	5707 Blue Lagoon Drive Miami FL 33126 ATTN: Robin Shafer	PKGA	10/24/20		10/31/41
1471	1795 RIBAULT RD	Amaufort	SC	29902	YSB Capital	350 Riverdale Drive Fort Lee, NJ 07024	PKGA	12/5/14	1/31/18	1/31/38
1551	4241 Augusta Road	Garden City	GA	31408	Burger King Corporation	5707 Blue Lagoon Drive Miami FL 33126 ATTN: Robin Shafer	PKGA	10/31/21 Approximate		10/31/41
1691	5015 New Jessup	Brunswick	GA	31520	BQX 5015, LLC	c/o President Mgmt Corp 1430 Broadway Suite 903 New York, NY 10018 ATTN: Mark Nagel	PKGA	6/30/92	4/16/13 8/1/13 6/15/16	8/1/33
1724	5222 Merrill Road	Jacksonville	FL	32277	Burger King Corporation	5707 Blue Lagoon Drive Miami FL 33126 ATTN: Robin Shafer	PKGA	9/1/21		12/31/40
2124	1710 Memorial Drive	Waycross	GA	31501	SRI Ventures	1141 Southpoint Dr. E, Suite B, Jacksonville, AL 32216 ATTN: John McCue	PKGA	1/28/05	6/15/16	1/31/27
2397	998 Sunset Blvd. Loc 129	Jessup	GA	31545	Burger King Corporation	5707 Blue Lagoon Drive Miami FL 33126 ATTN: Robin Shafer	PKGA	5/25/18		9/24/38

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Store Number	Store Address	City	State	Zip Code	Lessor/Sublessor	Lessor Address	Lessor Op Entity	Date of Lease or Sublease	As Amended or Assigned	Expiry of Primary Term or Current Option Period
2873	1940 S. 8th Street	Fernandina Beach	FL	32034	Power House Marina	16205 Biscayne Blvd #2201, Aventura, FL 33160	PKGA	1/31/18		1/31/18
3048	18770 WHITE HAROLE BLVD	Hardeeville	SC	29927	Dutchtown Villas Apartments, LLC	7370 Hodgson Memorial Drive, Suite D-10 Savannah, GA 31406	PKGA	12/3/14	1/31/15	1/31/18
5571	413 US HIGHWAY 80 E	Pooler	GA	31372	College Street Station, LLC	7370 Hodgson Memorial Drive, Suite D-10 Savannah, GA 31406 ATTN: Jeanne Whitney	PKGA	1/31/18		1/31/18
6986	11031 Old St. Augustine Rd	Jacksonville	FL	32217	South Coast Enterprises, LLC	14125 Robert Paro Ct., Chantilly, VA 20153 ATTN: Ashok Mehra	PKGA	1/31/18		1/31/18
7068	13180 Atlantic Blvd	Jacksonville	FL	32225	Burger King Corporation	5707 Blue Lagoon Drive Miami FL 33176 ATTN: Robin Shafer	PKGA	2/28/22		12/31/41
7171	10147 Phillips Hwy	Jacksonville	FL	32256	Burger King Corporation	5707 Blue Lagoon Drive Miami FL 33126 ATTN: Robin Shafer	PKGA	1/31/18		12/31/42
8907	1152 Boone Ave Ext E	Kingsland	GA	31548	Premier Kings Holdings of Georgia, LLC	Estate of Manraj S Sidhu c/o Robert Ritchey P.O. Drawer 4540 Montgomery, AL 36103-4540	PKGA	6/15/16	10/30/18	10/31/18
9942	9090 Merrif Road	Jacksonville	FL	32225	Justin Merrill	506 South Dixie Hwy Hallandale, FL 33009	PKGA	2/1/18		9/28/18
10241	13060 Highway 251	Darien	GA	31105	Premier Kings Holdings of Georgia, LLC	Estate of Manraj S Sidhu c/o Robert Ritchey P.O. Drawer 4540 Montgomery, AL 36103-4540	PKGA	6/15/16	10/30/18	10/31/18
10422	542370 US Highway 1	Gallatin	FL	32011	DEW1014 Investments LLC	1920 E. Hallandale Beach Blvd Suite 900 Hallandale Beach, FL 33009	PKGA	2/1/18/		1/31/18
10893	815 Elma G. Miles Parkway	Hainesville	GA	31133	Crown Premier Properties, LLC	10 Mail Court, Suite A Savannah, GA 31411 ATTN: Fonda Salgueiro	PKGA	6/18/19		6/30/19

Store Number	Store Address	City	State	Zip Code	Lessor/Sublessor	Lessor Address	Lessor Op Entity	Date of Lease or Sublease	As Amended or Assigned	Expiry of Primary Term or Current Option Period
11309	462591 SR 200	Yulee	FL	32097	South Coast Enterprises, LLC	14125 Robert Paro Ct, Chantilly, VA 20153 ATTN: Ashok Mehra	PKGA	1/31/18		1/31/18
12107	115 Golden Isles Plaza	Brunswick	GA	31520	Premier Kings Holdings of Georgia, LLC	Estate of Manraj S Sidhu c/o Robert Ritchey P.O. Drawer 4540 Montgomery, AL 36103-4540	PKGA	6/15/16	10/30/18	10/31/18
12792	10771 Highway 84 West	Blackshear	GA	31516	Premier Kings Holdings of Georgia, LLC	Estate of Manraj S Sidhu c/o Robert Ritchey P.O. Drawer 4540 Montgomery, AL 36103-4540	PKGA	6/15/16	10/30/18	10/31/18
12906	4257 E. MAIN ST	Ridgeland	SC	29936	J Grel LLC	488 NE 18th Street, Unit 415, Miami, FL 33132	PKGA	1/31/18	8/4/22 8/9/27	1/31/18
13106	13404 Sutton Park Dr.	Jacksonville	FL	32224	Tyler BK Associates LLC	17017 Glacier Bay Drive Boynton Beach, FL 33473 ATTN: Neil Tepper	PKGA	1/31/18	4/27/23	1/31/18
13243	154 S. Main St.	Baxley	GA	31513	Premier Kings Holdings of Georgia, LLC	Estate of Manraj S Sidhu c/o Robert Ritchey P.O. Drawer 4540 Montgomery, AL 36103-4540	PKGA	7/6/16	10/30/18	10/31/18
14209	201 MUSEUM ST	Hilton Head Isl	SC	29926	GPD Family Properties	501 East Sunny Hills Road Fullerton, CA 92835 ATTN: Ryan Dally	PKGA	1/31/18		1/31/18
14614	602 Fair Road	Statesboro	GA	30458	Crown Premier Properties, LLC	10 Mail Court, Suite A Savannah, GA 31411 ATTN: Fonda Salgueiro	PKGA	6/18/19		6/30/19
15499	13649 North Main St	Jacksonville	FL	32218	Premier Kings Holdings of Georgia, LLC	Estate of Manraj S Sidhu c/o Robert Ritchey P.O. Drawer 4540 Montgomery, AL 36103-4540	PKGA	8/1/17	10/30/18	10/31/18
15760	4268 Ogechee Road	Savannah	GA	31405	175 W. Arenas Avi-Ross, LLC	222 Karen Ave #707 Las Vegas, NV 89109 ATTN: Marina Rossi	PKGA	6/18/19		6/30/19

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Store Number	Store Address	City	State	Zip Code	Lessor/Sublessor	Lessor Address	Lessee/Op Entity	Date of Lease or Sublease	As Amended or Assigned	Expiry of Primary Term or Current Option Period
16751	184 S. Hwy 17	East Palatka	FL	32131	South Coast Enterprises, LLC	14125 Robert Paris Ct, Chantilly, VA 20151 ATTN: Ashok Mehta	PKGA	1/31/18		1/31/38
17831	11761 Beach Blvd	St Jacksonville	FL	32246	South Coast Enterprises, LLC/Halimian Holdings	14125 Robert Paris Ct, Chantilly, VA 20151 ATTN: Ashok Mehta	PKGA	2/1/18		8/31/30
19411	2455 SR 207	St Augustine	FL	32084	South Coast Enterprises, LLC	14125 Robert Paris Ct, Chantilly, VA 20151 ATTN: Ashok Mehta	PKGA	4/31/18		5/31/16
23049	495 Jimmy DeLoach Park	Savannah	GA	31407	Crown Premier Properties, LLC	10 Mall Court, Suite A, Savannah, GA 31411 ATTN: Fonda Salgueiro	PKGA	6/13/19		6/30/39
23153	3 SAYLOR BROOK DR	Okatie	SC	29909	Rave RE, LLC	14125 Robert Paris Ct, Chantilly, VA 20151 ATTN: Ashok Mehta	PKGA	1/31/18		1/31/38
23806	2430 Osborne Rd	St Mary's	GA	31558	Premier Kings Holdings of Georgia, LLC	Estate of Manraj S Sidhu c/o Robert Ritchey P.O. Drawer 4540 Montgomery, AL 36103-4540	PKGA	3/28/17	10/30/18	10/31/38
24500	5910 Ogeechee Road	Savannah	GA	31419	Grant Realty Corp	1982 Ashley Hall Road Charleston, SC 29407 ATTN: Barry Newton	PKGA	4/27/17	1/22/15	12/31/37
25882	106 N Duval St	Claxton	GA	30417	Premier Holdings of Georgia, LLC	Estate of Manraj S Sidhu c/o Robert Ritchey P.O. Drawer 4540	PKGA	12/13/18		12/29/38
25917	4660 Hwy 17	Richmond Hill	GA	31324	Premier Holdings of Georgia, LLC	Estate of Manraj S Sidhu c/o Robert Ritchey P.O. Drawer 4540	PKGA	8/5/19		11/4/39
26749	13706 East Oglethorpe	Midway	GA	31320	Premier Holdings of Georgia, LLC	Estate of Manraj S Sidhu c/o Robert Ritchey P.O. Drawer 4540	PKGA	5/24/19		8/15/39
26808	7304 Hwy 11	Port Wentworth	GA	31407	Port Wentworth, (GL to PKGA)PHGA (Del Agent w/PK-GA)	c/o Cape Asset Management 3735 Beam Road, Suite B Charlotte, NC 28217	PKGA	5/8/18 (GL) 5/17/19 Dev Agr	8/3/18 (GL)	3/31/39
27690	13200 W Cleveland Street	Nahunta	GA	31553	Premier Holdings of Georgia, LLC	Estate of Manraj S Sidhu c/o Robert Ritchey P.O. Drawer 4540 Montgomery, AL 36103-4540	PKGA	3/1/19		12/15/39

\*PKGA - Premier Kings of Georgia, Inc.

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## Exhibit C

### Bill of Sale

THIS BILL OF SALE (this "**Bill of Sale**") is made and entered into as of [\_\_\_\_\_] 2023, by Premier Kings of Georgia, Inc., a Georgia corporation ("**Seller**") in favor of \_\_\_\_\_, a \_\_\_\_\_ ("**Buyer**"). Seller and Buyer are referred to collectively as "**Parties**" herein, and each individually, a "**Party**".

### RECITALS

WHEREAS, Buyer and Seller are parties to that certain Asset Purchase Agreement dated as of [\_\_\_\_\_] 2023 (the "**Purchase Agreement**"), pursuant to which Seller agreed to sell, convey, assign, transfer and deliver to Buyer, all of its respective right, title and interest in and to the Assets (as defined therein), and Buyer agreed to acquire the same; and

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

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

### AGREEMENT

1. Assignment. Subject to the terms and conditions set forth in the Purchase Agreement, for valuable consideration received from Buyer, Seller does hereby irrevocably and unconditionally sell, assign, transfer, convey and deliver to Buyer, its successors and assigns forever, all of Seller's rights, title and interest in and to the Assets, including good and marketable title thereto, free and clear of any and all Liens, to have and to hold the same and each and all thereof unto Buyer, its successors and assigns forever, to its and their own use and benefit forever.
2. Further Assurances. In case at any time after the date hereof any further actions are necessary or desirable to carry out the purposes of this Bill of Sale, Seller shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required or requested by Buyer to carry out the provisions hereof.
3. Instrument of Conveyance Only. This Bill of Sale is being made by Seller pursuant to the requirements of the Purchase Agreement, the terms and conditions of which are incorporated herein by this reference, and this Bill of Sale shall be subject to such terms and conditions. Except for the actual conveyance of the Assets as set forth in Section 1 of this Bill of Sale, nothing set forth in this Bill of Sale is intended to or shall expand, enlarge, modify, restrict, limit, or abridge any of the terms, representations, warranties, covenants, conditions, agreements, provisions, rights, benefits, obligations or liabilities of the Parties beyond that set

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forth in the Purchase Agreement. In the event of any conflict, ambiguity or discrepancy between the terms or conditions of the Purchase Agreement and this Bill of Sale, the terms and conditions of the Purchase Agreement shall be controlling in all respects.

4. No Third Party Beneficiaries. This Bill of Sale is for the sole and exclusive benefit of the Parties and their respective successor and permitted assigns, and nothing herein is intended or shall be construed to confer upon any person other than the Parties and their respective successors and permitted assigns any rights, remedies or claims under, or by any reason of, this Bill of Sale of any term, covenant or condition hereof.
5. Governing Law; Disputes. The Parties agree that this Bill of Sale shall be governed by and construed in accordance with the laws of the State of Alabama without regard to such state's conflicts of laws rules. Any dispute arising from this Bill of Sale shall be subject to the terms and conditions of the Purchase Agreement.
6. Counterparts. This Bill of Sale may be executed in multiple counterparts, each of which will constitute an original and all of which, when taken together, will constitute one and the same agreement. Seller may deliver executed signature pages to this Bill of Sale by facsimile or email transmission. No Party may raise as a defense to the formation or enforceability of this Bill of Sale, and each Party forever waives any such defense, either (a) the use of a facsimile or email transmission to deliver a signature or (b) the fact that any signature was signed and subsequently transmitted by facsimile or email transmission.

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

**SELLER:**

PREMIER KINGS OF GEORGIA, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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## Exhibit D

### Assignment and Assumption Agreement

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment") is made and entered into as of \_\_\_\_\_, 2023, by and among Premier Kings of Georgia, Inc., a Georgia corporation ("**Assignor**") and \_\_\_\_\_, a \_\_\_\_\_ ("**Assignee**"). Assignor and Assignee are referred to collectively as "**Parties**" herein, and each individually, a "**Party**".

### RECITALS

WHEREAS, Assignor and Assignee are parties to that certain Asset Purchase Agreement dated as of [\_\_\_\_\_] 2023 (the "**Purchase Agreement**"), pursuant to which Assignor agreed to assign, and Assignee agreed to assume, all of Assignor's right, title and interest in and to the Assumed Contracts;

WHEREAS, in connection with the consummation of the transactions contemplated by the Purchase Agreement, Assignor agreed to assign, and Assignee agreed to assume, pay, perform, discharge or otherwise satisfy the Assumed Liabilities; and

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

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

### AGREEMENT

1. Assignment of Assumed Contracts. Subject to the terms and conditions set forth in the Purchase Agreement, for valuable consideration received from Assignee, Assignor hereby assigns, transfers and conveys to Assignee all of Assignor's right, title and interest in, to and under the Assumed Contracts and Assignee accepts such assignment.
2. Assumption of Assumed Liabilities. Subject to the terms and conditions set forth in the Purchase Agreement, Assignor hereby assigns to Assignee the Assumed Liabilities and Assignee hereby accepts such assignment and agrees to pay, perform, discharge or otherwise satisfy the Assumed Liabilities. Other than as specifically set forth herein, Assignee assumes no debt, liability, or obligation of Assignor all of which shall remain the responsibility of Assignor and shall be Excluded Liabilities.
3. Further Assurances. In case at any time after the date hereof any further actions are necessary or desirable to carry out the purposes of this Assignment, the Parties shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof.

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4. Instrument of Conveyance Only. This Assignment is being made by the Parties pursuant to the requirements of the Purchase Agreement, the terms and conditions of which are incorporated herein by this reference, and this Assignment shall be subject to such terms and conditions. Except for the actual conveyance of the Assumed Contracts as set forth in Section 1 of this Assignment and the assumption of the Assumed Liabilities as set forth in Section 2 of this Assignment, nothing set forth in this Assignment is intended to or shall expand, enlarge, modify, restrict, limit, or abridge any of the terms, representations, warranties, covenants, conditions, agreements, provisions, rights, benefits, obligations or liabilities of Assignors or Assignee beyond that set forth in the Purchase Agreement. In the event of any conflict, ambiguity or discrepancy between the terms or conditions of the Purchase Agreement and this Assignment, the terms and conditions of the Purchase Agreement shall be controlling in all respects.
5. No Third Party Beneficiaries. This Assignment is for the sole and exclusive benefit of the Parties and their respective successor and permitted assigns, and nothing herein is intended or shall be construed to confer upon any person other than the Parties and their respective successors and permitted assigns any rights, remedies or claims under, or by any reason of, this Assignment of any term, covenant or condition hereof.
6. Governing Law; Disputes. The Parties agree that this Assignment shall be governed by and construed in accordance with the laws of the State of Alabama without regard to such state's conflicts of laws rules. Any dispute arising from this Assignment shall be subject to the terms and conditions of the Purchase Agreement.
7. Counterparts. This Assignment may be executed in multiple counterparts, each of which will constitute an original and all of which, when taken together, will constitute one and the same agreement. The Parties may deliver executed signature pages to this Assignment by facsimile or email transmission. No Party may raise as a defense to the formation or enforceability of this Assignment, and each Party forever waives any such defense, either (a) the use of a facsimile or email transmission to deliver a signature or (b) the fact that any signature was signed and subsequently transmitted by facsimile or email transmission.

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IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment effective as of the date first set forth above.

**ASSIGNOR:**

PREMIER KINGS OF GEORGIA, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNEE:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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# Exhibit E

## Franchise Agreements

Store#	Operating Entity	Original Signer	Agreement Date	Date Assigned to PK	Agreement Addendum	Address	City	State	Zip Code
1197	PKGA	Vance Russell (South Coast Enterprises, LLC)	12/2/2016	1/31/2018	Franchise Agreement Addendum BKO7 signed on 12/2/16	250 Monument Road	Jacksonville	FL	32225
1724	PKGA	Manraj S. Sidhu	5/12/2022		Successor Addendum signed on 5/12/22 Franchise Agreement Addendum BKO7 signed on 5/12/22	5922 Merrill Road	Jacksonville	FL	32277
2873	PKGA	Vance Russell (South Coast Enterprises, LLC)	10/5/2010	1/31/2018		1940 S. 8th Street	Fernandina Beach	FL	32034
8986	PKGA	Vance Russell (South Coast Enterprises, LLC)	Per BKC 12/7/10			11031 Old St. Augustine Rd	Jacksonville	FL	32257
7068	PKGA	Manraj S. Sidhu	Per BKC 2/24/22			13180 Atlantic Blvd	Jacksonville	FL	32225
7121	PKGA	Vance Russell (South Coast Enterprises, LLC)	4/10/2015	1/31/2018		10142 Philip's Hwy	Jacksonville	FL	32256
8907	PKGA	Manraj S. Sidhu	8/21/2017		Successor Addendum signed on 8/21/17	1162 Boone St Ext E	Kingsland	GA	31546
9942	PKGA	Vance Russell (South Coast Enterprises, LLC)	12/31/2016	1/31/2018		9090 Merrill Road	Jacksonville	FL	32225
10422	PKGA	Vance Russell (South Coast Enterprises, LLC)	12/1/2014	1/31/2018		542370 US Highway 1	Callahan	FL	32011
11309	PKGA	Vance Russell (South Coast Enterprises, LLC)	8/31/2015	1/31/2018		462581 SR 200	Yulee	FL	32097
13106	PKGA	Vance Russell (South Coast Enterprises, LLC)	12/16/2016	1/31/2018		13404 Sutton Park Dr.	Jacksonville	FL	32224
15499	PKGA	Manraj S. Sidhu	3/31/2017		Replacement Franchise Addendum signed on 3/31/17	13049 North Main St	Jacksonville	FL	32218
16751	PKGA	Vance Russell (South Coast Enterprises, LLC)	10/1/2008	1/31/2018		184 S. Hwy 17	East Palatka	FL	32131
17831	PKGA	Vance Russell (South Coast Enterprises, LLC)	12/10/2010	1/31/2018		11761 Beach Blvd Ste 15	Jacksonville	FL	32246
19411	PKGA	Vance Russell (South Coast Enterprises, LLC)	11/22/2013	1/31/2018		2455 SR 207	St Augustine	FL	32084
23806	PKGA	Manraj S. Sidhu	3/28/2017		Franchise Agreement Addendum signed on 3/28/17	2430 Osborne Rd	St Mary's	GA	31558
1691	PKGA	Carol Slade (Parks Restaurant Management, Inc.)	2/13/2014	6/15/2016		5015 New Jesup Hwy	Brunswick	GA	31520
322	PKGA	Alex Salgueiro (Savannah Restaurants Corporation)	11/28/2017	6/17/2019		601 Martin Luther King Blvd	Savannah	GA	31401

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Store#	Operating Entity	Original Signer	Agreement Date	Date Assigned to PK	Agreement Addendum	Address	City	State	Zip Code
521	PKGA	Manraj S. Sidhu	10/1/2021		Successor Addendum signed on 10/1/21 Franchise Agreement Addendum B&C signed on 10/1/21	7923 White Bluff Road	Savannah	GA	31406
1226	PKGA	Alex Salgueiro (Savannah Restaurants Corporation)	9/10/2015	6/17/2019		14 W. DeRenne Ave	Savannah	GA	31405
1404	PKGA	Manraj S. Sidhu	Per B&C 10/1/21			11711 Abercorn Street	Savannah	GA	31419
1471	PKGA	Ashok Mehta (Rave Enterprises, LLC)	12/7/2014	1/31/2018		1295 Ribaut Rd	Beaufort	SC	29902
1551	PKGA	Manraj S. Sidhu	10/1/2021		Successor Addendum signed on 10/1/21 Franchise Agreement Addendum B&C signed on 10/1/21	4241 Augusta Road	Garden City	GA	31408
2124	PKGA	Carol Slade (Parks Restaurant Management, Inc.)	3/30/2011	5/15/2016		1710 Memorial Drive	Waycross	GA	31501
2357	PKGA	Manraj S. Sidhu	Per B&C 4/17/19			998 Sunset Blvd	Jesup	GA	31545
3048	PKGA	Ashok Mehta (Rave Enterprises, LLC)	8/31/2017	1/31/2018		16770 Whyte Hardee Blvd	Hardeeville	SC	29927
3571	PKGA	Ashok Mehta (Rave Enterprises, LLC)	12/7/2014	1/31/2018		415 US Highway 80 E	Pooler	GA	31322
10241	PKGA	Manraj S. Sidhu	Per B&C 11/30/18			Highway 251 Magnolia Bluff Way	Darien	GA	31305
10893	PKGA	Alex Salgueiro (Savannah Restaurants Corporation)	12/11/2017	6/17/2019		815 Fima G. Miles Parkway	Hinewille	GA	31113
12107	PKGA	Manraj S. Sidhu	Per B&C 12/20/2018			115 Golden Isles Plaza	Brunswick	GA	31520
12792	PKGA	Manraj S. Sidhu	11/30/2018		Successor Addendum signed on 11/30/18	3527 Highway 64 West	Blackshear	GA	31516
12906	PKGA	Ashok Mehta (Rave Enterprises, LLC)	11/16/2016	1/31/2018		8257 E Main St	Ridgeland	SC	29936
13243	PKGA	Manraj S. Sidhu	11/30/2018		Successor Addendum signed on 11/27/18	154 S. Main St.	Baxley	GA	31513
14709	PKGA	Ashok Mehta (Rave Enterprises, LLC)	9/28/2017	1/31/2018		201 Museum St	Hilton Head Island	SC	29926
14614	PKGA	Alex Salgueiro (Savannah Restaurants Corporation)	6/4/2003	6/17/2019		602 Fair Road	Statesboro	GA	30458
15760	PKGA	Alex Salgueiro (Savannah Restaurants Corporation)	11/20/2006	6/17/2019		4268 Ogeechee Road	Savannah	GA	31405
23049	PKGA	Alex Salgueiro (Savannah Restaurants Corporation)	12/30/2016	6/17/2019		496 Jimmy DeLoach Parkway	Savannah	GA	31407
23155	PKGA	Ashok Mehta (Rave Enterprises, LLC)	12/27/2016	1/31/2018		3 Baylor Brook Dr	Oakatie	SC	29909
24560	PKGA	Manraj S. Sidhu	12/31/2017		Franchise Agreement Addendum signed on 12/31/17	5918 Ogeechee Road	Savannah	GA	31419
25882	PKGA	Manraj S. Sidhu	Per B&C 12/30/2018			106 N Duval St	Claxton	GA	30417
25937	PKGA	Manraj S. Sidhu	11/5/2019		Franchise Agreement Addendum signed on 11/5/19	4860 Hwy 17	Richmond Hill	GA	31374

Store#	Operating Entity	Original Signer	Agreement Date	Date Assigned to PK	Agreement Addendum	Address	City	State	Zip Code
26749	PKGA	Manraj S. Sidhu	8/26/2019		Franchise Agreement Addendum signed on 8/20/19	13708 East Oglethorpe Hwy	Midway	GA	31320
26868	PKGA	Manraj S. Sidhu	8/1/2019		Franchise Agreement Addendum signed on 8/1/19	7306 Hwy 21	Port Wentworth	GA	31407
27690	PKGA	Manraj S. Sidhu	12/20/2019		Franchise Agreement Addendum signed on 12/20/19	13200 W Cleveland Street	Nahunta	GA	31553

\*PKGA - Premier Kings of Georgia, Inc.

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Schedule 1.2(a) -1  
Assignable Contracts

None.

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Schedule 1.2(a) – 2  
Designated Contracts

None

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**Schedule 1.3(a) -1  
Assignable Leases**

Store Number	Store Address	City	State	Zip Code	Lessor/Sublessor	Lessor Address	Lessee/Op Entity	Date of Lease or Sublease	As Amended or Assigned	Expiry of Primary Term or Current Option Period
322	501 Martin Luther King Blvd	Savannah	GA	31401	Crown Premier Properties, LLC	10 Mall Court, Suite A, Savannah, GA 31411 ATTN: Fonda Saiguero	PKGA	1/26/97	1/18/16 1/20/16 6/18/19	6/17/39
521	7971 White Bluff Road	Savannah	GA	31405	Burger King Corporation	5707 Blue Lagoon Drive Miami FL 33126 ATTN: Robin Shafer	PKGA	1/19/21		10/31/41
1197	750 Monument Road	Jacksonville	FL	32225	Burger King Corporation	5707 Blue Lagoon Drive Miami FL 33126 ATTN: Robin Shafer	PKGA	10/13/16	1/31/18	12/31/36
1226	14 W. DeRenne Ave	Savannah	GA	31405	Crown Premier Properties, LLC	10 Mall Court, Suite A Savannah, GA 31411 ATTN: Fonda Saiguero	PKGA	6/18/19		6/29/39
1404	11711 Abercorn Street	Savannah	GA	31419	Burger King Corporation	5707 Blue Lagoon Drive Miami FL 33126 ATTN: Robin Shafer	PKGA	10/24/20		10/31/41
1471	1285 RIBAULT RD	Beaufort	SC	29902	YSB Capital	350 Riverdale Drive Fort Lee, NJ 07024	PKGA	12/5/14	1/31/18	1/31/38
1551	4241 Augusta Road	Garden City	GA	31408	Burger King Corporation	5707 Blue Lagoon Drive Miami FL 33126 ATTN: Robin Shafer	PKGA	10/31/21 Approximate		10/31/41
1691	5015 New Setup	Brunswick	GA	31520	BQK 5015, LLC	efn Provident Mgmt Corp 1430 Broadway Suite 903 New York, NY 10018 ATTN: Mark Nagel	PKGA	6/30/97	4/16/13 8/1/13 6/15/16	8/1/33
1724	5922 Merrill Road	Jacksonville	FL	32277	Burger King Corporation	5707 Blue Lagoon Drive Miami FL 33126 ATTN: Robin Shafer	PKGA	9/1/21		12/31/40
2124	1710 Memorial Drive	Waycross	GA	31501	SRJ Ventures	4141 Southpoint Dr. E, Suite B, Jacksonville, AL 32216 ATTN: John Mecue	PKGA	1/28/05	6/15/16	1/31/27
2397	998 Sunset Blvd Loc 129	Jesup	GA	31545	Burger King Corporation	5707 Blue Lagoon Drive Miami FL 33126 ATTN: Robin Shafer	PKGA	9/25/18		9/24/38

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Store Number	Store Address	City	State	Zip Code	Lessor/Sublessor	Lessor Address	Lessors/Op Entity	Date of Lease or Sublease	As Amended or Assigned	Expiry of Primary Term or Current Option Period
2673	1940 S. 8th Street	Fernandina Beach	FL	32034	Power House Marina	18205 Bucayne Blvd #2201,ventura, FL 33160	PKGA	1/31/18		1/31/36
3048	18770 WYFFLE HAROLD Blvd.	Hardeeville	SC	29927	Dutchtown Villas Apartments, LLC	7370 Hodgson Memorial Drive, Suite D-10 Savannah, GA 31406	PKGA	12/3/14	1/31/16	1/31/38
5571	415 US HIGHWAY 90 E	Pooler	GA	31322	College Street Station, LLC	7370 Hodgson Memorial Drive, Suite D-10 Savannah, GA 31406 ATTN: Jeanne Whitney	PKGA	1/31/18		1/31/38
6980	11031 Old St. Augustine Rd	Jacksonville	FL	32257	South Coast Enterprises, LLC	14125 Robert Paris Ct, Chantilly, VA 20151 ATTN: Ashok Mehta	PKGA	1/31/18		1/31/36
7008	13180 Atlantic Blvd	Jacksonville	FL	32225	Burger King Corporation	5707 Blue Lagoon Drive, Miami FL 33176 ATTN: Robin Shuler	PKGA	2/24/22		12/31/41
7121	10140 Phillip's Hwy	Jacksonville	FL	32256	Burger King Corporation	5707 Blue Lagoon Drive, Miami FL 33176 ATTN: Robin Shuler	PKGA	1/31/18		12/31/42
8907	1162 Boone Ave Ext E	Kingland	GA	31548	Premier Kings Holdings of Georgia, LLC	Estate of Manraj S Sidhu c/o Robert Ritchey P.O. Drawer 4540 Montgomery, AL 36103-4540	PKGA	6/15/16	10/30/18	10/31/38
9942	9090 Merrill Road	Jacksonville	FL	32225	Urban Merrill	508 South Dixie Hwy, Hallandale, FL 33009	PKGA	2/1/18		9/30/36
10241	13060 Highway 251	Dunwoody	GA	31105	Premier Kings Holdings of Georgia, LLC	Estate of Manraj S Sidhu c/o Robert Ritchey P.O. Drawer 4540 Montgomery, AL 36103-4540	PKGA	6/15/16	10/30/18	10/31/38
10422	542370 US Highway 1	Callahan	FL	32011	DEW1014 Investments LLC	1020 E. Hallandale Beach Blvd Suite 900 Hallandale Beach, FL 33009	PKGA	2/1/18/		1/31/39
10893	815 Flora G. Mues Parkway	Hinesville	GA	31313	Crown Premier Properties, LLC	10 Mall Court, Suite A Savannah, GA 31411 ATTN: Fonda Salgueiro	PKGA	6/18/19		6/30/39

Store Number	Store Address	City	State	Zip Code	Lessor/Sublessor	Lessor Address	Lessors/Op Entity	Date of Lease or Sublease	As Amended or Assigned	Expiry of Primary Term or Current Option Period
11309	462581 SR 200	Yulee	FL	32097	South Coast Enterprises, LLC	14125 Robert Paris Ct, Chantilly, VA 20151 ATTN: Ashok Mehta	PKGA	1/31/18		1/31/38
12107	115 Golden Isles Plaza	Brunswick	GA	31520	Premier Kings Holdings of Georgia, LLC	Estate of Manraj S Sidhu c/o Robert Ritchey P.O. Drawer 4540 Montgomery, AL 36103-4540	PKGA	6/15/16	10/30/18	10/31/38
12792	3527 Highway 84 West	Blackshear	GA	31516	Premier Kings Holdings of Georgia, LLC	Estate of Manraj S Sidhu c/o Robert Ritchey P.O. Drawer 4540 Montgomery, AL 36103-4540	PKGA	6/15/16	10/30/18	10/31/38
12906	8257 E MAIN ST	Kingsland	SC	29936	J Gabel LLC	488 NE 18th Street, Unit 415, Miami, FL 33132	PKGA	1/31/18	8/4/22 8/9/23	1/31/38
13106	13404 Sutton Park Dr.	Jacksonville	FL	32274	Tyler RK Associates LLC	12057 Glacier Bay Drive, Boynton Beach, FL 33473 ATTN: Neil Tappier	PKGA	1/31/18	4/27/23	1/31/38
13243	154 S. Main St.	Baxley	GA	31513	Premier Kings Holdings of Georgia, LLC	Estate of Manraj S Sidhu c/o Robert Ritchey P.O. Drawer 4540 Montgomery, AL 36103-4540	PKGA	7/6/16	10/30/18	10/31/38
14709	101 MUSEUM ST	Hilton Head Is.	SC	29926	GRD Family Properties	501 East Sunny Hills Road, Fullerton, CA 92835 ATTN: Ryan Daily	PKGA	1/31/18		1/31/38
14614	607 Fair Road	Statesboro	GA	30458	Crown Premier Properties, LLC	10 Mall Court, Suite A Savannah, GA 31411 ATTN: Fonda Salgueiro	PKGA	6/18/19		6/30/39
15499	13049 North Main St	Jacksonville	FL	32218	Premier Kings Holdings of Georgia, LLC	Estate of Manraj S Sidhu c/o Robert Ritchey P.O. Drawer 4540 Montgomery, AL 36103-4540	PKGA	3/1/17	10/30/18	10/31/38
15760	4288 Ogeechee Road	Savannah	GA	31405	175 W. Athens Art-Boss, LLC	222 Karen Ave #702 Las Vegas, NV 89109 ATTN: Marina Rossi	PKGA	6/18/19		6/30/39

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Store Number	Store Address	City	State	Zip Code	Lessor/Sublessor	Lessor Address	Lessor/Op Entity	Date of Lease or Sublease	As Amended or Assigned	Expiry of Primary Term or Current Option Period
16751	184 S Hwy 17	East Palatka	FL	32131	South Coast Enterprises, LLC	14125 Robert Paris Ct, Chantilly, VA 20151 ATTN: Ashok Mehta	PKGA	1/31/18		1/31/18
17831	11761 Beach Blvd	St Jacksonville	FL	32246	South Coast Enterprises, LLC/Hakimian Holdings	14125 Robert Paris Ct, Chantilly, VA 20151 ATTN: Ashok Mehta	PKGA	2/1/18		8/31/30
19411	2455 SR 207	St Augustine	FL	32084	South Coast Enterprises, LLC	14125 Robert Paris Ct, Chantilly, VA 20151 ATTN: Ashok Mehta	PKGA	43131		50436
23049	496 Jimmy Deloach Park	Savannah	GA	31407	Crown Premier Properties, LLC	10 Mail Court, Suite A, Savannah, GA 31411 ATTN: Fonda Salgueiro	PKGA	6/15/19		6/30/39
23155	3 BAYLOR BROOK DR	Oklato	SC	29909	Rave RE, LLC	14125 Robert Paris Ct, Chantilly, VA 20151 ATTN: Ashok Mehta	PKGA	1/31/18		1/31/18
23806	2430 Osborne Rd	St Mary's	GA	31558	Premier Kings Holdings of Georgia, LLC	Estate of Manraj S Sidhu c/o Robert Ritchey P.O. Drawer 4540 Montgomery, AL 36103-4540	PKGA	3/28/17	10/30/18	10/31/18
24560	5910 Ogeechee Road	Savannah	GA	31419	Grant Realty Corp	1982 Ashley Hall Road Charleston, SC 29407 ATTN: Barry Newton	PKGA	4/27/17	1/22/15	12/31/37
25882	106 N Duval St	Claxton	GA	30417	Premier Holdings of Georgia, LLC	Estate of Manraj S Sidhu c/o Robert Ritchey P.O. Drawer 4540	PKGA	12/13/18		12/28/38
25937	4660 Hwy 17	Richmond Hill	GA	31324	Premier Holdings of Georgia, LLC	Estate of Manraj S Sidhu c/o Robert Ritchey P.O. Drawer 4540	PKGA	6/5/19		11/4/39
26749	11708 East Oglethorpe Hwy	Midway	GA	31370	Premier Holdings of Georgia, LLC	Estate of Manraj S Sidhu c/o Robert Ritchey P.O. Drawer 4540	PKGA	5/24/19		8/19/39
26868	7304 Hwy 21	Port Wentworth	GA	31407	Port Wentworth, (GL to PKGA)PHGA (Del Agent w/PK-GA)	c/o Cape Asset Management 3735 Beam Road, Suite B Charlotte, NC 28217	PKGA	5/8/18 (GL) 5/17/19 Dev Agt	8/1/18 (GL)	3/31/39
27690	13200 W Cleveland Street	Nahunta	GA	31553	Premier Holdings of Georgia, LLC	Estate of Manraj S Sidhu c/o Robert Ritchey P.O. Drawer 4540 Montgomery, AL 36103-4540	PKGA	3/1/19		12/19/39

\*PKGA = Premier Kings of Georgia, Inc.

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**Schedule 1.3(a) - 2**  
**Designated Leases**

To be provided by Buyer in accordance with the terms of the Agreement.

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**Schedule 1.5**  
**Excluded Assets**

1. Coca-Cola Rebate for the portion of the rebate earned by Premier King through closing date.
2. Dr. Pepper Rebate for the portion of the rebate earned by Premier King through closing date.
3. RSI Rebate for the portion of the rebate earned by Premier King through closing.
4. Any and all claims and causes of action of Seller arising under bankruptcy and applicable non-bankruptcy law, including, but not limited to, all claims to collect accounts receivable and other debts, and all other causes of action for events and occurrences arising both before and after the Petition Date.
5. Any and all cash, cash equivalents, bank accounts, deposit accounts, credits, prepaid expenses, deposits, deferred charges, insurance claims, litigation proceeds, advance payments, security deposits, prepaid items, funds, securities, investment accounts, accounts receivable, notes, notes receivable, mortgages, security interests, income, revenues derived from Seller before the Closing Date.
6. Any and all avoidance actions Seller may have under Sections 544-551 of the Bankruptcy Code.
7. Any real or tangible personal property not located in the Stores to be sold to Buyer.
8. All of Seller's rights, claims and interests under insurance policies.
9. To the extent Buyer does not assume liability for and agree to take assignment of Seller's contracts with Brinks and Coca-Cola that have equipment within the Stores, all such equipment owned by such vendors, who also have the right to retrieve their equipment within the purchased restaurants.

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Schedule 3.2  
Escrow Agreement

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## ESCROW DEPOSIT AGREEMENT

This ESCROW DEPOSIT AGREEMENT dated as of this 25<sup>th</sup> day of October 2023 (the "Agreement") by and among **PREMIER KINGS OF GEORGIA, INC.**, a Georgia corporation ("Party A"), having an address at c/o Aurora Management Partners, 112 South Tryon Street, Suite 1770, Charlotte, North Carolina 28284, **RRG OF JACKSONVILLE, LLC**, a Florida limited liability company ("Party B"), having an address at c/o Palm Beach Capital, 525 South Flagler Drive, Suite 201, West Palm Beach, Florida 33401, and **FLAGSTAR BANK, N.A.** (the "Escrow Agent"), having an address at 1400 Broadway, 26<sup>th</sup> Floor, New York, NY 10018.

### W I T N E S S E T H:

WHEREAS, Party A and Party B are parties to that certain Asset Purchase Agreement, dated on or about the date hereof (the "Purchase Agreement"); and

WHEREAS, Party A and Party B have agreed that a certain sum of money shall be held in escrow upon certain terms and conditions; and

WHEREAS, Party A and Party B appoint the Escrow Agent as escrow agent of such escrow subject to the terms and conditions set forth in this Agreement; and

WHEREAS, the Escrow Agent accepts such appointment as escrow agent subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, IT IS AGREED as follows:

#### 1. Delivery of Escrow Funds.

(a) The Party A and Party B will deliver, or shall cause to be delivered, to the Escrow Agent checks or wire transfer made payable to "Flagstar Bank, N.A. as Escrow Agent for Premier Kings of Georgia, Inc." to be held in an account at Flagstar Bank, N.A. entitled "Premier Kings of Georgia, Inc., Flagstar Bank, N.A., as Escrow Agent" having ABA No. [REDACTED] 3576, Account No. [REDACTED] 4381 (the "Escrow Account").

(b) The collected funds deposited into the Escrow Account are referred to as the "Escrow Funds".

(c) The Escrow Agent shall have no duty or responsibility to enforce the collection or demand payment of these checks or any other funds delivered to Escrow Agent for deposit into the Escrow Account. If, for any reason, these checks or any other funds deposited into the Escrow Account shall be returned unpaid to the Escrow Agent, the sole duty of the Escrow Agent shall be to advise Party A and Party B promptly thereof and return check in the manner directed in writing by Party A and Party B.

2. Release of Escrow Funds. The Escrow Funds shall be paid by the Escrow Agent in accordance with the joint written instructions, in form and substance satisfactory to the Escrow Agent, received

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from Party A and Party B (and executed by a designated individual of each of them, as listed on their respective Certificates (as hereinafter defined)), or in absence of such joint written instructions in accordance with the order of a court of competent jurisdiction. The Escrow Agent shall not be required to pay any uncollected funds or any funds that are not available for withdrawal. The Escrow Agent may act in reliance upon any joint written instructions signed by both an individual designated by Party A on its Certificate and an individual designated by Party B on its Certificate, court orders, notices, certifications, demands, consents, authorizations, receipts, or powers of attorney delivered to it without being required to determine the authenticity or validity thereof or the correctness of any fact stated therein, the propriety or validity of the service thereof, or the jurisdiction of the court issuing any judgment or order.

3. Acceptance by Escrow Agent. The Escrow Agent hereby accepts and agrees to perform its obligations hereunder, provided that:

(a) Upon execution of this Agreement, Party A shall execute and deliver to Escrow Agent Exhibit A hereto, and Party B shall execute and deliver to Escrow Agent Exhibit A-1 (together with Exhibit A, each a "Certificate") hereto, for the purpose of (i) establishing the identity of each respective authorized representative(s) of Party A and Party B entitled to singly initiate and/or confirm disbursement instructions to Escrow Agent on behalf of each such party and (ii) providing standing wire instructions for each of Party A and Party B to be used for disbursements to said party. The Escrow Agent may act in reliance upon any signature on each Certificate reasonably believed by it to be genuine, and may assume that any person who has been designated by Party A or Party B to give any written instructions, notice or receipt, or make any statements in connection with the provisions hereof has been duly authorized to do so. The Escrow Agent shall have no duty to make inquiry as to the genuineness, accuracy or validity of any statements or instructions or any signatures on statements or instructions, including but not limited to, those contained on each Certificate. Party A and Party B may update their respective Certificate by executing and delivering to the Escrow Agent an updated Certificate in the form attached hereto as Exhibit A and/or Exhibit A-1. Until such time as Escrow Agent shall receive an updated Certificate, Escrow Agent shall be fully protected in relying without inquiry on the current Certificate on file with Escrow Agent.

(b) The Escrow Agent may seek confirmation of disbursement instructions by telephone call back to one of the authorized representatives set forth on each Certificate, and the Escrow Agent may rely upon the confirmations of anyone purporting to be the person(s) so designated. To ensure the accuracy of the instruction it receives, the Escrow Agent may record such call back. If the Escrow Agent is unable to verify the instruction, or is not satisfied in its sole discretion with the verification it receives, it will not execute the instruction until all issues have been resolved to its satisfaction. Party A and Party B agree that the foregoing procedures constitute commercially reasonable security procedures. Escrow Agent further agrees not to comply with any direction or instruction (other than those contained herein or delivered in accordance with this Agreement) from any party inconsistent with the foregoing.

(c) The Escrow Agent may act relative hereto in reliance upon advice of counsel in reference to any matter connected herewith. The Escrow Agent shall not be liable for any mistake

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of fact or error of judgment or law, or for any acts or omissions of any kind, unless caused by its willful misconduct or gross negligence.

(d) Party A and Party B, jointly and severally, agree to indemnify, release, and hold the Escrow Agent harmless from and against any and all claims, losses, costs, liabilities, damages, suits, demands, judgments or expenses, including, but not limited to, attorney's fees, costs and disbursements (collectively, "Claims"), claimed against or incurred by Escrow Agent arising out of or related, directly or indirectly, to this Agreement and the Escrow Agent's performance hereunder or in connection herewith, except to the extent such Claims arise from Escrow Agent's willful misconduct or gross negligence as adjudicated by a court of competent jurisdiction.

(e) In the event of any disagreement between or among Party A and Party B, or between any of them and any other person, resulting in adverse claims or demands being made to Escrow Agent in connection with the Escrow Account, or in the event that the Escrow Agent, in good faith, be in doubt as to what action it should take hereunder, the Escrow Agent may, at its option, refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, so long as such disagreement continues or such doubt exists, and in any such event, the Escrow Agent shall not become liable in any way or to any person for its failure or refusal to act, and the Escrow Agent shall be entitled to continue so to refrain from acting until (i) the rights of all parties shall have been fully and finally adjudicated by a court of competent jurisdiction, or (ii) all differences shall have been adjusted and all doubt resolved by agreement among all of the interested persons, and the Escrow Agent shall have been notified thereof in writing signed by all such persons. The Escrow Agent shall have the option, after thirty (30) days' notice to Party A and Party B of its intention to do so, to file an action in interpleader requiring the parties to answer and litigate any claims and rights among themselves. The rights of the Escrow Agent under this section are cumulative of all other rights which it may have by law or otherwise.

(f) In the event that the Escrow Agent shall be uncertain as to its duties or rights hereunder, the Escrow Agent shall be entitled to (i) refrain from taking any action other than to keep safely the Escrow Funds until it shall be directed otherwise by a court of competent jurisdiction, or (ii) deliver the Escrow Funds to a court of competent jurisdiction.

(g) The Escrow Agent shall have no duty, responsibility or obligation to interpret or enforce the terms of any agreement other than Escrow Agent's obligations hereunder, and the Escrow Agent shall not be required to make a request that any monies be delivered to the Escrow Account, it being agreed that the sole duties and responsibilities of the Escrow Agent shall be to the extent not prohibited by applicable law (i) to accept checks or other instruments for the payment of money delivered to the Escrow Agent for the Escrow Account and deposit said checks or instruments into the Escrow Account, and (ii) disburse or refrain from disbursing the Escrow Funds as stated herein, provided that the checks or instruments received by the Escrow Agent have been collected and are available for withdrawal.

4. Escrow Account Statements and Information. The Escrow Agent agrees to send to Party A and/or Party B a copy of the Escrow Account periodic statement, upon request in accordance with the Escrow Agent's regular practices for providing account statements to its non-escrow clients, and to also provide Party A and/or Party B, or their respective designee(s), upon request, other

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deposit account information, including Escrow Account balances, by telephone or by computer communication, to the extent practicable. Party A and Party B agree to complete and sign all forms or agreements required by the Escrow Agent for that purpose. Party A and Party B each consents to the Escrow Agent's release of such Escrow Account information to (a) any of the individuals designated by Party A or Party B (as applicable) on the respective Certificate thereof; and (b) any other individual(s) designated by Party A or Party B (as applicable), which designation has been signed by a designated individual of Party A or Party B (as applicable) listed on the respective Certificate thereof. Further, Party A and Party B have an option to receive e-mail notification of incoming and outgoing wire transfers. If this e-mail notification service is requested and subsequently approved by the Escrow Agent, Party A and Party B agrees to provide a valid e-mail address and other information necessary to set-up this service and sign all forms and agreements required for such service. Party A and Party B each consents to the Escrow Agent's release of wire transfer information to the designated e-mail address(es). The Escrow Agent's liability for failure to comply with this section shall not exceed the cost of providing such information.

5. Resignation and Termination of the Escrow Agent. The Escrow Agent may resign at any time by giving thirty (30) days' prior written notice of such resignation to Party A and Party B. Upon providing such notice, the Escrow Agent shall have no further obligation hereunder except to hold the Escrow Funds that it has received as of the date on which it provided the notice of resignation as depository. In such event, the Escrow Agent shall not take any action until Party A and Party B jointly designate a banking corporation, trust company, attorney or other person as successor escrow agent. Upon receipt of such written instructions signed by Party A and Party B, the Escrow Agent shall promptly deliver the Escrow Funds, net of any outstanding charges, to such successor escrow agent and shall thereafter have no further obligations hereunder. If such instructions are not received within thirty (30) days following the effective date of such resignation, then the Escrow Agent may deposit the Escrow Funds and any other amounts held by it pursuant to this Agreement with a clerk of a court of competent jurisdiction pending the appointment of a successor escrow agent. Once the Escrow Agent delivers the Escrow Funds to a successor escrow agent or to a clerk of a court of competent jurisdiction, in each case as provided for in this section, the Escrow Agent shall be relieved of all further obligations and released from all liability thereafter arising with respect to the Escrow Funds.

6. Termination. Party A and Party B may terminate the appointment of the Escrow Agent hereunder upon a joint written notice to Escrow Agent specifying the date upon which such termination shall take effect. In the event of such termination, Party A and Party B shall, within thirty (30) days of such notice, jointly appoint a successor escrow agent and the Escrow Agent shall, upon receipt of written instructions signed by both Party A and Party B, turn over to such successor escrow agent all of the Escrow Funds; provided, however, that if Party A and Party B fail to appoint a successor escrow agent within such thirty (30)-day period, such termination notice shall be null and void and the Escrow Agent shall continue to be bound by all of the provisions hereof. Upon receipt of the Escrow Funds, the successor escrow agent shall become the Escrow Agent hereunder and shall be bound by all of the provisions hereof and the Escrow Agent shall be relieved of all further obligations and released from all liability thereafter arising with respect to the Escrow Funds.

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7. Investment. All Escrow Funds received by the Escrow Agent shall be held only in non-interest bearing bank accounts at Escrow Agent.

8. Compensation. The Escrow Agent shall be entitled, for the duties to be performed by it hereunder, to a fee of \$6,000.00, which fee shall be paid by Party A upon the signing of this Agreement. Further, if the term of this Agreement exceeds one (1) year from the execution date hereof, a fee of \$1,500.00 will be paid by Party A on each such anniversary of the execution of this Agreement. In addition, Party A shall be obligated to reimburse Escrow Agent for all fees, costs and expenses incurred or that becomes due in connection with this Agreement or the Escrow Account, including reasonable attorney's fees. Neither the modification, cancellation, termination or rescission of this Agreement nor the resignation or termination of the Escrow Agent shall affect the right of the Escrow Agent to retain the amount of any fee which has been paid, or to be reimbursed or paid any amount which has been incurred or becomes due, prior to the effective date of any such modification, cancellation, termination, resignation or rescission. To the extent the Escrow Agent has incurred any such expenses, or any such fee becomes due, prior to any closing, the Escrow Agent shall advise Party A and Party B, and Party A shall direct all such amounts to be paid directly at any such closing.

9. Notices. All notices, requests, demands and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given if sent by hand-delivery, by facsimile followed by first-class mail, by nationally recognized overnight courier service or by prepaid registered or certified mail, return receipt requested, to the addresses set forth below.

If to Party A:

Premier Kings, Inc., et al.  
c/o Aurora Management Partners  
112 South Tryon Street, Suite 1770  
Charlotte, NC 28284  
Attention: David M. Baker  
Email: dbaker@auroramp.com

With a copy (which shall not constitute notice to Party A) to:

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

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If to Party B:

RRG of Jacksonville, LLC  
c/o Palm Beach Capital  
525 South Flagler Drive, Suite 201  
West Palm Beach, FL 33401  
Attention: Michael L. Schmickle  
and Randy Pianin  
Email: mschmickle@pbcap.com  
rpianin@royalrg.com

With a copy (which shall not constitute notice to Party B) to:

Nelson Mullins Riley & Scarborough LLP  
1905 Corporate Blvd. NW, Suite 310  
Boca Raton, FL 33431  
Attention: Matthew M. Thompson  
Email: matthew.thompson@nelsonmullins.com

If to Escrow Agent:

1400 Broadway, 26th Floor  
New York, NY 10018  
Attention: Robert Bloch, Managing Group Director - EVP  
Facsimile No.: \_\_\_\_\_  
Email: rbloch@signatureny.com

#### 10. Regulatory Compliance.

(a) Party A and Party B agree to observe and comply, to the extent applicable, with all anti-money laundering laws, rules and regulations including, without limitation, regulations issued by the Office of Foreign Assets Control of the United States Department of Treasury and the Financial Crimes Enforcement Network of the U.S. Department of Treasury.

(b) Party A and Party B shall provide to the Escrow Agent such information as the Escrow Agent may require to enable the Escrow Agent to comply with its obligations under the Bank Secrecy Act of 1970, as amended ("BSA"), or any regulations enacted pursuant to the BSA or any regulations, guidance, supervisory directive or order of the New York State Department of Financial Services or Federal Deposit Insurance Corporation. The Escrow Agent shall not make any payment of all or any portion of the Escrow Funds to any person unless and until such person has provided to the Escrow Agent such documents as the Escrow Agent may require to enable the Escrow Agent to comply with its obligations under the BSA.

(c) To help the United States government fight funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. When an account is opened, and from time to time as may be required by the Escrow Agent's internal policies and procedures, the Escrow Agent shall be entitled to ask for information that will allow the Escrow Agent to identify

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relevant parties. For a non-individual person such as a business entity, a charity, a trust, or other legal entity, the Escrow Agent may ask for documentation to verify its formation and existence as a legal entity. The Escrow Agent may also ask to see financial statements, licenses, identification, and authorization documents from individuals claiming authority to represent the entity or other relevant documentation. The parties acknowledge that a portion of the identifying information set forth herein is being requested by the Escrow Agent in connection with Title III of the USA Patriot Act, Pub.L. 107-56 (the "Act"), and Party A and Party B each agrees to provide any additional information requested by the Escrow Agent in its sole discretion in connection with the Act or any other legislation, regulation, regulatory order or published guidance to which the Escrow Agent is subject, in a timely manner.

#### 11. General.

(a) Each of the parties hereto hereby irrevocably agrees that any action, suit or proceedings against any of them by any of the other aforementioned parties with respect to this Agreement shall be brought in the United States Bankruptcy Court for the Northern District of Alabama, which shall have exclusive jurisdiction over such action, suit or proceedings. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York applicable to agreements made and to be entirely performed within such State. EACH OF THE PARTIES HERETO HEREBY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

(b) This Agreement and the Purchase Agreement set forth the entire agreement and understanding of the parties in respect to the matters contained herein, and supersede all prior agreements, arrangements and understandings relating thereto. Solely as between and among Party A and Party B, in the event of any dispute or conflict between this Agreement and the Purchase Agreement, the Purchase Agreement shall control and govern.

(c) All of the terms and conditions of this Agreement shall be binding upon, and inure to the benefit of and be enforceable by, the parties hereto, as well as their respective successors and assigns.

(d) This Agreement may be amended, modified, superseded or canceled, and any of the terms or conditions hereof may be waived, only by a written instrument executed by each party hereto or, in the case of a waiver, by the party waiving compliance. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver of any party of any condition, or of the breach of any term contained in this Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of the breach of any other term of this Agreement. No party may assign any rights, duties or obligations hereunder unless all other parties have given their prior written consent.

(e) If any provision included in this Agreement proves to be invalid or unenforceable, it shall not affect the validity of the remaining provisions.

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(f) This Agreement and any modification or amendment of this Agreement may be executed in several counterparts or by separate instruments and all of such counterparts and instruments shall constitute one agreement, binding on all of the parties hereto.

12. Form of Signature. The parties hereto agree to accept a facsimile transmission copy of their respective actual signatures as evidence of their actual signatures to this Agreement and any modification or amendment of this Agreement; *provided, however*, that each party who produces a facsimile signature agrees, by the express terms hereof, to place, promptly after transmission of his or her signature by fax, a true and correct original copy of his or her signature in overnight mail to the address of the other party.

13. No Third-Party Beneficiaries. This Agreement is solely for the benefit of the parties and their respective successors and permitted assigns, and no other person has any right, benefit, priority or interest under or because of the existence of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

*[Signature page to follow]*

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IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first set forth above.

**PARTY A:**

**PREMIER KINGS OF GEORGIA, INC.**

By: \_\_\_\_\_

Name: Laura Kendall

Title: Deputy Restructuring Officer

**PARTY B:**

**RRG OF JACKSONVILLE, LLC**

By: \_\_\_\_\_

Name: Randy Pianin

Title: Manager

**ESCROW AGENT:**

**FLAGSTAR BANK, N.A.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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**EXHIBIT A**

CERTIFICATE OF AUTHORIZED REPRESENTATIVES – *Premier Kings of Georgia, Inc.*

Name	Signature	Initiate (Y/N)	Callback (Y/N)	Phone No.	Alt. Phone No.
Greg Baker		Y	Y	770-670-8598	
Nick Wright		Y	Y	678-910-1738	
Laura Kendall		Y	Y	704-957-3322	
David Baker		Y	Y	828-638-5744	

**STANDING WIRE INSTRUCTIONS FOR PARTY A**

In accordance with Section 3(a) of the Agreement disbursements to Party A by wire transfer must be sent in accordance with the following wire instructions:

Bank Name:	Truist Bank
Bank Address:	214 North Tryon Street Charlotte, NC
ABA Number:	3984
Account Number:	8155
Account Name:	PKGA MAIN OPERATING 8155

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**EXHIBIT A-1**

**CERTIFICATE OF AUTHORIZED REPRESENTATIVES – RRG OF JACKSONVILLE, LLC**

Name	Signature	Initiate (Y/N) Y	Callback (Y/N) Y	Phone No.	Alt. Phone No.
Michael Schmickle				561-762-6124	
Randy Pianin		Y	Y	561-212-8516	

**STANDING WIRE INSTRUCTIONS FOR PARTY B**

In accordance with Section 3(a) of the Agreement disbursements to Party B by wire transfer must be sent in accordance with the following wire instructions:

Bank Name: Amerant Bank, N.A.  
Bank Address: 220 Alhambra ricle, Coral Gables, FL 33134  
ABA Number: [REDACTED] 0509  
Account Number: [REDACTED] 6806  
Account Name: Royal Restaurant Group, LLC

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Schedule 6.4  
Compliance with Law

Florida Dept of Environmental Protection v. Premier Kings of Georgia.  
S.A. NO: 23SA050388AN in the Circuit Court of the Fourth Judicial  
Circuit in and for Nassau County, Florida.

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## Schedule 6.6 Lease Defaults

Store Number	Buyer	Landlord	Store Address	City	State	Zip Code	Nature of Default
521	RRG	Burger King Corporation	7923 White Bluff Road	Savannah	GA	31406	Failure to Pay Rent
1197	RRG	Burger King Corporation	250 Monument Road	Jacksonville	FL	32225	Failure to Pay Rent
1404	RRG	Burger King Corporation	11711 Abercorn St.	Savannah	GA	31419	Failure to Pay Rent
1551	RRG	Burger King Corporation	4241 Augusta Rd	Garden City	GA	31408	Failure to Pay Rent
1724	RRG	Burger King Corporation	5922 Merrill Road	Jacksonville	FL	32277	Failure to Pay Rent
2397	RRG	Burger King Corporation	998 Sunset Blvd.	Jesup	GA	31545	Failure to Pay Rent
7068	RRG	Burger King Corporation	13180 Atlantic Boulevard	Jacksonville	FL	32225	Failure to Pay Rent
7121	RRG	Burger King Corporation	10142 Phillip's Hwy	Jacksonville	FL	32256	Failure to Pay Rent
17831	RRG	Gates of the Beachwood, LLC	11761-15 Beach Boulevard	Jacksonville	FL	32246	Failure to Pay Rent

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Schedule 6.7  
Contracts

None.

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Schedule 6.9  
Legal Proceedings

Case Title	Case number	Court Information
Florida Dept of Environmental Protection v. Premier Kings of Georgia, Inc.	S.A. NO; 23SA050388AN	Circuit Court of the 4th Judical Circuit in and for Nassau County, FL

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Schedule 6.11  
Employees

None.

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**Schedule 6.13**  
**Brokers**

1. An investment banking fee is owed by Seller to Raymond James Financial.

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Schedule 8.1

Pre-Closing Conduct of Business Covenant Exceptions

None

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## FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT

This **FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT**, dated as of December 11, 2023 (this "Amendment"), is by and between Premier Kings of Georgia, Inc., a Georgia corporation ("**Seller**"), and RRG of Jacksonville, LLC, a Florida limited liability company, or its nominee(s) ("**Buyer**"). Buyer and Seller are each referred to herein individually as a "**Party**" and collectively as the "**Parties**". Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in Purchase Agreement (defined below).

**WHEREAS**, Seller and Buyer entered into that certain Asset Purchase Agreement dated October 25, 2023 (the "Purchase Agreement") pursuant to which Seller agreed to sell, and Buyer agreed to purchase, certain assets of Seller; and

**WHEREAS**, Seller and Buyer desire to amend the Purchase Agreement as set forth below.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained in the Purchase Agreement, the Parties, intending to be legally bound, agree as follows:

1. Amendments to Purchase Agreement.

(a) Amendment to Third Whereas Clause. The Third Whereas clause of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

"**WHEREAS**, pursuant to this Agreement, Seller desires to (i) assign to Buyer and Buyer desires to assume from Seller, the Designated Leases, the Designated Franchise Agreements and the Designated Contracts, in each case subject to the terms and conditions hereof unless otherwise provided herein or as agreed to by Buyer and the third-parties to the Designated Leases, the Designated Franchise Agreements and the Designated Contracts, and (ii) sell and transfer to Buyer, and Buyer desires to purchase and assume from Seller, all of Seller's right, title, and interest in the Assets; and"

(b) Amendment to Section 1.2(b). Section 1.2(b) of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

"(b) With respect to each Designated Contract, on the Closing Date, Seller shall pay all amounts necessary to cure any default under such Designated Contract or necessary to effect any consent to assignment thereof (collectively, the "**DC Cure Costs**") and, subject to Buyer providing adequate assurance of performance to the counterparty thereto to the extent required by the Bankruptcy Court, Seller shall assign such Designated Contract to Buyer pursuant to an Order of the Bankruptcy Court (which may be the Sale Order), and Buyer shall assume such Designated Contract effective on the Closing Date."

(c) Amendment to Section 1.3(b). Section 1.3(b) of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:



"(b) With respect to each Designated Lease, on the Closing Date, Seller shall pay all amounts necessary to cure any default under such Designated Lease or necessary to effect any consent to assignment thereof (collectively, the "DL Cure Costs") and, subject to Buyer providing adequate assurance of performance to the counterparty thereto to the extent required by the Bankruptcy Court, Seller shall assign such Designated Lease to Buyer pursuant to an Order of the Bankruptcy Court (which may be the Sale Order), and Buyer shall assume such Designated Lease effective on the Closing Date."

(d) Amendment to Section 1.3. Section 1.3 of the Purchase Agreement is hereby amended to add the following as new subsection (e) thereto:

"(c) Schedule 1.3(a)-2 attached hereto is a list of Designated Leases for assumption. Buyer shall have the right to remove any Designated Lease from Schedule 1.3(a)-2 on or before two (2) days prior to the Closing; provided, however, that any such removal shall not reduce the Purchase Price. All Leases that are not reflected on Schedule 1.3(a)-2 as Designated Leases as of less than two (2) days prior to the Closing are referred to herein as the "Rejected Leases"."

(e) Amendment to Section 1.4. Section 1.4 of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

"Section 1.4 Franchise Agreements

(a) Schedule 1.4(a)-1 lists all Franchise Agreements (collectively, the "Assignable Franchise Agreements") that Buyer may elect to assume and have Seller assign to Buyer. Each Assignable Franchise Agreement relates to an Assignable Lease in connection with which Seller operates a Store. At Closing, Buyer shall assume, and Seller shall assign to Buyer, each Assignable Franchise Agreement that corresponds to a Designated Lease (collectively, the "Designated Franchise Agreements"). To the extent an Assignable Lease is not a Designated Lease as of Closing (each, a "Rejected Lease"), the Assignable Franchise Agreement that corresponds to such Rejected Lease (each, a "Rejected Franchise Agreement") shall not be assumed by Buyer, and Seller shall not assign such all of the Designated Franchise Agreement, which shall be prepared by Buyer and delivered to Seller promptly following the final determination of all Designated Leases and Rejected Leases. Any amendment to Schedule 1.4(a)-2 pursuant to the foregoing provisions of this Section 1.4(a), shall be served by Seller on the parties who have been added to or deleted from Schedule 1.4(a)-2.

(b) With respect to each Designated Franchise Agreement, on the Closing Date, Seller shall pay all amounts necessary to cure any default under such Designated Franchise Agreement or necessary to effect any consent to assignment thereof (collectively, the "DFA Cure Costs") (the DC Cure Costs, the DL Cure Costs and the DFA Cure Costs collectively being the "Cure Costs") and, subject to Buyer providing adequate assurance of performance to the counterparty thereto to the extent required by the Bankruptcy Court, Seller shall assign such Designated Franchise Agreement to Buyer pursuant to an Order of the



Bankruptcy Court (which may be the Sale Order), and Buyer shall assume such Designated Franchise Agreement effective on the Closing Date.

(c) The Sale Order shall provide that, as of the Closing, Seller shall assign to Buyer the Designated Franchise Agreements and the Designated Franchise Agreements shall be identified by (i) the address of the real property for each Designated Franchise Agreement, (ii) the other party to the Designated Franchise Agreement, and (iii) the address of such party for notice purposes, all included on an exhibit attached to either the motion filed in connection with the Sale Order or a motion for authority to assume and assign such Designated Franchise Agreement or a notice filed pursuant to the Bidding Procedures Order.

(d) In the case of Designated Franchise Agreements that cannot be transferred or assigned effectively without the consent of any third party, which consent has not been obtained prior to the Closing (after giving effect to the Sale Order and the Bankruptcy Code), Seller shall, subject to any approval of the Bankruptcy Court, use commercially reasonable efforts to cooperate with Buyer in endeavoring to obtain such consent."

(f) Amendment to Section 2.1(a). Section 2.1(a) of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

"(a) In consideration for the transfer of the Assets by Seller, Buyer shall assume only those executory liabilities, obligations or commitments of Seller for payment and performance pursuant to the Designated Franchise Agreements, the Designated Leases and Designated Contracts, in each case solely to the extent arising or to be performed after the Effective Time (collectively, the "***Assumed Liabilities***")."

(g) Amendment to Section 5.1(a). Section 5.1(a) of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

"(a) Consummation of the Transaction contemplated by this Agreement (the "**Closing**") will be held at a location, time, manner, and date (the "**Closing Date**") to be agreed upon by the Parties, provided that in all events Closing shall be completed by no later than the later of: (i) January 16, 2024; or (ii) 30 days after entry of the Sale Order, in each case unless otherwise determined by the Bankruptcy Court."

(h) Amendment to Section 5.2(d). Section 5.2(d) of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

"(d) All transfer fees, extension fees, and other fees, charges or requirements of Franchisor, including but not limited to all scopes of work (or similar property improvements required by the Franchisor) and all franchise related fees and charges arising out of the transaction contemplated in this Agreement, excluding (i) any DFA Cure Costs, which DFA Cure Costs shall be the obligation of Seller pursuant to Section 1.4, and (ii) any such fees outstanding or otherwise in arrears and any associated penalties, late fees, or reinstatement



fees of the Franchisor as provided under the Franchise Agreements as of the Closing Date;”

(i) Addition of Section 5.6(a)(vi). A new Section 5.6(a)(vi) is hereby added to the Purchase Agreement as follows:

“(vi) Assignment and Assumption of Franchise Agreement from Seller to Buyer, for each Designated Franchise Agreement conveying all of Seller’s rights, title and interest in each such Designated Franchise Agreement, which Assignment and Assumption of Franchise Agreement shall be in a form reasonably acceptable to Buyer;”

(j) Amendment to Section 10.1(b). Section 10.1(b) of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

“(b) Franchisor. Franchisor shall have timely waived its right of first refusal and shall have approved of Buyer’s assumption of the Designated Franchise Agreements.”

(k) Amendment to Section 10.1(d)(iii). Section 10.1(d)(iii) of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

“(iii) the Sale Order shall become a Final Order on or before January 31, 2024 (the “**Outside Date**”).”

(l) Amendment to Section 10.1(d)(v). Section 10.1(d)(v) of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

“(v) the Designated Contracts, Designated Leases and Designated Franchise Agreements shall have been assigned to Buyer in a form and manner consistent with this Agreement; and”

(m) Amendment to Section 11.1(d)e. Section 11.1(d)e of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

“e. if Franchisor has not agreed to Buyer’s assumption of the Designated Franchise Agreements on or before the Outside Date.”

## 2. Miscellaneous.

(a) Each term and provision of this Amendment is hereby incorporated fully into the Purchase Agreement and shall constitute a part of the Purchase Agreement as amended hereby. Except to the extent expressly modified hereby, it is further agreed that all of the remaining terms, provisions, conditions and covenants of the Purchase Agreement shall remain in full force and effect, unmodified in any way, and are hereby ratified and reaffirmed.

(b) This Amendment is to be interpreted consistently with the terms of the Purchase Agreement to the fullest extent possible. If there is any conflict between the terms and provisions set forth in this Amendment and those set forth in the Purchase Agreement, this Amendment shall control. On and after the date of this Amendment, each reference in the

Purchase Agreement to “this Agreement,” “herein,” “hereunder” or words of similar import, and each reference in any other document or instrument delivered in connection with the Purchase Agreement shall be deemed to be a reference to the Purchase Agreement as amended by this Amendment, and the Purchase Agreement as so amended shall be read as a single, integrated document.

(c) Seller and Buyer will execute such additional documents and take such further actions as are reasonably requested by the other party to reflect the terms and conditions of this Amendment.

(d) This Amendment may be executed and delivered by facsimile signature or portable document format (PDF) and in separate counterparts, each of which will constitute an original but all of which will constitute one and the same agreement.

[SIGNATURE PAGE FOLLOWS]

[Remainder of Page Intentionally Left Blank]



IN WITNESS WHEREOF, the Parties have caused this First Amendment to Asset Purchase Agreement to be executed in multiple original counterparts as of the date first above written.

**SELLER:**

**PREMIER KINGS OF GEORGIA, INC.**

DocuSigned by:  
*David Baker*  
By: \_\_\_\_\_  
Name: David M. Baker  
Title: Chief Restructuring Officer

**BUYER:**

**RRG OF JACKSONVILLE, LLC**

By: \_\_\_\_\_  
Name: Randy Pianin  
Title: Manager

IN WITNESS WHEREOF, the Parties have caused this First Amendment to Asset Purchase Agreement to be executed in multiple original counterparts as of the date first above written.

**SELLER:**

**PREMIER KINGS OF GEORGIA, INC.**

By: \_\_\_\_\_  
Name: David M. Baker  
Title: Chief Restructuring Officer

**BUYER:**

**RRG OF JACKSONVILLE, LLC**

By: Randy Pianin  
Name: Randy Pianin  
Title: Manager

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**Schedule 1.3(a)-2  
Designated Leases**

Store Number	Store Address
322	601 Martin Luther King Blvd., Savannah, GA
1197	250 Monument Road, Jacksonville, FL
1226	14 W. DeRenne Ave., Savannah, GA
1404	11711 Abercorn Street, Savannah, GA
1471	1295 Ribaut Road, Beaufort, GA
1551	4241 August Road, Garden City, GA
1691	5015 New Jesup Hwy, Brunswick, GA
1724	5922 Merrill Road, Jacksonville, FL
2124	1710 Memorial Drive, Waycross, GA
2397	998 Sunset Blvd., Loc 129, Jesup, GA
3048	8770 Whyte Hardee Blvd, Hardeeville, SC
5571	415 US-80 East, Pooler, GA
6986	11031 Old St. Augustine Rd, Jacksonville, FL
7068	13180 Atlantic Blvd., Jacksonville, FL
7121	10142 Phillip's Hwy, Jacksonville, FL
8907	1162 Boone Ave., Ext E, Kingsland, GA
9942	9090 Merrill Road, Jacksonville, FL
10241	13060 Hwy. 251, Darien, GA
10893	815 Elma G. Miles Parkway, Hinesville, GA
11309	462581 SR 200, Yulee, FL
12107	115 Golden Isles Plaza, Brunswick, GA
12792	3527 Hwy. 84 West, Blackshear, GA
12906	8257 E. Main Street, Ridgeland, SC
13106	13404 Sutton Park Drive, Jacksonville, FL
13243	154 S. Main Street, Baxley, GA
14209	201 Museum Street, Hilton Head Island, SC
14614	602 Fair Road, Statesboro, GA
15499	13049 N. Main Street, Jacksonville, FL
16751	184 S. Hwy. 17, East Palatka, FL
17831	11761 Beach Blvd Ste 15, Jacksonville, FL
19411	2455 SR 207, St. Augustine, FL
23049	496 Jimmy DeLoach Parkway, Savannah, GA
23155	3 Baylor Brook Drive, Okatie, SC
23806	2430 Osborn Rd., St. Mary's, GA
24560	5910 Ogeehee Road, Savannah, GA
25882	106 N. Duval Street, Claxton, GA
25937	4660 Hwy. 17, Richmond Hill, GA
26749	13708 East Oglethorpe Hwy., Midway, GA
26868	7304 Hwy. 21, Port Wentworth, GA
27690	13200 W. Cleveland Street, Nahunta, GA

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Message

**From:** Jamison, Heather A. [/O=BURR/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=HLEE]  
**Sent:** 1/5/2024 7:48:47 PM  
**To:** Patrick Finn [pfinn@stnladvisors.com]  
**CC:** Robert M. Ritchey [rritchey@gilpingivhan.com]; jay gill [jaygill16@yahoo.com]; Matthew Anuszkiewicz [manuszkiewicz@stnladvisors.com]; Robert Arruda [rarruda@stnladvisors.com]; Stephen Olefson [solefson@stnladvisors.com]; Champion, Chloe [/o=BURR/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b9aecd702ec34c51bdc4989e234bc47b-Champion, Chloe]  
**BCC:** Goolsby, Susan [/o=BURR/ou=First Administrative Group/cn=Recipients/cn=sgoolsby]  
**Subject:** RE: RRG of Jacksonville, LLC / Premier Kings Holdings of GA - (Premier Kings Inc, Case No. 23-02871-TOM)

Patrick:

Thank you for calling me this morning. My client has confirmed that it will agree to 8.25% over the life of the lease.

Please note that the above counteroffer remains subject to lender approval. We are working on lender approval now and will update as soon as possible.

I look forward to receiving the draft assignment documents.

**From:** Jamison, Heather A. <HJamison@burr.com>  
**Sent:** Friday, January 5, 2024 9:11 AM  
**To:** Patrick Finn <pfinn@stnladvisors.com>  
**Cc:** Robert M. Ritchey <rritchey@gilpingivhan.com>; jay gill <jaygill16@yahoo.com>; Matthew Anuszkiewicz <manuszkiewicz@stnladvisors.com>; Robert Arruda <rarruda@stnladvisors.com>; Stephen Olefson <solefson@stnladvisors.com>; Champion, Chloe <CChampion@burr.com>  
**Subject:** RE: RRG of Jacksonville, LLC / Premier Kings Holdings of GA - (Premier Kings Inc, Case No. 23-02871-TOM)

Patrick: Just following up on RRG's response to the below. Thank you.

**From:** Jamison, Heather A. <HJamison@burr.com>  
**Sent:** Thursday, January 4, 2024 11:24 AM  
**To:** Patrick Finn <pfinn@stnladvisors.com>  
**Cc:** Robert M. Ritchey <rritchey@gilpingivhan.com>; jay gill <jaygill16@yahoo.com>; Matthew Anuszkiewicz <manuszkiewicz@stnladvisors.com>; Robert Arruda <rarruda@stnladvisors.com>; Stephen Olefson <solefson@stnladvisors.com>; Champion, Chloe <CChampion@burr.com>  
**Subject:** RE: RRG of Jacksonville, LLC / Premier Kings Holdings of GA - (Premier Kings Inc, Case No. 23-02871-TOM)

Patrick:

My client will agree to 8.25% but after the first 5-year term it must increase to 8.5%.

**From:** Patrick Finn <pfinn@stnladvisors.com>  
**Sent:** Thursday, January 4, 2024 10:58 AM  
**To:** Jamison, Heather A. <HJamison@burr.com>  
**Cc:** Robert M. Ritchey <rritchey@gilpingivhan.com>; jay gill <jaygill16@yahoo.com>; Matthew Anuszkiewicz <manuszkiewicz@stnladvisors.com>; Robert Arruda <rarruda@stnladvisors.com>; Stephen Olefson <solefson@stnladvisors.com>; Champion, Chloe <CChampion@burr.com>  
**Subject:** RE: RRG of Jacksonville, LLC / Premier Kings Holdings of GA - (Premier Kings Inc, Case No. 23-02871-TOM)

[EXTERNAL EMAIL]





Heather – we have authorization to accept the below terms at an 8.00% RTS threshold. We are in the process of drafting amendments.

Please let us know if this is acceptable.

Patrick Finn  
STNL Advisors LLC  
Office 332.345.7297  
Cell 631.742.6757

**From:** Jamison, Heather A. <HJamison@burr.com>  
**Sent:** Thursday, January 4, 2024 11:26 AM  
**To:** Patrick Finn <pfinn@stnladvisors.com>  
**Cc:** Robert M. Ritchey <rritchey@gilpingivhan.com>; jay gill <jaygill16@yahoo.com>; Matthew Anuszkiewicz <manuszkiewicz@stnladvisors.com>; Robert Arruda <rarruda@stnladvisors.com>; Stephen Olefson <solefson@stnladvisors.com>; Champion, Chloe <CChampion@burr.com>  
**Subject:** RE: RRG of Jacksonville, LLC / Premier Kings Holdings of GA - (Premier Kings Inc, Case No. 23-02871-TOM)

Patrick:

Holdings hereby makes the following counteroffer to RRG:

1. 25937:
  - a. Total Rent: Greater of \$120,000 or 8.50% RTS in Years 1-5. 10% increase to the minimum base rent following the initial 5 years which will increase every 5 years.
2. 26749:
  - a. Total Rent: Greater of \$115,000 or 8.50% RTS in Years 1-5. 10% increase to the minimum base rent following the initial 5 years which will increase every 5 years.
3. 27690:
  - a. Total Rent: Greater of \$128,000 or 8.50% RTS in Years 1-5. 10% increase to the minimum base rent following the initial 5 years which will increase every 5 years.
4. 23806:
  - a. Total Rent: Greater of \$97,000 or 8.50% RTS in Years 1-5. 10% increase to the minimum base rent following the initial 5 years which will increase every 5 years.
5. 15499
  - a. Total Rent: Greater of \$126,000 or 8.50% RTS in Years 1-5. 10% increase to the minimum base rent following the initial 5 years which will increase every 5 years.

As to the request for a purchase option, Holdings is not willing to include that in the leases at this time.

In considering a response, Holdings stresses that the sales in these stores are increasing, and that 8.5% is Burger King standard.

Please note that the above counteroffer remains subject to lender approval.

Feel free to contact me with any questions or to further discuss.

**From:** Patrick Finn <pfinn@stnladvisors.com>  
**Sent:** Wednesday, January 3, 2024 12:07 PM  
**To:** Jamison, Heather A. <HJamison@burr.com>  
**Cc:** Robert M. Ritchey <rritchey@gilpingivhan.com>; Jay Gill <jaygill16@yahoo.com>; Matthew Anuszkiewicz <manuszkiewicz@stnladvisors.com>; Robert Arruda <rarruda@stnladvisors.com>; Stephen Olefson <solefson@stnladvisors.com>; Champion, Chloe <CChampion@burr.com>  
**Subject:** RE: RRG of Jacksonville, LLC / Premier Kings Holdings of GA - (Premier Kings Inc, Case No. 23-02871-TOM)

[EXTERNAL EMAIL]

Heather, thank you for your time to speak earlier.

Appreciate your patience as we were awaiting guidance from the franchisor for site 25882. We have been advised that 25882 is a permanent closure due to performance and that it will not be assumed by the bidder.

The following terms are acceptable to RRG, and we have been authorized to present the below. Note that the defined annual rent amounts will be considered the minimal annual base rent and determine the natural breakpoint for percentage rent:

1. 25937:
  - a. Total Rent: Greater of \$95,000 or 7.50% RTS in Years 1-5. 10% increase to the minimum base rent following the initial 5 years which will increase every 5 years.
2. 26749:
  - a. Total Rent: Greater of \$86,000 or 7.50% RTS in Years 1-5. 10% increase to the minimum base rent following the initial 5 years which will increase every 5 years.
3. 27690:
  - a. Total Rent: Greater of \$110,000 or 7.50% RTS in Years 1-5. 10% increase to the minimum base rent following the initial 5 years which will increase every 5 years.
4. 23806:
  - a. Total Rent: 7.50% RTS in Years 1-5, the then total rent following the initial 5-year term shall increase by 10% every 5 years with no percentage rent.
5. 15499
  - a. Total Rent: Greater of \$106,000 or 7.50% RTS in Years 1-5. 10% increase to the minimum base rent following the initial 5 years which will increase every 5 years.

We wish to retain the options to purchase initially set forth by the landlord earlier in our discussions:

1. For each respective property outlined below, a purchase option shall be included at the listed purchase price amounts and tenant shall have 24 months from lease assumption to exercise, if at all. This will be separate from the proposed rights of first refusal outlined in the attached note.
  - a. 25937: \$1,420,000
  - b. 26749: \$1,560,000
  - c. 27690: \$1,300,000

Referencing initial email chain below, the tenant will agree to the base lease terms proposed, renewal options outlined increasing by 10% / 5 years to minimum base rent, and rights of first refusal for 23806 and 15499 if the landlord elects to sell to a third party. There will be no TIA provided by the landlord and tenant will continue to report sales per all effective leases as it currently stands.

Please review internally and advise of any lender approval available. As time is of the essence, we will begin drafting lease amendment documents with the understanding that we can achieve an outcome and avoid any additional lease terminations.

Thank you,



Patrick Finn  
STNL Advisors LLC  
Tel: 332.345.7297  
Fax: 631.742.6757

**From:** Jamison, Heather A. <HJamison@burr.com>

**Sent:** Friday, December 29, 2023 9:59 AM

**To:** Patrick Finn <pfinn@stnladvisors.com>

**Cc:** Robert M. Ritchey <rritchey@gilpingivhan.com>; jay gill <jaygill16@yahoo.com>; Matthew Anuszkiewicz <manuszkiewicz@stnladvisors.com>; Robert Arruda <rarruda@stnladvisors.com>; Stephen Olefson <solefson@stnladvisors.com>; Champion, Chloe <CChampion@burr.com>

**Subject:** RE: RRG of Jacksonville, LLC / Premier Kings Holdings of GA - (Premier Kings Inc, Case No. 23-02871-TOM)

Patrick:

Good morning. This firm represents Holdings with respect to leasing issues in connection with the Premier Kings bankruptcy cases. Following are Holdings' counteroffers to the discussions previously had with respect to specific stores:

1. 25937: Holdings counters for base rent to be the greater of 8.5% of sales and base rent of \$11,000 for year one; 8.5% of sales and base rent of \$11,500 for year 2; and the greater of 8.5% of sales and base rent of \$11,800 for years 3-5; with a 10% increase in base rent every five years thereafter.
2. 26749: Holdings counters for base rent to be the greater of 8.5% of sales and base rent of \$10,000 for year one; 8.5% of sales and base rent of \$10,500 for year 2; and the greater of 8.5% of sales and base rent of \$10,800 for years 3-5; with a 10% increase in base rent every five years thereafter.
3. 27690: Holdings counters for base rent to be the greater of 8.5% of sales and base rent of \$11,000 for year one; 8.5% of sales and base rent of \$11,500 for year 2; and the greater of 8.5% of sales and base rent of \$11,800 for years 3-5; with a 10% increase in base rent every five years thereafter.
4. 25882: Holdings would accept the greater of (i) \$91,000 annually and (ii) 8.5% of sales (if the lease were assumed and assigned).
5. 15499: Holdings counters for rental payments equal to 8.5% of sales which would then be established as base rent after year 1, base rent for the following years would be the greater of 8.5% of sales and base rent, with base rent increasing 10% every 5 years.
6. 23806: Holdings counters for rental payments equal to 8.5% of sales which would then be established as base rent after year 1, base rent for the following years would be the greater of 8.5% of sales and base rent, with base rent increasing 10% every 5 years.

**PLEASE NOTE THAT ALL THE ABOVE COUNTEROFFERS ARE SUBJECT TO AND CONTINGENT UPON HOLDINGS' LENDER(S) APPROVAL.**

If these payment terms are acceptable, we can further discuss the additional details mentioned in your e-mail below.

Let me know if you have any questions or want to discuss. I'm available throughout the weekend on my cell at 205.919.7948.

**Heather A. Jamison**  
Partner

420 North 20th Street, Suite 3400  
Birmingham, Alabama 35203

direct 205-458-5170  
fax 205-244-5669  
[HJamison@burr.com](mailto:HJamison@burr.com)  
Web

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The information contained in this email is intended for the individual or entity above. If you are not the intended recipient, please do not read, copy, use, forward or disclose this communication to others; also, please notify the sender by replying to this message, and then delete this message from your system. Thank you.

**From:** Patrick Finn <[pfinn@stnladvisors.com](mailto:pfinn@stnladvisors.com)>

**Sent:** Thursday, December 28, 2023 8:36 AM

**To:** jay gill <[jaygill16@yahoo.com](mailto:jaygill16@yahoo.com)>; Robert M. Ritchey <[rritchey@gilpingivhan.com](mailto:rritchey@gilpingivhan.com)>

**Cc:** Matthew Anuszkiewicz <[manuszkiewicz@stnladvisors.com](mailto:manuszkiewicz@stnladvisors.com)>; Robert Arruda <[rarruda@stnladvisors.com](mailto:rarruda@stnladvisors.com)>; Stephen Olefson <[solefson@stnladvisors.com](mailto:solefson@stnladvisors.com)>

**Subject:** RE: RRG of Jacksonville, LLC / Premier Kings Holdings of GA - (Premier Kings Inc, Case No. 23-02871-TOM)

Good morning, Jay & Robert,

Hope you are having an enjoyable holiday week.

Have you had any time to speak with the internal parties? We are available for a phone call as needed. We will need to make final decisions by 1/12/2023 so time is very much against us.

Thank you,

Patrick Finn  
STNL Advisors LLC  
Office 332.345.7297  
Cell 631.742.6757

---

**From:** Patrick Finn

**Sent:** Wednesday, December 20, 2023 2:36 PM

**To:** jay gill <[jaygill16@yahoo.com](mailto:jaygill16@yahoo.com)>; Robert M. Ritchey <[rritchey@gilpingivhan.com](mailto:rritchey@gilpingivhan.com)>

**Cc:** Matthew Anuszkiewicz <[manuszkiewicz@stnladvisors.com](mailto:manuszkiewicz@stnladvisors.com)>; Robert Arruda <[rarruda@stnladvisors.com](mailto:rarruda@stnladvisors.com)>; Stephen Olefson <[solefson@stnladvisors.com](mailto:solefson@stnladvisors.com)>

**Subject:** RE: RRG of Jacksonville, LLC / Premier Kings Holdings of GA - (Premier Kings Inc, Case No. 23-02871-TOM)

Yes – we note the same figures.

It's not an issue with the sales, the current rent amounts are \$162k and \$178k, respectively. We can't advise an incoming operator to commit to these types of occupancy costs for another 15 years.



There's no way that these stores can sustain these levels of rent over the long run, particularly in the BK system.

Patrick Finn  
STNL Advisors LLC  
F 332.345.7297  
C 631.742.6757

**From:** jay gill <jaygill16@yahoo.com>  
**Sent:** Wednesday, December 20, 2023 2:05 PM  
**To:** Robert M. Ritchey <rritchey@gilpingivhan.com>; Patrick Finn <pfinn@stnladvisors.com>  
**Cc:** Matthew Anuszkiewicz <manuszkiewicz@stnladvisors.com>; Robert Arruda <rarruda@stnladvisors.com>; Stephen Olefson <solefson@stnladvisors.com>  
**Subject:** Re: RRG of Jacksonville, LLC / Premier Kings Holdings of GA - (Premier Kings Inc, Case No. 23-02871-TOM)

Patrick:  
Wanted to point out that Richmond Hill 25937 and Nabunta 27690 sales are 1.4M and 1.55 M.

Thanks  
**Jay Gill**  
Ph:770-630-0862  
Fax: 888-744-5087  
755 Tate Overlook  
Marietta, GA 30064

On Friday, December 8, 2023 at 01:52:05 PM EST, Patrick Finn <pfinn@stnladvisors.com> wrote:

Jay, as you may already be aware the balance of the properties is marked as Conditionally Designated Leases with the understanding that RRG has an opportunity to come to a solution across the balance of the properties in scope as ultimately rejected leases are scheduled prior to the extended deadline.

Following a further review this week, the position has not changed on these locations and your indication to us on our previous phone calls that landlord may be interested in retaining RRG following lender approval prompts our efforts to continue the conversation. The initial email proposal attached and sent on 11/28/2023 remains current to RRG's direction and requirements if there is any way at all for these locations to be assumed. The only additional requirements that we are placing into these proposals relates to the three stores that you noted as potential sale candidates to the tenant:

1. For each respective property outlined below, a purchase option shall be included at the listed purchase price amounts and tenant shall have 24 months from lease assumption to exercise, if at all. This will be separate from the proposed rights of first refusal outlined in the attached note.
  - a. Nabunta: \$1,300,000
  - b. Richmond Hill: \$1,420,000
  - c. Midway: \$1,560,000

We are available to discuss following your review. Given that we procured some additional time, we'd like to seek lender review for their input.

Please call me once you have time to speak internally.

Thank you,

Patrick Finn  
STNL Advisors LLC  
F 332.345.7297  
C 631.742.6757

From: jay gill <jaygill16@yahoo.com>  
Sent: Friday, December 1, 2023 12:56 PM  
To: Stephen Olefson <solefson@stnladvisors.com>  
Cc: Patrick Finn <pfinn@stnladvisors.com>; Matthew Anuszkiewicz <manuszkiewicz@stnladvisors.com>; Robert Arruda <rarruda@stnladvisors.com>  
Subject: Re: RRG of Jacksonville, LLC / Premier Kings Holdings of GA - (Premier Kings Inc, Case No. 23-02871-TOM)

Nahunta : 1.6M

Richmond hill: 1.85M

Midway: 1.85M

In todays date you cannot buy the land and build it less than 2.2-2.4M.

The amounts will clear the bank loans

Thanks

**Jay Gill**

Ph:770-630-0862

Fax: 888-744-5087

755 Tate Overlook

Marietta, GA 30064

On Dec 1, 2023, at 12:10 PM, Stephen Olefson <solefson@stnladvisors.com> wrote:

Yes

Stephen Olefson

STNL Advisors LLC

Cell 646.856.2532

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From: jay gill <jaygill16@yahoo.com>  
Sent: Friday, December 1, 2023 11:58:30 AM  
To: Patrick Finn <pfinn@stnladvisors.com>  
Cc: Matthew Anuszkiewicz <manuszkiewicz@stnladvisors.com>; Stephen Olefson <solefson@stnladvisors.com>; Robert Arruda <rarruda@stnladvisors.com>  
Subject: Re: RRG of Jacksonville, LLC / Premier Kings Holdings of GA - (Premier Kings Inc, Case No. 23-02871-TOM)

Would you be open to buying the RE on some?

Thanks

**Jay Gill**

Ph:770-630-0862

Fax: 888-744-5087

755 Tate Overlook

Marietta, GA 30064

On Nov 29, 2023, at 4:10 PM, Patrick Finn <pfinn@stnladvisors.com> wrote:

Jay – left you a voicemail earlier. Its not a good situation.



We have teams in the market today and the condition of these stores is extremely discouraging including those we are not addressing below.

Have you had any time to review on your end? Time is against us.

Thank you,

Patrick Finn  
STNL Advisors LLC  
P: 332.345.7297  
M: 631.742.6757

From: Patrick Finn  
Sent: Tuesday, November 28, 2023 8:36 PM  
To: [jaygill16@yahoo.com](mailto:jaygill16@yahoo.com)  
Cc: Matthew Anuszkiewicz <[manuszkiewicz@stnladvisors.com](mailto:manuszkiewicz@stnladvisors.com)>; Stephen Olefson <[solefson@stnladvisors.com](mailto:solefson@stnladvisors.com)>; Robert Arruda <[rarruda@stnladvisors.com](mailto:rarruda@stnladvisors.com)>  
Subject: RRG of Jacksonville, LLC / Premier Kings Holdings of GA - (Premier Kings Inc, Case No. 23-02871-TOM)

Jay -

Appreciative of your time and connecting with me earlier given the latest developments and critical timelines involved with this ongoing process.

Attached is our letter of engagement with RRG, the subsequent bidder on numerous Premier Burger King locations. There are several dozen stores in scope, and we are working diligently to ensure that this potential purchaser will have the ability to confidently operate as many of these restaurants as possible.

Following our conversation, the current locations as part of the bidding that we are recording as owned by Premier Kings Holdings of GA are as follows:

Store Number	Address	City	State	Landlord
23806	2430 Osborne Rd	St Mary's	GA	Premier Kings Holdir
25937	4660 Hwy 17	Richmond Hill	GA	Premier Kings Holdir
26749	13708 East Oglethorpe Hwy	Midway	GA	Premier Kings Holdir
12107	115 Golden Isles Plaza	Brunswick	GA	Premier Kings Holdir
13243	154 S. Main St.	Baxley	GA	Premier Kings Holdir
12792	3527 Highway 84 West	Blackshear	GA	Premier Kings Holdir
27690	13200 W Cleveland Street	Nahunta	GA	Premier Kings Holdir
10241	Highway 251 Magnolia Bluff Way	Darien	GA	Premier Kings Holdir
15499	13049 North Main St #15499	Jacksonville	FL	Premier Kings Holdir
8907	1362 Boone St Ext	Kingsland	GA	Premier Kings Holdir

As time is of the essence and wed to a 12/1/2023 deadline, our fiduciary to the bidder prioritizes operating metrics that will allow long term efficiency on a unit level basis. While we are recommending modifications to this portfolio in its entirety, we are resorting to transparency with you and your partners in expressing that there are five locations that are due for rejection. This is based on a combination of elevated rents and required leasehold improvements over the extended term. These five sites are carrying significant occupancy costs for a BK unit relative to their performance and an assumption of the effective leases for the remaining lease term is not possible.

We are proposing the following modifications subject to RRG emerging as the successful bidder in this case. These leases shall remain as NNN in nature, and we are prepared to draft lease amendments to reflect the below general economic terms:

1. 23806: St Mary's, GA

- a. Base Term: 15 years from assumption of lease, execution of new amendment and grant of winning bid to incoming tenant.
- b. Base Rent: \$97,670.00 annually
- c. Base Rental Increases: 10% / 5 years
- d. Renewal Options: 4x5 year renewal options increasing 10% / 5 years
- e. ROFR: In the event landlord elects to sell the premises, tenant shall have the right of first refusal to purchase the property at the specified price from third party purchaser deemed acceptable to owner.
- f. Financial Reporting: Tenant will furnish copies of annual sales data following the completion of its fiscal year.

2. 25937: Richmond Hill, GA

- a. Base Term: 15 years from assumption of lease, execution of new amendment and grant of winning bid to incoming tenant.
- b. Base Rent: \$107,460.00 annually
- c. Base Rental Increases: 10% / 5 years
- d. Renewal Options: 4x5 year renewal options increasing 10% / 5 years
- e. ROFR: In the event landlord elects to sell the premises, tenant shall have the right of first refusal to purchase the property at the specified price from third party purchaser deemed acceptable to owner.
- f. Financial Reporting: Tenant will furnish copies of annual sales data following the completion of its fiscal year.

3. 26749: Midway, GA (Store will require \$400,000 of improvements over the life of the lease)

- a. Base Term: 15 years from assumption of lease, execution of new amendment and grant of winning bid to incoming tenant.
- b. Base Rent: \$78,740.00 annually
- c. Base Rental Increases: 12% / 5 years
- d. Renewal Options: 4x5 year renewal options increasing 12% / 5 years
- e. ROFR: In the event landlord elects to sell the premises, tenant shall have the right of first refusal to purchase the property at the specified price from third party purchaser deemed acceptable to owner.
- f. Tenant Improvement Allowance: None
- g. Financial Reporting: Tenant will furnish copies of annual sales data following the completion of its fiscal year.

4. 27690: Nahunta, GA

- a. Base Term: 15 years from assumption of lease, execution of new amendment and grant of winning bid to incoming tenant.
- b. Base Rent: \$73,325.00 annually
- c. Base Rental Increases: 12% / 5 years
- d. Renewal Options: 4x5 year renewal options increasing 12% / 5 years
- e. ROFR: In the event landlord elects to sell the premises, tenant shall have the right of first refusal to purchase the property at the specified price from third party purchaser deemed acceptable to owner.
- f. Financial Reporting: Tenant will furnish copies of annual sales data following the completion of its fiscal year.

5. 15499: Jacksonville, FL (Store will require \$800,000 of improvements over the life of the lease – full remodel or scrape)

- a. Base Term: 15 years from assumption of lease, execution of new amendment and grant of winning bid to incoming tenant.
- b. Base Rent: \$116,870.00 annually



- c. Base Rental Increases: 10% / 5 years
- d. Renewal Options: 4x5 year renewal options increasing 10% / 5 years
- e. ROFR: In the event landlord elects to sell the premises, tenant shall have the right of first refusal to purchase the property at the specified price from third party purchaser deemed acceptable to owner.
- f. Tenant Improvement Allowance: None
- g. Financial Reporting: Tenant will furnish copies of annual sales data following the completion of its fiscal year.

It is imperative that we understand the direction of ownership given the limited timelines. We call on all the ownership partners involved in this process to participate in allowing these stores to remain open and operating. Please share with your partners as we will make it a priority to find time to speak with you following your review. We will need to make decisions on a portfolio wide basis by this Friday and recommend scheduling a phone call at some point tomorrow to discuss.

We cannot express enough that time is of the essence to finalize decisions for these several dozen locations in focus. I will look to hear from you soon.

Respectfully,

Thank you,

Patrick Finn  
STNL Advisors LLC  
Cell 332.345.7297  
631.742.6757

Jay –

Appreciative of your time and connecting with me earlier given the latest developments and critical timelines involved with this ongoing process.

Attached is our letter of engagement with RRG, the subsequent bidder on numerous Premier Burger King locations. There are several dozen stores in scope, and we are working diligently to ensure that this potential purchaser will have the ability to confidently operate as many of these restaurants as possible.

Following our conversation, the current locations as part of the bidding that we are recording as owned by Premier Kings Holdings of GA are as follows:

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13243	154 S. Main St.	Baxley	GA	Premier Kings Holdings of GA
12792	3527 Highway 84 West	Blackshear	GA	Premier Kings Holdings of GA
27690	13200 W Cleveland Street	Nahunta	GA	Premier Kings Holdings of GA
10241	Highway 251 Magnolia Bluff Way	Darien	GA	Premier Kings Holdings of GA
15499	13049 North Main St #15499	Jacksonville	FL	Premier Kings Holdings of GA
8907	1362 Boone St Ext	Kingsland	GA	Premier Kings Holdings of GA

As time is of the essence and wed to a 12/1/2023 deadline, our fiduciary to the bidder prioritizes operating metrics that will allow long term efficiency on a unit level basis. While we are recommending modifications to this portfolio in its entirety, we are resorting to transparency with you and your partners in expressing that there are five locations that are due for rejection. This is based on a combination of elevated rents and required leasehold improvements over the extended term. These five sites are carrying significant occupancy costs for a BK unit relative to their performance and an assumption of the effective leases for the remaining lease term is not possible.



We are proposing the following modifications subject to RRG emerging as the successful bidder in this case. These leases shall remain as NNN in nature, and we are prepared to draft lease amendments to reflect the below general economic terms:

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  - a. Base Term: 15 years from assumption of lease, execution of new amendment and grant of winning bid to incoming tenant.
  - b. Base Rent: \$97,670.00 annually
  - c. Base Rental Increases: 10% / 5 years
  - d. Renewal Options: 4x5 year renewal options increasing 10% / 5 years
  - e. ROFR: In the event landlord elects to sell the premises, tenant shall have the right of first refusal to purchase the property at the specified price from third party purchaser deemed acceptable to owner.
  - f. Financial Reporting: Tenant will furnish copies of annual sales data following the completion of its fiscal year.
2. 25937: Richmond Hill, GA
  - a. Base Term: 15 years from assumption of lease, execution of new amendment and grant of winning bid to incoming tenant.
  - b. Base Rent: \$107,460.00 annually
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  - d. Renewal Options: 4x5 year renewal options increasing 10% / 5 years
  - e. ROFR: In the event landlord elects to sell the premises, tenant shall have the right of first refusal to purchase the property at the specified price from third party purchaser deemed acceptable to owner.
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3. 26749: Midway, GA (Store will require \$400,000 of improvements over the life of the lease)
  - a. Base Term: 15 years from assumption of lease, execution of new amendment and grant of winning bid to incoming tenant.
  - b. Base Rent: \$78,740.00 annually
  - c. Base Rental Increases: 12% / 5 years
  - d. Renewal Options: 4x5 year renewal options increasing 12% / 5 years
  - e. ROFR: In the event landlord elects to sell the premises, tenant shall have the right of first refusal to purchase the property at the specified price from third party purchaser deemed acceptable to owner.
  - f. Tenant Improvement Allowance: None
  - g. Financial Reporting: Tenant will furnish copies of annual sales data following the completion of its fiscal year.
4. 27690: Nahunta, GA
  - a. Base Term: 15 years from assumption of lease, execution of new amendment and grant of winning bid to incoming tenant.
  - b. Base Rent: \$73,325.00 annually
  - c. Base Rental Increases: 12% / 5 years
  - d. Renewal Options: 4x5 year renewal options increasing 12% / 5 years
  - e. ROFR: In the event landlord elects to sell the premises, tenant shall have the right of first refusal to purchase the property at the specified price from third party purchaser deemed acceptable to owner.
  - f. Financial Reporting: Tenant will furnish copies of annual sales data following the completion of its fiscal year.
5. 15499: Jacksonville, FL (Store will require \$800,000 of improvements over the life of the lease – full remodel or scrape)
  - a. Base Term: 15 years from assumption of lease, execution of new amendment and grant of winning bid to incoming tenant.
  - b. Base Rent: \$116,870.00 annually
  - c. Base Rental Increases: 10% / 5 years
  - d. Renewal Options: 4x5 year renewal options increasing 10% / 5 years
  - e. ROFR: In the event landlord elects to sell the premises, tenant shall have the right of first refusal to purchase the property at the specified price from third party purchaser deemed acceptable to owner.
  - f. Tenant Improvement Allowance: None
  - g. Financial Reporting: Tenant will furnish copies of annual sales data following the completion of its fiscal year.

It is imperative that we understand the direction of ownership given the limited timelines. We call on all the ownership partners involved in this process to participate in allowing these stores to remain open and operating. Please share with your partners as we will make it a priority to find time to speak with you following your review. We will need to make decisions on a portfolio wide basis by this Friday and recommend scheduling a phone call at some point tomorrow to discuss.



We cannot express enough that time is of the essence to finalize decisions for these several dozen locations in focus. I will look to hear from you soon.

Respectfully,

Patrick Finn

STNL Advisors LLC

275 Madison Avenue, 13<sup>th</sup> Floor

New York, NY 10016

Office 332.345.7297

Cell 631.742.6757

S T N L  
A D V I S O R S

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Account Number	Property Name	State	City	Street Address	Zip	Lot Area	Parcel Number	Transfer Image Type	Color Image Type	Franchise Expiration	Type	License ID#	License Address	FoodNet	Licensee's City	General Taxes	Percent State Taxes	Taxes	License Amount	Effective Date to License Term	Monthly Payment Plan	Additional Fees that apply on Taxes	City
Adm 1	Regency	Al	Albany	1000 N. Albany Street	31704	3424	0000000000	2000-00-01	2000-00-01	11/1/2009	Food	0000000000	1000 N. Albany Street	Albany	Albany, Georgia	0.00%	0.00%	0.00	0.00	0.00			
Adm 2	Regency	Al	Albany	1000 N. Albany Street	31704	3424	0000000000	2000-00-01	2000-00-01	11/1/2009	Food	0000000000	1000 N. Albany Street	Albany	Albany, Georgia	0.00%	0.00%	0.00	0.00	0.00			
Other	Corporate 2000	Al	Albany	1000 N. Albany Street	31704						Food	0000000000	1000 N. Albany Street	Albany	Albany, Georgia	0.00%	0.00%	0.00	0.00	0.00			
Other	AS, Office	GA	Albany	1000 N. Albany Street	31704						Food	0000000000	1000 N. Albany Street	Albany	Albany, Georgia	0.00%	0.00%	0.00	0.00	0.00			

[illegible]



Amount	Lease Term Original	Lease Expenditures Payment Dates	Notes on Current schedule with Landlords	Cost Basis Include Depreciation?	Particular in which Event? For 2018 Summary University of Illinois S. 195 - Mar 1 to Mar 31	Assigned to which Type? For 2018 Summary University of Illinois S. 195 - Mar 1 to Mar 31	Statement Date	Priority	Interest	Total Monthly Payment	Lease Outstanding Balance	Lease Maturity Date	Interest Rate	Original Term Date	Statement Date	Priority	Interest	Total Monthly Payment	Lease Outstanding Balance	Lease Maturity Date	Interest Rate
		12/1/2018		Yes	Mar 1 to Mar 31	Mar 1 to Mar 31	12/1/2018	4113.75	4,087.25	898.00	11,478,725.00	12/1/2018	7.25%	12/1/2018	12/1/2018	11/1/2018	0.00%	850.00	1,281,400.00	12/1/2018	7.25%
				Yes	Mar 1 to Mar 31	Mar 1 to Mar 31	12/1/2018	8779.50	8785.50	1800.00	11,478,725.00	12/1/2018	7.25%	12/1/2018	12/1/2018	11/1/2018	0.00%	850.00	1,281,400.00	12/1/2018	7.25%
		12/1/2018		Yes	Mar 1 to Mar 31	Mar 1 to Mar 31	12/1/2018	1348.24	925.00	1750.00	7707.00	12/1/2018	7.25%	12/1/2018	12/1/2018	11/1/2018	0.00%	850.00	1,281,400.00	12/1/2018	7.25%
		12/1/2018		Yes	Mar 1 to Mar 31	Mar 1 to Mar 31	12/1/2018	2142.00	2130.75	1800.00	8500.00	12/1/2018	7.25%	12/1/2018	12/1/2018	11/1/2018	0.00%	850.00	1,281,400.00	12/1/2018	7.25%

Loan	Lender	Entity(ies)	Loan/Credit Limit	Loan Balance	Prin Loan	Intstnce Rate	Origination Date	Maturity Date	Collateral/Purpose	Guarantors	Default Status	Concept	Store #/Address	Dropbox Folder/Notes
Auburn Bank #1	PH LLC	750,100	840,236	6,024	4.60%	6/25/2019	1/0/2001	86 MACULA RE - Building only 05 use	Marney Sathu	?	Burger King	Store No 24579 - 22382 Hwy 216, MCDONALD, AL 35111	Not uploaded yet	
Auburn Bank #5	PH LLC	292,800	182,439	5,249	5.20%	8/23/2019	1/0/2001	86 MACULA F&E	Marney Sathu	?	Burger King	Store No 24579 - 22382 Hwy 216, MCDONALD, AL 35111	Not uploaded yet	
CB&I Bank #3	PH-GA	1,758,850	1,580,721	11,327	5.54%	10/29/2018	11/22/2024	Tennille	Marney Sathu and Japal Gil	?	Burger King	Store No 28748 - 515 Carnationflower, Tennille, GA 30159	Not uploaded yet	
First Chapman Bank #1	PH-GA	1,203,000	1,719,413	13,338	4.97%	12/20/2024	12/20/2024	Richmond Hill	Marney Sathu and Japal Gil	?	Burger King	Store No 29837 - 4650 Highway 27, Richmond Hill, GA 31324	Not uploaded yet	
First Chapman Bank #2	PH-GA	1,891,600	1,709,090	13,377	4.25%	11/30/2024	11/30/2024	Waynes	Marney Sathu and Japal Gil	?	Burger King	Store No 26749 - 13708 East Ogilthorpe Hwy, Milledgeville, GA 31320	Not uploaded yet	
First Horizon Bank #10	PH-GA	517,000	233,767	8,425	2.54%	3/2/2019	3/2/2024	Nashville	Marney Sathu and Premier Kings of Georgia Inc.	Yes	Burger King	Store No 27660 - 13220 W Cleveland Street, Nashville, GA 31563	Not uploaded yet	
First Horizon Bank #11	PH-GA	1,303,200	1,294,218	8,959	2.54%	3/2/2019	3/2/2024	Nashville	Marney Sathu and Premier Kings of Georgia Inc.	Yes	Burger King	Store No 27660 - 13220 W Cleveland Street, Nashville, GA 31563	Not uploaded yet	
First Horizon Bank #12	PH LLC	1,395,347	1,202,406	8,405	2.30%	11/22/2018	11/22/2025	Harpersville	Marney Sathu and Premier Kings Inc.	Yes	Burger King	Store No 27261 - 5482 Hwy 280, Harpersville, AL 35758	Not uploaded yet	
First Horizon Bank #4	PH LLC	460,023	276,982	11,101	2.35%	11/22/2018	11/22/2025	Harpersville	Marney Sathu and Premier Kings Inc.	Yes	Burger King	Store No 27261 - 5482 Hwy 280, Harpersville, AL 35758	Not uploaded yet	
First Horizon Bank #5	PH LLC	1,040,020	608,473	6,475	2.40%	8/4/2021	9/2/2022	Atlanta Hwy - Building	Marney Sathu and Premier Kings Inc.	Yes	Burger King	Store No 21454 - 4310 Atlanta Hwy, Marietta, AL 36009	Not uploaded yet	
First Horizon Bank #6	PH-GA	517,000	338,952	1,474	2.54%	5/2/2019	5/2/2024	Port Wentworth	Marney Sathu and Premier Kings of Georgia Inc.	Yes	Burger King	Store No 26889 - 7904 Highway 21, Port Wentworth, GA 31407	Not uploaded yet	
First Horizon Bank #9	PH-GA	1,114,940	980,240	8,801	2.54%	5/2/2019	5/2/2024	Port Wentworth	Marney Sathu and Premier Kings of Georgia Inc.	Yes	Burger King	Store No 26889 - 7904 Highway 21, Port Wentworth, GA 31407	Not uploaded yet	
Max Credit Union #1	PH LLC	1,479,051	51,324	5,135	1/0/2000	8/2/2024	BM - Shopper	Marney Sathu	?	Burger King	Store No 26814 - 391 Main Street, Shear, AL 36075	Not uploaded yet		
Mem Bank #50	PH LLC	326,000	275,080	4,300	4.46%	3/1/2021	11/8/2022	Lynch, TN FFE	Marney Sathu	?	Burger King	Store No 27815 - 103 North Military Street, Lynch, TN 37560	Not uploaded yet	
Mem Bank #3	PH LLC	1,114,000	1,254,739	8,000	4.95%	8/13/2019	3/29/2026	Killeen, TN RE	Marney Sathu	?	Burger King	Store No 26513 - 103 North Military Street, Lynch, TN 37560	Not uploaded yet	
Mem Bank #6	PH LLC	1,442,000	1,376,757	8,743	4.95%	8/13/2019	3/29/2026	Killeen, AL RE	Marney Sathu	?	Burger King	Store No 26545 - 4340 Florence Blvd, Phenix, AL 36848	Not uploaded yet	
Mem Bank #5	PH LLC	1,114,000	1,241,608	8,000	4.95%	10/24/2019	11/29/2026	Peabody, RE	Marney Sathu	?	Burger King	Store No 26844 - 204 East Hwy 276, Piedmont, AL 36722	Not uploaded yet	
Mem Bank #6	PH LLC	-	-	-	0.00%	3/29/2021	3/1/2026	Driveway RE/FFE	Marney Sathu	?	Burger King	Store No 25912 - 5611 Alabama Hwy 16, Colville, AL 35961	This is one of the sales/leases that occurred in Apr 2022 and paid off	
Mem Bank #7	PH LLC	326,000	240,240	4,500	0.00%	2/1/2021	1/28/2022	Piedmont F&E	Marney Sathu	?	Burger King	Store No 26994 - 204 East Hwy 276, Piedmont, AL 36722	Not uploaded yet	
Mem Bank #8	PH LLC	384,000	781,400	4,500	4.95%	3/1/2021	1/28/2022	Killeen, AL FFE	Marney Sathu	?	Burger King	Store No 26848 - 4240 Florence Blvd, Phenix, AL 36848	Not uploaded yet	
PeoplesSouth Bank #1	PH LLC	1,984,140	1,211,111	1,388	5.25%	12/28/2018	10/10/2023	Southside - Real Property	Marney Sathu	?	Burger King	Store No 25426 - 1580 Hwy 77, Southside, AL 36867	Not uploaded yet	
PeoplesSouth Bank #2	PH LLC	272,054	184,358	2,896	0.00%	1/0/1900	1/0/1900	Southside - F&E	Marney Sathu	?	Burger King	Store No 25426 - 1580 Hwy 77, Southside, AL 36867	Not uploaded yet	
PeoplesBank #12	PH LLC	150,753	12,362	4,757	0.00%	4/21/2020	4/21/2025	Springdale FFE	Marney Sathu	?	Burger King	Store No 24121 - 210 Springdale Station Blvd, Springdale, AL 32149	Not uploaded yet	
PeoplesBank #15	PH-GA	1,515,000	1,361,474	10,318	0.00%	1/0/1900	11/15/2022	Greensboro, GA	Marney Sathu and Japal Gil	?	Burger King	Store No 25697 - 1012 Hospitality Drive, Greensboro, GA 30642	Not uploaded yet	
PeoplesBank #17	PH-GA	1,587,500	1,390,111	10,771	0.00%	1/0/1900	12/15/2022	Cleaton, GA	Marney Sathu and Japal Gil	?	Burger King	Store No 25692 - 106 N Quail Street, Cleaton, GA 30417	Not uploaded yet	
PeoplesBank #18	PH-GA	250,725	205,341	4,703	0.00%	5/6/2022	5/10/2027	Conway F&E	Marney Sathu and Japal Gil	?	Burger King	Store No 26111 - 1501 Highway 276, Conway, GA 30624	Not uploaded yet	
PeoplesBank #25	PH-GA	800,000	621,072	5,476	3.34%	11/27/2017	1/28/2024	Peoples Bankers Office Building	Marney Sathu & Japal Gil	?	Office	7078 Riverchase Ind. Blvd, Ste 400, Peachtree Corners, GA 30071	Not uploaded yet	
PeoplesBank #4	PH LLC	490,000	288,806	3,889	4.95%	8/22/2024	6/2/2025	Gordonsville - Building/Equipment	Marney Sathu and Premier Kings Inc.	?	Burger King	Store No 20826 - 130 Fiddlers Road, Gardenville, AL 36021	Not uploaded yet	
PeoplesBank #5	PH LLC	1,571,750	490,514	16,877	0.00%	1/0/1900	1/0/1900	Union, AL	Marney Sathu	?	Burger King	Store No 25741 - 122 Car Cannon Blvd, Union, AL 35087	Not uploaded yet	
PeoplesBank #6	PH LLC	1,285,000	1,231,796	9,401	0.00%	1/0/1900	1/0/1900	Union, AL	Marney Sathu	?	Burger King	Store No 25561 - 1001 Al Hwy 79, Union, AL 35087	Not uploaded yet	
Wells Fargo Prop Co Loan	PH, PH-GA	51,430,000	50,710,074	94,334		10/1/2018		WF Prop Co Loan	Marney Sathu		Burger King	38 stores - see Related Party Loans Tab and Loans by location in green		
Total			83,381,333	74,883,106	317,607									
check														

By Loans	Bank	# of Loans	Loan/Credit Limit	Loan Balance	Loan Paym
	Wells Fargo Bank Group - Jem	0	-	-	-
	Wells Fargo Bank Group - Desele	0	-	-	-
	Wells Fargo Bank Group - Rowan	0	-	-	-
	Wells Fargo Prop Co Loan	1	25,000,000	50,710,074	94,334
	Remount Bank	8	2,800,678	1,548,068	16,955
	PNC - Term	0	-	-	-
	PNC - Rev Loan	0	-	-	-
	PNC - Cleared Draw Term	0	-	-	-
	Alco Sublease	0	-	-	-
	Auburn Bank	2	1,304,000	1,000,463	11,267
	Remount Bank	0	-	-	-
	BB&T Bank (PA, AL)	0	-	-	-
	CB&I Bank	1	1,708,800	1,580,721	11,317
	First Chapman Bank	2	3,489,800	3,422,443	26,611
	First Horizon Bank	7	6,970,669	4,925,589	51,800
	Ford Credit	0	-	-	-
	Max Credit Union	1	-	1,479,051	11,234
	Mem Bank	7	5,056,000	4,650,305	38,797
	PeoplesSouth Bank	2	1,062,193	1,395,569	12,343
	PeoplesBank, LLC	0	-	-	-
	River Bank & Trust	0	-	-	-
	SBA EIDL Loan	0	-	-	-
	United Community Bank	0	-	-	-
Total		17	83,381,333	74,883,106	317,607
check					

Premier Kings of Georgia guarantees the following businesses not current

First Horizon #10, Nashville FFE	232,989.00
First Horizon #11, Nashville RE	1,184,276
First Horizon #9, Port Wentworth FFE	338,452
First Horizon #9, Port Wentworth Lendwell RE	980,240
	3,735,957

Remount Bank #6, Greensboro F&E

Remount Bank #6, Greensboro F&E	288,006
	1,187,678



Summary of Payment Terms for Related Party Restaurant Leases				
Leases by Location Tab	# of Stores	Lease Terms	Notes	Stores in this Category
	39	Fixed Monthly Payment	Wells Fargo Propco Loan	Locations which secure Propco Loan
	2	Fixed Monthly Payment	3rd Party GL; also have Real Estate Loan on Location.	20826, 21654
	1	Fixed Monthly Payment	3rd Party GL; no add'l loan	21983
	2	8.5% of sales*	Real Estate Loan on Location	25565, 25743
	4	8.5% of sales*	Real Estate Loan & Equipment Loan on Location	25426, 28954, 29043, 29513
	6	greater of 8.5% of sales* or debt service**	Real Estate Loan on Location	25607, 25882, 25937, 25748, 26749, 26914
	2	greater of 8.5% of sales* or debt service**	Real Estate & Equipment Loans on Location	26579, 27690
	1	No Lease between PKGA and PKHGA	Third party lease to PKGA; equip loan to PKHGA, but there is no lease between PKHGA and PKGA	26113
	1	development agreement instead of a lease; payment is debt service + \$100	3rd party ground lease; development agreement with propco to construct the restaurant; development fee is equal to debt service plus \$100; no mention of equip loan	26868
	1	greater of 8.5% of sales* or \$127,500/12	Real Estate & Equipment Loan on Location	27281
59	The total of 59 includes 2 stores (26113 and 26868) for which there is no lease Period for Calculating % of Sales is not Defined Service is not Defined			* = ** = Debt

PREMHAP0000671 4891-4260-0672 v.1.XLSX

# EXHIBIT 2

Page 1

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

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(Chapter 11)  
Case No. 23-02871-TOM  
Jointly Administered

- - -

In Re:  
PREMIER KINGS, INC., et al.,  
Debtors.

---

Adversary Proceeding No. 24-00016-TOM

- - -

PREMIER HOLDINGS OF GEORGIA, LLC,  
  
Plaintiff,

vs.

RRG OF JACKSONVILLE, LLC,  
  
Defendant.

---

DEPOSITION OF  
RANDY PIANIN

Atlanta, Georgia  
Tuesday, September 10, 2024

Court Reporter: Michelle M. Boudreaux-Phillips, CCR

Veritext Legal Solutions

877-373-3660

800.808.4958



September 10, 2024

9:48 a.m.

Deposition of RANDY PIANIN, held at the  
offices of Nelson Mullins Riley & Scarborough  
LLP, Atlantic Station, Suite 1700, 201 17th  
Street NW, Atlanta, Georgia, pursuant to  
Agreement, before Michelle M. Boudreaux-  
Phillips, a Certified Court Reporter in the  
State of Georgia.

APPEARANCES

On behalf of the Plaintiff:

HEATHER A. JAMISON, Esq.  
CHLOE E. CHAMPION, Esq.  
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On behalf of the Defendant:

PETER J. HALEY, Esq.  
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peter.haley@nelsonmullins.com

Also Present: Annie Hughes  
Jay Gill



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## EXAMINATIONS

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1                                   RANDY PIANIN,  
2       being first duly sworn, was examined and testified as  
3       follows:

4                                   EXAMINATION

5       BY MS. JAMISON:

6               Q       My name is Heather Jamison. This is  
7       Chloe Champion, Jay Gill -- he's a representative for  
8       Premier -- and then Annie Hughes. And we represent the  
9       plaintiff in this case, Premier Holdings of Georgia,  
10      LLC.

11                    I will ask you a series of questions; and if  
12      you don't understand a question, just ask me to repeat  
13      it. Please try not to shake and nod your head and  
14      answer "yes" and "no" instead, because the  
15      court reporter can't write down a "yes" or "no" [sic].

16                    If you need to take a break at any time, just  
17      let us know; but I do ask that you answer the question  
18      that's on the table before we take a break.

19                    MR. HALEY: Heather, before we start,  
20      can we agree to waive the sealing and the  
21      filing of the deposition, to the extent  
22      that's required, and to reserve all  
23      objections except as to the form of the  
24      question and motions to strike until the time  
25      of trial?

1 MS. JAMISON: Yes.

2 MR. HALEY: Thank you.

3 Q (By Ms. Jamison) I'm probably going to refer  
4 to Premier Holdings as either "Premier Holdings" or  
5 "Holdings." And then for RRG of Jacksonville, LLC,  
6 we'll probably refer to it as "RRG." Is that okay with  
7 you?

8 A Uh-huh. Yes.

9 Q Are you on any medication today that would  
10 affect your ability to answer these questions  
11 truthfully and accurately?

12 A No.

13 Q Can you state your name for the record?

14 A Randy Pianin.

15 Q And did you go to college?

16 A I did.

17 Q Where did you go?

18 A Emory University, undergrad. And  
19 Columbia University, graduate.

20 Q So what degree did you get from Emory?

21 A A bachelor in business administration.

22 Q And from Columbia?

23 A A master in business administration.

24 Q Have you ever testified in court before?

25 A Yes.



1 Q When was that?

2 A Ten or fifteen years ago.

3 Q Is that the only time you testified?

4 A I did a deposition, if that qualifies. That  
5 would have been about four or five years ago.

6 Q And what was the type of case that you  
7 testified in court concerning?

8 A It was a divorce case.

9 Q And then what type of case was the  
10 deposition?

11 A It was insurance-related.

12 Q Other than your divorce case, have you ever  
13 personally been a plaintiff or a defendant in a  
14 lawsuit?

15 A No.

16 Q When you prepared for this deposition, was  
17 anyone present other than RRG's counsel?

18 A No.

19 Q How long have you been at RRG?

20 A Since November of 2022, I believe is when the  
21 company started.

22 Q Are you one of the members?

23 A I am.

24 Q What percentage?

25 A Twelve, fourteen percent. I don't recall the

1 exact number.

2 Q And what is your title with RRG?

3 A Chief executive officer.

4 Q Is this your only employment at this time?

5 A Yes.

6 Q Have you ever been involved in the purchase  
7 of assets from a bankruptcy case other than the  
8 Premier Kings bankruptcy case?

9 A I was an auditor for Deloitte & Touche for  
10 Macy's, which was in bankruptcy.

11 Q To what extent were you involved in the  
12 purchase of these stores from Premier Kings?

13 A That's a vague question, but we looked at the  
14 offering memorandum, looked at information in the data  
15 room, worked with RRG employees on assessing whether to  
16 purchase. We worked with outside advisors to look at  
17 leases to renegotiate, to reject.

18 Q Were you a decision-maker on whether to  
19 purchase the assets?

20 A I was one of the decision-makers.

21 Q Who were the other decision-makers?

22 A Michael Schmickle, Robert Negron, and  
23 Dylan Nugent.

24 Q I'm going to show you what's marked as  
25 Plaintiff's Exhibit 1. Have you seen this document



1 before?

2 A I believe so, yes.

3 Q If you'll turn to page 2 of this document, it  
4 sets out the topics for examination. And starting with  
5 (a) at the bottom of the page, are you able to testify  
6 as to the factual bases relating to the assertions  
7 contained in the complaint filed by Premier Holdings?

8 A Yes.

9 Q Are you able to testify to the factual bases  
10 relating to the defenses in the answer filed by RRG?

11 A Yes.

12 Q What about the motion for judgment on the  
13 pleadings that RRG filed?

14 A I'm not sure I know how to answer that  
15 question.

16 THE WITNESS: What are the motions?

17 MR. HALEY: The witness -- I mean, I  
18 think the witness can testify that he's been  
19 designated by RRG and is the person  
20 knowledgeable with respect to each of the  
21 areas set forth on Exhibit 1.

22 Q (By Ms. Jamison) Did you have access to the  
23 virtual data room where the documents -- where the due  
24 diligence documents were for the sale?

25 A Yes.

1           Q     Did you personally review those documents  
2     that were in the virtual data room?

3           A     I reviewed documents. I cannot tell you if I  
4     reviewed every single document.

5           Q     Was the development agreement at issue here  
6     one of those documents that you reviewed?

7           A     It was not in the data room.

8           Q     Did you review the asset purchase agreement  
9     before it was executed?

10          A     I did.

11          Q     Were you involved in the decision to reject  
12     or assume leases?

13          A     Yes.

14          Q     Were you involved in responding to  
15     Premier Holdings' discovery requests?

16          A     Yes.

17          Q     Who else was involved?

18          A     I would have asked Michael Schmickle,  
19     Dylan Nugent, Robert Negron, and Todd Donaghue.

20          Q     And I'm not asking for communications with  
21     your counsel, but what process was used to gather  
22     documents for the production?

23          A     We reviewed internal communications, internal  
24     files.

25          Q     Were these paper documents or electronically



1 stored?

2 A Electronically stored. We don't keep paper  
3 documents.

4 Q Did you have these in a folder or anything  
5 else on your computer --

6 A Uh-huh. Yes.

7 Q -- that were separated out?

8 A Yes.

9 Q Did you have these divided by store number?

10 A It depends on the file.

11 Q Did you have a separate file for the  
12 Port Wentworth store?

13 A There would not have been a separate file for  
14 the Port Wentworth store. But if we had a file with  
15 all of the leases, there would be a separate document  
16 with that lease.

17 Q Did you also review emails?

18 A Yes.

19 Q And how did you find emails that were  
20 relevant to the production?

21 A I sorted based on the store number, based on  
22 the name. I also looked at communications around the  
23 time that this issue surfaced.

24 Q Are you aware of any digital or physical  
25 storage of the documents that was not searched?

1           A     No.

2           Q     I'm going to show you what's marked as  
3     Plaintiff's Exhibit 3. Have you seen this document  
4     before?

5           A     Yes.

6           Q     Can you please -- starting on page 1 and  
7     continuing to page 2, can you please read that  
8     paragraph. You do not have to read it aloud, but just  
9     let us know when you've read it.

10          A     Okay.

11          Q     Do you agree with that statement?

12          A     Yes.

13          Q     On page 5, there's an Interrogatory No. 6,  
14     which states, "Identify each person(s) of whom you are  
15     aware who accessed the data room on behalf of RRG and  
16     the date of said access."

17                 And you've listed yourself, Dylan Nugent,  
18     and Todd Donaghue, and then counsel and advisors --  
19     STNL Advisors.

20                 Are you aware of anyone else with RRG who  
21     accessed this data room?

22          A     No.

23          Q     On page 6, Interrogatory No. 8 states,  
24     "Identify each person(s) of whom you are aware who  
25     drafted the asset purchase agreement and amendment or



1 who was involved in the negotiations of the asset  
2 purchase agreement and the APA amendment."

3 Did any of the people that you answered have  
4 any more involvement than the others?

5 A Again, it's not equal across.

6 Q Who would you say was the main RRG contact  
7 who was involved?

8 A That would be me.

9 Q And then Interrogatory 9 states, "Identify  
10 each person(s) of whom you are aware who drafted the  
11 assumption agreement or who was involved in the  
12 negotiations of the assumption agreement."

13 Were you also the main RRG representative who  
14 was involved in those negotiations and drafting?

15 A Yes.

16 Q Page 7, there's Interrogatory No. 12, and  
17 then there's an answer, which is continued on to  
18 page 8. And the fifth line from the bottom of that  
19 answer, before the list of people, it states,  
20 "The defendant answers further by stating that the  
21 development agreement was not provided to the  
22 defendant."

23 Is that an accurate response?

24 A It was, prior to the decision to reject,  
25 which is the context of this, I believe.

1           Q     Then it further states that "the defendant  
2     was unaware of the existence of the development  
3     agreement or its terms until after the closing of the  
4     transaction."

5                     Is that an accurate statement?

6           A     It was.

7           Q     What do you mean by "it was" in past tense?

8           A     Well, I was made aware of an email that I was  
9     copied on that the development agreement was contained  
10    in subsequent to the decision to accept and reject  
11    locations.

12          Q     What steps did you take to ensure that the  
13    answers in these interrogatories are accurate? For  
14    instance, did you search your emails?

15          A     I did.

16          Q     And you did not find the email that you were  
17    copied on?

18          A     I either did not find it or I did not see it.

19          Q     What do you mean by "did not see it"?

20          A     Well, if it was included in there, I might  
21    not have read it, because I am copied on hundreds of  
22    emails and don't necessarily read every email I'm  
23    copied on.

24          Q     Does someone read the emails that you are  
25    copied on with RRG?



1           A     No. I would imagine whoever the email was  
2 directed to would read it.

3           Q     So when you did the search for emails, was  
4 this particular email you're talking about given to  
5 your counsel for production?

6           MR. HALEY: Objection. To the extent  
7 that the answer requires the witness to  
8 testify about communications with counsel,  
9 I'm going to object and instruct the witness  
10 not to answer.

11          Q     (By Ms. Jamison) On the very last page of  
12 this document, on page 10, right before your signature,  
13 it states that you, in your capacity as chief executive  
14 officer of the defendant, state under the penalties of  
15 perjury that based on your "review of the applicable  
16 records of the defendant, the foregoing responses are  
17 true and accurate to the best of my knowledge,  
18 information, and belief."

19                When you signed this, was this an accurate  
20 statement?

21          A     Yes.

22          Q     So the applicable records that you reviewed,  
23 what were those records?

24          A     I think I answered this already. It was  
25 internal communications, and it was files that we had

1 relating to the transaction.

2 Q When did you -- let me back up.

3 How many Burger King locations did RRG own  
4 prior to the purchase from Premier Kings?

5 A Twenty-four.

6 Q And how many locations did RRG purchase from  
7 Premier Kings?

8 A Eventually, it was 36 after rejecting.

9 Q Did you say it was after rejecting?

10 A After rejecting.

11 Q How did you learn that these stores were  
12 available for purchase?

13 A There were discussions with Burger King,  
14 frankly, before we joined the system that these may be  
15 coming available at some point, so we -- you know, in  
16 the back of our mind, we were hoping these would become  
17 available. And it may have been an offering  
18 memorandum. Typically, the items we get for purchase  
19 come through Michael Schmickle and Dylan Nugent,  
20 because they are partners in a private equity firm.  
21 They don't own -- the private equity firm does not own  
22 us, but they typically see -- it may have come from  
23 there. I don't recall.

24 Q Upon learning that these stores were  
25 available for purchase, were you interested in



1 purchasing all of the stores?

2 A We were interested in the portfolio.

3 Q How did you narrow down the stores that you  
4 were interested in purchasing?

5 A The Premier Kings -- there were approximately  
6 180, and they were divided up into -- I'll call them  
7 territories. And the Jacksonville/Savannah market was  
8 the territory that we were interested in and that  
9 Burger King would allow us to try to purchase.

10 Q And when you say that Burger King would allow  
11 you to purchase, what does that mean?

12 A They want operators to have contiguous  
13 restaurants so that -- they were -- they had experience  
14 in the past with operators that got big with  
15 restaurants in disparate markets and had difficulty  
16 managing them.

17 Q Were these 24 stores that you owned before  
18 you purchased the Premier Kings stores also in the same  
19 territory?

20 A Yes. They're in Jacksonville.

21 Q Once RRG expressed interest in these stores,  
22 what was the next step in purchasing the stores?

23 A I believe that we got documents from  
24 Raymond James and eventually got access to a data room.

25 Q Once RRG had access to the data room, what

1 documents was RRG interested in to make a determination  
2 on whether it wanted to purchase the stores?

3 A Well, we started with the financial  
4 information, so we would look at sales, gross profit  
5 percentages, operating profit, which would include  
6 rent, which is a key component. We would look at  
7 leases. We would look at documents that were -- any  
8 contracts or agreements that -- that related to the  
9 restaurants to see if we wanted to assume them or not  
10 assume them.

11 Q What were your financial requirements for  
12 stores that you were interested in assuming?

13 A We were looking for a certain level of sales,  
14 a certain level of operating profit, and a certain  
15 level of rent as a percent of sales.

16 Q And do you remember what those benchmarks  
17 were?

18 A We try to get -- well, first, from sales, we  
19 were -- we looked at different break points, and I  
20 think we identified restaurants that were under  
21 1.3 million as ones that we wanted to see if we could  
22 renegotiate rent, or we would look to see if there were  
23 remodel requirements.

24 Rent -- we try to keep rent somewhere between  
25 8 and 9 percent, and the range of the data that we had



1 in the data room was between 6 and -- I think the  
2 highest was 13. I may be off a little bit. And we  
3 looked to try to either renegotiate or reject where the  
4 rent, as a percent of sales, was too high.

5 And then operating profit, we looked at all  
6 that were losing money. We then looked at ones that  
7 were making less than 25,000, ones making less than  
8 100,000.

9 Q And when you say 25,000 and 100,000, is that  
10 sales?

11 A Store-level operating profit.

12 Q Annually?

13 A Yeah. We looked at the trailing twelve  
14 months that was provided by Raymond James, which I  
15 believe came from Premier Kings of Georgia or whatever  
16 the operating entity was.

17 Q And then rent as a percentage of sales --

18 A Uh-huh.

19 Q -- what was the benchmark that you were  
20 looking for there?

21 A We try to get between 8 and 9. If it was  
22 over 10, we tried to -- we tried to renegotiate the  
23 leases. And if we couldn't and the rent was too high,  
24 we would reject it.

25 Q Approximately how many of the leases did you

1 try to renegotiate?

2 A I would say maybe about 20 or so. I don't  
3 have an exact number. We hired a third party.

4 Q And who was that third party?

5 A STNL.

6 Q Did STNL prepare this analysis based on your  
7 benchmarks?

8 A They prepared a schedule with data that came  
9 from us and the data room. I also prepared a schedule  
10 based on the data from the data room.

11 Q What did STNL's analysis include?

12 A It looked at sales profitability, rent, lease  
13 renewals, remodel requirements.

14 Q And what was the purpose of looking at  
15 remodel requirements?

16 A Because if the restaurant wasn't making a lot  
17 of money or if the sales were low, we did not want to  
18 have to invest anywhere from six hundred to two million  
19 dollars in remodeling.

20 Q And then what data did you look at to perform  
21 the analysis you did?

22 A There were monthly P&Ls in the data room for  
23 each location.

24 Q I'm going to show you what's marked as  
25 Plaintiff's Exhibit 7. Have you seen this before?



1           A     I have seen it after.

2           Q     What do you mean by "after"?

3           A     As I mentioned earlier, I saw the development  
4 agreement after the decision was made to accept or  
5 reject locations.

6           Q     When did you first read this document?

7           A     I believe it was whenever we were first  
8 served.

9           Q     I'm going to show you what's marked as  
10 Plaintiff's Exhibit 33. When we were talking earlier  
11 about the email that you were copied on, is this that  
12 email?

13          A     Yes, it was.

14          Q     And so when you received this email, you  
15 didn't read it?

16          A     I don't believe that I did.

17          Q     Did you look at any of the attachments?

18          A     If I didn't read it, I wouldn't have looked  
19 at the attachments.

20          Q     Who did you expect to read these documents?

21          A     Our outside counsel, who requested them.

22          Q     What date was the closing on the purchase  
23 from Premier Kings?

24          A     I believe it was the 16th of January.

25          Q     2024?

1           A     Uh-huh.

2           Q     Is that a yes?

3                   MR. HALEY:  Remember to answer yes or  
4           no.

5                   THE WITNESS:  Yes.

6           Q     (By Ms. Jamison)  I'm going to show you  
7           what's marked as Exhibit 15.  This came from a  
8           spreadsheet, and I had it blown up into a large  
9           document because I can't read small language anymore.  
10                   Have you seen this document before?

11           A     I can't say yes or no.  It's possible.  It  
12           looks like many documents that were in the data room,  
13           so...

14           Q     Do you know who would have provided this  
15           document and put it in the data room?

16           A     I'm assuming it would have been  
17           Raymond James, who would have gotten it from the  
18           operating entity.

19           Q     On the third page of this document, a little  
20           over halfway down, on the left-hand column it  
21           references Store No. 26868.  Or is that on your fourth  
22           page?

23           A     It's on the fourth page.

24           Q     Fourth page.  And is that the Port Wentworth  
25           location that we are here about today?

1           A     I believe it is.

2           Q     If you move over, it's called the -- it's  
3 the eighth column. It's labeled "Lessor." On the  
4 first [sic] page.

5           A     Okay.

6           Q     And it states, "Port Wentworth, GL to  
7 Premier Kings of Georgia. PKGA pays develop fee to  
8 Premier Holdings of Georgia."

9                     Had you seen this notation before?

10          A     As I told you, I can't recall if I saw this  
11 document or not.

12          Q     In the next column over, it states,  
13 "GL between third party and PKGA; development agreement  
14 between PKGA and PHGA for debt service payment plus  
15 \$100."

16                     Do you know if anyone saw that reference --  
17 MR. HALEY: Objection.

18          Q     -- in this document?

19                     MR. HALEY: Objection.

20                     You can answer.

21                     THE WITNESS: I don't know, but we  
22 didn't assume any debt service of anything  
23 for the debtor, so -- or for the purchaser,  
24 so I'm not sure that that would have even  
25 struck a chord if they did.



1           Q       (By Ms. Jamison) On the next-to-last column,  
2       it's called "Lease Terms." And some of these are  
3       listed as fixed monthly amounts, and then mostly on  
4       the -- toward the end, there are -- some of them -- for  
5       instance, right above [sic] the "Port Wentworth" row,  
6       it states "8.5% of sales or debt service payment,  
7       whichever is greater."

8                   Do you know what that means?

9           A       For which location?

10          Q       This is for the 26749, for Midway, Georgia.

11                  MR. HALEY: Just for clarification, so  
12       the -- as blown up, that's on the bottom of  
13       the prior page.

14                  MS. JAMISON: Thank you.

15                  MR. HALEY: So it's at the very bottom  
16       line.

17                  THE WITNESS: It means 8.5 percent of  
18       sales. I have no idea what the debt service  
19       payment was, so...

20          Q       (By Ms. Jamison) If that is in the lease or  
21       part of the lease terms, would RRG be interested in  
22       what this debt service payment was?

23          A       We would not be assuming any debt from the  
24       purchaser.

25          Q       Was there ever any communications with

1 Raymond James or your brokers or anyone else regarding  
2 what these debt service payments were with respect to  
3 any of the leases RRG assumed?

4 A Not that I know of. And we've been paying  
5 the 8.5 percent of sales, and we've been paying  
6 whatever the lease is for Port Wentworth.

7 The lease in Port Wentworth did not reference  
8 any of these -- did not reference the development  
9 agreement, so we're paying what the lease says to  
10 pay.

11 Q And you're making that payment to who?

12 A Whoever -- I have to check the accounts  
13 payable records. Whoever the landlord is.

14 Q I'm going to show you what's marked as  
15 Plaintiff's Exhibit 19, and you're welcome to fold  
16 this in any way that helps.

17 About two-thirds of the way down,  
18 in the left-hand column, there's a reference to  
19 Store No. 26868, the Port Wentworth store.

20 Do you know who prepared this document?

21 A I do not.

22 Q Do you know if this was something provided by  
23 Premier Kings or if this was something that was  
24 prepared by your advisors or internally?

25 A I said I don't know who did it. I don't. It

1 could have been our -- the outside firm that does our  
2 accounting. It could have been our chief financial  
3 officer. I don't know. I don't know why we would have  
4 put "Bidder" in, so...

5 Q Pardon?

6 A I'm not sure, if it was us, why we would have  
7 put "Bidder" in, so...

8 Q What is your understanding is the rental for  
9 the Port Wentworth store?

10 A It's the amount that was in the lease, which  
11 was 6,000 and change. Let's see if an exact -- that's  
12 6,164.92 per month. And that was the amount that was  
13 in the financials provided to us in the data room for  
14 the last six-plus months. I forget exactly.

15 Q So on an annual basis, would that be around  
16 \$74,000?

17 A Yeah.

18 Q Do you know if the Port Wentworth location  
19 was renegotiated or assumed as is?

20 A I don't believe it was renegotiated because I  
21 don't believe that -- well, let me say it differently.  
22 I believe that STNL, who was doing the negotiations  
23 initially, thought this was a Burger King property.  
24 And what they did initially was they did not look at  
25 any Burger King or any Premier Kings real estate



1       entity. They focused first on true third-party  
2       landlords.

3           Q     On the very first -- I'm handing you what's  
4       marked as Plaintiff's Exhibit 25. Have you seen this  
5       document before?

6           A     I have.

7           Q     And who prepared this document?

8           A     I did.

9           Q     Under the section titled "Savannah" on the  
10      very first page, if you go down, it has store location  
11      26868.

12          A     Uh-huh.

13               MR. HALEY: I'm sorry, just --

14               THE WITNESS: Yes.

15               MR. HALEY: Thanks.

16               I was just reminding the witness to  
17      respond verbally.

18               MS. JAMISON: Thank you.

19          Q     (By Ms. Jamison) And under the column  
20      entitled "Rent," it states that rent is \$120,015?

21          A     Yes.

22          Q     And that's different than the 74,000, right?

23          A     I have to answer that? Yes, it is.

24          Q     At the top of this page, it says  
25      "September 2023 TTM." What does TTM stand for?

1           A     Trailing twelve months.

2           Q     So this would have been -- covered the period  
3     from October of '22 to September of '23; is that  
4     correct?

5           A     Yes, that is 12 months.

6           Q     Did you question why the rental for these  
7     12 months was more than the rental set forth in the  
8     ground lease?

9           A     No, because the lease that we had showed that  
10    what they were paying for September, going back -- and  
11    I'd have to look at the monthly schedule that we were  
12    provided -- had what they were paying. So we did not  
13    ask why they were paying more earlier in the year per  
14    the lease that was in the data room, but they were  
15    paying towards the back end and what we -- what we  
16    believed was the rent was what they were paying, so...

17          Q     Based on your analysis here, including the  
18    \$120,015 annual rent payment, was this an acceptable  
19    location based on profitability?

20          A     This would have been acceptable at this  
21    level. However, if you see, it's -- it was marked as a  
22    potential restructure because of the sales level.

23          Q     Why was the decision made not to restructure  
24    this one?

25          A     As I mentioned before, they focused on the

1 third-party landlords. We had a limited amount of time  
2 in order to get the lease negotiations done.

3 Initially, there was a belief that this was BK. I have  
4 not found out why they thought it was. But whether it  
5 was BK or whether it was the real estate entity,  
6 Premier Kings, the focus was on third-party landlords.

7 Q On the very next page, there is another  
8 spreadsheet. Can you tell me what this is?

9 A It looks like it could be monthly and some  
10 trailing twelve as of different points in time, and  
11 then an accumulation of the monthlies on a quarterly  
12 basis, is my guess.

13 Q Do you know who prepared this document?

14 A I don't recall.

15 Q Do you know what the numbers in the columns  
16 represent?

17 A I believe it could be monthly -- well,  
18 it's -- I believe that the LTM columns or -- they seem  
19 to be trailing-twelve-month sales as of that month, is  
20 my guess. And then the ones that are -- those could be  
21 monthly sales. I would have to add them up.

22 Q Would that have been gross or net sales?

23 A Basically, everything we look at is net  
24 sales.

25 Q So if these were net sales, would this mean



1       that 26868 was an acceptable store to RRG financially?

2           A       We wouldn't look at sales only to determine  
3       whether it was acceptable financially.

4           Q       You would look at the other benchmarks you  
5       talked about earlier?

6           A       That's correct.

7           Q       And then if you turn to the next page, do you  
8       know what these numbers represent?

9           A       This is potentially the rent per month.

10          Q       Do you know who prepared this document?

11          A       I don't. I don't recall. And it looks  
12       similar to the other documents, so I'm guessing it's  
13       probably all on the same file.

14          Q       If you look down at Store No. 26868, it shows  
15       a wide variance in rent, doesn't it? Strike that.  
16       That's very general.

17                 It shows a variance in rent from January 31st  
18       of '22 until February 28th of '23, doesn't it?

19          A       It does.

20          Q       And these rent numbers would have gone into  
21       the net sales numbers that we just looked at, right?

22          A       It wouldn't go into net sales. It would go  
23       into net operating profit.

24          Q       I think the exhibit we just looked at was --  
25       you had said that it was net numbers.

1           A     You're talking about this one (indicating)?

2           Q     Yes.

3           A     This, I said I thought it was sales.

4           Q     Sales?

5           A     Sales.

6           Q     And that would have been just sales,  
7     period --

8           A     That's all it is, is sales.

9           Q     -- not net?

10          A     That is not net operating profit, no.

11          Q     Next we're going to show you what's marked as  
12     Plaintiff's Exhibit 28. Have you seen this document  
13     before?

14                     (Discussion off the record.)

15                     (Recess taken.)

16          Q     (By Ms. Jamison) So this is Plaintiff's  
17     Exhibit No. 28. Have you seen this document before?

18          A     I don't recall seeing this, no.

19          Q     Does that mean that you don't know who  
20     prepared it?

21          A     That would mean I don't know who prepared it,  
22     that's correct.

23          Q     I'm going to show you what's marked as  
24     Plaintiff's Exhibit 31. Have you ever seen this  
25     before?

1           A     Yes.

2           Q     Can you tell me who prepared this?

3           A     It might have been me, but it was definitely  
4     RRG.

5           Q     Down on the first page, (B), under  
6     "Legal & Agreements," No. 4, it says, "Development  
7     agreement, if any."

8           A     Yep.

9           Q     When was this document prepared? Before the  
10    closing or after?

11          A     This was way before the closing, but the  
12    reference to the development agreement is not your  
13    document. This is did Premier Kings have a development  
14    agreement with Burger King to open up a certain number  
15    of locations, which when you're a franchisee, it is  
16    very typical to have development agreements with the  
17    franchisor.

18          Q     These development agreements with the  
19    franchisor, what are they documenting?

20          A     The number of new locations you need to open.

21          Q     So is it Burger King saying, "You have to  
22    open this many new locations"?

23          A     That's what we were trying to determine, if  
24    there was a requirement to open any new locations.

25          Q     And this would have been a development



1 agreement between who that you're looking for?

2 A It would have been between Premier Kings,  
3 operating entity, and Burger King.

4 Q Were you aware of any potential development  
5 agreements with anyone other than Burger King?

6 A No. There were none provided in the data  
7 room, so we were not aware of any.

8 Q Do you believe that if this Port Wentworth  
9 development agreement between Holdings and  
10 Premier Kings was not in the data room, do you think it  
11 should have been in the data room?

12 MR. HALEY: Objection.

13 You can answer.

14 THE WITNESS: It definitely should have  
15 been in the data room. All contracts between  
16 Premier Kings operating and anyone should  
17 have been in the data room.

18 Q (By Ms. Jamison) Do the development  
19 agreements with Burger King, when they tell you the  
20 number of stores, is it the number of stores that can  
21 be opened or required to be opened?

22 A I believe it would depend on the development  
23 agreement.

24 Q Does it contain any terms -- does it require  
25 or address anything other than the number of stores to

1 be opened?

2 MR. HALEY: Objection.

3 You can answer.

4 The question is hypothetically?

5 THE WITNESS: Yeah, that's why I'm  
6 struggling, because I can speak to  
7 development agreements I've been subject to  
8 in other franchise concepts, and they are new  
9 restaurants you are required to open.

10 Q (By Ms. Jamison) With -- in your experience,  
11 who would be required to pay for the buildout and  
12 construction of these stores?

13 A Whoever was subject to the development  
14 agreement.

15 Q So not Burger King?

16 A No.

17 Q I'm going to show you what's marked as  
18 Plaintiff's No. -- Exhibit 12. Have you seen this  
19 document before?

20 A Yes.

21 Q And this is addressed to Premier Kings of  
22 Georgia, Inc., the debtor?

23 A That's what it says.

24 Q And on the second page, is this a letter that  
25 you signed?

1           A     Yes.

2           Q     And in this letter, it does not reject the  
3 Port Wentworth lease, correct?

4           A     Yes, based on the facts that we had at the  
5 time.

6           Q     And what are the facts that you had at that  
7 time?

8           A     That the lease was \$6,000 a month, and it was  
9 making the store-level EBITDA associated with that.

10                   And I'm going to say it here, had -- we were  
11 aware that the lease was something other than what the  
12 lease said, it would have been rejected, based on  
13 economics, because the economics of the location do not  
14 make sense if you tack on that development agreement  
15 that you put in front of me.

16           Q     I'm going to show you what's marked as  
17 Plaintiff's Exhibit No. 34. Have you seen this  
18 document before?

19           A     Yes.

20           Q     Were you involved in drafting this agreement?

21           A     Our outside counsel drafted the agreement.

22           Q     Did you review and approve of this agreement?

23           A     I signed the agreement.

24           Q     Did you read it prior to signing it?

25           A     I would have. I would have read it, yes.



1           Q     If you look under "Recitals," the very first  
2 paragraph, it states, "Whereas, Assignor, as tenant,  
3 and Port Wentworth Fee Owner, LLC, as landlord, are  
4 parties to that certain Ground Lease, dated as of  
5 May 8, 2018, as amended by that certain Amendment to  
6 Ground Lease, dated August 3, 2018, and as subject to  
7 that certain Development Agreement between  
8 Premier Holdings of Georgia, LLC and Assignor, dated  
9 May 17, 2019."

10                   When you reviewed this document, did you  
11 notice the reference to the development agreement?

12           A     We discussed this with our outside counsel.

13           Q     Did you ask to see this development  
14 agreement?

15                   MR. HALEY:  Objection.  To the extent  
16 the question is directed to communications  
17 that were between the witness and counsel, I  
18 instruct the witness not to answer.  To the  
19 extent the witness is being asked whether he  
20 asked anyone else to see the development  
21 agreement or whether he saw the development  
22 agreement at the time he signed it, he can  
23 answer.

24                   THE WITNESS:  So are you reasking or am  
25 I answering?

1           Q     (By Ms. Jamison) I am reasking if you  
2 asked --

3           A     I did not see it prior to signing.

4           Q     And you did sign this document, correct?

5           A     I did, yes.

6           Q     If you turn to the page past your signature,  
7 there's a "Landlord Consent to Assignment and  
8 Assumption of Lease."

9                     Is this a normal -- strike that.

10                    Did you see this page when you signed --

11           A     I don't recall.

12           Q     -- this document?

13           A     I don't recall.

14           Q     And if you turn to the next page, there's a  
15 development -- "Developer Consent to Assignment and  
16 Assumption of Lease."

17                     Did you see this page prior to signing?

18           A     I don't believe I did.

19           Q     Do you know whether Premier Kings paid  
20 Premier Holdings a cure payment on the development  
21 agreement?

22           A     No.

23           Q     Would Premier Kings pay a cure payment on a  
24 document that was not being assumed?

25           A     I don't know why you're asking me that

1 question. I don't know anything between those two  
2 entities. I suggest you ask Premier Kings.

3 Q I'm going to show you what's marked as  
4 Plaintiff's Exhibit No. 39. Have you seen this  
5 before?

6 A Yes.

7 Q And if you'll look at paragraph 13 of this  
8 complaint, did you -- there's a little screenshot or  
9 snip of a part of the APA at the bottom of paragraph  
10 13, that was in the APA. Do you remember this being in  
11 the APA?

12 A I recall seeing this in the APA.

13 Q And did you notice that it mentioned an  
14 agreement with Premier Kings of Georgia?

15 A Subsequent to, meaning in April or May, when  
16 this thing first surfaced, is when that came to light.

17 Q But you didn't notice it before?

18 A No, I did not notice it, and No. 13 refers to  
19 it as "leases," and we believe there's one lease, which  
20 is the ground lease.

21 Q I'm going to show you what's marked as  
22 Plaintiff's Exhibit No. 41. Have you seen this  
23 before?

24 A Yes.

25 Q Did you review this document before it was



1 filed?

2 A Yes.

3 Q If you'll look at paragraphs 13 and 14 on  
4 page 4 --

5 A Uh-huh.

6 Q -- this refers to an argument to alter or  
7 amend a judgment for mistake, inadvertence, surprise,  
8 or excusable neglect.

9 Do you think that the APA should be revised  
10 because a mistake was made with respect to the  
11 development agreement?

12 MR. HALEY: Objection.

13 You can answer.

14 THE WITNESS: Yes.

15 Q (By Ms. Jamison) Has RRG, based on your  
16 knowledge, ever tried to get out of a contract based on  
17 a mistake before?

18 MR. HALEY: Objection.

19 You can answer.

20 THE WITNESS: I don't know if it's a  
21 mistake, so I'll say no.

22 Q (By Ms. Jamison) Based on your knowledge and  
23 your experience with RRG --

24 A Uh-huh.

25 Q -- has RRG ever had a counterparty to one of

1       its contracts try to get out of the provisions of that  
2       contract based on a mistake?

3               MR. HALEY:  Objection.

4               You can answer.

5               THE WITNESS:  No.

6               Q       (By Ms. Jamison)  If you can continue  
7       turning, there's a page 8, followed by a blank sheet --  
8       or a sheet that has "Exhibit A" on it.

9               A       Uh-huh.

10              Q       And then the following page is an affidavit.  
11       Have you seen this affidavit before?

12              A       Yes.

13              Q       If you turn to paragraph 10 in this  
14       affidavit, it states that "At no time prior to the  
15       deadline for assumption and rejection of leases, or  
16       prior to closing on this transaction on January 16,  
17       2024, were RRG or its advisors provided a copy of, or  
18       access to, the development agreement dated May 17,  
19       2019."

20                     Is this an accurate statement?

21              A       It was my belief when I signed this.

22              Q       Did you do anything to confirm that RRG and  
23       its advisors were not provided a copy of or access to  
24       the development agreement prior to closing?

25              A       I did a review of internal communications at

1       this time.

2           Q       Did you reach out to STNL to ask them?

3           A       I don't know that I did prior to this, um --  
4       prior to this.

5           Q       Did you search your emails prior to executing  
6       the affidavit?

7           A       I did look at internal; but I think, as we've  
8       already established, there was an email I was copied on  
9       that I had not found prior to this.

10          Q       In paragraph 11, the second sentence states,  
11       "For this reason alone, RRG would have never assumed  
12       the agreement without knowing what payment obligations  
13       were entailed or having any ability to do so by  
14       reference to an unidentified 'bank loan.'"

15                 Does this mean that RRG would not have  
16       assumed the development agreement or the lease?

17          A       We would not assume any contract that we  
18       didn't know the terms of. But if, for some reason,  
19       this was deemed to be part of the lease, which it is  
20       not referenced to in the lease, we would have rejected  
21       both the lease and this. Again, it makes no economic  
22       sense.

23          Q       And then on the next page, did you sign this  
24       document?

25          A       Yes.



1           Q     And it states, "Signed under the penalties of  
2     perjury this 8th day of May 2024," correct?

3           A     That's what it says.

4           Q     And did you -- do you know what penalties of  
5     perjury are?

6           A     I have a broad idea.

7           MS. JAMISON: Peter, if it's okay with  
8     you, we -- if we can take a break --

9           MR. HALEY: Sure.

10          MS. JAMISON: -- and let me review my  
11     notes and documents --

12          MR. HALEY: Sure.

13          MS. JAMISON: -- and then if I have some  
14     more questions.

15          MR. HALEY: Yeah, that's fine.

16          MS. JAMISON: Okay.

17          (Recess taken.)

18          Q     (By Ms. Jamison) So I know we had talked  
19     about this earlier, but you said that you didn't review  
20     every document in the data room, right?

21          A     I don't believe I did.

22          Q     If you did not, how are you sure that the  
23     development agreement was not in the data room?

24          A     Because I had downloaded everything that was  
25     in the data room, so I did see what was in there.

1           Q     Were the -- were other documents for the  
2     Port Wentworth store in the data room?

3           A     I'm sure the lease must have been in there.  
4     I'm not sure what else without looking at the list.

5           Q     Did you make -- or did RRG make its decision  
6     to take over these stores based on the documents they  
7     reviewed or based on the financials?

8           A     It would have been based on -- primarily on  
9     the financials and then, you know, it -- it is  
10    customary to look at contracts that are entered into by  
11    the people you're buying to see if you want them or you  
12    don't want them. So we would look at contracts. It  
13    could be utility, it could be trash hauling, it  
14    could -- just any contracts, we would look at. And  
15    those typically are uploaded into the data room, and we  
16    would make decisions on those based on the terms.

17          Q     Do you remember when the deadline was to  
18    reject the document -- to reject leases?

19          A     It was, I think, the end of December, I  
20    believe. One of the things you put in front of me, I  
21    think it was dated December 26th.

22          Q     So if you did not reject by that date, it was  
23    just too late to reject documents?

24                   MR. HALEY: Objection.

25                   You can answer if you know.

1 THE WITNESS: I don't -- I believe there  
2 was a deadline; but from the legal point, I  
3 can't answer.

4 Q (By Ms. Jamison) Did you consider rejecting  
5 any stores after the deadline to reject?

6 A No, because we thought the deadline had  
7 passed.

8 Q On Exhibit 41 that we looked at, which  
9 contained your affidavit as Exhibit A --

10 A Okay.

11 Q -- in paragraph 12 of that affidavit, it  
12 states that with the development agreement payment of  
13 approximately 11,000 per month, that the total monthly  
14 tenancy cost for this location would become 17.05  
15 percent of sales.

16 What was the -- on your benchmarks, what did  
17 you consider to be an appropriate percentage for  
18 tenancy cost?

19 A We try to get between 8 and 9 percent, and we  
20 started looking to renegotiate leases of the Premier  
21 portfolio when they were over 10 percent. And I  
22 believe the highest one was 13 percent, so this would  
23 have far exceeded the top end of the range. And  
24 applying the 11,000 per month also reduces the  
25 store-level operating profit to a point that we would



1 have also rejected.

2 Q When RRG took on this location, did it  
3 believe that it could increase the sales for this  
4 location?

5 A We look at all the -- everything we buy and  
6 try and improve the operations. The question becomes  
7 if it has a low level of sales, there's just so much  
8 you can do. So the expense structure has to be  
9 commensurate with the sales.

10 Q So when you were looking at sales, how far  
11 back do you go to look at sales?

12 A We looked at the trailing twelve.

13 Q So if the revenue increases for the store --

14 A Uh-huh.

15 Q -- then your tenancy cost will go down,  
16 right?

17 A As a percent of sales, it goes down.

18 Q And then if sales go down, then the tenancy  
19 cost percentage would go up, right?

20 A That's correct.

21 Q Do you have any locations where sales have  
22 gone down and increased the tenancy percentage to, say,  
23 something over 10 percent?

24 A I would have to look. I'm sure one of the 60  
25 locations' sales went down.

1           Q     If sales went down for a location, would you  
2     be able to close that location?

3           A     I would have to work with Burger King, and  
4     typically they would look for the restaurant losing  
5     money.

6           Q     Would Burger King require you to keep open a  
7     store that's losing money?

8           A     They would --

9                 MR. HALEY:  Objection.

10                You can answer.

11                THE WITNESS:  Okay.

12                We have not formally asked to close any  
13     restaurants since we acquired them, other  
14     than two locations that were negotiated when  
15     we bought the 23.  So I'm not sure what they  
16     would do.

17                What I've been told from other people is  
18     that they would look to see if the restaurant  
19     is losing money before they would entertain a  
20     discussion.  They would then look at history  
21     and what they believe to be potential before  
22     they would let you close it.

23           Q     (By Ms. Jamison)  Would they look at the rest  
24     of the stores that you have as well?

25           A     They would look at the market.  They would

1 look at the system as a whole. They would look at  
2 customer service metrics. They would look at the rent.  
3 They would look at the life of the lease. They would  
4 look at many factors.

5 Q So if you looked at the trailing twelve  
6 months on sales, why did you not look at the trailing  
7 twelve months on the rental costs?

8 A We did.

9 Q And did you come to any conclusion as to why  
10 the rental cost had decreased in the last four months?

11 A We did not. We looked at what was -- I  
12 believe it was more than four months in the trailing  
13 twelve in September. But we saw that what was being  
14 paid was what was in the lease, and therefore that's  
15 what we used.

16 Q With the ground lease, is it -- would you  
17 consider it atypical for rent to be as low as \$6,000 on  
18 a ground lease?

19 MR. HALEY: Objection.

20 You can answer.

21 THE WITNESS: We have -- I looked at the  
22 rent as a percent of sales, and there were --  
23 there was actually at least one, there may  
24 have been more, that was actually lower than  
25 the rent as a percent of sales for the -- for



1           that location at the 6,100 and whatever,  
2           so...

3           Q       (By Ms. Jamison) Did you look at the cost to  
4 build a store on the ground lease?

5           A       Why would I do that?

6           MR. HALEY: Object -- (gesturing).

7           THE WITNESS: No.

8           Q       (By Ms. Jamison) Would you assume that a  
9 building placed on a ground lease would have cost money  
10 to build the building?

11          MR. HALEY: Objection.

12          You can answer.

13          THE WITNESS: Yes.

14          Q       (By Ms. Jamison) Do you know how much it  
15 would cost to build an outfit of Burger King on a  
16 ground lease?

17          A       I don't know what it would cost to build it  
18 in that location. We are in the process of scraping  
19 and rebuilding one of the first 23 restaurants.

20          Q       And in that process of scraping and  
21 rebuilding, where would -- where are the funds coming  
22 from to build that location?

23          A       Cash on hand and developing a line of credit.

24          MS. JAMISON: I think that's all I have.

25          MR. HALEY: Could we just go off the

record for a second.

(Discussion off the record.)

MR. HALEY: I don't have any questions.

(Deposition concluded at 11:45 a.m.)

C E R T I F I C A T E

STATE OF GEORGIA

COUNTY OF COBB

I, MICHELLE M. BOUDREAUX-PHILLIPS, do hereby  
certify that RANDY PIANIN, the witness whose deposition  
is hereinbefore set forth, was duly sworn by me and  
that such deposition is a true record of the testimony  
given by such witness.

I further certify that I am not related to  
any of the parties to this action by blood or marriage  
and that I am in no way interested in the outcome of  
this matter.

IN WITNESS WHEREOF, I have hereunto set my  
hand this 17th day of September 2024.



MICHELLE M. BOUDREAUX-PHILLIPS, CCR



1 PETER J. HALEY, Esq.

2 peter.haley@nelsonmullins.com

3 September 17, 2024

4 RE: Premier Holdings Of Georgia, LLC v. RRG Of Jacksonville, LLC

5 9/10/2024, 30(b)(6) Randy Pianin (#6877182)

6 The above-referenced transcript is available for  
7 review.

8 Within the applicable timeframe, the witness should  
9 read the testimony to verify its accuracy. If there are  
10 any changes, the witness should note those with the  
11 reason, on the attached Errata Sheet.

12 The witness should sign the Acknowledgment of  
13 Deponent and Errata and return to the deposing attorney.  
14 Copies should be sent to all counsel, and to Veritext at  
15 CS-SOUTHEAST@VERITEXT.COM.

16 Return completed errata within 30 days from  
17 receipt of testimony.

18 If the witness fails to do so within the time  
19 allotted, the transcript may be used as if signed.

20  
21  
22 Yours,

23 Veritext Legal Solutions  
24  
25

Premier Holdings Of Georgia, LLC v. RRG Of Jacksonville, LLC  
 30(b)(6) Randy Pianin (#6877182)

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REASON\_\_\_\_\_

Randy Pianin

Date

Premier Holdings Of Georgia, LLC v. RRG Of Jacksonville, LLC  
30(b)(6) Randy Pianin (#6877182)

ACKNOWLEDGEMENT OF DEPONENT

I, Randy Pianin, do hereby declare that I  
have read the foregoing transcript, I have made any  
corrections, additions, or changes I deemed necessary as  
noted above to be appended hereto, and that the same is  
a true, correct and complete transcript of the testimony  
given by me.

\_\_\_\_\_  
Randy Pianin

\_\_\_\_\_  
Date

\*If notary is required

SUBSCRIBED AND SWORN TO BEFORE ME THIS  
\_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC



<b>&amp;</b>	<b>16th</b> 22:24	<b>26</b> 4:17,24	<b>6</b>
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<b>0</b>	<b>17.05</b> 45:14	<b>26868</b> 23:21 26:19 28:11 31:1,14	<b>6,000</b> 27:11 36:8 48:17
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<b>010549</b> 4:12	<b>17th</b> 2:12 51:18	<b>28</b> 4:19,20 32:12 32:17	<b>6,164.92</b> 27:12
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<b>t</b> 51:1,1 53:3,3 <b>table</b> 6:18 <b>tack</b> 36:14 <b>take</b> 6:16,18 15:12 43:8 44:6 <b>taken</b> 32:15 43:17 <b>talked</b> 31:5 43:18 <b>talking</b> 16:4 22:10 32:1 <b>tell</b> 11:3 30:8 33:2 34:19 <b>ten</b> 8:2 <b>tenancy</b> 45:14 45:18 46:15,18 46:22 <b>tenant</b> 37:2 <b>tense</b> 15:7 <b>terms</b> 15:3 25:2 25:21 34:24 42:18 44:16 <b>territories</b> 18:7 <b>territory</b> 18:8 18:19 <b>testified</b> 6:2 7:24 8:3,7			<b>uh</b> 7:8 12:6 20:18 23:1 28:12 40:5,24 41:9 46:14 <b>um</b> 42:3 <b>unaware</b> 15:2 <b>under</b> 16:14 19:20 28:9,19 33:5 37:1 43:1 <b>undergrad</b> 7:18 <b>understand</b> 6:12 <b>understanding</b> 27:8 <b>unidentified</b> 42:14 <b>united</b> 1:1 <b>university</b> 7:18 7:19 <b>uploaded</b> 44:15 <b>used</b> 11:21 48:15 52:19 <b>utility</b> 44:13

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<b>v</b> 52:4 53:1 54:1	<b>witness</b> 10:16
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34:8 36:3 37:3	
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<b>whereof</b> 51:17	
<b>whichever</b> 25:7	



Alabama Rules of Civil Procedure  
Part V. Depositions and Discovery  
Rule 30

(e) Submission to witness; changes; signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within thirty (30) days of its submission to the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the

court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(F) Certification and filing by officer; exhibits; copies; notice of filing.

(1) The officer shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. Unless otherwise ordered by the court, the officer shall then securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file it with the court in which the action is pending or send it by registered or certified mail to the clerk thereof for filing.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted



fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at [www.veritext.com](http://www.veritext.com).

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

In re:  
PREMIER KINGS, INC., et al.,  
  
Debtor.

)  
)  
) Chapter 11  
) CASE NO. 23-02871 (TOM11)  
) (Jointly Administered)  
)

---

PREMIER HOLDINGS OF GEORGIA, LLC,

Plaintiff,

v.

)  
) Adv. Proc. No. 24-00016-TOM  
)

RRG OF JACKSONVILLE, LLC

Defendant.

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**NOTICE OF 30(b)(6) DEPOSITION OF RRG OF JACKSONVILLE, LLC**

TO:

Peter J. Haley  
Nelson Mullins Riley & Scarborough LLP  
One Financial Center, 35th Floor  
Boston, Massachusetts 02111  
[peter.haley@nelsonmullins.com](mailto:peter.haley@nelsonmullins.com)

Gregory M. Taube  
Nelson Mullins Riley & Scarborough LLP  
201 17th Street, NW, Suite 1700  
Atlanta, Georgia 30363  
[greg.taube@nelsonmullins.com](mailto:greg.taube@nelsonmullins.com)

DEPONENT: Rule 30(b)(6) representative of RRG of Jacksonville, LLC

TIME AND DATE: September 10, 2024 at 10:00 a.m. Eastern Time

**PLAINTIFF'S EXHIBIT 1**

CS018750-v1

**LOCATION:** Nelson Mullins  
Atlantic Station  
201 17<sup>th</sup> Street NW  
Suite 1700  
Atlanta, GA 30363

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 7030 of the Federal Rules of Bankruptcy Procedure, Premier Holdings of Georgia, LLC ("Plaintiff") will take the deposition upon oral examination of RRG of Jacksonville, LLC, ("RRG") listed herein at the above-listed time, date, and location.

Said deposition will continue from time to time until completed and may be used for any purpose permitted under the Federal Rules of Bankruptcy Procedure. Said deposition shall be conducted pursuant to the Federal Rules of Bankruptcy Procedure and shall be taken upon oral examination by ordinary stenographic means before a Notary Public and Court Reporter, or other authorized and qualified person, for the purpose of discovery, or for use as evidence at the trial of this action, or for both purposes.

Pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 7030 of the Federal Rules of Bankruptcy Procedure, Plaintiff requests that RRG designate and produce for examination one or more officers, directors, managing agents, or other persons most knowledgeable to testify regarding the following matters (the "Topics for Examination"):

- (a) The factual bases relating to the assertions contained in the Complaint filed by Plaintiff on April 5, 2024.
- (b) The factual bases relating to the defenses contained in the Answer filed by RRG on May 8, 2024.



(c) The factual bases related to the Motion for Judgment on the Pleadings filed by RRG on May 8, 2024.

(d) Information related to the Data Room, including information related to the documents contained in the Data Room.

(e) Information related to RRG's access of the Data Room, including when the Data Room was accessed, by whom the Data Room was accessed, and which documents were contained in the Data Room at the time of access.

(f) Information related to the drafting, negotiation, execution, and performance of the Asset Purchase Agreement and the APA Amendment.

(g) Information related to RRG's decision to reject certain leases, pursuant to the Rejection Notice.

(h) Information related to the reasons why RRG did not include the Development Agreement in its Rejection Notice.

(i) Information related to why the Development Agreement was listed in the Asset Purchase Agreement as an "Assignable Lease."

(j) Information related to RRG's involvement with the Bankruptcy.

(k) Information related to the Assumption Agreement, and the drafting, negotiation, execution, and performance of the same.

(l) Information related to the Port Wentworth Store.

(m) Information related to the Ground Lease, and RRG's assumption of the same.

(n) Information related to the Development Agreement, and RRG's assumption of the same.

(o) All communications, correspondence, and documents by and between RRG and Debtors.

(p) All communications, correspondence, and documents by and between RRG and Plaintiff.

(q) Information related to the Sale Order.

All terms not expressly defined above shall have the definition set forth in *Plaintiff's First Set of Interrogatories and Requests for Production of Documents to RRG of Jacksonville, LLC*.

Dated this the 19th day of August, 2024.

/s/ Heather A. Jamison

Heather A. Jamison

Chloe E. Champion

*Counsel for Plaintiff*

**OF COUNSEL:**

BURR & FORMAN LLP  
420 North 20th Street, Suite 3400  
Birmingham, Alabama 35203  
Telephone: (205) 251-3000  
Facsimile: (205) 458-5100  
Email: [hjamison@burr.com](mailto:hjamison@burr.com)  
[echampion@burr.com](mailto:echampion@burr.com)

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing document by email, with a copy following by U.S. mail, postage prepaid, on this the 19th day of August, 2024.

Peter J. Haley  
Nelson Mullins Riley & Scarborough LLP  
One Financial Center, 35th Floor  
Boston, Massachusetts 02111  
peter.haley@nelsonmullins.com

Gregory M. Taube  
Nelson Mullins Riley & Scarborough LLP  
201 17th Street, NW, Suite 1700  
Atlanta, Georgia 30363  
greg.taube@nelsonmullins.com

/s/ Heather A. Jamison  
OF COUNSEL



**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

PREMIER HOLDINGS OF GEORGIA, LLC

Plaintiff,

v.

RRG OF JACKSONVILLE, LLC

Defendant.

Adversary Proceeding  
No. 23-02871-TOM

**DEFENDANT RRG OF JACKSONVILLE'S  
ANSWERS TO FIRST SET OF INTERROGATORIES**

The Defendant RRG of Jacksonville, LLC ("Defendant"), by and through their counsel and pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure as made applicable by the Federal Rules of Bankruptcy Procedure, submit the following responses to Plaintiffs' First Set Of Interrogatories propounded upon Defendant.

**INTRODUCTION AND GENERAL OBJECTIONS**

- 1) In responding to Plaintiffs' interrogatories, Defendant has sought information and from those persons who are most likely to know of information or documents or other things

<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. The Court entered an order for joint administration on October 30, 2023 [Doc. No. 84].

responsive to Plaintiffs' discovery. Defendant has conducted a reasonable search for its records kept in the ordinary course of business where such information, documents, or other things responsive to discovery are most likely to be found. To the extent Plaintiff's interrogatories call for more, Defendant objects on the grounds that such interrogatory is overly broad and unduly burdensome. Consistent with the Federal Rules of Civil Procedure, Defendant has limited its search to information in its possession, custody, or control. To the extent that Plaintiff's interrogatories can be construed to require Defendant to obtain information not in its possession, custody, or control, Defendant objects on the grounds that such interrogatories require Defendant to undertake obligations beyond those set forth in the Rules.

2. Defendant objects to interrogatories seeking information that Plaintiffs already have or that are more easily accessible to them on the grounds that any such interrogatories are overly broad and unduly burdensome.
3. Defendant further objects on the grounds that some information sought in Plaintiff's interrogatories (a) was prepared in anticipation of litigation; (b) is protected by the attorney-client privilege; (c) is protected by the work product doctrine; and/or (d) is otherwise privileged or protected from disclosure. Defendant hereby asserts all such applicable privileges and protections and excludes such privileged information from its answers.
4. This Introduction and General Objections are incorporated by reference to the extent applicable into the specific answers set forth below and are neither waived nor limited by the specific responses and objections. Defendant's General Objections shall be continuing as to each interrogatory and are not waived, or in any way limited, by the specific objections. Defendant's objections set forth herein are based upon information presently known to Defendant. Defendant reserves the right to (a) rely on facts, documents, or other

evidence that may develop or subsequently come to its attention; (b) to assert objections or supplemental responses should Defendant discover additional information or grounds for objection; and/or (c) to supplement or amend those answers at any time.

The Defendant responds to each interrogatory as follows:

**INTERROGATORY NO. 1:**

Please state the name, address, and representative capacity, if any, of the Person(s) answering these discovery requests, and provide the same information for any and all Persons who participated in any manner in providing information to You or with whom You consulted in responding to these discovery requests.

**ANSWER:**

Randy Pianin  
c/o Counsel to the Defendant  
Chief Executive Officer

**INTERROGATORY NO. 2:**

Identify each and every Person(s) of whom You are aware who has knowledge of any facts relating to any allegations or defenses set forth by Plaintiff in the Complaint or RRG in the Answer or Motion for Judgment.

**ANSWER:**

The Defendant responds to Interrogatory No. 2 by stating that in addition to the parties to this action, it believes that representatives of the Debtors Premier Kings, Inc. et al, Raymond James, Aurora Management Partners, Burger King Company, LLC, the landlord Port Wentworth Fee Owner, LLC, Laura Kendall, Stephen Olefson (STNL), Matthew Anuszkiewicz (STNL), Patrick Finn (STNL), Randy Pianin (RRG), Mike Schmickle (RRG), Todd Donaghue (RRG) and Dylan Nugent (RRG) each have knowledge of facts relating to this matter. The Defendant answers



— further by stating that discovery is ongoing in this matter and it anticipates identifying additional parties.

**INTERROGATORY NO. 3:**

State whether You have any notes or other documents currently in Your possession which relate in any way to this Adversary Proceeding or the subject matter thereof, and identify such notes or documents consistent with the instructions and definitions set forth in these interrogatories.

**ANSWER:**

The Defendant responds to Interrogatory No. 3 by stating that it will produce copies of any relevant documents.

**INTERROGATORY NO. 4:**

Identify each Person whom You expect to call as a witness at trial or may utilize as a witness in this case, and for each such Person, provide the subject matter on which such witness is expected to testify.

**ANSWER:**

The Defendant has not yet determined what witnesses it will call at any trial of this matter and states that it will supplement this response at the time required by any pre-trial order.

**INTERROGATORY NO. 5:**

Identify each Person whom You expect to call as an expert witness at trial or may utilize as an expert witness in this case and for each such Person provide the following information:

- (a) The subject matter on which such expert is expected to testify;
- (b) The substance of the facts and opinions as to which each such expert is expected to testify;

(c) Summarize the grounds for each such opinion on which the expert is expected to testify; and

(d) Identify all documents provided to such expert(s) to assist him or her in formulating any opinion in this case.

**ANSWER:**

The Defendant has not yet determined what expert witnesses, if any, it will call at any trial of this matter and states that it will supplement this response at the time required by any pre-trial order.

**INTERROGATORY NO. 6:**

Identify each Person(s), of whom You are aware, who accessed the Data Room on behalf of RRG and the date of said access.

**ANSWER:**

The Defendant does not have or maintain records of data room access. It believes the following persons at RRG accessed the site:

Randy Pianin

Dylan Nugent

Todd Donaghue

Additionally, the Defendant believes that its counsel at Nelson Mullins and outside advisors at STNI, Advisors accessed the site on its behalf.

**INTERROGATORY NO. 7:**

Identify each Person(s), of whom You are aware, who have knowledge related to the Data Room and the documents in the Data Room.

**ANSWER:**

The Defendant responds to Interrogatory No. 7, by incorporating by reference its response to Interrogatory No. 6.

**INTERROGATORY NO. 8:**

Identify each Person(s) of whom You are aware, who drafted the Asset Purchase Agreement and APA Amendment, or who was involved in the negotiations of the Asset Purchase Agreement and the APA Amendment.

**ANSWER:**

Randy Pianin  
Dylan Nugent  
Todd Donaghue  
Mike Schmickle  
Robert Negron  
Counsel at Nelson Mullins.

**INTERROGATORY NO. 9:**

Identify each Person(s) of whom You are aware, who drafted the Assumption Agreement, or who was involved in the negotiations of the Assumption Agreement.

**ANSWER:**

Randy Pianin  
Dylan Nugent  
Mike Schmickle  
Counsel at Nelson Mullins.

**INTERROGATORY NO. 10:**

Identify each Person(s), of whom You are aware, who have knowledge related to the Development Agreement, the Ground Lease, and/or the Port Wentworth Store.



**ANSWER:**

The following individuals had general knowledge of the Ground Lease and Port Wentworth store, no person was aware of or ever saw the Development Agreement prior to the commencement of this action.

Randy Pianin  
Dylan Nugent  
Mike Schmickle  
Todd Donaghue  
Counsel at Nelson Mullins and STNL Advisors.

**INTERROGATORY NO. 11:**

Identify each Person(s), of whom You are aware, who have been involved with the Bankruptcy on behalf of RRC.

**ANSWER:**

Randy Pianin  
Dylan Nugent  
Mike Schmickle  
Todd Donaghue  
Counsel at Nelson Mullins and STNL Advisors.

**INTERROGATORY NO. 12:**

Identify each Person(s), of whom You are aware, who were involved in developing a list of leases to reject, pursuant to the *Second Omnibus Motion of the Debtors and Debtors-in-Possession for Entry of an Order (I) Authorizing Rejection of Unexpired Leases, and (II) Setting a Deadline for the Filing of Rejection Claims* [Doc. No. 418] (the "Rejection Notice") filed in the Bankruptcy, and for each such Person provide the following information:

- (a) State the reasons why the Development Agreement was not included in the Rejection Notice.

**ANSWER:**

The Defendant objects to Interrogatory No. 12 as argumentative, inconsistent and unanswerable, without waiving its objection the Defendant identifies the following persons who were involved

In determining what leases to assume or reject and answers further by stating that the Development Agreement was not a lease or referenced in any lease, that the Asset Purchase Agreement specifically stated that no contracts were being assumed, and that the Defendant by written notice, as provided for in the Asset Purchase Agreement, identified leases to be assumed by store number and location and otherwise rejected any and all other leases or contracts, including the Development Agreement. The Defendant answers further by stating that the Development Agreement was not provided to the Defendant or included in the data room and that, as a result, the Defendant was unaware of the existence of the Development Agreement or its terms until after the closing of the transaction. The Defendant incorporates by reference the facts as asserted in its Motion for Judgment on the Pleadings and Motion for Relief from Order Assuming Contract.

Randy Pianin  
Dylan Nugent  
Mike Schmickle  
Todd Donaghue  
Robert Negron  
Counsel at Nelson Mullins and STNI, Advisors,

**INTERROGATORY NO. 13:**

State whether You have any documents in Your possession which relate to the drafting and negotiating of the Asset Purchase Agreement, the APA Amendment, and the Assumption Agreement and identify such documents.

**ANSWER:**

The Defendant responds to Interrogatory No. 13 by stating that it will produce copies of any relevant documents.

**INTERROGATORY NO. 14:**

State whether You have any documents in Your possession which relate to the Data Room, and identify such documents.

**ANSWER:**

The Defendant responds to Interrogatory No. 14 by stating that it will produce copies of any relevant documents.

**INTERROGATORY NO. 15:**

State whether You have any documents in Your possession which relate to the Ground Lease, the Development Agreement, and/or the Port Wentworth Store, and identify such documents.

**ANSWER:**

The Defendant responds to Interrogatory No. 15 by stating that it will produce copies of any relevant documents and answers further by stating that it was never in possession of the Development Agreement or any documents related to the Development Agreement.

**INTERROGATORY NO. 16:**

State why the APA listed the Development Agreement as an "Assignable Lease," as that term is defined in the APA.

**ANSWER:**

The Asset Purchase Agreement incorporated a list of documents provided by the Debtors. The Defendant did not prepare the list and does not have any knowledge as to why the Debtor included a reference to the Development Agreement, not a lease, in the list. The Defendant never saw the Development Agreement, nor was it aware of its existence.

**INTERROGATORY NO. 17:**

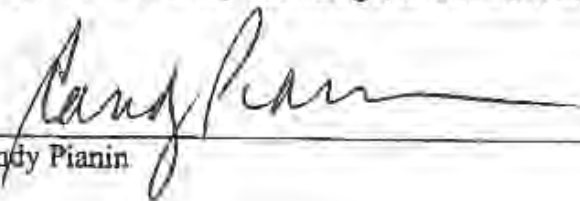
Describe why the Development Agreement was not included in the Rejection Notice as an agreement to be rejected.



ANSWER:

The Development Agreement was not a lease or referenced in any lease, the Asset Purchase Agreement specifically stated that no contracts were being assumed, and the Defendant by written notice, as provided for in the Asset Purchase Agreement, identified leases to be assumed by store number and location and otherwise rejected any and all other leases or contracts, including the Development Agreement. The Defendant answers further by stating that it was never in possession of the Development Agreement or any documents related to the Development Agreement and that if the Development Agreement constituted a required cost of the store location, it would have rejected Ground Lease and the store location. The Defendant incorporates by reference the facts as asserted in its Motion for Judgment on the Pleadings and Motion for Relief from Order Assuming Contract

I, Randy Pianin, in my capacity as the Chief Executive Officer of the Defendant state under the penalties of perjury that based on my review of the applicable records of the Defendant the foregoing responses are true and accurate, to the best of my knowledge, information and belief.

  
\_\_\_\_\_  
Randy Pianin

For the Objections,

RRG of Jacksonville, LLC

By its attorneys,

/s/ Peter J. Haley

Peter J. Haley, BBO #543858

[peter.haley@nelsonmullins.com](mailto:peter.haley@nelsonmullins.com)

Nelson Mullins Riley & Scarborough LLP

One Financial Center, Suite 3500

Boston, MA 02111

(617) 217-4700

Dated: August 30, 2024

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made and entered into by and between Premier Holdings of Georgia, LLC, a Georgia limited liability company hereinafter called the "Developer" and Premier Kings of Georgia, Inc., a Georgia corporation (hereinafter called the "Owner/Operator") on or about May 17, 2019, 2019.

### WITNESSETH:

WHEREAS, Developer and Owner/Operator desire to establish in writing their agreement concerning their relationship, obligations and rights with respect to the development of a Burger King restaurant on certain property located Chatham County, Georgia which is described on Exhibit "A" and to be known as Burger King Store No. 26868, 7304 Highway 21, Fort Wentworth, Georgia 31407 (the "Premises");

WHEREAS, Developer and Owner/Operator acknowledge that this Development Agreement is made subject to the provisions hereof, and the terms and conditions of any bank loan, the proceeds of which will be used to construct the improvements on the Premises (hereinafter called the "Bank Loan");

WHEREAS, Developer and Owner/Operator acknowledge that the development of the Premises is made subject to the provisions hereof, all matters of record, and the terms and conditions of that certain franchise agreement entered into between Owner/Operator and Burger King Corporation (hereinafter called the "Franchise Agreement");

NOW, (HEREFORE, in consideration of the payments hereinafter agreed to be paid and the mutual covenants and agreements hereinafter set forth and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Developer and Owner/Operator agree as follows:

1. Development of the Premises: Developer, for and in consideration of the fees, covenants, agreements and stipulations hereinafter mentioned, reserved and contained, to be paid, kept and performed by Owner/Operator, by these presents does hereby agree to construct a Burger King restaurant on the Premises described on Exhibit "A" for the use and benefit of the Owner/Operator upon the terms and conditions hereinafter set forth and in compliance with the Project # 26868 including all plans and specifications (and appendices and addendums thereto) for the Project, as provided, updated, and supplemented by Hendon - Hueckestein Architects, PC (the "Plans and Specifications"), which are incorporated herein by reference (collectively, the "Project").

2. Term: The term of the Development Agreement shall commence on the date hereof and shall terminate twenty (20) years from the date hereof (the "Termination Date").

3. Development Fee: Owner/Operator agrees to pay to Developer, without deduction, set off or abatement, and without previous notice or demand therefor, a monthly development fee on the first day of each month commencing on June 1, 2019, and continuing through the Termination Date, equal to (a) the Developer's debt service payment associated with the development of the Project, including without limitation under the Bank Loan, plus (b) an administrative/overhead/profit fee of \$100.00.

4. Costs And Expenses: Each Party agrees to pay its own costs and expenses incurred in connection with the proposals, responses, and negotiation of the transactions contemplated herein, including all costs and expenses incurred in connection with the preparation of any studies or reports, surveys, or approvals for this Agreement or otherwise.

5. Assignment: This Agreement is not assignable, except that the Developer shall have the right at any time to assign all its rights and obligations in and to the Project and to transfer this Agreement or any part thereof to any affiliate of the Developer that agrees to assume assigned obligations of the Developer in and to the

## **PLAINTIFF'S EXHIBIT 7**



Project; and if so assigned, the Developer shall continue to be responsible for the performance of the obligations of the Developer under this Agreement.

6. Section Titles and Headings. The section titles and headings are for convenience only and do not define, modify, or limit any of the terms and provisions hereof.

7. Survival of Representations and Warranties. The representations, warranties, and covenants made by each of the Parties hereto and contained herein shall survive the performance of any obligations to which such representations, warranties, and covenants relate.

8. Waivers. Waiver of any of the obligations of any Party under this Agreement shall be effective only when stated in writing and signed by the waiving Party. No delay or omission to exercise any right or power by any Party shall be construed to be a waiver. In the event any provision is waived by a Party, such waiver shall not be deemed to waive any other provision.

9. Time is of the Essence. The Parties acknowledge and agree that time is of the essence in performing their respective duties under this Agreement.

10. Notices. All notices required by, or arising out of, or related to this Agreement shall be sent by United States Mail, first class postage affixed, addressed to the receiving Party as described below:

PREMIER HOLDINGS OF GEORGIA, LLC  
3300 Eastern Blvd  
Montgomery AL 36116

PREMIER KINGS OF GEORGIA, INC.  
3300 Eastern Blvd  
Montgomery AL 36116

or to such other address as the receiving Party shall have most recently forwarded to the sending Party pursuant to the provisions of this Section.

11. Entire Agreement; Amendment. This Agreement is the entire agreement and supersedes all prior and collateral communications and agreements of the Parties relating to the subject matter. This Agreement may be amended only by a written modification executed by each of the Parties' duly authorized representatives. The terms and provisions of this Agreement shall run with the land for as long as this Agreement remains in effect and shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

12. Severability. In case any one or more of the provisions contained herein should be invalid, illegal or unenforceable in any respect and for any reason whatsoever, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, and in the event any such provision is held to be invalid, illegal or unenforceable, those Parties affected by such event shall exercise their best efforts to agree upon a provision in substitution for such invalid, illegal or unenforceable provision that is as near to economic benefit as possible to the provision found to be invalid, illegal or unenforceable.

13. No Third-Party Beneficiaries. Other than as set forth in this Agreement, this Agreement shall not confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assigns.

14. Governing Law. The governing law of this Agreement shall be the law of the State of Alabama without regard to conflicts of law provisions.

15. Construction. In this Agreement, unless the context indicates otherwise, the singular includes the plural and the plural the singular, references to statutes, sections or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section or regulation referred to; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation" or "but not limited to" or words of similar import; references to exhibits, attachments or appendices are to those of this Agreement unless otherwise indicated and shall be deemed to include all subsequent modifications thereto; references to agreements and other contractual instruments shall be deemed to include all exhibits, attachments and appendices attached thereto and all subsequent amendments and other modifications to such instrument; and references to Parties include their respective successors and permitted assigns.

16. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

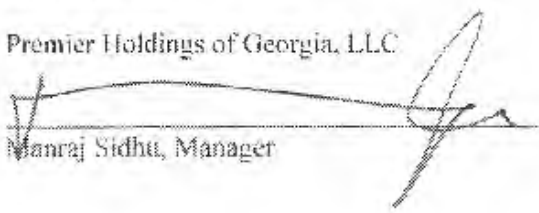
[Execution begins on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be executed in their respective names by their respective authorized representatives as of the day and year first above written.

DEVELOPER:

Premier Holdings of Georgia, LLC

Manraj Sidhu, Manager



OWNER/OPERATOR:

Premier Kings of Georgia Inc.

Manraj Sidhu, President

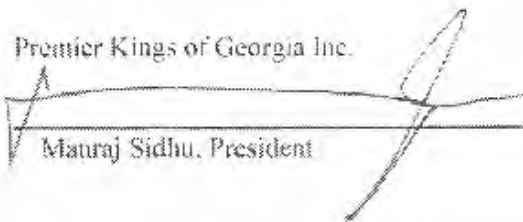




Exhibit "A"

LEGAL DESCRIPTION

00787242

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**From:** [Lorio, Roger](#)  
**To:** [Matthew Thompson](#); [Walker, Irving](#); [Enrique Acevedo](#); [dbaker@auroramp.com](#); [Laura Kendall](#)  
**Cc:** [Randy Pianin](#); [Todd Donaghue](#); [Mike Schmickle](#); [Dylan Nugent](#); [Pratik Parikh](#); [Stephanie Savage](#); [Peter Haley](#); [Trenton Parks](#)  
**Subject:** RE: RRG-Premier Kings // Missing Leases [IWOV-CSDOCS.FID2544408]  
**Date:** Friday, January 5, 2024 4:25:18 PM  
**Attachments:** [Bk 1551 - Lease signed \(1\).pdf](#)  
[Bk 1551 - Lease signed \(1\).pdf](#)  
[BK 1404 - Lease Agreement signed \(1\).pdf](#)  
[Affiliate Lease Agreement executed Richmond Hill.pdf](#)  
[Premier Kings of GA, Inc. Ground Lea 0508.18/1\).pdf](#)  
[Premier Kings of GA, Inc. 145 0803.10/1\).pdf](#)  
[ii 15 - Development Agreement.pdf](#)  
[Mahuda - Lease Agreement.pdf](#)

---

Attached are the requested leases.



## ROGER IORIO

ROGER IORIO

201.525.1621  
201.248.1526  
[rorio@coleschotz.com](mailto:rorio@coleschotz.com)

Court Plaza North | 25 Main Street | Hackensack, NJ 07601

Legal Practice Assistant: Jill Babicz | 201.489.3000 x 5017 | [jBabicz@coleschotz.com](mailto:jBabicz@coleschotz.com)

**From:** Matthew Thompson <[Matthew.Thompson@nelsonmullins.com](mailto:Matthew.Thompson@nelsonmullins.com)>  
**Sent:** Friday, January 5, 2024 3:05 PM  
**To:** Iorio, Roger <[RIorio@coleschotz.com](mailto:RIorio@coleschotz.com)>; Walker, Irving <[Walker@coleschotz.com](mailto:Walker@coleschotz.com)>; Enrique Acevedo <[Enrique.Acevedo@RaymondJames.com](mailto:Enrique.Acevedo@RaymondJames.com)>; [dbaker@auroramp.com](mailto:dbaker@auroramp.com); Laura Kendall <[lkendall@auroramp.com](mailto:lkendall@auroramp.com)>  
**Cc:** Randy Pianin <[rpianin@royalrg.com](mailto:rpianin@royalrg.com)>; Todd Donaghue <[tdonaghue@royalrg.com](mailto:tdonaghue@royalrg.com)>; Mike Schmickle <[MSchmickle@pbcap.com](mailto:MSchmickle@pbcap.com)>; Dylan Nugent <[dnugent@pbcap.com](mailto:dnugent@pbcap.com)>; Pratik Parikh <[pratik.parikh@nelsonmullins.com](mailto:pratik.parikh@nelsonmullins.com)>; Stephanie Savage <[stephanie.savage@nelsonmullins.com](mailto:stephanie.savage@nelsonmullins.com)>; Peter Haley <[Peter.Haley@nelsonmullins.com](mailto:Peter.Haley@nelsonmullins.com)>; Trenton Parks <[trenton.parks@nelsonmullins.com](mailto:trenton.parks@nelsonmullins.com)>  
**Subject:** RRG-Premier Kings // Missing Leases  
**Importance:** High

## PLAINTIFF'S EXHIBIT 33

CAUTION: External Message

Roger / Irv / Premier Kings Team - we are working to prepare all of the individual lease assignments and we do not have copies of the below leases. Please provide copies at your earliest convenience:

Store No.	Address
1197	250 Monument Road, Jacksonville, FL
1404	11711 Abercorn Street, Savannah, GA
1551	4241 August Road, Garden City, GA
25937	4660 Hwy. 17, Richmond Hill, GA
26868	7304 Hwy. 21, Port Wentworth, GA
27690	13200 W. Cleveland Street, Marietta, GA

Thanks,

Matt

**Matthew Thompson**

Nelson Mullins

561.343.6904

[www.nelsonmullins.com](http://www.nelsonmullins.com)

**Confidentiality Notice**

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

\*\*\*\*\*

This e-mail message from Cole Schotz P.C. is private and may contain privileged information. If you are not the intended recipient, please do not read, copy or use it or disclose it to others. If you have received this message in error, please notify the sender immediately by replying to this message and then delete it from your system.



## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made and entered into by and between Premier Holdings of Georgia, LLC, a Georgia limited liability company hereinafter called the "Developer") and Premier Kings of Georgia Inc, a Georgia corporation (hereinafter called the "Owner/Operator") on or about May 17, 2019, 2019.

## WITNESSETH

WHEREAS, Developer and Owner/Operator desire to establish in writing their agreement concerning their relationship, obligations and rights with respect to the development of a Burger King restaurant on certain property located Chatham County, Georgia which is described on Exhibit "A" and to be known as Burger King Store No. 26868, 7304 Highway 21, Port Wentworth, Georgia 31407 (the "Premises").

WHEREAS, Developer and Owner/Operator acknowledge that this Development Agreement is made subject to the provisions hereof, and the terms and conditions of any bank loan, the proceeds of which will be used to construct the improvements on the Premises (hereinafter called the "Bank Loan").

WHEREAS, Developer and Owner/Operator acknowledge that the development of the Premises is made subject to the provisions hereof, all matters of record and the terms and conditions of that certain franchise agreement entered into between Owner/Operator and Burger King Corporation (hereinafter called the "Franchise Agreement").

NOW, THEREFORE, in consideration of the payments hereinafter agreed to be paid and the mutual covenants and agreements hereinafter set forth and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Developer and Owner/Operator agree as follows:

1. Development of the Premises: Developer, for and in consideration of the fees, covenants, agreements and stipulations hereinafter mentioned, reserved and contained, to be paid, kept and performed by Owner/Operator, by these presents does hereby agree to construct a Burger King restaurant on the Premises described on Exhibit "A" for the use and benefit of the Owner/Operator upon the terms and conditions hereinafter set forth and in compliance with the Project # [REDACTED] (including all plans and specifications (and appendices and addendums thereto) for the Project, as provided, updated, and supplemented by Hendon + Buckstein Architects, PC (the "Plans and Specifications"), which are incorporated herein by reference (collectively, the "Project").

2. Term: The term of the Development Agreement shall commence on the date hereof and shall terminate twenty (20) years from the date hereof (the "Termination Date").

3. Development Fee: Owner/Operator agrees to pay to Developer, without deduction, set off or abatement, and without previous notice or demand therefor, a monthly development fee on the first day of each month commencing on June 1, 2019, and continuing through the Termination Date, equal to (a) the Developer's debt service payment associated with the development of the Project, including without limitation under the Bank Loan, plus (b) an administrative/overhead/profit fee of \$100,00.

4. Costs and Expenses: Each Party agrees to pay its own costs and expenses incurred in connection with the proposals, responses, and negotiation of the transactions contemplated herein, including all costs and expenses incurred in connection with the preparation of any studies or reports, surveys, or approvals for this Agreement or otherwise.

5. Assignment: This Agreement is not assignable, except that the Developer shall have the right at any time to assign all its rights and obligations in and to the Project and to transfer this Agreement or any part thereof to any affiliate of the Developer that agrees to assume assigned obligations of the Developer in and to the

NOTE: 1-42

Project; and if so assigned, the Developer shall continue to be responsible for the performance of the obligations of the Developer under this Agreement.

6. Section Titles and Headings. The section titles and headings are for convenience only and do not define, modify, or limit any of the terms and provisions hereof.

7. Survival of Representations and Warranties. The representations, warranties, and covenants made by each of the Parties hereto and contained herein shall survive the performance of any obligations to which such representations, warranties, and covenants relate.

8. Waivers. Waiver of any of the obligations of any Party under this Agreement shall be effective only when stated in writing and signed by the waiving Party. No delay or omission to exercise any right or power by any Party shall be construed to be a waiver. In the event any provision is waived by a Party, such waiver shall not be deemed to waive any other provision.

9. Time is of the Essence. The Parties acknowledge and agree that time is of the essence in performing their respective duties under this Agreement.

10. Notices. All notices required by, or arising out of, or related to this Agreement shall be sent by United States Mail, first class postage affixed, addressed to the receiving Party as described below:

PREMIER HOLDINGS OF GEORGIA, LLC  
3300 Eastern Blvd  
Montgomery AL 36116

PREMIER KINGS OF GEORGIA, INC.  
3300 Eastern Blvd  
Montgomery AL 36116

or to such other address as the receiving Party shall have most recently forwarded to the sending Party pursuant to the provisions of this Section.

11. Entire Agreement; Amendment. This Agreement is the entire agreement and supersedes all prior and collateral communications and agreements of the Parties relating to the subject matter. This Agreement may be amended only by a written modification executed by each of the Parties' duly authorized representatives. The terms and provisions of this Agreement shall run with the land for as long as this Agreement remains in effect and shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

12. Severability. In case any one or more of the provisions contained herein should be invalid, illegal or unenforceable in any respect and for any reason whatsoever, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, and in the event any such provision is held to be invalid, illegal or unenforceable, those Parties affected by such event shall exercise their best efforts to agree upon a provision in substitution for such invalid, illegal or unenforceable provision that is as near in economic benefit as possible to the provision found to be invalid, illegal or unenforceable.

13. No Third-Party Beneficiaries. Other than as set forth in this Agreement, this Agreement shall not confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assigns.



14. Governing Law. The governing law of this Agreement shall be the law of the State of Alabama without regard to conflicts of law provisions.

15. Construction. In this Agreement, unless the context indicates otherwise, the singular includes the plural and the plural the singular, references to statutes, sections or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section or regulation referred to; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation" or "but not limited to" or words of similar import; references to exhibits, attachments or appendices are to those of this Agreement unless otherwise indicated and shall be deemed to include all subsequent modifications thereto; references to agreements and other contractual instruments shall be deemed to include all exhibits, attachments and appendices attached thereto and all subsequent amendments and other modifications to such instrument; and references to Parties include their respective successors and permitted assigns.

16. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

[Execution begins on following page]



IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be executed in their respective names by their respective authorized representatives as of the day and year first above written.

DEVELOPER:

Premier Holdings of Georgia, LLC

Manraj Sidhu, Manager



OWNER/OPERATOR:

Premier Kings of Georgia Inc.

Manraj Sidhu, President

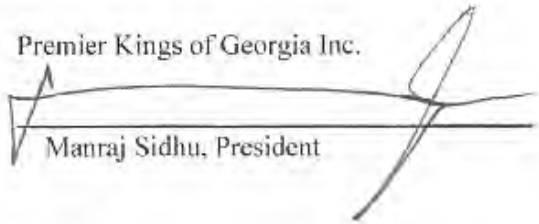


Exhibit "A"

LEGAL DESCRIPTION

00787242

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## GROUND LEASE

THIS GROUND LEASE (the "Lease") is made and entered into this 8 day of May, 2018 (the "Effective Date"), by and between PORT WENTWORTH FEE OWNER, LLC, a Delaware limited liability company ("Landlord"), and PREMIER KINGS OF GEORGIA, INC., a Georgia corporation ("Tenant").

### ARTICLE I DEMISE OF PREMISES

Section 1.01. Demise. For and in consideration of the rents, terms, covenants and agreements hereinafter set forth on the part of Tenant and Landlord to be paid, kept, observed and performed, Landlord does hereby demise and lease to Tenant, and Tenant does hereby take and hire from Landlord, upon and subject to the terms and conditions contained herein, that certain tract of land, consisting of approximately 1.05 acres, lying and being within the shopping center commonly known as Waterford Commons located in Chatham County, Georgia (the "Shopping Center"), known as "Outparcel B" on the Site Plan attached hereto as Exhibit "A" and incorporated herein by reference (the "Site"), and as more particularly described in Exhibit "B" attached hereto and incorporated herein by this reference, together with all improvements now located thereon and all appurtenances thereunto belonging (said Site, improvements and appurtenances hereinafter collectively referred to as the "Premises"), subject to all encumbrances of record and as would be shown on a current, accurate ALTA survey.

Section 1.02. Appurtenant Rights and/or Easements. The Premises are leased by Landlord to Tenant together with, but subject to the terms and conditions of this Lease, the rights, privileges and easements appurtenant to the Site created and established by virtue of that certain Declaration of Easements, Covenants, Restrictions and Maintenance Responsibilities (Shopping Center and Outparcel Property) dated September 19, 2005, recorded in Deed Book 294Q, Page 361 in the Official Records of the Chatham County Clerk in Chatham County, Georgia, as affected by that certain Amended and Restated Declaration of Easements, Covenants, Restrictions and Maintenance Responsibilities (Shopping Center and Outparcel Property) dated March 19, 2007, recorded in Deed Book 322L, Page 457, aforesaid Records, as further affected by that certain First Amendment to Amended and Restated Declaration of Easements, Covenants, Restrictions and Maintenance Responsibilities (Shopping Center and Outparcel Property) dated February 21, 2008, recorded in Deed Book 337V, Page 103, aforesaid Records, and as further affected by that certain Assignment and Assumption of Declarant's Rights dated May 31, 2015, recorded in Deed Book 387Z, Page 942, aforesaid Records collectively, (the "Declaration"). In the event there is any conflict between the rights appurtenant to the Site in the Declaration and the terms of this Lease, the terms of this Lease shall prevail.

Section 1.03. Reservation of Easements. Landlord hereby reserves for the benefit of the property owned by Landlord in the Shopping Center all easements over and across the Site and other rights conferred upon "Declarant" (as defined in the Declaration) pursuant to the Declaration.



## ARTICLE II. TERM OF LEASE

Section 2.01. Term of Lease. The term of this Lease (the "Initial Term") shall commence on the Rental Commencement Date (as defined below) and unless sooner terminated or extended under the terms and conditions contained herein, shall continue until 11:59 p.m. (local time) on the day preceding the twentieth (20th) anniversary of the Rental Commencement Date (as hereinafter defined), plus the remainder of the month in which the twentieth anniversary of the Rental Commencement Date occurs if the Rental Commencement Date is not on the first day of a calendar month.

Section 2.02. Extended Term. Provided this Lease has not been terminated for any reason prior to the expiration of the Initial Term or current Extended Term (as defined below), as applicable, unless Tenant has issued a Non-Renewal Notice in accordance with the requirements of this Section 2.02, the Term of this Lease shall automatically be extended for four (4) successive additional periods of five (5) years each (each such additional period being herein referred to as an "Extended Term"). Each Extended Term shall be upon all of the same terms, covenants and conditions of this Lease then applicable except that the Rent (as defined below) during the Extended Terms shall be as set forth in Section 3.03 hereof. The term "Term" or the phrase "Term of this Lease" as used in this Lease shall mean the Initial Term and any Extended Term which may become effective. Tenant shall have the right to cause any or all Extended Terms which have not yet commenced to be terminated by written notice to Landlord (a "Non-Renewal Notice") given not less than one hundred eighty (180) days before the expiration of the Initial Term or the then current Extended Term, as the case may be. Unless Tenant shall send a Non-Renewal Notice to Landlord as provided hereinabove, then, subject to the conditions contained in this Section 2.02, this Lease shall automatically extend as provided herein. All Extended Terms shall be sequential, i.e., Tenant shall not have the right to issue a Non-Renewal Notice for less than all of the Extended Terms which have not yet commenced.

## ARTICLE III. RENT AND ADDITIONAL RENT

Section 3.01. Pre-Paid Rent. Within two (2) business days of the Effective Date, Tenant shall deposit Ten Thousand and No/100 Dollars (\$10,000.00) ("Pre-paid Rent") with Laura Kaliz at Fidelity National Title Insurance Company, 5565 Glenridge Connector, Suite 300, Atlanta, Georgia 30342 ("Landlord's Agent") to be held in escrow, whereby such Pre-paid Rent shall be solely applied to (i) the first (1st) month of Rent (as hereinafter defined) commencing on the Rental Commencement Date, and (ii) the first (1st) month of Rent for the second Lease Year (as defined below).

Section 3.02. Rental Payments. Subject to Section 3.01, commencing on the Rental Commencement Date, Tenant covenants and agrees to pay Landlord, in lawful money of the United States of America, the base annual rent (hereinafter referred to as "Rent") specified in Section 3.03 hereunder, plus any and all additional sums and charges that come due under the terms and conditions of this Lease (any and all such sums and charges hereinafter referred to as "Additional Rent"). Rent shall be payable, in advance and without demand, in twelve (12) equal monthly installments for each Lease Year, on the first day of each calendar month during the Term, commencing on the Rental Commencement Date, at the office of Landlord, or at such

other address as Landlord may from time to time designate in writing to Tenant. If the Rental Commencement Date is other than the first day of a calendar month, then Rent for such month shall be prorated on a daily basis and the installment so prorated shall be paid in advance on the Rental Commencement Date.

Section 3.03: Rent. Commencing on the Rental Commencement Date and thereafter during the Term, Tenant shall pay Rent as follows:

<u>Lease Year</u>	<u>Base Annual Rent</u>	<u>Base Monthly Rent</u>
1 - 5	\$60,000.00	\$5,000.00
6 - 10	\$60,000.00	\$5,000.00
11 - 15	\$60,000.00	\$5,000.00
16 - 20	\$60,000.00	\$5,000.00
21 - 25 (1 <sup>st</sup> Extension)	\$66,000.00	\$5,500.00
26 - 30 (2 <sup>nd</sup> Extension)	\$72,600.00	\$6,050.00
31 - 35 (3 <sup>rd</sup> Extension)	\$79,860.00	\$6,655.00
36 - 40 (4 <sup>th</sup> Extension)	\$87,846.00	\$7,320.50

For purposes of this Lease the term "Lease Year" shall mean each twelve (12) full calendar month period during the Term commencing on the Rental Commencement Date and on each anniversary thereof. In addition, for purposes of this Lease the "Rental Commencement Date" shall mean the date which is the earlier of: (i) the date when Tenant opens for business to the public in the Premises, or (ii) the expiration of the Construction Period (as defined below).

Section 3.04: Additional Rent. In addition to Rent, Tenant shall pay Additional Rent during the Term of any and all other sums and charges required to be paid by Tenant pursuant to this Lease, whether designated as additional rent or not, and such sums and charges shall be collectible when due as Additional Rent as provided herein and shall be subject to all provisions of this Lease as to default in the payment of rent.

#### ARTICLE IV. TAXES, ASSESSMENTS AND CHARGES

Section 4.01: Taxes and Assessments. Tenant covenants and agrees to discharge and pay before the same become delinquent and before any fine, penalty, or interest may be added for nonpayment, any and all taxes, assessments, license or permit fees, excises, imposts and charges of every nature and classification (all or any one of which are hereinafter referred to as "Taxes") that at any time during the Term are levied, assessed, charged or imposed upon the Premises, this Lease, the leasehold estate of Tenant created hereby, the Improvements, or any Rent or Additional Rent reserved or payable hereunder, including any gross receipts or other taxes levied upon, assessed against or measured by the Rent or Additional Rent. Unless the creation of separate assessments are not permitted under applicable law, Landlord may, but shall not be obligated to, cause the Improvements to be assessed separately for real estate tax purposes from all other buildings and structures within the Shopping Center and Landlord may, but shall not be obligated to, cause the land within the Shopping Center to be separately assessed for real estate tax purposes from the buildings and improvements within the Shopping Center. For all tax years during the Term for which the Improvements, the other buildings and structures within the



Shopping Center and the land within the Shopping Center are separately assessed for real estate tax purposes in the manner described above, Tenant shall pay to Landlord, in the manner otherwise provided under this Section 4.01, one hundred percent (100%) of the Taxes levied and assessed upon the Improvements.

Landlord shall notify Tenant of Tenant's share of the Taxes and will furnish Tenant with a copy of applicable tax bills and calculation of Tenant's share of Taxes within thirty (30) days after receipt by Landlord thereof. Tenant shall pay its share of the Taxes as set forth above to Landlord, not later than ten (10) days before the taxing authority's delinquency date or ten (10) days after receipt of a bill from Landlord, whichever is later.

Section 4.02. General. Tenant shall prepare and file all reports and returns required by law and governmental regulations with respect to any Taxes and shall furnish copies thereof to Landlord, if requested by Landlord. Tenant shall promptly forward to Landlord copies of any bill or assessment respecting any Taxes upon Tenant's receipt thereof from the taxing authority. Likewise, Landlord shall promptly furnish to Tenant copies of any bill or assessment respecting any Taxes upon Landlord's receipt thereof from the taxing authority. Upon request of Landlord, Tenant agrees to furnish and deliver to Landlord receipts evidencing the payment of any Taxes payable by Tenant as provided in Section 4.01 hereof. Any Taxes for the year in which the Term of this Lease commences and the year in which it terminates or expires shall be prorated on a daily basis between Landlord and Tenant. If Tenant fails to pay any Taxes when due, Landlord, without declaring a default hereunder and without relieving Tenant of any liability hereunder, may, but shall not be obligated to, pay any such Taxes and any amount so paid by Landlord, together with all costs and expenses incurred by Landlord in connection therewith, shall constitute Additional Rent hereunder and shall be paid immediately by Tenant to Landlord on demand with Default Interest thereon in the manner provided in Section 13.05 hereof. Tenant's obligation to pay Taxes which accrue during the Term shall survive any termination of this Lease.

Section 4.03. Impact Fees. Tenant covenants and agrees that it shall pay any charges in the nature of impact fees, environmental fees and other similar charges necessary to bring all utilities to the boundary line of the Site.

Section 4.04. Utility Charges. Tenant covenants and agrees that it shall pay when due all charges for all public or private utility services including, but not limited to, water, sewer, gas, light, heat and air conditioning, telephone, electricity, cable television, trash removal, power and other utility and communications services that at any time during the Term are rendered or become due and payable with respect to the Premises. Tenant shall, at its sole cost and expense, obtain all necessary permits and approvals and install all meters, wires, conduits, transformers, and other equipment required for supplying such utility services to the Premises, and Tenant shall pay all tap and connection fees pertaining to such utilities. Landlord shall have no responsibility and shall bear no cost with respect to the installation, maintenance, or repair of such lines.



Section 4.05 Reimbursement Obligations.

(a) Tenant shall be responsible for Landlord's pro-rata share of the Reimbursement Obligations (as defined in the Declaration) set forth in Section 5 of the Declaration.

(b) Tenant shall pay to Landlord its share of the Reimbursement Obligations in equal monthly installments in advance of the first day of each calendar month as Additional Rent. Within one hundred twenty (120) days after the end of each calendar year, Landlord shall furnish Tenant with a written statement providing reasonable detail of the actual costs of the Reimbursement Obligations paid or incurred during the preceding calendar year and showing the calculation of the pro rata share allocated to the Site. Any overpayments of Reimbursement Obligations as may be reflected in said statement shall be applied against Tenant's next due installments of Reimbursement Obligations. Any deficiency in the total monthly payments for the year in relation to its share of actual costs shall be paid by Tenant to Landlord within thirty (30) days after such Tenant's receipt of the annual statement.

ARTICLE V. NET LEASE; NON-TERMINATION

Section 5.01 Net Lease. Except as otherwise provided to the contrary herein, this Lease is a net lease and Rent and Additional Rent shall be paid without notice, demand (except as expressly provided herein in the case of certain Additional Rent), counterclaim, setoff, recoupment, deduction or defense and, without abatement, suspension, deferment, diminution or reduction. It is the purpose and intent of Landlord and Tenant that Rent and Additional Rent (where payable to Landlord) shall be absolutely net to Landlord, so that this Lease shall yield, net to Landlord, the Rent specified in Section 3.03 hereof throughout the Term, and that all costs, expenses and obligations of every kind and nature whatsoever relating to the Premises which may arise and become due as specified in Sections 4.01, 4.02, 4.03, 4.04 and 4.05, or elsewhere in this Lease during the Term shall be paid by Tenant, and that Landlord shall be indemnified and saved harmless by Tenant from and against the same.

Section 5.02 Non-Termination. Except as otherwise expressly provided in this Lease, this Lease shall not terminate nor shall Tenant have any right to terminate this Lease or be entitled to the abatement of any Rent or Additional Rent hereunder or any reduction thereof, nor shall the obligations of Tenant under this Lease be otherwise affected, by reason of (a) any damage to or destruction of all or any portion of the Premises from whatever cause, (b) the prohibition, limitation or restriction of or interference with Tenant's use of all or any portion of the Premises, or (c) for any other cause, whether similar or dissimilar to the foregoing.

ARTICLE VI. PERMIT/LIMITED DILIGENCE PERIOD; PREMISES;  
CONSTRUCTION OF IMPROVEMENTS

Section 6.01 Intentionally Omitted.

Section 6.02. Permit/Limited Diligence Period. Tenant shall have a period of seventy five (75) days following the Effective Date (the "Permit/Limited Diligence Period") to obtain any and all permits, licenses or governmental approvals (the "Permits") which are necessary, in Tenant's sole discretion, to construct and operate a Burger King restaurant on the Site, and also to obtain a geotechnical report reflecting soil conditions reasonably sufficient to support the contemplated Burger King development, a Phase I environmental report which reveals no evidence of material adverse environmental conditions (i.e., a Phase II is not needed or recommended), an ALTA survey, and a leasehold title commitment evidencing good title to the Premises ("Basic Diligence Items"). Tenant agrees to use commercially diligent efforts to obtain such Permits and Basic Diligence Items in an expeditious manner and shall immediately notify Landlord of receipt thereof. In the event Tenant fails to obtain all Permits or is unable to in good faith obtain the Basic Diligence Items during the Permit/Limited Diligence Period, Landlord shall be entitled (without obligation) to a period of seventy five (75) days after the Permit/Limited Diligence Period ("Landlord Permit/Limited Diligence Period") in which to pursue the Permits or obtain the Basic Diligence Items on Tenant's behalf. If Landlord does not elect to exercise the Landlord Permit/Limited Diligence Period, or Landlord is unable to obtain all Permits and/or Basic Diligence Items on behalf of Tenant during the Landlord Permit/Limited Diligence Period, Tenant shall have the right to terminate this Lease and neither party shall have further obligations, rights, remedies or claims of liability to the other hereunder, except for such obligations that expressly survive termination of this Lease. If Tenant terminates this Lease during the Permit/Limited Diligence Period for any reason other than failure to secure the Permits or because of failure to obtain the Basic Diligence Items, and provided Landlord is not then in default under any provision of this Lease that provides Tenant the right to terminate, Tenant shall pay Landlord, within thirty (30) days of such termination, a termination fee of \$25,000.00, and neither party shall have further obligations, rights, remedies or claims of liability to the other hereunder, except for such obligations that expressly survive termination of this Lease.

Section 6.03. Condition and Suitability of the Premises. TENANT AGREES THAT TENANT IS LEASING THE PREMISES "AS IS," AND LANDLORD MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO FITNESS, MERCHANTABILITY, USE OR CONDITION OF THE PREMISES. Tenant leases the Premises without representation or warranty by Landlord, express or implied, in fact or by law, and without recourse, with respect to (a) the condition of the Premises, including, but not limited to the soil and subsurface conditions thereof, and (c) access to or from the Premises.

Section 6.04. Intentionally Omitted

Section 6.05. Use of the Premises. Tenant agrees that, subject to the limitations of this Lease, it will construct and open for business on the Site a Burger King restaurant with a drive through service (the "Permitted Use"), and shall thereafter use and operate the Premises for the Permitted Use and for no other purpose whatsoever without the prior written consent of Landlord, not to be unreasonably withheld, provided any such use is not prohibited by any other existing uses within the Shopping Center at that time or as set forth in the Declaration.



Section 6.06. Tenant Exclusive. Landlord agrees that, commencing on the Effective Date and for a period of fifteen (15) years thereafter or until a Burger King restaurant ceases to operate on the Site for a period of more than seventy-five (75) days consecutively, whichever occurs first, Landlord, for itself and for its successors and assigns, shall not allow (i) any portion of that certain adjacent property located in the Shopping Center as depicted on Exhibit "D" attached hereto and incorporated herein (the "Adjacent Property") to be leased, used or occupied by or as a McDonald's, Hardee's or Wendy's; nor (ii) any portion of the Adjacent Property to be leased, used or occupied as "a business selling or serving hamburgers as a principal menu item". For purposes of this Lease, "a business selling or serving hamburgers as a principal menu item" means a quick serve restaurant deriving fifty (50%) or more of its food and beverage gross sales from the sale of hamburgers.

Section 6.07. Restricted Uses. Notwithstanding anything else to the contrary provided in this Lease, in no event shall Tenant use the Premises for any of the purposes set forth in Exhibit "C" attached hereto and by reference made a part hereof.

Section 6.08. Construction of Improvements. The layout of the Site and all buildings, signs, landscaping and related improvements (the "Improvements") constructed upon the Site by Tenant shall be initially constructed in substantial accordance with plans for such work approved by Landlord as provided herein. Within forty five (45) days following the Effective Date and prior to the commencement of the construction and installation of any Improvements whatsoever on the Site or any part thereof, Tenant shall deliver to Landlord a site plan, sealed elevations, exterior design concepts, material selection and color for the exterior surfaces of the proposed Improvements, including signage and landscaping plans. Landlord shall either approve, disapprove, or make recommendations for changes in such plans or any revisions thereto within fifteen (15) days of the receipt thereof. Failure to approve, disapprove, or make recommendations for changes within said fifteen (15) day period shall constitute an approval of such plans as submitted. Any disapproval or recommendation for change shall specify with particularity the reason therefor. Upon submission of any disapproval or recommendation for change, Landlord shall consult with Tenant and both parties shall use good faith efforts to establish approved plans for the proposed work. Landlord shall exercise its discretion with respect to approval or disapproval of any such plans in a reasonable and uniform manner for the mutual benefit of the Shopping Center and all of the occupants thereof, and consistent with the Declaration.

Tenant shall have the lesser of (i) one hundred twenty (120) days following receipt of the Permit, or (ii) one hundred twenty (120) days following the expiration of the Permit/Limited Diligence Period in order to construct and install the Improvements on the Site substantially in accordance with the mutually approved plans, except in the case of changes required to comply with applicable governmental laws, ordinances or regulations (the "Construction Period").

Upon the completion of the initial construction and installation of any such Improvements, except in the case of changes required to comply with applicable governmental laws, ordinances or regulations, the same shall not be thereafter changed or altered without the prior written consent of Landlord if such changes or alterations would materially and substantially modify the site layout, building and landscaping materials, elevations, or exterior



appearance of the Improvements, or add to the footprint of the building, which approval shall be sought pursuant to the terms set forth above and, subject to the requirements of the other provisions of this Lease, which approval shall not be unreasonably withheld in accordance with the criteria set forth above. The approval of any plans and specifications hereunder by Landlord shall not impose any liability or responsibility whatsoever upon Landlord with respect to the compliance or non-compliance of any such plans and specifications, or any improvements erected or installed in accordance therewith, with applicable zoning ordinances, building codes, or other applicable governmental laws, ordinances, or regulations.

All buffer strips and other undeveloped land areas on the Site, if any, shall be landscaped by the Tenant with trees, shrubs, or suitable ground cover (which may include grass) in a uniform manner consistent with standards of first class shopping center development and in accordance with governmental requirements.

Within forty five (45) days after Tenant's completion of the Improvements, Tenant shall deliver to Landlord, at Tenant's expense, copies of the following items: (a) an "as-built" survey of the Improvements, certified by a registered land surveyor licensed by the State of Georgia, showing the Improvements and utility easements in place in relation to the boundaries of the Site; (b) an AIA form architect's certificate of completion, certifying that the Improvements have been constructed and completed in substantial compliance with the approved plans and specifying the particulars of any variation therefrom; (c) a final contractor's affidavit and waiver of liens with respect to the Premises executed by the general contractor(s) performing work or supplying labor or materials in connection with the Improvements; and (d) a certificate of occupancy for the Premises by the appropriate governmental authorities.

Section 6.09. Tenant's Signage. Tenant shall be entitled to install signage on the Premises, subject to compliance with all applicable signage ordinances and Tenant obtaining all applicable governmental approvals, and further subject to Landlord's approval of the dimensions, design and materials for such signage, which approval shall not be unreasonably withheld and may be conditioned upon the conformity of such signage with reasonable uniform signage criteria to be developed for the Shopping Center by Landlord. Tenant shall maintain all such signage in good condition and repair at all times. If any damage is done to Tenant's signage, Tenant shall repair (or commence to repair and proceed diligently to complete) same within ten (10) days or Landlord shall have the right to repair such sign and bill Tenant for the cost of the repairs. Tenant shall remove such signage at the expiration or sooner termination of this Lease and shall repair any damage caused by such removal.

Section 6.10. Recapture. Notwithstanding anything in this Lease to the contrary, in the event Tenant has not commenced construction of the Improvements within eight (8) months of the Effective Date in accordance with approved plans, Landlord shall have the right to terminate this Lease, and Tenant shall pay Landlord a termination fee of \$35,000.00 to compensate Landlord for Landlord's damages as a result of Tenant's failure to commence construction of the Improvements, the parties agreeing that Landlord's damages in the event Tenant fails to commence construction of the Improvements within eight (8) months of the Effective Date are difficult to ascertain at this time and the amount set forth herein is a reasonable estimate of those damages and represents full and liquidated damages.



## ARTICLE VII. COMPLIANCE WITH LAW, LIENS AND ENCUMBRANCES

Section 7.01. Compliance with Laws. Tenant, at its sole cost and expense, shall comply with and cause the Premises and any and all Improvements located thereon to comply with all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances or recommendations affecting the Premises or any part thereof, or the use thereof, whether foreseen or unforeseen, including those which require "Repairs", as that term is defined in Section 5.01 hereof, or any structural changes in the Improvements.

Section 7.02. Tenant's Agreement Relating to Hazardous Substances. Tenant hereby covenants that Tenant and its agents, employees and contractors will not generate, store, use, treat or dispose of any "Hazardous Substances" (as defined below) in, on or at the Premises or any part of the Improvements, except for Hazardous Substances as are commonly legally used or stored (and in such amounts as are commonly legally used or stored) as a consequence of using the Premises for the Permitted Use, but only so long as Tenant strictly complies or causes compliance with all laws, statutes, rules, orders, regulations, ordinances and decrees concerning the use or storage of such Hazardous Substances. Tenant further covenants that neither the Premises nor any part of the Improvements shall ever be used by Tenant or its agents, contractors or employees as a dump site or storage site (whether permanent or temporary) for any Hazardous Substances during the Term.

Tenant hereby agrees to indemnify Landlord and hold Landlord harmless from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, Landlord by any person or entity or governmental agency for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release if caused or permitted in whole or in part by Tenant, its agents, contractors, employees, representatives, licensees, subtenants or concessionaires on or from, the Premises, the Improvements or the Shopping Center of any Hazardous Substance, including, without limitation, any losses, liabilities, including without limitation strict liability, damages, injuries, expenses, including without limitation reasonable attorneys' fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, as same may be amended ("CERCLA"), any so called federal, state or local "Superfund" or "Superlien" laws, or any federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability, including strict liability, or standards of conduct concerning any Hazardous Substance.

Landlord shall indemnify and hold Tenant harmless from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment and claims of any kind whatsoever paid, incurred or suffered by, or asserted against, Tenant by any entity or governmental agency for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release if caused solely by Landlord or Landlord's agents, in the Shopping Center of any Hazardous Substance.



For purposes of this Lease, "Hazardous Substances" shall mean and include those elements or compounds which are contained in the lists of hazardous substances or wastes now or hereafter adopted by the United States Environmental Protection Agency (the "EPA") or the lists of toxic pollutants designated now or hereafter by Congress or the EPA or which are defined as hazardous, toxic, pollutant, infectious or radioactive by CERCLA or any Superfund law or any Superfund law or any other Federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

Landlord shall have the right but not the obligation, and without limitation of Landlord's rights under this Lease, to enter onto the Premises or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Substance following receipt of any notice from any person or entity (including without limitation the EPA) asserting the existence of any Hazardous Substance in, on or at the Premises or any part thereof which, if true, could result in an order, suit or other action against Tenant and/or Landlord; provided, however, Landlord agrees that, except in the case of an emergency, Landlord will take such action only after written notice to Tenant of the alleged existence of Hazardous Substances and, in the event Landlord is claiming indemnity by Tenant pursuant to the terms hereof, should Tenant fail within a reasonable period of time following receipt of such notice to commence, or fail to thereafter diligently pursue to completion, the appropriate action to clean-up, remove, resolve or minimize the impact of such Hazardous Substances. All reasonable costs and expenses incurred by Landlord in the exercise of any such rights, which costs and expenses result from the violation of the covenants and agreements of Tenant contained in the first paragraph of this Section 7.02, shall be deemed Additional Rent under this Lease and shall be payable by Tenant upon demand.

This Section 7.02 shall survive cancellation, termination or expiration of this Lease.

Section 7.03, Lien and Encumbrances. Tenant shall not create or permit to be created or to remain, and shall promptly discharge, at its sole cost and expense, any lien, encumbrance or charge (all or any one of which hereinafter referred to as "Lien") upon the Premises, or any part thereof or upon Tenant's leasehold estate hereunder, that arises from the use or occupancy of the Premises by Tenant or by reason of any labor, service or material furnished or claimed to have been furnished to or for the benefit of Tenant or by reason of any construction or repairs by or at the direction of Tenant of all or any part of the Improvements.

Notice is hereby given that Landlord shall not be liable for the cost and expense of any labor, services or materials furnished or to be furnished with respect to the Premises at or by the direction of Tenant or anyone holding the Premises or any part thereof by, through or under Tenant and that no laborer's, mechanic's or materialman's or other lien for any such labor, service or materials shall attach to or affect the interest of Landlord in and to the Premises. Nothing contained in this Lease shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any



materials for any improvements or Repairs to or of the Premises or any part thereof, nor as giving Tenant any right, power or authority on behalf of Landlord to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any Lien against the Premises or any part thereof.

If Tenant fails to discharge any Lien created or established in violation of Tenant's covenant herein, and if such failure continues for a period of thirty (30) days after receipt by Tenant of notice of the existence of the Lien, Landlord, without declaring a default hereunder and without relieving Tenant of any liability hereunder, may, but shall not be obligated to, discharge or pay such Lien (either by paying the amount claimed to be due or by procuring the discharge of such Lien by deposit or by bonding proceedings), and any amount so paid by Landlord and all costs and expenses incurred by Landlord in connection therewith shall constitute Additional Rent hereunder and shall be paid immediately by Tenant to Landlord upon demand by Landlord, with Default Interest thereon from the date of demand by Landlord.

#### ARTICLE VIII. REPAIRS AND ALTERATIONS.

Section 8.01. Maintenance and Repair. Tenant at all times during the Term, at its expense, shall keep the Premises, including, without limitation, the Improvements, in good order, condition and repair, ordinary wear and tear excepted, and shall promptly make or cause to be made any and all necessary repairs, replacements, or renewals (all or any one of which herein referred to as "Repairs"). All Repairs shall be at least equal in quality and class to the original work or to a lesser standard approved in writing by Landlord. The term "Repairs" includes, without limitation, all necessary repairs and replacements of the Premises, structural or otherwise, ordinary or extraordinary, foreseen and unforeseen, including but not limited to the roofs, foundations, all interior and exterior walls, all structural and exterior portions of the buildings and other improvements, exterior and interior windows, doors and entrances, signs, floor coverings, columns and partitions, lighting, heating, plumbing and sewerage facilities, and air conditioning equipment. Landlord shall not be required to make any repairs of any kind or nature in, on or to the Premises during the Term.

Section 8.02. Alterations. Tenant shall have the right to make any modifications, alterations or additions to the Improvements subsequent to the initial construction of such Improvements as may be necessary for the proper conduct of its business and use of the Premises as permitted herein. Any such alterations shall be expeditiously completed by Tenant in a good and workmanlike manner in compliance with the Declaration and all applicable laws, rules, regulations, and ordinances, then in effect.

#### ARTICLE IX. DAMAGE AND DESTRUCTION.

Section 9.01. Notice. In the event of any material damage to or destruction of all or any part of the Premises, Tenant will promptly give written notice thereof to Landlord, which notice shall generally describe the nature and extent of such damage or destruction. There shall be no abatement of or adjustment to Rent or Additional Rent under this Lease as a result of any damage or destruction.



Section 9.02. Restoration. Subject to the following grammatical paragraph, in the event of any damage to or destruction of all or any part of the Improvements and whether or not the insurance proceeds on account of such damage or destruction shall be sufficient for the purpose, or in the event of any condemnation of the Premises of the character described in Section 16.02 hereof and whether or not the proceeds of any award received on account of such condemnation shall be sufficient for the purpose, Tenant, at its sole cost and expense, shall promptly commence and shall thereafter diligently and continuously prosecute to completion the restoration, replacement or rebuilding of the Improvements and/or the Premises, as the case may be, as nearly as practicable to its value, architectural condition and character as existed immediately prior to such damage, destruction or condemnation (but with such changes in the design, type or character of the Improvements as Tenant may deem desirable, subject to the prior written approval of Landlord, of any such changes, which approval shall not be unreasonably withheld so long as the Improvements have an architectural style which is similar to, and a level of quality which is at least equal to, the Improvements originally constructed by Tenant and are not inconsistent with the terms of the Declaration) so as to permit resumption of the use of the Premises for the Permitted Use to as nearly the same degree as possible (pending completion of the work, such restoration, replacement or rebuilding, together with any temporary repairs and property protection, are herein collectively referred to as "Restoration").

In the event damage to or destruction of a substantial portion of the Improvements occurs within the last year of the Term, Tenant shall have the right, at its election and in lieu of fulfilling its obligations under this Section 9.02, to terminate this Lease upon thirty (30) days' prior written notice to Landlord by paying to Landlord, simultaneously with such notice, a sum equal to all Rent and Additional Rent due from Tenant to Landlord to such termination date and paying or assigning to Landlord all insurance proceeds due on account of any damage or destruction of the Premises or any part thereof less and excepting only the amount actually expended by Tenant in demolishing and removing all damaged Improvements and in clearing and cleaning the surface area of the Site, and by surrendering the Premises to Landlord, on or before the effective date of such termination, in a clean and slightly condition, free of any and all debris and free of damaged Improvements. Tenant's obligation to demolish and remove Improvements damaged prior to the termination of this Lease shall survive any termination of this Lease.

Section 9.03. Application of Proceeds. Except as otherwise provided in Section 9.02 hereof, insurance proceeds received on account of any damage to or destruction of the Premises or any part thereof shall be applied to pay for the cost of Restoration. To the extent any such proceeds shall be inadequate to pay such cost, it shall be Tenant's sole cost and obligation to pay all costs of Restoration.

## ARTICLE X. INSURANCE

Section 10.01. Tenant's Insurance. Commencing on the Effective Date of this Lease (with regard to the insurance required by subsection (b) below) and on the date Tenant shall commence construction of any Improvements on the Site (with regard to the insurance required by subsections (a) and (c) below), and at all times thereafter through and during the Term, Tenant shall keep the Premises insured against the risks and hazards and with coverage in amounts not less than those specified as follows:



(a) Insurance against the risks customarily included under "special form" policies with respect to improved properties similar to the Premises in an amount equal to the "full insurable value" (which as used herein shall mean the full replacement value, including the costs of debris removal, which amount shall be determined annually) of the Improvements, and which amount shall be sufficient to prevent either Landlord or Tenant from becoming a coinsurer of any loss; and

(b) Commercial general public liability insurance (including, but not limited to, coverage for any construction on or about the Premises) covering the legal liability of Tenant against all claims for any bodily injury or death of persons and for damage to or destruction of property occurring on, in or about the Premises and the adjoining streets, sidewalks and passageways and arising out of the use or occupation of the Premises by Tenant; such insurance to provide for a limit of not less than Three Million and No/100 Dollars (\$3,000,000.00) for personal injury or death to any one person, for a limit of not less than Five Million and No/100 Dollars (\$5,000,000.00) for personal injury or death to any number of persons arising out of any one occurrence, and for a limit of not less than One Million and No/100 Dollars (\$1,000,000.00) in respect of any instance of property damage. Commencing on the fifth (5th) anniversary of the Rental Commencement Date, and continuing thereafter on the fifth (5th) anniversary of the previous "Adjustment Date" (as defined below) during the Term (each of such dates being referred to in this Section 10.01 and in Section 10.02 below as an "Adjustment Date"), the aforesaid minimum amounts of insurance coverage shall be increased to such limits as are then prevailing within the restaurant industry.

(c) Business interruption insurance sufficient to cover Rent payable under this Lease for a period of not less than one (1) year.

**Section 10.02. Requirements.** All insurance required under Section 10.01 hereof shall be written by companies of recognized financial standing which are authorized to do insurance business in the State of Georgia and shall provide that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days after receipt by Landlord of written notice thereof. All liability policies shall name Landlord, any mortgagee of Landlord, and any other party designated by Landlord as additional insureds. Tenant's casualty policy shall expressly provide (a) an effective waiver by the insurer of all rights of subrogation against Landlord, and (b) that during construction of any Improvements on the Premises such policy shall be in "builder's risk" form. A copy of each policy required to be carried by Tenant hereunder or of an acceptable certificate of insurance in force, issued by the insurer as provided in Section 10.01 hereof, shall be delivered to Landlord on or before the date Tenant is required to obtain the applicable insurance, and with respect to renewal or replacement policies, not less than ten (10) days prior to expiration of the policy being renewed or replaced. Tenant may obtain the insurance required hereunder by endorsement to blanket insurance policies, provided that said policies fulfill the requirements of this Section 10.02, that said policies reference the Premises, and that Landlord receives satisfactory written proof of coverage. Tenant shall permit the Landlord to examine all policies evidencing the insurance required to be maintained under this Lease.



Section 10.05. Mutual Release and Waiver of Subrogation. Landlord and Tenant hereby release each other and anyone claiming through or under the other by way of subrogation or otherwise from any and all liability for any loss or damage to property, whether caused by the negligence or fault of the other party, to the extent of any recovery made by the parties hereto for such loss or damage under any casualty insurance policy now or hereafter issued covering the property of such party. In addition, Landlord and Tenant shall cause each such insurance policy carried by them to be written to provide that the insurer waives all rights of recovery by way of subrogation.

#### ARTICLE XI. INDEMNIFICATION

Section 11.01. Indemnification by Tenant. Tenant covenants and agrees to pay, defend, indemnify and save harmless Landlord from and against any and all liability, loss, damage, cost, expense (including without limitation all attorneys' fees and expenses of Landlord), causes of action, suits, claims, demands or judgments of any nature whatsoever based upon, arising from or connected in any manner with (a) injury to or the death of any person or damage to any property occurring on the Premises, (b) the use, non-use, condition, possession, construction, operation, maintenance, management or occupation of the Premises or any part thereof, or (c) any negligence or intentional misconduct on the part of Tenant or its agents, contractors, servants or employees or the negligence or intentional misconduct on the part of Tenant's licensees or invitees while they are located at the Premises. If any action or proceeding should be brought against Landlord based upon any such claim, Tenant, upon notice from Landlord, shall cause such action or proceeding to be defended at Tenant's expense by counsel selected by Tenant and reasonably satisfactory to Landlord. The agreement of indemnification set forth in this Section 11.01 shall not extend to claims for loss or damage to property caused by or resulting from the negligence of Landlord, its agents or employees, unless such claims are covered by the casualty insurance required to be maintained by Tenant under Section 10.01(a) above. The obligations of Tenant under this Section 11.01 shall commence to accrue on the Effective Date of this Lease and shall survive any termination of this Lease and any permitted transfer or assignment by Landlord or Tenant of this Lease or any interest hereunder.

Section 11.02. Release of Landlord. Landlord shall not in any event whatsoever be liable for any injury or damage to the Premises or the Tenant or to any concessionaires, subtenants or other persons claiming through or under Tenant or their respective agents, employees, licensees, invitees, guests or other such persons or to any property of any such persons as a result of Tenant's use, occupancy, or possession of the Premises, unless caused by Landlord's negligence, in which case Landlord's liability shall be limited to damages not covered by insurance carried by Tenant or insurance which Tenant is required to carry by this Lease and applicable law. Tenant shall not make any claim or demand upon or institute any action against the Landlord as a result of such injury or damage.

#### ARTICLE XII. OWNERSHIP OF IMPROVEMENTS

Section 12.01. Title to Improvements. Title to the improvements during the Term shall be to Tenant, and Tenant alone shall be entitled to deduct all depreciation on Tenant's income



tax returns for such Improvements during the Term. Notwithstanding such title, the terms and conditions of this Lease shall govern the construction, use, and operation of the Improvements and the exercise of Tenant's rights with respect thereto; and Tenant's right, title, interest, and estate in and to the Improvements shall not be separable from the leasehold estate granted Tenant hereunder. Upon the termination or expiration of this Lease, title to the Improvement(s) shall vest in and become the full and absolute property of Landlord without need of any further action being taken by Tenant or Landlord, and Tenant shall immediately surrender possession of the Improvements upon such termination or expiration as provided in Section 12.02 hereof. The value or cost of the Improvements constructed by Tenant shall not in any way constitute a substitute for or a credit against any obligation of Tenant under this Lease to pay Rent or Additional Rent.

Section 12.02: Surrender. Upon the termination or expiration of this Lease, Tenant shall peaceably quit and surrender the Premises, and any and all fixtures, machinery and equipment constructed, installed or placed by Tenant thereon which is necessary to the operation of the Improvements, to Landlord in good order and condition, ordinary wear and tear excepted. In the event Tenant is not then in default under this Lease, Tenant shall have the right upon the termination or expiration of this Lease to remove from the Premises all personal property and trade fixtures used in Tenant's business, and placed, installed or used by Tenant thereon, such as installed food service equipment, as distinguished from fixtures, machinery and equipment used in and necessary to the operation of the Improvements or Premises such as HVAC systems; provided, however, that Tenant shall repair, at its sole cost and expense, any damage to the Premises or to the Improvements caused by such removal. In no event shall any machinery and equipment used in and necessary to the operation of the Improvements or Premises be removed by Tenant unless same is promptly replaced with comparable or better such machinery or equipment or unless same is damaged and is required to be removed by Tenant pursuant to Section 9.02 hereof.

#### ARTICLE XIII. ASSIGNMENT AND SUBLETTING

Section 13.01. No Assignment or Subletting. Except as expressly herein provided, neither this Lease nor the interest of Tenant in this Lease or in the Premises, or any part thereof, shall be sold, assigned or otherwise transferred by Tenant, whether by operation of law or otherwise, and the Premises shall not be sublet in whole or in part, without the express prior written consent of Landlord, such consent not to be unreasonably withheld. For purposes hereof, the transfer of any voting capital stock of Tenant or the voting capital stock of any corporate entity which directly or indirectly controls Tenant or any interest in any non-corporate entity which directly or indirectly controls Tenant, which transfer results in a change in the direct or indirect voting control of Tenant (whether such transfer occurs at one time or at intervals so that, in the aggregate, such a transfer shall have occurred) shall be deemed to be an assignment governed by the provisions of this Section 13.01. The preceding sentence shall not apply to, and Tenant shall not be in default under this Section 13.01 as a result of, an offering of voting stock to the public pursuant to a registered securities offering, the transfer of voting stock which is listed on a national securities exchange or on the NASDAQ national market system both before and after the transfer (regardless of whether such transfer is made on a national securities exchange or through the NASDAQ national marketing system), the transfer of voting stock to



employees of the applicable corporate entity pursuant to a bona fide employee stock ownership plan or other bona fide arrangement with one or more employees, or any transfer of voting stock by gift, bequest or inheritance;

Section 13.02. Tenant's Notice. Should Tenant desire to assign this Lease or any right or interest herein or sublet the Premises or any part thereof and such assignment or sublease requires Landlord's prior consent hereunder, Tenant shall give Landlord written notice of such desire, which notice shall contain (i) the name and address of the proposed subtenant or assignee and its form of organization; (ii) the material terms and conditions of the proposed sublease or assignment (including, without limitation, the financial terms of such proposed subletting or assignment and the proposed commencement date of the proposed sublease or assignment); (iii) in the case of a proposed assignment, financial statements for the three (3) most recently completed fiscal years of the proposed assignee and such other financial information as Landlord shall reasonably request (or if the proposed assignee has not been existent for at least three (3) years, such financial statements as are available); and (iv) a description of any proposed remodeling or renovation to the exterior of the Improvements to be conducted by the proposed assignee or subtenant, together with the request that Landlord approve such assignment or sublease. Landlord shall have a period of thirty (30) days following receipt of such written notice within which to notify Tenant in writing that Landlord elects either (a) to permit Tenant to assign this Lease or sublet the Premises, or (b) to withhold consent to Tenant's assigning or subleasing such space and to continue this Lease in full force and effect as to the entire Premises. The failure of Landlord to notify Tenant in writing of such election within the thirty (30) day period described above shall be deemed an election to withhold consent to such proposed assignment or sublease.

Section 13.03. Terms of Landlord Consent. Any consent given by Landlord to any assignment or subletting shall apply only to the specific transaction thereby authorized and shall not relieve Tenant or any approved successor of Tenant from the requirement of obtaining the prior written consent of Landlord to any further transfer or subletting. No consent by Landlord to any assignment of this Lease or of Tenant's interest under this Lease or in the Premises, or any part thereof, or to any sublease shall be effective unless and until there shall have been delivered to Landlord a written agreement, in a form reasonably acceptable to Landlord, executed by Tenant and the proposed assignee or subtenant, as the case may be, wherein and whereby any assignee legally binds itself to pay the Rent and Additional Rent due under this Lease and to observe and perform all of the other terms, conditions and provisions of this Lease on the part of Tenant to be observed or performed, and any subtenant acknowledges the right of Landlord to continue or terminate any sublease, in Landlord's sole discretion, upon termination of this Lease, and such subtenant agrees to recognize and attorn to Landlord in the event that Landlord elects to continue such sublease.

Section 13.04. No Release. Any person or entity who shall, by operation of law or otherwise, become an assignee of this Lease or become vested with a leasehold interest hereunder shall be bound by and be liable upon all the terms, covenants, provisions and conditions contained in this Lease during the Term, whether or not of the nature of covenants ordinarily running with the land, but neither Tenant nor any subsequent Tenant whose interest is



assigned or divested shall be relieved of liability hereunder other than by an express release from liability executed in writing by Landlord.

Section 13.05. Permitted Assignment. Notwithstanding the provisions above to the contrary, Tenant shall have the right, without Landlord's prior consent, to assign this Lease to an entity controlled by or under the direct control of the majority owners of Tenant. No such permitted assignment shall be deemed to release Tenant from its obligation to observe and perform all of the terms, covenants and provision on the Tenant's part to be observed and performed under this Lease. Any permitted assignee or successor in interest must execute and deliver to Landlord a written assumption agreement for the benefit of Landlord, in a form reasonably acceptable to Landlord, whereby such assignee legally binds itself to pay the Rent and Additional Rent due under this Lease and to observe and perform all of the other terms, conditions and provisions of this Lease on the part of Tenant to be observed or performed.

#### ARTICLE XIV BROKERAGE PROVISIONS

Section 14.01. Brokers. Landlord and Tenant represent and warrant that no broker, commission agent, real estate agent or salesman has participated in the negotiation of this Lease, its procurement or in the procurement of Landlord or Tenant except for Colliers International and Mopper-Stapen, Inc. d/b/a NAI Mopper Benton (individually and collectively, "Broker"), which have acted as Landlord's and Tenant's brokers, respectively, with regard to this Lease. Broker's fee, if any, shall be paid pursuant to a separate agreement between Landlord and Broker. No other person, firm, corporation or other entity is or shall be entitled to the payment of any fee, commission, compensation or other form of remuneration in connection herewith in any manner. Landlord shall and does hereby indemnify and agree to hold Tenant harmless from and against any claims, demands, actions and judgments of any and all brokers, agents and other intermediaries (other than Broker) alleging a commission, fee or other payment to be owing by reason of Landlord's dealings, negotiations or communications in connection with this Lease or the demise of the Premises. Likewise, Tenant shall and does hereby indemnify and agree to hold Landlord harmless from and against any claims, demands, actions and judgments of any and all brokers, agents and other intermediaries (other than Broker) alleging a commission, fee or other payment to be owing by reason of Tenant's dealings, negotiations or communications in connection with this Lease or the demise of the Premises. The terms of this Section 14.01 shall survive any termination of this Lease.

#### ARTICLE XV. DEFAULT

Section 15.01. Events of Default. The occurrence of any of the following acts, events or conditions, notwithstanding the pendency of any proceeding which has or might have the effect of preventing Tenant from complying with the terms, conditions or covenants of this Lease, shall constitute an "Event of Default" under this Lease:

(a) The Rent, Additional Rent or any other sum of money payable under this Lease is not paid when due and such failure shall continue for ten (10) days after the due date;

(b) The failure or refusal of Tenant, at any time during the Term, to fulfill or perform any other covenant, agreement or obligation of Tenant hereunder if such failure or refusal shall continue without correction for a period of thirty (30) consecutive calendar days from and after notice thereof to Tenant by Landlord, provided that if such covenant, agreement or obligation shall be of such nature that it can be fulfilled or performed and if Tenant in good faith commences to fulfill or perform same within said thirty (30) day period, but due to the nature of same it could not be reasonably fulfilled or performed within said thirty (30) day period exercising due diligence, an Event of Default shall not be deemed to have occurred if Tenant is then diligently pursuing the fulfillment or performance of the covenant, agreement or obligation and shall thereafter continuously and diligently proceed therewith until completion;

(c) The initiation of any proceeding whereupon the estate or interest of Tenant in the Premises, or any portion thereof, or in this Lease is levied upon or attached if such proceeding is not vacated, discharged or bonded within thirty (30) days after the date of notice to Tenant of such levy or attachment;

(d) The entry of any decree or order for relief by a court having jurisdiction in the Premises in respect of Tenant in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Tenant or for any substantial part of the assets of Tenant, or the entry of any decree or order with respect to winding-up or liquidation of the affairs of Tenant, if any such decree or order continues unstayed and in effect for a period of thirty (30) consecutive days;

(e) The commencement by Tenant of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by Tenant to the appointment of or possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of Tenant or for any substantial part of the assets of Tenant, or any assignment made by Tenant for the benefit of creditors;

(f) Any sale, assignment, mortgage, pledge, hypothecation or other transfer of this Lease or any interest of Tenant hereunder or in the Premises or any sublease of the Premises without full compliance with any and all requirements therefor set forth in Section 13.01 or 13.02, as the case may be, of this Lease; or

(g) Tenant's failure to open for business in the Premises as required by this Lease; or Tenant's failure to operate at the Premises, except as expressly permitted herein, for a period of thirty (30) consecutive days following Landlord's written notice to Tenant of such default, unless Tenant's failure is the result of casualty or condemnation or remodeling.



Section 15.02, Remedies. Upon the occurrence of an Event of Default, Landlord shall have the option to do and perform any one or more of the following in addition to, and not in limitation of, any other remedy or right permitted it by law or in equity or by this Lease:

(a) Landlord, with or without terminating this Lease, may reenter the Premises and perform, correct or repair any condition which shall constitute a failure on Tenant's part to keep, observe, perform, satisfy, or abide by any term, condition, covenant, agreement, or obligation of this Lease, and Tenant shall fully reimburse and compensate Landlord on demand for all costs and expenses incurred by Landlord in such performance, correction or repair, including, without limitation, accrued interest as provided in the next sentence. All sums so expended to cure Tenant's default shall accrue Default Interest from the date of demand until date of payment at the rate specified in Section 15.05 hereof.

(b) Landlord, with or without terminating this Lease, may immediately or at any time thereafter demand in writing that Tenant vacate the Premises and thereupon Tenant shall vacate the Premises and remove therefrom all property thereon belonging to or placed on the Premises by, at the direction of, or with consent of Tenant within five (5) business days of receipt by Tenant of such notice from Landlord, whereupon Landlord shall have the right to reenter and take possession of the Premises. Any such demand, reentry and taking possession of the Premises by Landlord shall not of itself constitute an acceptance by Landlord of a surrender of this Lease or of the Premises by Tenant and shall not of itself constitute a termination of this Lease by Landlord.

(c) Landlord, with or without terminating this Lease, may immediately or at any time thereafter reenter the Premises and remove therefrom Tenant and all property belonging to or placed on the Premises by, at the direction of, or with consent of Tenant. Any such reentry and removal by Landlord shall not of itself constitute an acceptance by Landlord of a surrender of this Lease or of the Premises by Tenant and shall not of itself constitute a termination of this Lease by Landlord.

(d) Landlord, with or without terminating this Lease, may terminate Tenant's right of possession and immediately or at any time thereafter relet the Premises or any part thereof for such term or terms (which may be for a term extending beyond the Term), at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable, and Landlord may make any alterations, redecorations or repairs to the Premises which it may deem reasonably necessary or proper to facilitate such reletting; and Tenant shall pay all reasonable costs of such reletting including but not limited to the reasonable cost of any such alterations, redecorations and repairs made to the Premises, reasonable attorneys' fees, reasonable brokerage commissions and lease assumptions; and if this Lease shall not have been terminated, Tenant shall continue to pay all Rent, Additional Rent and all other charges due under this Lease up to and including, without limitation, the date of beginning of payment of rent by any subsequent tenant of part or all of the Premises, and thereafter Tenant shall pay monthly during the remainder of the Term the difference, if any, between the rent and other charges collected from any such subsequent tenant or tenants.



and the Rent, Additional Rent and other charges reserved in this Lease, but Tenant shall not be entitled to receive any excess of any such rents collected over the Rent and Additional Rent reserved herein.

(e) Landlord shall be entitled to bring suit against Tenant for the performance of any non-monetary covenant or obligation of Tenant or to seek injunctive or other equitable relief with respect to any such default. In addition, Landlord shall be entitled to sue for and recover any actual damages incurred by Landlord as a result of any non-monetary default, and pursuit of any of the other remedies provided for in this Section 15.02 shall not preclude pursuit of any such claim for actual damages.

(f) Landlord may immediately or at any time thereafter terminate this Lease, and this Lease shall be deemed to have been terminated upon receipt by Tenant of written notice of such termination. Upon such termination, Landlord shall have and retain full right to sue for and recover from Tenant all damages Landlord may suffer by reason of such termination, all arrearages in Rent, costs, charges, Additional Rent, and reimbursements, the cost (including, without limitation, court costs and attorneys' fees) of recovering possession of the Premises, and the cost of any alteration or redecoration of or repair to the Premises and Improvements which is reasonably necessary or proper to prepare the same for reletting. Tenant shall immediately surrender and deliver up the Premises to Landlord upon any such termination by Landlord, and upon any failure by Tenant in so doing, Landlord shall have the right to recover possession by summary proceedings or otherwise.

Section 15.03. Reentry by Landlord. No reentry or taking possession of the Premises by Landlord or any other action taken by or on behalf of Landlord shall be construed to be an acceptance of a surrender of this Lease or an election by Landlord to terminate this Lease.

Section 15.04. General. No course of dealing between Landlord and Tenant or any failure or delay on the part of Landlord in exercising any rights of Landlord under Section 15.02 hereof or under any other provisions of this Lease shall operate as a waiver of any rights of Landlord hereunder, at law or in equity or under any other provisions of this Lease, nor shall any waiver of an Event of Default on one occasion operate as a waiver of any subsequent Event of Default or of any other Event of Default. No express waiver shall affect any condition, covenant, rule, or regulation other than the one specified in such waiver and that one only for the time and in the manner specifically stated. The exercise by Landlord of any one or more of the rights and remedies provided in this Lease shall not prevent the subsequent exercise by Landlord of any one or more of the other rights and remedies herein provided. All remedies provided for in this Lease are cumulative and may, at the election of Landlord, be exercised alternatively, successively, or in any other manner and are in addition to any other rights provided for or allowed by law or in equity.

Section 15.05. Default Interest and Late Charges. Any Rent or Additional Rent not paid within ten (10) days after the due date thereof shall bear interest at a rate of interest equal to the rate of interest announced by Wells Fargo in Atlanta, Georgia as its base rate or reference rate (which rate shall change automatically and simultaneously from time to time with each change in

the announced base rate or reference rate) plus four percent (4%) per annum ("Default Interest"), but in no event in excess of the maximum lawful rate, from the original due date until paid-in-full. In addition, Tenant acknowledges that late payments by Tenant to Landlord of amounts due from Tenant under this Lease will cause Landlord to incur costs not otherwise contemplated by this Lease, the exact amount of which is extremely difficult or impracticable to determine. Such costs include, but are not limited to, processing and accounting charges and, late charges that may be imposed on Landlord by the terms of any encumbrance or notes secured by any encumbrance covering the Premises. Therefore, if an installment of Rent or Additional Rent due from Tenant is not received by Landlord within ten (10) days after the applicable due date a late charge will be assessed pursuant to this Section 15.05 equal to Five Hundred Dollars (\$500.00) for each such occurrence. The parties acknowledge that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. Acceptance of any late charge shall not constitute a waiver by Landlord of Tenant's default with respect to the overdue amount, and shall not prevent Landlord from exercising any of the other rights and remedies available to Landlord for any other event of Default under this Lease.

Section 15.06. Attorneys' Fees. In the event of any action or dispute between the parties arising out of this Lease which results in litigation or dispute resolution or on account of any default of a party's obligations hereunder, the losing or defaulting party, as the case may be, shall pay the prevailing or non-defaulting party as the case may be, the reasonable cost (including reasonable attorney's fees) incurred in bringing or defending such action, enforcing any judgment granted therein and/or enforcing its remedies hereunder.

#### ARTICLE XVI. CONDEMNATION

Section 16.01. Material Condemnation. If, during the Term, all or such portion of the Premises is condemned or taken by the United States or any other legal entity having the power of eminent domain with respect thereto:

(a) which part so taken includes the building (or any part thereof) to be located on the Premises; or

(b) which results in a reduction of (twenty-five percent (25%) or more of the parking area within the permitted parking area; or

(c) which eliminates or materially adversely affects access to public streets securing the Premises;

then Tenant may, at its election, terminate this Lease by giving Landlord notice of the exercise of Tenant's election within thirty (30) days after Tenant shall receive notice of such taking, which notice shall include the condemning authority's official notice or a reasonably detailed account thereof. In the event of termination by Tenant under the provisions of this Section 16.01, this Lease and the Term hereof shall terminate as of the date that title to the Premises or portion thereof vests in such condemning authority; provided, however, that such termination shall not benefit such condemning authority and shall be without prejudice to the rights of either Landlord or Tenant to recover just and adequate compensation from the condemning authority.



Section 16.02. Partial Condemnation. If, during the Term, any portion of the Premises is condemned or taken by the United States or any other legal entity having the power of eminent domain with respect thereto in respect of which Tenant shall not have the right to terminate this Lease, or having such right shall not elect to terminate this Lease, then Tenant shall (subject to the last sentence of this Section) forthwith cause the Premises to be restored, by effecting Restoration as provided in Section 9.02 hereof. From and after the date of such taking, Rent shall be equitably reduced taking into account all of the relevant factors and circumstances, provided, however, there shall be no reduction whatsoever in Rent in the event of a taking without compensation to Landlord of any portion of the Site for the widening of roads or rights-of-way adjoining the Site or for the purpose of construction of acceleration or deceleration lanes adjoining the Site, unless such taking shall reduce the area of the Site used for parking. In the event such partial condemnation occurs within the last year of the Term, Tenant shall have the right, at its election and in lieu of fulfilling its obligations under this Section 16.02, to terminate this Lease upon thirty (30) days prior written notice to Landlord and satisfaction of the following conditions: (a) by paying to Landlord, on the effective date of such termination, a sum equal to all Rent and Additional Rent due from Tenant to Landlord to such date; (b) by releasing to Landlord all of the right and interest of Tenant in and to any condemnation award made in connection with such condemnation proceeding; and (c) by surrendering the Premises to Landlord on the effective date of such termination in a clean and slightly condition, free of any and all debris.

Section 16.03. Awards. Landlord and Tenant hereby agree to petition the court in any condemnation proceeding to make separate awards to Landlord and Tenant, if said separate awards are not prohibited by law. In the event such court is prohibited by law from making separate awards to Landlord and Tenant or declines to do so and if all of the Premises or such portion is condemned as to render the remaining portion thereof to be of substantially no commercial value for the Permitted Use, the award shall be divided between Landlord and Tenant so that each party shall receive that portion of the award which bears the same proportion of the total award as the value of such party's interests in the Premises bears to the total value of all interests in the Premises. The value of Landlord's interests shall include the value of the land; the value of Landlord's interest in this Lease had the Premises not been condemned, including the right to receive payment of all sums required to be paid by Tenant to Landlord hereunder for the remainder of the Term, and the value of Landlord's residual right to the improvements upon termination of this Lease. The value of the Tenant's interests shall include: the value of the improvements reduced by the value of Landlord's reversionary interest therein; and the value of Tenant's leasehold estate hereunder had the Premises not been condemned, including the right to use and occupy the Premises for the remainder of the Term subject to the obligation of Tenant to pay Rent and Additional Rent hereunder.

In the event such court is prohibited by law from making separate awards to Landlord and Tenant or declines to do so and the remaining portion of the Premises after such condemnation is of some commercial value for the Permitted Use, the award shall be divided between Landlord and Tenant as follows: Landlord shall receive such portion of the award as shall represent the value of the part of the land so taken; Tenant shall receive such portion of the award as shall represent the value of the improvements so taken and shall apply such portion of the award to the costs of Restoration as provided in Section 16.02 hereof, and if there shall



remain any balance of the award after Restoration as aforesaid, said balance shall belong to Landlord.

Section 16.04. Taking for Temporary Use. If there is a temporary taking of all or any portion of the Premises, Tenant shall give prompt notice thereof to Landlord, and the Term of this Lease shall not be reduced or affected in any way. In such case, Tenant shall continue to pay the full Rent and Additional Rent and other sums and charges provided to be paid by Tenant hereunder. Tenant shall be entitled to the entire award for such taking (whether paid by way of damages, rent or otherwise) unless the period of occupation and use by the condemning authority shall extend beyond the date of expiration of the Term of this Lease, in which case the award made for such taking shall be apportioned between Landlord and Tenant as of the date of such expiration. In any proceeding for such temporary taking, Landlord shall have the right to intervene and participate, but no award or settlement shall be made without Tenant's written approval, provided that if such intervention shall not be permitted, Tenant shall, at Tenant's expense, consult with Landlord, its attorneys and experts, and shall cooperate with Landlord in the prosecution or defense of such proceeding. At the termination of any such use or occupation of the Premises, Tenant will, at its sole cost, repair and restore the Improvements then upon the Premises to the condition, as nearly as may be reasonably possible, in which such Improvements were at the time of such taking. Tenant shall not be required to make such repairs and restoration if the Term of this Lease shall expire prior to the date of termination of the temporary taking, and in any such event, Landlord shall be entitled to recover all damages and awards arising out of the failure of the condemning authority to repair and restore the Improvements at the expiration of such temporary taking. Any recovery or sum received by Tenant as an award or compensation for physical damage to the Premises caused by and during the temporary taking shall be used to the extent necessary for the purpose of repairing or restoring such damage as required hereinabove.

#### ARTICLE XVII MISCELLANEOUS

Section 17.01. No Waiver. Failure of Landlord to insist upon the strict performance by Tenant of any term, condition or covenant on Tenant's part to be performed pursuant to the terms of this Lease or to exercise any option, right, power, or remedy contained in this Lease shall not be or be deemed to be a waiver of such performance or relinquishment of such right now or at any time subsequent hereto. The receipt by Landlord of any Rent or Additional Rent required to be paid by Tenant hereunder with knowledge of any Event of Default by Tenant shall not be or be deemed to be a waiver of such Event of Default. No waiver by Landlord of any provision of this Lease shall be or be deemed to have been made unless expressed in writing and signed by Landlord.

Section 17.02. Waiver of Redemption. Tenant hereby waives and surrenders any right or privilege under any present or future constitution, statute or law to redeem the Premises or to continue this Lease after the termination of this Lease for any reason, and the benefits of any present or future constitution, statute or rule of law which exempts property from liability for debt or for distress for rent.

Section 17.03. Estoppel Certificates. Within ten (10) days of Tenant's receipt of a written request from Landlord, Tenant shall from time to time execute, acknowledge and deliver to Landlord and to any mortgagees of or prospective purchasers from Landlord, a written certificate certifying (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications), (b) the dates to which Rent and Additional Rent payable by Tenant hereunder have been paid, and (c) that no notice has been received by Tenant of any default or Event of Default by Tenant hereunder which has not been cured, except as to any default or Event of Default specified in said certificate.

Upon written request of Tenant, Landlord shall from time to time execute, acknowledge and deliver to Tenant a written certificate certifying (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications), (b) the dates to which Rent and Additional Rent payable by Tenant hereunder have been paid, and (c) whether or not, to the knowledge of Landlord, a default or Event of Default by Tenant has occurred under this Lease which has not been cured (and if so, specifying the same).

Section 17.04. Quiet Enjoyment. If and so long as Tenant shall pay, when due, the Rent and Additional Rent reserved or payable under this Lease and shall observe all terms, conditions and covenants and other obligations required to be observed by Tenant under this Lease, Landlord shall not interfere with the peaceful and quiet occupation and enjoyment of the Premises by Tenant, which occupation and enjoyment shall be without hindrance or ejection by Landlord; provided, however, that this Section 17.04 shall not abrogate or diminish, in any way, the approval and inspection rights granted Landlord under this Lease.

Section 17.05. Transfer by Landlord. In the event Landlord shall transfer or assign or otherwise dispose of its interest in the Premises or in this Lease, Landlord shall thereupon be released and discharged from any and all liabilities and obligations under this Lease (except those accruing prior to such transfer, assignment or other disposition) and such liabilities and obligations thereafter accruing shall be binding upon the assignee of Landlord's interest under this Lease.

Section 17.06. Landlord's Liability. Landlord shall have no personal liability with respect to any of the provisions of this Lease. If Landlord is in default with respect to its obligations under this Lease, Tenant shall look solely to the equity of Landlord in and to the Shopping Center for satisfaction of Tenant's remedies, if any. It is expressly understood and agreed that Landlord's liability under the terms of this Lease shall in no event exceed the amount of its interest in and to said Shopping Center. In no event shall any partner of Landlord nor any joint venturer in Landlord, nor any officer, director or shareholder of Landlord or any such partner or joint venturer of Landlord be personally liable with respect to any of the provisions of this Lease.

Section 17.07. Mortgaging Landlord's Interest. This Lease is and shall be subordinate and subject to any mortgage, pledge, deed to secure debt, deed of trust, or any other hypothecation for security which has been or which hereafter may be placed upon the Premises.



Any provision, term or condition of this Lease which is or which may appear to be to the contrary notwithstanding, Landlord shall, at all times and from time to time after the Effective Date of this Lease, have the express right, power and privilege of pledging, conveying, assigning or mortgaging Landlord's interest in and to the Premises and/or Landlord's reversionary right to the Improvements, for the purpose of obtaining financing, credit, or as security for any financing or extension of credit. Tenant hereby agrees that upon request from Landlord, or from the holder or proposed holder of any mortgage, pledge, deed to secure debt or deed of trust which encumbers or will encumber Landlord's interest in the Premises, including the current holder of the mortgage encumbering the Premises, which Landlord shall use reasonable efforts to procure within thirty (30) days of the Effective Date, Tenant shall execute a subordination, non-disturbance and attornment agreement in a commercially reasonably form subordinating this Lease to the interest of such holder and its heirs, successors and assigns. The holder or proposed holder of any such mortgage, pledge, deed to secure debt or deed of trust shall agree in such subordination, non-disturbance and attornment agreement that, so long as Tenant complies with all of the terms and conditions of this Lease and is not in default hereunder beyond the period for cure of such default as provided herein, such holder or any person or entity acquiring the interest of Landlord under this Lease as a result of the enforcement of such mortgage, pledge, deed to secure debt or deed of trust shall not take any action to disturb Tenant's possession of the Premises during the remainder of the Term and shall recognize all of Tenant's rights under this Lease despite any foreclosure or other action by such holder. Alternatively, the person or entity accepting such pledge, conveyance, assignment or mortgage as security may elect to take subject to the rights of Tenant and its successors and permitted assigns under this Lease. In any event, Tenant, in the event of any foreclosure or deed in lieu of foreclosure or other final conveyance and transfer of Landlord's interest as aforesaid, shall recognize and attorn to the grantee thereof as "landlord" under this Lease. Likewise, and to similar effect, Landlord, at all times and from time to time after the date of this Lease, shall have the express right, power and privilege of assigning Landlord's interest in this Lease or in the Rent and Additional Rent to be paid hereunder.

Section 17.08 Mortgaging Tenant's Interest. Landlord hereby grants to Tenant and its successors and assigns approved by Landlord in accordance with this Lease, the right, without Landlord's prior written consent, to mortgage its interests in, to or under this Lease, or any part or parts thereof, and otherwise to assign and/or convey all or any part of Tenant's interest in or rights under this Lease to any institutional lender(s) solely as collateral for loans, and, in such event, the mortgagee or assignee shall have all the rights of Tenant hereunder. Notwithstanding anything contained herein to the contrary, Landlord's fee interest in the Premises will not become, in any respect whatsoever subject to, considered a part of, or become subordinate to any mortgage of the Tenant, its successors and/or assigns. Nor will the Landlord's fee interest become subordinate to any subtenant of Tenant. If Tenant mortgages Tenant's leasehold estate to an institutional lender and the mortgagee or holders of the indebtedness secured by the leasehold mortgage or trust deed notify Landlord in accordance with the notice provisions of this Lease, of the execution of such mortgage or trust deed and name the place for service of notice upon such institutional mortgagee or holder of indebtedness, then, in such event, Landlord agrees that for the benefit of such mortgagees or holders of indebtedness from time to time:

- (a) Landlord will give to any such mortgagee or holder of indebtedness simultaneously



with service on Tenant, a duplicate of any and all notices or demands given by Landlord to Tenant. Landlord will deliver such notices in the manner and subject to the terms of the notice provisions of this Lease.

- (b) Such mortgagee or holder of indebtedness will have the privilege of performing any of Tenant's covenants under this Lease, curing any Tenant default or exercising any election, option or privilege conferred upon Tenant by the terms of this Lease.
- (c) Landlord will not terminate this Lease or Tenant's right of possession for any Tenant default if, within a period of ten (10) days after the expiration of any applicable period of time within which Tenant might cure such default under the provisions of this Lease, such mortgagee or holder of indebtedness commences in good faith to eliminate the cause of such default and proceeds diligently and with reasonable dispatch to complete such cure and actually cures such default within an additional ten (10) days.
- (d) Except for the termination rights contained in this Lease, no negotiated termination of this Lease will be effective unless joined in by any such mortgagee or holder of the indebtedness.
- (e) No liability for the payment of rent or the performance of any of Tenant's covenants and agreements will attach to or be imposed upon any mortgagee, trustee under any trust deed or holder of any indebtedness secured by any mortgage or trust deed upon the leasehold estate, unless such mortgagee, trustee or holder of indebtedness forecloses its interest and becomes the Tenant under this Lease or otherwise enters into possession of the Premises, in which instance such mortgagee, trustee, or holder of indebtedness shall bring rent current hereunder within fifteen (15) days.

Section 17.09 Separability. Each and every covenant and agreement contained in this Lease shall be for any and all purposes hereof construed as separate and independent, and the breach of any covenant by either party shall not discharge or relieve the other party from its obligation to perform each and every covenant and agreement to be performed under this Lease. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate applicable law and shall be limited to the extent necessary to render this Lease valid and enforceable. If any term, provision or covenant of this Lease or the application thereof to any person or circumstance shall be held to be invalid, illegal or unenforceable, by a court of last resort having jurisdiction in the Premises, the validity of the remainder of this Lease shall not be affected, this Lease shall not terminate, and there shall be substituted for such illegal, invalid or unenforceable provision a like provision which is legal, valid and enforceable within the limits established by such court's final opinion and which most nearly accomplishes and reflects the original intention of the parties.

Section 17.10. Notices, Demands and Other Instruments. All notices, demands, requests, consents, and approvals desired, necessary, required or permitted to be given pursuant to the terms of this Lease shall be in writing and shall be deemed to have been properly given if delivered personally or by courier with a signed receipt, delivered by a recognized national

overnight delivery service, or sent, postage prepaid, by first class registered or certified United States mail, return receipt requested, addressed to each party herein at the following address:

Landlord: Port Wentworth Fee Owner, LLC  
c/o JDI Capital, LLC  
3735-B Beam Road  
Charlotte, North Carolina 28217  
Attention: Gary J. Davies

Tenant: Premier Kings of Georgia, Inc.  
3300 Eastern Boulevard  
Montgomery, Alabama 36116  
Attention: Legal Dept.

or at such other address in the United States as Landlord or Tenant may from time to time designate by like notice. Additionally, Tenant agrees to send copies of all notices required or permitted to be given to Landlord to each holder of a mortgage, deed to secure debt, deed of trust or similar financing instrument encumbering Landlord's interest in the Premises that notifies Tenant in writing of its interest and the address to which notices are to be sent. Any such notice, demand, request or other communication shall be considered given or delivered, as the case may be, on the date of personal or courier delivery or within three (3) days of the date of deposit in the United States mail as provided above. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand, request or other communication.

Section 17.11. Successors and Assigns. Each and every covenant, term, condition and obligation contained in this Lease shall apply to and be binding upon and inure to the benefit or detriment of the respective legal representatives, heirs, successors and permitted assigns of Landlord and Tenant. Whenever reference to the parties hereto is made in this Lease, such reference shall be deemed to include the legal representatives, successors, heirs and permitted assigns of said party the same as if in each case expressed. The term "person" when used in this Lease shall mean any individual, corporation, partnership, firm, trust, joint venture, business association, syndicate, government or governmental organization or any other entity.

Section 17.12. Headings. The headings to the various Articles and Sections of this Lease have been inserted for purposes of reference only and shall not limit or define or otherwise affect the express terms and provisions of this Lease.

Section 17.13. Counterparts. This Lease may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all of which may be annexed to one another and shall constitute one instrument.

Section 17.14. Applicable Law. This Lease shall be construed under and enforced in accordance with the laws of the State of Georgia.



Section 17.15. Entire Agreement; Amendments. This Lease sets forth the entire understanding and agreement of Landlord and Tenant with respect to the Premises, all courses of dealing, usage of trade and all prior representations, promises, understandings and agreements, whether oral or written, are superseded by and merged into this Lease. No modification or amendment of this Lease shall be binding upon Landlord and Tenant, or either, unless in writing and fully executed.

Section 17.16. Relationship of the Parties. Nothing contained herein shall be deemed or construed by the parties hereto, or any third party, as creating the relationship of principal and agent or a partnership or joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rent nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

Section 17.17. Time is of Essence. Time is of the essence of this Lease. Whenever a day certain is provided for the payment of any sum of money or the performance of any act or thing, the same enters into and becomes a part of the consideration for this Lease.

Section 17.18. Memorandum of Lease. Landlord and Tenant hereby agree that this Lease shall not be recorded in the public records of Chatham County, Georgia. Landlord and Tenant shall, upon request of either party, execute a Memorandum of Lease, wherein a legal description of the Premises, the Term and certain other terms and provisions hereof, excepting, however, the provisions hereof relating to the amount of Rent, Additional Rent or any other sum payable hereunder, may be set forth. The Memorandum of Lease may be filed for record with the Official Records of Chatham County, Georgia promptly after (and not before) expiration of the Permit/Limited Diligence Period. Any and all recording costs and taxes, if any, required in connection with the recording of the Memorandum of Lease shall be at the sole cost and expense of the requesting party.

Section 17.19. Approval and Inspection Rights. Tenant expressly acknowledges and agrees that Landlord has the right, but not the duty, at all times and from time to time upon reasonable notice to Tenant and during normal business hours, to enter upon the Premises and any portion thereof to determine to Landlord's satisfaction whether the terms, covenants and conditions of this Lease, including Tenant's performance obligations, are being kept and observed. Tenant agrees that other than as provided herein to the contrary, any failure of Landlord to approve or disapprove anything or undertaking where Landlord's approval or disapproval is required shall not be a waiver or abatement of Landlord's right to give or withhold such approval as to the specific thing or undertaking involved, nor as to any future or other instance where Landlord has such right. Tenant agrees that any failure of Landlord to exercise any right of inspection shall not be or be deemed to be a waiver of the right of inspection, which is and shall be continuing, nor shall Landlord ever be accountable or liable to Tenant or to any other person for exercising or not exercising its right of inspection.

Section 17.20. Holding Over, No Extension, Month-to-Month Tenancy and Holdover Rent. In the event Tenant shall hold the Premises after the expiration of the Term, without the express written consent of the Landlord, such holding shall be deemed to have created a tenancy



from month to month which shall be terminable upon thirty (30) days' written notice by either party to the other, and which shall be on a monthly rental basis and otherwise subject to all terms and provisions of this Lease, except as contemplated to the contrary in this Section 17.20. Monthly rental during the period of Tenant's occupancy shall be one-twelfth (1/12) of the amount equal to the product of the total rental payable by Tenant to Landlord during the last twelve (12) month period of the Term, including but not limited to, Rent, Additional Rent and all other additional charges provided by this Lease, multiplied by 1.50.

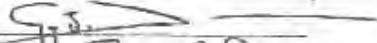
If the Tenant fails to surrender the Premises upon the expiration of the Term, then Tenant shall, in addition to any other liabilities to Landlord accruing therefrom, indemnify and hold Landlord harmless from any loss or liability resulting from such failure, including, without limitation, any claims made by any succeeding tenant founded on such failure.

(SIGNATURES APPEAR ON THE FOLLOWING PAGE)

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease, have affixed their seals hereunto and have delivered same, in duplicate originals, as of the day, month and year first above written.

"LANDLORD":

PORT WENTWORTH FEE OWNER, LLC,  
a Delaware limited liability company

By:   
Name: GARY S. DAVIES  
Its: Manager

"TENANT":

PREMIER KINGS OF GEORGIA, INC.,  
a Georgia corporation

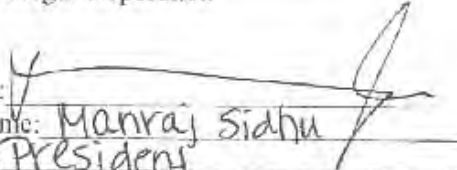
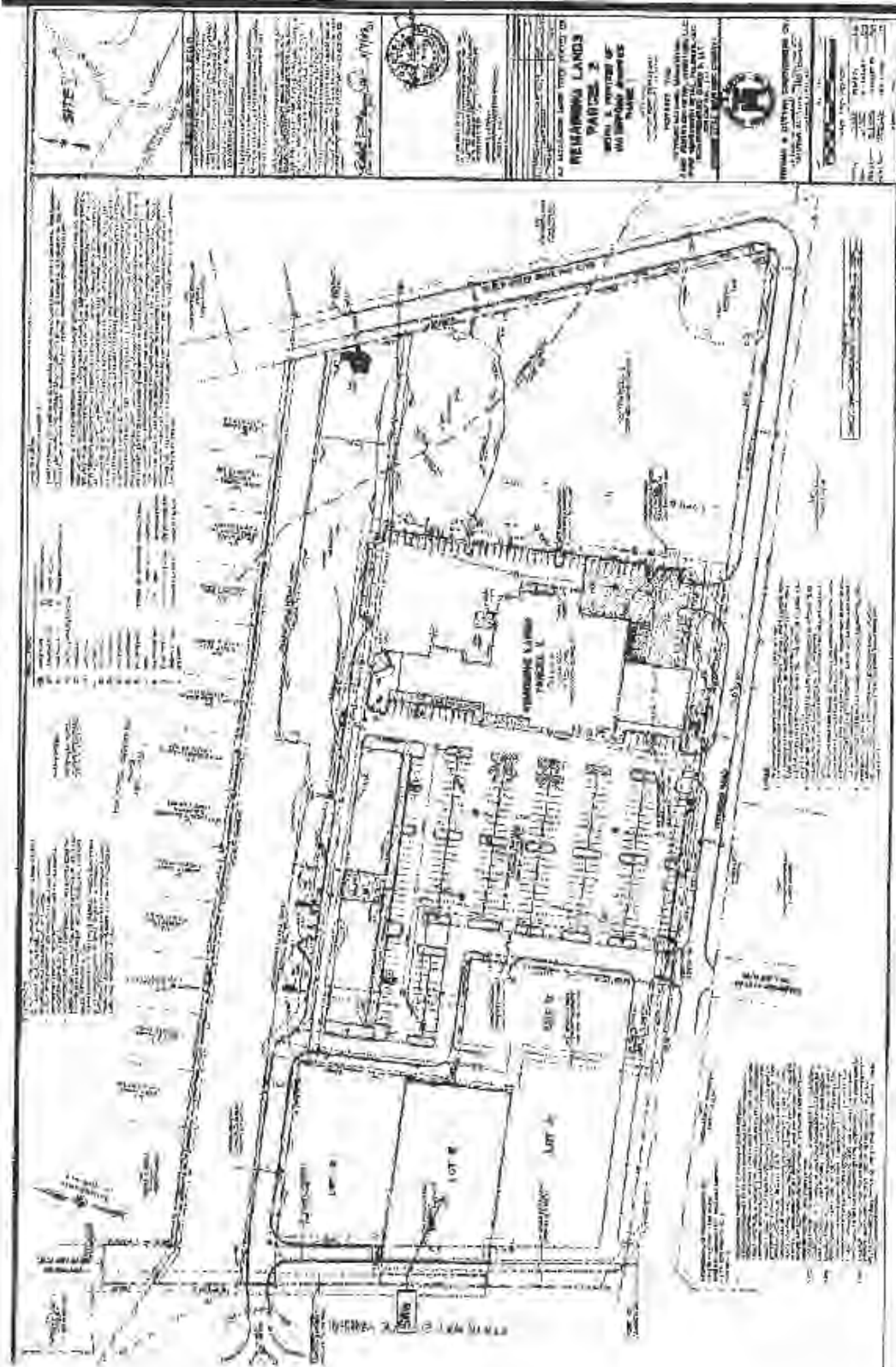
By:   
Name: Manraj Sidhu  
Its: President

EXHIBIT "A"

SITE PLAN

[See Attached]





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## EXHIBIT "B"

### LEGAL DESCRIPTION

#### Outparcel B:

BEING all of that certain piece or parcel of real property located in Port Wentworth, Georgia, containing approximately 1.052 acres, and being more particularly described as follows:

To find the Beginning Point commence at calculated point located in the easterly margin of the right-of-way of State Highway 21 (variable width right-of-way) and marking the northwesterly corner of the property now or formerly owned by Coldbrook Station, LLC (PIN 7-0637-01-036) (the "Coldbrook Property") (said point being 0.39 feet northerly and 0.20 feet westerly of an iron rod), and proceed with the easterly margin of the right-of-way of Highway 21 the following three (3) courses and distances: (1) North 17-16-49 West 69.18 feet to a calculated point, (2) North 83-48-14 West 30.12 feet to a calculated point, and (3) North 17-31-45 West 164.16 feet to a calculated point, said point being the Beginning Point; thence from said point and place of BEGINNING continuing with the easterly margin of the right-of-way of Highway 21 North 17-31-45 West 156.10 feet to a calculated point; thence leaving the easterly margin of the right-of-way of Highway 21 the following three (3) courses and distances: (1) North 79-16-35 East 304.85 feet to a calculated point, (2) South 10-43-25 East 155.00 feet to a calculated point, and (3) South 79-16-35 West 286.35 feet to the point and place of BEGINNING.

## EXHIBIT "C"

### USE RESTRICTIONS

1. During the term of this Lease, no portion of the Premises shall be used for any of the following purposes:

(a) Any use which is illegal or dangerous, which constitutes a public or private nuisance, or which creates vibrations or offensive odors, fumes, dust or vapors, other than normal cooking odors, which are noticeable outside of any building on the Site, or any noise or sound which can be heard outside of any building in the Shopping Center and which is offensive due to intermittency, heat, frequency, shrillness or loudness;

(b) Any operation primarily used as a warehouse operation (which shall not include storage incidental to a retail operation constructed on the same premises), any drilling for and/or removal of subsurface conditions, any manufacturing or industrial operation, any processing or rendering plant, or any lumber yard;

(c) The storage of explosives or other unusually hazardous materials (other than materials sold or used in the normal course of business, provided that the same are handled in accordance with all governmental rules, regulations, and requirements applicable thereto);

(d) Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);

(e) Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage dumpsters or compactors which are screened from public view);

(f) Any automobile, truck, boat, trailer, RV or other motorized vehicle sales, rental, leasing, display or repair facility, including any quick lube change service, or tire, battery and accessory facility;

(g) Any funeral parlor or mortuary;

(h) Any adult book store or establishment selling or exhibiting pornographic materials;

(i) Any massage parlor (provided that nothing herein shall restrict massage services in connection with operation of a physical therapy clinic or health care facility) or any establishment selling or exhibiting paraphernalia for use with illicit drugs, or any so-called "head shop"; or



(j) Any off-track betting parlor or other gambling establishment; provided lottery sales departments incidental to the operation of a permitted use shall be permitted to the extent operated, or authorized by the appropriate governmental authority.

2. In addition to the restrictions set forth in Paragraph 1 above, the Premises shall be subject to the following restrictions:

(a) The Premises shall not be used for the operation of automobile or trailer sales and services related to such businesses (including, but not limited to, gas stations and auto repair, sales or storage; or

(b) The Premises shall not be used for the operation of an extended-stay hotel.

Nothing contained in this Exhibit "C" shall be deemed to grant Tenant any right or privilege to operate within the Premises in any manner inconsistent with Tenant's Permitted Use as described in Section 6.05 of the Lease.

FIRST AMENDMENT TO GROUND LEASE

THIS FIRST AMENDMENT TO GROUND LEASE (this "Amendment") is made as of the 3 day of AUGUST 2018, between PORT WENTWORTH FEE OWNER, LLC, a Delaware limited liability company ("Landlord"), and PREMIER KINGS OF GEORGIA, INC., a Georgia corporation ("Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant are parties to that certain Ground Lease dated May 8, 2018 (the "Lease"), pursuant to which Tenant agreed to lease a certain tract of land consisting of approximately 1.05 acres located in Chatham County, Georgia, as more particularly described in the Lease (the "Premises"); and

WHEREAS, Landlord and Tenant have agreed to modify and amend certain terms and conditions of the Lease;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant, intending to be legally bound, hereby agree as follows:

1. Recitals. The recitals set forth above are incorporated herein.
2. Capitalized Terms. All terms used in this Amendment with an initial capital letter which are not otherwise defined herein shall have the meanings given to such terms in the Lease.
3. Permit/Limited Diligence Period. The definition of "Permit/Limited Diligence Period" set forth in Section 6.02 of the Lease is hereby amended to delete "seventy five (75) days" herefrom and to insert the following in lieu thereof: "one hundred twenty (120) days".
4. Construction of Improvements. The second paragraph of Section 6.08 is hereby deleted in its entirety and replaced with the following:  
  
"Tenant shall have the lesser of (i) one hundred eighty (180) days following receipt of the Permits, or (ii) one hundred eighty (180) days following the expiration of the Permit/Limited Diligence Period in order to construct and install the Improvements on the Site substantially in accordance with the mutually approved plans, except in the case of changes required to comply with applicable governmental laws, ordinances or regulations (the "Construction Period")."
5. Governing Law. This Amendment shall be governed, construed and interpreted in accordance with the laws of the State of Georgia.
6. Successors and Assigns. This Amendment shall inure to the benefit of and shall be binding upon Landlord, Tenant, and their respective successors and assigns.
7. Execution Counterparts. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original and together which shall constitute one and the same instrument.

08/03/18

CONFIDENTIAL

PJV-PREMIERKINGS-034349

IN WITNESS WHEREOF, Landlord and Tenant have caused this Amendment to be executed in their names and their seals to be hereunto affixed and attested by their officers thereunto duly authorized the day and year first above written.

**LANDLORD**

PORT WENTWORTH FEE OWNER, LLC,  
a Delaware limited liability company

BY: \_\_\_\_\_

Name: Gary J. Davies

Title: Vice President

**TENANT**

PREMIER KINGS OF GEORGIA, INC.,  
a Georgia corporation

BY: \_\_\_\_\_

Name: John Howard

Title: Vice President

General  
Counsel



## LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into by and between Premier Holdings of Georgia, LLC (hereinafter called the "Lessor") and Premier Kings of Georgia Inc. (hereinafter called the "Lessee") on or about June 5, 2019.

## WITNESSETH:

WHEREAS, Lessor and Lessee desire to establish in writing their agreement concerning their relationship, obligations and rights with respect to the rent or lease of the following property located in Oconee County, Georgia known as Burger King Store No. 25937, 4660 Highway 17, Richmond Hill, Georgia 31324 also described on Exhibit "A".

WHEREAS, Lessor and Lessee acknowledge that the lease of the premises is made subject to the provisions hereof, and the terms and conditions of any bank loan, the proceeds of which were used to construct the improvements on the premises (hereinafter called the "Bank Loan").

WHEREAS, Lessor and Lessee acknowledge that the lease of the premises is made subject to the provisions hereof, all matters of record, and the terms and conditions of that certain franchise agreement entered into between Premier Kings of Georgia Inc. and Burger King Corporation (hereinafter called the "Franchise Agreement").

NOW, THEREFORE, in consideration of the rents and other payments hereinafter agreed to be paid and the mutual covenants and agreements hereinafter set forth and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. Premises: Lessor, for and in consideration of the rents, covenants, agreements and stipulations hereinafter mentioned, reserved and contained, to be paid, kept and performed by Lessee, by these presents does lease and rent unto Lessee, and Lessee hereby agrees to lease and take upon the terms and conditions hereinafter set forth (the "Lease"), the land, buildings and/or improvements described as: SEE EXHIBIT "A", together with and subject to all easements, rights and appurtenances, if any, appearing of record and affecting said property (the "Real Property"). The Real Property is sometimes hereinafter collectively referred to as the "Premises." Lessee has examined the Premises and accepts same in the physical condition in which same now exists.

2. Use of Premises: The Premises shall be used as a Burger King restaurant, or any other lawful use approved by Lessor in writing.

3. Term: The term of the Lease shall commence on the date the Franchise Agreement commences (hereinafter called the "Commencement Date") and shall terminate upon the greater of twenty (20) years or termination of the Franchise Agreement.

4. Rental. Lessee agrees to pay to Lessor for the Premises, without deduction, set

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off or abatement, and without previous notice or demand therefore, basic rent equal to eight and one half (8.5%) of gross sales or monthly debt service to the bank, whichever is greater.

5. Maintenance and Repair: Lessee agrees to keep and maintain the land and buildings and all other improvements, furniture and furnishings, and appliances and equipment on the Premises in as good a state of repair as the same are in when turned over to it, and in a safe condition, free of hazardous or toxic waste and materials. Lessee agrees to make all necessary repairs, interior, exterior, and structural, to said appliances, equipment, furniture and furnishings, buildings and other improvements during the term of this Lease, including repairs required due to misuse or neglect by Lessee or Lessee's agents, servants, visitors or licensees. Lessee further agrees to clean up any hazardous or toxic waste or material placed on the Premises by Lessee, and reclaim said Premises if required. Lessee shall pay and hold Lessor free and harmless from bills or assessments for clean up, light, heat, water, gas, sewer rentals or charges, and any other expenses arising out of or incidental to the use or occupancy of said Premises. Lessee agrees to repair and restore all improvements on the Premises following any damage to or loss or destruction of the Premises or any part thereof from any cause whatsoever, at Lessee's expense, and without cost to Lessor, except as provided in this Agreement.

6. Taxes and Assessments: As additional rent, Lessee agrees and covenants to pay and discharge, before they become delinquent, all ad valorem or property taxes, all sanitary taxes, general and special charges or assessments, and other taxes levied or assessed against the Premises or arising in respect to the occupancy, use or possession of the Premises, and which are assessed or become a lien or become due and payable during the term of this Lease. This obligation of Lessee shall include the obligation, imposed by any law, ordinance or regulation now in existence or hereafter enacted or adopted, to pay any taxes, assessments or charges for public improvements or services levied or imposed in whole or in part as a capital or other levy against the Premises or on the rents hereunder, or in substitution for ad valorem taxes, charges or assessments for public improvements or services as now imposed by law. Lessee shall, within thirty (30) days following the last day on which any such taxes or assessments may be paid without incurring any interest or penalty, furnish to Lessor receipts or other evidence demonstrating payment thereof. There shall be an apportionment of all such taxes between Lessor and Lessee with respect to the first and last year of the term hereof. Lessee may, in good faith and in a lawful manner and upon giving notice to Lessor of its intention so to do, contest in Lessor's name any tax, assessment or charge against the Premises, but all costs and expenses incidental to such contest shall be paid by Lessee, and in case of an adjudication adverse to Lessee, then Lessee shall promptly pay such tax, assessment or charge. Lessee shall indemnify and save Lessor harmless against any loss or damage arising from such contest and shall, if necessary to prevent a sale or other loss or damage to Lessor, pay such tax, assessment or charge under protest and take such other steps as may be necessary to prevent any sale or loss.

7. Lessee's Improvements: Lessee, during the full term of this Lease, shall have the right, at any time, and from time to time, at its own and sole expense and liability, to place or install on the Premises such additional improvements which it shall desire, all of which shall be and remain, from the time of construction or installation, the property of Lessor, without payment or offset; provided that Lessee shall first obtain the prior written consent of Lessor and Lessor's mortgagee, if such mortgagee's consent is required. If any such improvements shall involve structural changes in the improvements existing or external appearance changes, then no such



installation or construction shall violate any lawful rule or regulation, plat or zoning restriction or other law, ordinance or regulation applicable thereto, and shall be done and performed in a good and workmanlike manner. All costs of any such improvements shall be paid by Lessee and Lessee shall allow no liens for labor or materials to attach to the Premises by virtue thereof. Lessee shall submit drawings and specifications to Lessor for Lessor's approval, and no work shall be commenced until Lessor has approved such drawings and specifications, or a reasonable period of time shall have elapsed.

8. Insurance: Lessee agrees to pay as additional rental all premiums required during the term hereof, to provide and keep in force policies of insurance as follows:

(a) Hazard Insurance. Fire and extended coverage insurance in some insurance company or companies authorized to do business in the State of Alabama in an amount acceptable to Lessor. Such policy or policies shall insure Lessor and Lessee, and in the event there shall be a lien on the Premises which is created pursuant to the lien of a mortgage, Lessee shall cause such insurance policy to be endorsed to include such mortgagee as a named insured as its interest may appear.

(b) Public Liability and Property Damage Insurance. Public liability and property damage insurance insuring Lessor and Lessee, with limits acceptable to Lessor.

(c) Workmen's Compensation Insurance. Lessee, at its cost, shall maintain Workers Compensation Insurance coverage for all employees.

All policies required by this paragraph shall be carried in such companies and upon such forms as both parties hereto from time to time approve.

Lessee hereby covenants that no policy shall be subject to cancellation or material modification except after prior written notice to Lessor and Lessor's mortgagee, if applicable, and each policy shall so provide.

8. Damage or Destruction of Premises: In the event that the Premises are totally or partially destroyed, the parties agree as follows:

(a) If the Premises are totally destroyed by storm, fire, lightning, earthquake or other casualty, Lessor shall have the option of either (i) terminating this Lease as of the date of such destruction, in which case rental shall be accounted for as of that date; or (ii) restoring the Premises within six (6) months of said destruction to substantially the same condition as before destruction out of insurance proceeds which will be assigned to Lessor for said purpose, in which case rental shall abate during the period of restoration, but not longer than six (6) months. Said option shall be exercised within sixty (60) days from the date of such destruction.

(b) If the Premises are partially destroyed by storm, fire, lightning, earthquake or other casualty, rental shall abate in the same proportion as use of the Premises has been destroyed, and Lessor shall restore the Premises to substantially the same



condition as before such damage as speedily as practicable, but within six (6) months, whereupon full rental shall recommence; provided, however, that if the damage shall be so extensive that the same cannot be reasonably repaired and restored within six (6) months from the date of casualty, or if the estimated cost of restoration exceeds insurance proceeds received as a result of such damage, then Lessor shall have the option of either (i) restoring the Premises or (ii) terminating this Lease. Said option shall be exercised by the giving of written notice to Lessee within thirty (30) days from date of such casualty.

Anything to the contrary contained in paragraphs (a) or (b) of this Paragraph 9 notwithstanding, upon receipt of notice of Lessor's election to terminate this Lease under such paragraphs (a) or (b) above, Lessee may, within sixty (60) days of the date of such destruction, notify Lessor of its intent to restore and rebuild to substantially the same condition as before such destruction. In the event of Lessee's election to so rebuild, Lessee shall provide Lessor with evidence of Lessee's financial ability to pay for such reconstruction (for this purpose, Lessee shall be entitled to include the proceeds of insurance), and upon Lessor's receipt of satisfactory evidence, Lessee shall be entitled to receive the proceeds of all insurance provided for in Paragraph 8 hereof to the extent that the same are required to rebuild and such proceeds shall be disbursed by Lessor to Lessee, from time to time as such rebuilding progresses, upon written request of Lessee, accompanied by a certificate of the architect or engineer in charge of the work that such distribution is appropriate for the work performed. In the event such proceeds are inadequate to reimburse Lessee for such repair or restoration, Lessee shall pay any additional amounts required from its own funds.

10. Lessor Indemnified: Lessee agrees to indemnify and save Lessor harmless against and from any and all claims by and on behalf of any persons, firms or corporations arising from the conduct or management of, or from any work or thing whatsoever done in or about, the Premises during the term of this Lease.

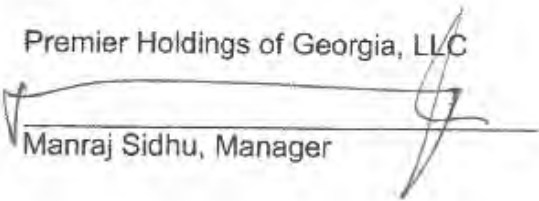
11. Net Lease Intended: It is the intention of the parties that Lessor shall receive rental specified herein as net rental, free from all charges, expenses, damages and deductions.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the parties hereto have caused this Lease to be executed in their respective names by their respective authorized representatives as of the day and year first above written.

**LESSOR:**

Premier Holdings of Georgia, LLC

  
\_\_\_\_\_  
Manraj Sidhu, Manager

**LESSEE:**

Premier Kings of Georgia Inc.

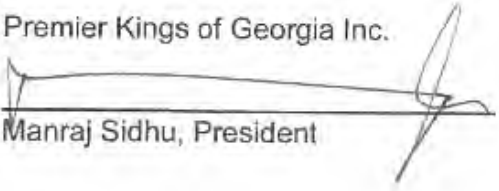
  
\_\_\_\_\_  
Manraj Sidhu, President

Exhibit A  
Legal Description

ALL THAT TRACT or parcel of land lying and being in the 20<sup>th</sup> GMD of Bryan County, Georgia, being Tract 1, as more particularly depicted on a plat recorded in Plat Book 672, Page 2, Records of Bryan County, Georgia, which plat is incorporated hereby by reference hereto.



# LEASE/SUBLEASE

## KEY CONTRACT DATA PAGE

This Key Contract Data Page forms a part of the Lease and is incorporated by reference into the Lease.

**Lease Date:** \_\_\_\_\_, 2021

**Lessee:** Premier Kings of Georgia Inc. an Georgia corporation

**Guarantor(s):** Manraj S. Sidhu

**Premises (Section 1.1):** BURGER KING® Restaurant # 1404, located at 11711 Abercorn St., Savannah, GA 31419-1905, as more particularly described on Exhibit A.

**Commencement Date (Section 2.1):** Upon the earlier of (i) October 24, 2020 and (ii) the earliest of the following dates:

- (a) The date ten (10) days following the date of the issuance of a Certificate of Occupancy for the Premises by appropriate governmental authorities; and
- (b) The date ten (10) days following date of certification of Lessor's architect that the Land has been improved and the Building constructed is substantially in conformance with the plans and specifications; or
- (c) The date Lessee opens for business.

**Term (Section 2.1):** Twenty (20) years

**Original Term Expiration Date (Section 2.1):** October 31, 2041

**Guaranteed Minimum Annual Rent (Section 3.1):**

<u>Lease Year:</u>	<u>Guaranteed Minimum Annual Rental:</u>	<u>Monthly Installment:</u>
Commencement Date - 10/31/2026	\$95,200.00	\$7933.33
11/1/2026 - 10/31/2031	\$106,624.00	\$8885.33
11/1/2031 - 10/31/2036	\$119,418.88	\$9951.5
11/1/2036 - 10/31/2041	\$133,749.15	\$11145.75

**Percentage Rental Data Schedule (Section 3.2):**

<u>Monthly Gross Sales:</u>	<u>Percentage:</u>
\$0 - \$133,333.33	8.5%
\$133,333.34 or higher	10.0%

**Building Improvement Funds (Section 6.1):**

<u>Annual Sum:</u>	<u>Monthly Installment:</u>
\$6,000	\$500

**Address for Notices (Section 17.2):**

Lessor: BURGER KING CORPORATION  
5707 Blue Lagoon Drive  
Miami, Florida 33126

Lease/Sublease  
Exhibit G1 (03/2021)  
BK #1404

With a copy to:

P. O. Box 020783,  
General Mail Facility  
Miami, Florida 33102-0783

Lessee:

**Premier Kings of Georgia Inc.**  
**c/o Burger King® Restaurant# 1404**  
3300 Eastern Boulevard,  
Montgomery AL 36116.

Lease/Sublease  
Exhibit G1 (03/2021)  
BK #1404

# LEASE/SUBLEASE

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## LEASE/SUBLEASE AGREEMENT

THIS AGREEMENT (the "Lease"), is made as of the Lease Date set forth on the Key Contract Data Page, by and between **BURGER KING CORPORATION**, a Florida corporation (the "Lessor") and the Lessee set forth on the Key Contract Data Page. The terms "Lessor" and "Lessee" shall mean respectively "Sublessor" and "Sublessee" whenever the context requires or permits it.

In consideration of the covenants contained in this Lease, the parties agree as follows:

### I. PROPERTY LEASED

**§1.1 DEMISE.** Lessor leases to Lessee and Lessee leases from Lessor the property set forth on the Key Contract Data Page (the "Land") along with the **BURGER KING®** restaurant (the "Building") and other improvements to be constructed on it (collectively called the "Premises").

Subject to any and all reservations, restrictions, easements, rights of way, limitations and conditions of record, if any.

~~**§1.2 ERECTION OF BUILDING.** Commencement of this Lease is conditioned on the completion of the Building in accordance with plans and specifications prepared by Lessor's architect. Lessor has agreed to construct or contract for the construction of the Building promptly and to complete or contract to complete it as promptly as conditions will permit, but in any event before one hundred eighty (180) days from the lease date; provided, however, that this period shall be extended by any time lost in construction due to delays caused by strikes, lockout, acts of God, shortage of materials, or other conditions beyond the control of Lessor. In the event the Building is not completed within one (1) year from the date of this Lease, this Lease may be terminated at the option of either party, on fifteen (15) days' notice to the other party.~~

**§1.3 COVENANT OF QUIET ENJOYMENT.** The Lessor promises, subject to Lessee's performance of all of the terms and conditions of the Lease, that Lessee shall be entitled to the quiet and peaceful enjoyment and undisturbed possession of the Premises for the term of this Lease.

### II. TERM

**§2.1 TERM.** The term of this Lease (the "Term") shall commence upon the Commencement Date set forth on the Key Contract Data Page and expire at midnight the Original Term Expiration Date set forth on the Key Contract Data Page (i.e., the day preceding the 20th anniversary of the Commencement Date) unless sooner terminated as provided in this Lease. The Commencement Date shall be designated by the parties in a form capable of being recorded among the public records of the county where the Premises are located.

**§2.2 POSSESSION.** Possession of the Premises shall be delivered to the Lessee on the Commencement Date.

**§2.3 HOLDOVER.** Any holdover at the expiration of the Term with the written consent of Lessor shall be on a month to month basis, which tenancy may be terminated by Lessor giving Lessee not less than fifteen (15) days notice. During such holdover tenancy, Lessee agrees to pay Lessor on a monthly basis all increased rentals and other charges that would have been due under this Lease and agrees to continue to be bound by all of the terms of this Lease which are applicable at that time. In the event Lessee holds over without consent of Lessor, the rent during any holdover period shall be double the average rent that was due during the last year of the Lease Term.

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CONFIDENTIAL

ENCLOSURE



#### **§2.4 END OF TERM.**

- (a) **Fixtures and Personality.** At the expiration or earlier termination of this Lease, any fixtures, as defined in Section 17.14(a) of this Lease, located on the Premises and not already owned by Lessor shall become the property of the Lessor. If, at that time, Lessee has fully complied with Lease terms and conditions, Lessor hereby waives any right to claim any personality owned or leased by Lessee and located on the Premises. The personality may then be removed by Lessee or the lessor of such personality provided that the Premises are restored to their original condition. Any such personality not removed within fifteen (15) days after the Lease expiration or termination shall be deemed abandoned and become the property of Lessor.
- (b) **Joint Inspection.** During a period no earlier than three (3) weeks and no later than one (1) week prior to the end of the Term, Lessor and Lessee shall conduct a joint inspection of the Premises and Lessor shall make a list of any items of repair and maintenance which may be needed to put the Premises in good condition and repair. If the items on such list cannot be completed by Lessee by the end of the Term, then Lessee shall pay to Lessor by the end of the Term the reasonable cost of such repairs as estimated by Lessor. Lessee's obligation to make such payment shall survive the termination of this Lease. Any failure by the parties to conduct the joint inspection shall not constitute a waiver of Lessee's obligations under this Section 2.4, Section 5.2 and Article VI of this Lease.

### **III. CONSIDERATION**

**§3.1 RENT.** Lessee agrees to pay and Lessor agrees to accept the Guaranteed Minimum Annual Rental as indicated on the Key Contract Data Page, for each year of the Term of this Lease (such being hereinafter referred to as "Guaranteed Minimum Annual Rental"), to be due and payable in monthly installments in advance on the first day of each month during the Term of this Lease. The first monthly installment of the Guaranteed Minimum Annual Rental shall be due on the Commencement Date. If this Lease shall commence on any day other than the first day of a calendar month, the monthly installment for the first and last month of the Lease Term shall be prorated.

The term "Lease Year" shall mean and refer to the first consecutive twelve (12) month period beginning on the Commencement Date of the Lease and each succeeding twelve (12) month period thereafter, whether fiscal or annual.

#### **§3.2 PERCENTAGE RENTAL.**

- (a) **Percentage Rental.** In addition to the Guaranteed Minimum Annual Rental, and as part of the total rent to be paid by Lessee to Lessor during the Lease Term, Lessee covenants and agrees to pay to Lessor as percentage rental ("Percentage Rental"), a sum equal to a percentage (as set forth as the Percentage Rental Data Schedule on the Key Contract Data Page) of the "Gross Sales" (defined in Section 3.2(b) below) for each month of each Lease Year in excess of the monthly installment of the Guaranteed Minimum Annual Rental to be paid for such month. The Percentage Rental shall be payable in monthly installments and computed in accordance with the terms and conditions of Section 3.2 (a) (i) below.
- (i) **Monthly Accounting and Payment.** Beginning with the tenth (10th) day of the month following the calendar month in which the Term commences and continuing monthly thereafter, Lessee shall deliver to Lessor a statement in writing on a form furnished by the Lessor, setting forth all of the Gross Sales for

the preceding calendar month, and simultaneously upon submission of such statement, Lessee shall pay to the Lessor the Percentage Rental due, being an amount equal to the amount set forth on the Key Contract Data Page, less the monthly installment of Guaranteed Minimum Annual Rental paid by Lessee for the month in question; provided that in no event shall Lessee ever become liable to pay less than the monthly installment of Guaranteed Minimum Annual Rental for any such month.

- (ii) Annual Accounting. Within thirty (30) days following each Lease Year, the Lessee agrees to deliver to Lessor a statement prepared by a Certified Public Accountant and sworn to by Lessee setting forth Gross Sales for the preceding Lease Year.
- (b) Gross Sales. The term "Gross Sales" as used in this Lease includes all sums charged for goods, merchandise or services sold at or from the Premises including all promotional items or premiums unless exempted by Lessor. The sale of BURGER KING products away from the Premises is not authorized; however, should any such sales be approved in the future, they will be included within the definition of Gross Sales. Gross Sales excludes any federal, state, county or city sales tax, excise tax, or other similar taxes collected by Lessee from customers based upon sales, and cash received as payment in credit transactions where the extension of credit itself has already been included in the figure upon which any previous Percentage Rental has been computed.

The Guaranteed Minimum Annual Rental and the Percentage Rental shall sometimes hereinafter be referred to collectively as the "Rent."

### 53.3 FINANCIAL REPORTS

- (a) Financial Statements. During the Term of this Lease, Lessee and any other persons or entities who are guarantors, who have personal liability, or who have joint and several liability under this Lease ("Guarantors") shall deliver to Lessor the following financial statements:

#### As to Lessee:

- (i) Within ninety (90) days after the end of each fiscal year of Lessee, balance sheets as of the end of such year and statements of income and of changes in financial condition for such year;
- (ii) Within twenty-five (25) days after the end of each fiscal quarter of Lessee, balance sheets as of the end of such quarter, and statements of income and changes in financial condition for such fiscal quarter and for the current fiscal year to the end of such fiscal quarter;

#### As to Guarantor:

- (iii) Within ninety (90) days after the end of each fiscal year of Guarantors, a personal net worth statement and a copy of the most recent federal income tax return filed as to each individual Guarantor;

#### As to Lessee and Guarantors:

- (iv) The balance sheets and financial statements referred to in subparagraphs (i), (ii), and (iii) above shall be prepared in accordance with generally accepted



accounting principles consistently applied (except as noted), and be accompanied by certificates of the Lessee and each Guarantor or the chief financial officer of the Lessee and each Guarantor, as the case may be, stating that such financial statements have been prepared in accordance with generally accepted accounting principles consistently applied (except as noted) and fairly present the financial condition of the Lessee or each Guarantor at the date thereof and for the periods covered thereby.

- (v) If requested by Lessor, the balance sheets and financial statements referred to in subparagraphs (i) and (ii) above shall be certified by a Certified Public Accountant.
- (h) Release of Financial Information. Lessee and Guarantors give permission to Lessor to release to Lessor's landlord, lenders or prospective landlord or lenders and/or any prospective purchaser of all or part of Lessor's interest in the Premises and/or the Lease, any financial and operational information relating to Lessee, Guarantors and/or the business operated at the Premises.
- (c) Records and Audit. Lessee agrees to keep true, accurate and complete records of the business conducted at the Premises in such form as Lessor now or hereafter may require. Lessee shall retain for a period of at least twenty-four (24) months and upon request submit to Lessor copies of all state sales tax returns and all supporting data and records relating to sales made from the business operated at the Premises and such other records as Lessor may reasonably request from time to time. Lessee agrees that Lessor or its representative, at Lessor's expense, shall at all reasonable times have the right to examine or audit the books, records, state sales tax returns or accounts of Lessee. Lessor shall similarly have the right to examine or audit the books, records, state sales tax returns or accounts of any and all Guarantors. In the event the audit discloses an understatement of Gross Sales for any period or periods, Lessee shall, within fifteen (15) days after the receipt of the audit report, pay Lessor the Percentage Rental of the amount of each understatement plus the late charge identified in Section 3.6 of this Lease from the date such payments were originally due. Additionally, if this audit discloses an understatement of Gross Sales which exceeds two percent (2%) for any period or periods, Lessee shall, within fifteen (15) days after receipt of the audit report, reimburse Lessor for all costs of the audit including travel, lodging and wages, reasonably incurred, and Lessor may terminate this Lease upon five (5) days' notice to Lessee unless the understatement was due to inadvertent clerical error. In the event the audit discloses an overstatement of Gross Sales for any period or periods, any excess payment paid shall be allowed as a credit to Lessee on the rental payment next accruing under the Lease. The acceptance by the Lessor of payment of any Percentage Rental is without prejudice to Lessor's right to audit the books and records of Gross Sales and other papers required to be kept hereunder.

**§3.4 ADDITIONAL CHARGES.** Lessee and Lessor agree that the Rent accruing under this Lease and the "Building Improvement Payments" described in Section 6.1 of this Lease shall be net to Lessor and that all Charges (as hereinafter defined), taxes, costs, common area maintenance fees, expenses and charges of every kind and nature ("Additional Charges") relating to the Premises (except the taxes of Lessor referred to in Section 7.3 and any payments for interest or principal under any mortgage relating to the Premises) which may arise or become due during the Term or any extension of this Lease, shall be paid by Lessee, and that Lessee shall indemnify and save harmless Lessor from and against them. All Additional Charges which Lessee assumes or agrees to pay under any provisions of this Lease, together with all interest and penalties that may accrue on these Additional Charges in the event Lessee fails to pay them, as well as all other damages, costs and expenses, including, without limitation, reasonable attorneys' fees and other legal and court costs which Lessor may incur in enforcing this Lease, and any and all other sums which may become due by reason of Lessee's default or failure to comply with its

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obligations under this Lease, shall be deemed to be "Additional Rent." In the event of non-payment, Lessor shall have all the rights and remedies as provided in the case of non-payment of Rent.

**§3.5 ALTERNATIVE METHOD OF PAYMENT.** Lessor or its assigns, mortgagee or designated agent, may, at its/their option, require payment of (i) the Rent and/or (ii) the monthly escrow sums described in Section 6.1 and Section 7.4 of the Lease and/or (iii) if applicable, any common area maintenance or similar charge assessed pursuant to the Lease and/or (iv) any Additional Charges due pursuant to Section 3.4 of this Lease by making direct monthly withdrawals in the appropriate amount(s) from Lessee's bank account. In the event that this option is exercised, Lessee agrees to execute and deliver to its bank and to Lessor those documents necessary to authorize such withdrawals and to make payment or deposit as directed by Lessor. Lessee further agrees that it will not thereafter terminate such authorization so long as this Lease is in effect. Lessee also agrees that in the event that a direct monthly withdrawal program is not available at the bank at which Lessee then does its business, it will take all reasonable and necessary steps to establish an account at a bank which does have such a program.

**§3.6 LATE CHARGES.** All Rent, the Building Improvement Payments described in Section 6.1 of this Lease, Additional Charges and any other charges shall be paid to Lessor without notice or demand and without abatement, deduction or set-off, except as otherwise expressly provided in this Lease. All payments not paid when due shall bear interest at the maximum rate allowed by Florida law. In the event such interest rate shall be void or unenforceable under the laws of the jurisdiction where the Premises are located, the highest rate of interest permitted within such jurisdiction shall be charged.

**§3.7 LESSOR'S LIEN.** To secure the payment of all Rent, Additional Charges and Charges or any other sums due and to become due under this Lease, the faithful performance of this Lease by Lessee and to secure all other indebtedness and liabilities of Lessee to Lessor now existing or hereafter incurred, Lessee hereby grants to Lessor a lien and security interest on all furniture, furnishings, trade fixtures, equipment and other personal property (collectively, "Personal Property") to which Lessee has legal title and which is placed in the Premises. The Lessee further agrees that if Lessee vacates the Premises while any Rent or Additional Charges owing under this Lease is unpaid, Lessor, in addition to any remedy otherwise provided by law or in this Lease, may seize and sell the Personal Property at any place to which Lessee or any other person may have removed them in the same manner as if the Personal Property had remained at the Premises. If requested by Lessor, Lessee shall execute and deliver to Lessor any and all documentation necessary to evidence Lessor's lien on the Personal Property.

#### IV. INSURANCE

**§4.1 COVERAGE.** During the Term, Lessee, at its own cost and expense, shall:

- (a) Keep the Premises and the fixtures and personalty on it insured with an all risk property insurance policy (including business interruption coverage with an indemnity period of at least 12 months) in an amount sufficient to cover the cost of replacement (without deduction for depreciation). Such replacement cost shall be determined from time to time at the request of Lessor, but not more frequently than once in any twelve (12) consecutive calendar months. Replacement cost shall be determined by one of the insurers or, at the option of Lessor, by an appraiser, architect or contractor who is mutually and reasonably acceptable to Lessor and Lessee, and whom shall be retained and paid by Lessee. Such insurance shall name Lessor and any other entity that Lessor acting reasonably requests as a loss payee as its interest may appear and shall include a waiver of subrogation in favor of Lessor and any other loss payee.



(b) Provide and keep in force:

- (i) commercial general liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Premises or the adjoining streets and property, in a primary and excess limit of not less than \$5,000,000 per occurrence for bodily injury, death, personal injury, property damage, non-owned automobiles, blanket contractual and products and completed operations liability, with the annual aggregate liability limit to be maintained on the commercial general liability insurance (which can be achieved through a combination of primary and excess annual aggregate liability limits) based on the number of BURGER KING restaurants owned by Lessee and certain of its affiliates as follows: (1) for 1-10 restaurants, an annual aggregate liability limit of not less than \$5,000,000 per year, (2) for 11-50 restaurants, an annual aggregate liability limit of not less than \$10,000,000 per year, and (3) for more than 50 restaurants, an annual aggregate liability limit of not less than \$20,000,000 per year;
- (ii) automobile liability insurance on all owned and/or leased vehicles, with a combination of primary and excess limits of not less than \$1,000,000.00;
- (iii) broad form Boiler and Machinery Insurance covering all boilers, pressure vessels and HVAC equipment within the Premises in an amount not less than the full replacement cost thereof; and
- (iv) such other insurance and in such amounts as reasonably may be required by Lessor for its own and Lessee's protection.

The foregoing policies shall name Lessor and any other entity that Lessor acting reasonably requests as an additional insured and shall include a waiver of subrogation in favor of BKG and any other loss payee.

- (c) Provide and keep in force plate glass insurance covering the glass in the Premises, unless waived by Lessor;
- (d) If requested by Lessor, provide and keep in force rent insurance (and/or, as the case may require, use and occupancy insurance) in an amount not less than the then current Guaranteed Minimum Annual Rental plus the estimated annual taxes, water charges, sewer rents, common area maintenance and other assessments and the annual premiums for the insurance required by this Article;
- (e) If requested by Lessor or any mortgagee, provide and keep in force insurance for such other insurable hazards in such amounts as similarly situated Premises are then commonly insured.

**§4.2 POLICIES.** Lessee's obligation to obtain and maintain the foregoing policy or policies in the amounts specified shall not be limited in any way by reason of any insurance which may be maintained by Lessor. All insurance maintained by Lessee shall be primary and shall not call into contribution any insurance maintained by Lessor. All insurance required by Lessor and provided by Lessee shall be carried in favor of Lessor and Lessee, as their respective interests may appear, and any underlying lessor, fee owner, affiliate corporation, trustee, mortgagee or other person designated by Lessor. If requested by Lessor, insurance against fire or other casualty shall provide that the proceeds of any loss shall be payable to the mortgagee under a standard mortgagee clause. Any rent insurance or use and occupancy insurance carried by Lessee shall provide that, in the event of loss or damage to the Premises, the proceeds shall be payable to Lessor to be held by Lessor as security for the payment of the Rent, the Building Improvement Payments described in Section 6.1 of this Lease and Additional Charges



due under this Lease until the Premises are restored. All insurance shall be obtained from companies licensed to do business in the state in which the Premises are located and be with insurers with a minimum A. M. Best A(X) rating or Standard & Poor's Rating of A. Lessee shall procure policies for all insurance for periods of not less than one year and shall deliver to Lessor all policies or certificates of insurance with evidence of payment of all premiums. Lessee shall procure renewals of these policies from time to time before their respective expiration dates. All insurance policies shall be non-assessable and shall require thirty (30) days' notice by registered mail to Lessor of any cancellation or change affecting Lessor's coverage under the policies. All property damage and business interruption policies of Lessee shall contain a waiver of any subrogation rights which Lessee's insurers may have against Lessor, even if the loss suffered is caused by the act, omission or negligence of Lessor.

**§4.3 ADJUSTING PROCEEDS.** Claims for loss due to damage to the Premises under any policies provided for in this Lease shall be adjusted with the insurance companies:

- (a) by Lessee in the case of any particular casualty resulting in damage or destruction not exceeding \$25,000, or
- (b) by Lessor and Lessee, in the case of any particular casualty resulting in damage or destruction exceeding \$25,000 in the aggregate. Subject to the rights of any mortgagee, the proceeds of any insurance shall be payable as follows:
  - (1) With respect to any loss not exceeding \$25,000 in the aggregate, proceeds shall be paid to Lessee, who shall hold them in trust for the purpose of paying the costs of repair and restoration; and
  - (2) With respect to losses exceeding \$25,000 in the aggregate, the proceeds shall be paid to Lessor and shall be applied to pay the costs of repair and restoration.

**§4.4 JOINT EFFORTS.** Lessee and Lessor shall cooperate in attempts to collect any insurance proceeds that may be due in the event of loss, and Lessee shall execute and deliver to Lessor such proofs of loss and other instruments which may be required for the purpose of recovering these proceeds.

**§4.5 WAIVER OF SUBROGATION.** Lessee agrees to look solely to the proceeds of his own insurer for indemnity against exposure for loss of property or business interruption. Lessee warrants that its property and business interruption insurers shall have no rights against Lessor by virtue of assignment, subrogation, loan agreement or otherwise.

**§4.6 CANCELLATION OF INSURANCE.** If any insurance policy covering the Premises or any part of it is canceled or is threatened by the insurer to be canceled, or if the coverage thereunder is reduced in any way by the insurer for any reason, and if Lessee fails to remedy the condition giving rise to cancellation, threatened cancellation, or reduction of coverage within forty-eight (48) hours after notice thereof by Lessor, Lessor may, at its option, either (i) reenter the Premises forthwith by leaving upon the Premises a notice in writing of its intention to do so (in which case the provisions of Article IX shall apply) or (ii) enter the Premises and remedy the condition giving rise to such cancellation, threatened cancellation or reduction, and Lessee shall forthwith pay the cost thereof to Lessor (which cost may be collected by Lessor as Additional Rent) and Lessor shall not be liable for any damage or injury caused to any property of Lessee or of others located on the Premises as a result of any such entry.

**§4.7 LOSS AND DAMAGE.** Lessor shall not be liable for any death or injury occurring on the Premises, nor for the loss of or damage to any of the personality or other property of Lessee or of others by theft or otherwise, from any cause whatsoever. Without limiting the generality of the foregoing, Lessor shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, dampness, gas, electricity, water, rain, snow, or leaks from any part of the Premises or from the pipes, appliances or plumbing works or from the roof, street or subsurface or from any other place by any



other cause whatsoever. Lessor shall not be liable for any such damage caused by other persons or occupants of adjacent property, or the public, or caused by operations in construction of any private, public or quasi-public work. All of the personalty or any other property of Lessee kept or stored on the Premises shall be kept or stored at the risk of Lessee.

## V. THE PREMISES

**§5.1 USE AND SERVICES.** During the Term of this Lease, Lessee shall continuously operate a BURGER KING restaurant on the Premises in accordance with the terms of the BURGER KING Franchise Agreement entered into by Lessee contemporaneously with this Lease (the "Franchise Agreement"), unless Lessee is prevented from doing so due to acts of God or other causes beyond Lessee's control. The Premises shall not be used for any other purpose. Lessee shall not use in connection with the operation of or as additional parking for its business on the Premises any property other than the Premises, except in accordance with the provisions of Article XIV of this Lease.

Except as may be otherwise specifically provided by the terms of this Lease or the Franchise Agreement, Lessor shall not be required to furnish to Lessee any facilities or services of any kind whatsoever, such as, but not limited to water, sewer, steam, heat, gas, hot water, electricity, light and power.

**§5.2 REPAIRS AND MAINTENANCE.** Lessee shall, at all times during the Term, at its own cost and expense, put, keep and maintain the Premises and all fixtures and personalty located on it in first-class order and condition, and subject to all applicable terms of Section 5.3 and Section 5.8, shall make all necessary and desirable repairs, restorations and replacements thereof, structural and nonstructural, foreseen or unforeseen (hereinafter collectively called "Repairs"), and shall use all reasonable precaution to prevent waste, damage or injury. Lessee shall also put, keep and maintain in good repair and free from dirt, snow, ice, rubbish and other obstructions or encumbrances, the sidewalks, parking areas, yards, plantings, gutters and curbs in front of and adjacent to the Building.

In the event that Lessee fails or neglects to make all necessary Repairs or fulfill its other obligations as set forth above, Lessor or its agents may enter the Premises for the purpose of making such Repairs or fulfilling those obligations. All costs and expenses incurred as a consequence of Lessor's action (together with a service charge of fifteen percent (15%) thereof) shall be repaid by Lessee to Lessor within fifteen (15) days after Lessee receives copies of receipts showing payment by Lessor for such Repairs or other obligations. These receipts shall be prima facie evidence of the payment of the charges paid by Lessor. Except in the case of emergency, Lessor shall give Lessee ten (10) days notice before taking any such action. If Lessee fails to pay any such amounts due to Lessor under this Section 5.2, Lessor may add the same to Lessee's "Rent" and recover the same by all remedies available to Lessor for recovery of Rent in arrears.

**§5.3 ALTERATIONS.** Lessee agrees that it will at its own cost and expense make such reasonable alterations to the interior or exterior of the Premises as may reasonably be requested by Lessor from time to time in order to modify the appearance of the Building to reflect the then current image of BURGER KING restaurants.

Lessee shall not at any time make any alteration, change, addition or improvement (hereinafter collectively called "Alterations") in or to the interior or exterior of the Premises without the prior written consent of Lessor. In the event consent is given:

- (a) the Alterations shall be performed in a first class workmanlike manner at Lessee's sole expense, and shall not weaken or impair the structural strength or lessen the value of the Premises, or change the purpose for which the Premises may be used.



- (b) the Alterations shall be made according to plans and specifications therefor, which shall be first submitted to and approved in writing by Lessor;
- (c) before the commencement of work on any Alterations, such plans and specifications shall be approved by all governmental authorities having jurisdiction and any public utility company having an interest in the Alterations;
- (d) before the commencement of any Alterations, Lessee shall pay the amount of any increase in premiums on insurance policies for endorsements covering the risk during work on the Alterations and workmen's compensation insurance covering all persons employed in connection with that work;
- (e) If the estimated cost of the Alteration exceeds \$50,000.00, Lessee shall furnish to Lessor a surety bond of a company acceptable to Lessor, in an amount equal to the estimated cost of such work, or other security satisfactory to Lessor, guaranteeing the completion of such work, free and clear of all liens and encumbrances;
- (f) the Alterations shall comply with (i) the requirements of Title III of the Americans With Disabilities Act of 1990 ("ADA") as same may be amended from time to time; (ii) the Americans With Disabilities Act Accessibility Guidelines 1991 ("ADAAG") as same may be amended from time to time which is a part of the ADA; (iii) the 2010 ADA Standards; and (iv) all state and local building codes including any disabilities related statutes or codes (collectively, the "Codes") in the applicable jurisdiction where the Premises are located; and
- (g) upon completion of the Alterations, an architect shall inspect the Alterations and complete the Burger King® 2004 ADAAG Checklist V1.2 (which is currently under revision to reflect the 2010 ADA Standards), and complete a certificate of inspection, on a form to be provided by Lessor, certifying that the Alterations are in compliance with Title III of the ADA, the ADAAG, the 2010 ADA Standards and the Codes, as same may be amended from time to time.

All buildings, additions, improvements, fixtures and appurtenances in or on the Premises at the Commencement Date and those which may be erected, affixed or installed in or on the Premises during the Term are deemed to be and shall immediately become part of the Premises and the sole property of Lessor. All personally installed by Lessee (except signs, trademarks and other insignia of Lessor) shall remain the property of Lessee.

Notwithstanding the foregoing, if requested by Lessor, the Lessee will remove from the Premises any or all alterations, additions, and improvements, brought upon or affixed to the Premises and make good any damage caused thereby.

**§5.4 LIENS.** Should Lessee cause any Alterations or Repairs to be made to the Premises, or cause any labor to be performed or material to be furnished, neither Lessor nor the Premises shall under any circumstances be liable for the payment of any expense incurred, and all such Alterations and Repairs shall be made and performed at Lessee's expense. If, because of any act or omission of Lessee, any mechanic's or other lien, charge, claim or order for the payment of money shall be filed against the Premises or against Lessor, Lessee shall, at its own cost and expense, cause it to be canceled and discharged of record or bonded within fifteen (15) days after filing or notice of filing thereof. In the event that the Lessee fails to cause any such mechanics' or other lien, charge or order to be canceled and discharged or bonded, then, in addition, to any other right or remedy of the Lessor, the Lessor may, at its option, cancel or discharge such lien, charge or order by paying the amount claimed to be due into court or directly to any claimant, without inquiring into the validity or merits of such lien, charge or order, and the amount so paid by Lessor and all costs and expenses including attorneys' fees incurred for the



cancellation or discharge of such lien shall be due from the Lessee to the Lessor as an additional charge payable on demand.

**§5.5 SIGNS.** Lessee shall not place any signs or symbols on any portion of the Premises without the prior written approval of Lessor.

**§5.6 INSPECTION.** Fee owner, Lessor or their representatives shall have the right to enter the Premises at reasonable hours of any business day to ascertain if the Premises are in proper repair and condition.

**§5.7 LICENSE AND LAWS.** The Lessee shall, at its own cost and expense, obtain all necessary licenses and/or permits which may be required for the conduct of its business; and Lessee shall, at its own cost and expense, promptly observe and comply with all present and future laws, ordinances, requirements, orders, directions, rules and regulations (referred to generally as "Regulations") of governmental authorities having or claiming jurisdiction over the Premises or the conduct of Lessee's business. By way of example, and not limitation, compliance with governmental Regulations shall include, but not be limited to, the following: (i) alterations and/or additions to the Premises if required under the Americans with Disabilities Act of 1990 and (ii) testing, remediation or abatement of environmental conditions (defined as conditions affecting the air, soil, ground water and improvements) affecting the Premises or property adjacent to or near the Premises, if so required by governmental authority. Lessee may contest in good faith, after notice to Lessor, by appropriate proceedings conducted promptly at Lessee's own expense, in Lessee's name (and/or whenever necessary and with Lessor's consent in Lessor's name), the validity or enforcement of any such regulation; provided that (i) such contest or any associated deferment of payment does not subject Lessor to a fine or other criminal liability, or subject the Premises to any encumbrance, (ii) Lessee diligently prosecutes such contest to a final determination by the governing authority, and (iii) Lessee furnishes Lessor with any security that Lessor may reasonably request in connection with such contest.

**§5.8 DAMAGE OR DESTRUCTION.** If, during the Term, the Premises or the personally or fixtures on it are destroyed or damaged in whole or in part by fire or other cause, Lessee shall give Lessor immediate notice, and Lessee, at its own cost and expense, shall cause the prompt repair, replacement and rebuilding of same ("Restoration"), subject to Section 5.2 and Section 5.3 of this Lease. The restored building, personally or fixtures shall reflect the then current image of BURGER KING restaurants and conform to the then current design and specifications of Lessor. Lessor shall in no event be called upon to repair, replace or rebuild any such buildings, fixtures or personally, nor to pay any of the costs or expenses thereof beyond or in excess of any insurance proceeds, as provided in this Lease.

All insurance proceeds received by Lessor or by any insurance trustee on account of such damage or destruction, less the actual cost, fees and expenses, if any, incurred in connection with adjustment of the loss, shall be applied by Lessor to pay or reimburse Lessee for the payment of the cost of the Restoration, including the cost of temporary repairs or for the protection of property pending the completion of permanent Restoration, and shall be paid out from time to time as Restoration progresses upon the written request of Lessee, accompanied by evidence satisfactory to Lessor that:

- (a) (1) the sum then requested either has been paid by Lessee or is justly due to contractors, subcontractors, materialmen, or other persons who have rendered services or furnished materials for the Restoration pursuant to a certificate or claim for payment ("Certificate"); and that the sum then requested does not exceed the amount of the services and materials described in the Certificate;
- (2) except for the amount, if any, stated in the Certificate to be due for services or materials, there is no outstanding indebtedness known to the persons signing such Certificate after due inquiry, which is then due for labor, wages, materials, supplies, or services in connection with the Restoration;



(3) the cost of the Restoration required to be done does not exceed the insurance proceeds, and

(b) that there have not been filed against the Premises any vendors, contractor's, mechanic's, laborers or materialman's statutory or similar lien ("Liens") which has not been discharged of record, except those that will be discharged upon payment of the sum requested in the Certificate, or bonded or contested in accordance with Section 5.4.

Upon compliance with the above provisions, Lessor or the insurance trustee shall, out of such insurance proceeds and such other funds as may have been made available, pay or cause to be paid to Lessee or its designee, the respective amounts due.

If the insurance proceeds and other funds deposited with Lessor or the insurance trustee, less the actual cost, fees and expenses, if any, incurred in connection with the adjustment of the loss, are insufficient to pay the entire cost of the Restoration, Lessee will pay the deficiency.

At least ten (10) days before the commencement of Restoration, Lessee shall notify Lessor of its intention to restore the Premises. During Restoration, this Lease shall not terminate, nor shall the Rent and the Additional Charges payable under this Lease be abated or be affected in any manner.

**§5.9 WARRANTIES: DISCLAIMER.** Lessor shall provide Lessee with the benefit of any warranties provided by the building contractor. Lessor expressly disclaims any other warranty, either express or implied, and Lessee acknowledges that neither Lessor nor its agents have made any representations or promises with respect to the Premises except as expressly set forth in this Lease, and no rights, easements or licenses are acquired by Lessee by implication or otherwise except as expressly set forth herein. The taking of possession of the Premises by Lessee shall be conclusive evidence that the Lessee has accepted the Premises "AS IS," including any latent or patent defects. Lessee acknowledges that Lessee is relying on its own independent inspection. Lessor agrees to cooperate with and assist Lessee in asserting claims against contractors or others providing work and/or services to the Premises.

**§5.10 CONTRACTS.** Lessee shall not without Lessor's consent enter into any service contract or agreement relating to the furnishing of any services to the Premises or the occupants of it unless such contract or agreement shall by its terms be terminable on no more than thirty (30) days notice or shall expressly provide that it shall not become binding on Lessor in the event that this Lease is terminated or expires. Lessee shall furnish Lessor with copies of all service contracts or agreements affecting the Premises that are now in existence or that are subsequently entered into.

**§5.11 REFUSE.** Lessee shall not allow any refuse, garbage or other loose or objectionable materials to accumulate on or about the Premises, will at all times keep the Premises in a clean and wholesome condition, and shall be responsible for the removal of all garbage or loose or objectionable materials emanating from the Premises. Lessee shall not dispose of any trash or garbage in or about the Premises except for in areas provided therefor by Lessor.

**§5.12 LOADING AND UNLOADING.** Lessee shall take all reasonable precautions to ensure that loading and unloading of merchandise, supplies, materials or chattels shall be made only through or by means of doorways and openings designated by Lessor.

**§5.13 CONDUCT AND HOURS OF OPERATION.** Lessee covenants to operate and conduct its business in a high-class and reputable manner and to conduct its business in the Premises during such hours as set out in the Franchise Agreement.



**§5.14 HEAT.** Lessee covenants to heat the Premises so as, at all times, to protect the Premises and all of its contents from damage by cold or frost.

## VI. BUILDING IMPROVEMENT FUNDS

**§5.1 BUILDING IMPROVEMENT FUNDS.** In addition to, and without limiting or diminishing in any manner whatsoever Lessee's repair and maintenance obligations set forth in Section 5.2 of this Lease, Lessee is required to fund a building improvement reserve for the replacement of certain improvements now or hereafter located at the Premises. Lessee shall, in addition to the Rent, Additional Rent and Additional Charges due under this Lease, pay to Lessor for each Lease Year the annual sum as set forth on the Key Contract Data Page, payable in equal monthly installments as set forth on the Key Contract Data Page in advance on the first day of each month during the Term of this Lease. Such payments are herein called the "Building Improvement Payments" and the amounts so paid together with any interest accruing thereon are hereinafter referred to as the "Building Improvement Funds". The first monthly installment shall be due on the Commencement Date. If this Lease shall commence on any day other than the first day of a calendar month, the monthly installment for the first and last month of the Lease Term shall be pro-rated.

**§5.2 STATUS OF BUILDING IMPROVEMENT FUNDS.** Lessor shall hold the Building Improvement Funds in accordance with the terms of this Article VI and not as an advance rental deposit or as a measure of Lessor's damage in case of Lessee's default. Lessee shall not pledge, hypothecate, encumber or otherwise transfer any interest in the Building Improvement Funds. The Building Improvement Funds shall be held by Lessor as non-segregated, interest-accruing funds and may be commingled with the other general assets of Lessor. The interest accruing on the Building Improvement Funds shall be determined and fixed annually by Lessor in its sole and absolute discretion and shall be based on the then-current weekly average yield for Three Month U.S. Treasury Constant Maturities as published in the Federal Reserve Statistical Release H-15 (the "Index"), less one-half percent (1.50%). If for any reason the Index is not published for any particular week or month during the Lease Term as may be required for the foregoing computation of interest, then the Index next published shall be used in its stead; and in the event that the Index shall no longer be published, or if the method of computing the Index shall be substantially altered, then Lessor, in its sole and absolute discretion, shall select another index generally recognized as authoritative and reflecting data substantially similar to the information used to compute the Index. All Building Improvement Payments not received by Lessor when due (i.e., on the first day of each month during the Term of this Lease) shall not accrue any interest until the following calendar month. Interest accrued or earned on the Building Improvement Funds shall become a part of the Building Improvement Funds and be subject to the terms hereof. Lessor shall report all interest earned on the Building Improvement Funds for the account of Lessee and Lessee shall execute and provide to Lessor a W-9 form and any other form required by Lessor for this purpose.

**§5.3 USE OF BUILDING IMPROVEMENT FUNDS.** The Building Improvement Funds shall be used to reimburse Lessee for the cost of any "Building Improvement(s)" (as that term is defined below). All reasonable costs, expenses, and fees associated with any Building Improvements shall hereinafter be referred to as the "Replacement Costs." Without limiting the effect of any provision hereof, unless otherwise specifically agreed to by Lessor in writing, the Building Improvement Funds shall not be used to pay for any costs of repairing or maintaining the Premises under Section 5.2 of this Lease. The judgment and determination of Lessor as to whether a cost or expense incurred by Lessee is a "Replacement Cost" within the meaning contemplated by this Article VI shall be final and conclusive.

As used herein the term "Building Improvement" shall mean any of the following:

- (a) the replacement of the entire air conditioning system including heating units for the Premises;



- (b) ~~the replacement of the entire mansard roof, fascia, soffit and related roofing structural components of the Premises;~~
- (c) ~~the replacement of the entire asphalt parking lot overlay located on the Premises; and~~
- (d) ~~the painting of the entire exterior surface of the Building.~~

The judgment and determination of Lessor as to whether an improvement to the Premises is a "Building Improvement" within the meaning contemplated by this Article VI shall be final and conclusive.

Lessee agrees that it will, at its own cost and expense, make any and all Building Improvements to the Premises as may be requested by Lessor from time to time. Lessee understands and agrees that Lessor may, in its sole and absolute discretion, require the same Building Improvement to be performed by Lessee on more than one occasion during the Term of the Lease, notwithstanding the balance of the Building Improvement Funds held by Lessor. Said Building Improvements must be completed by Lessee within the time periods specified by Lessor. Lessee shall not at any time make any Building Improvement to the Premises without the prior written consent of Lessor.

All approved Building Improvements shall be performed by Lessee in accordance with Section 5.3 of this Lease. Lessee shall be solely responsible for the payment of all Replacement Costs, as well as any increase in real estate taxes or assessments levied, certified and/or pending against the Premises resulting from the Building Improvements.

**§6.4 REIMBURSEMENT OF REPLACEMENT COSTS.** Lessee may request in writing that Lessor reimburse Lessee for Replacement Costs from the Building Improvement Funds, within thirty (30) days after completion of a Building Improvement. Lessor shall disburse the Building Improvement Funds as follows:

- (a) To Lessee in such amounts designated and approved by Lessor, and only upon Lessor's receipt of the following items:
  - (i) ~~Request for Funds.~~ Lessee's written request for Building Improvement Funds, addressed to Lessor, specifying the amount of the disbursement sought and a description of the Replacement Costs incurred since the date of the last disbursement, together with supporting invoices or receipts for performance of the Building Improvement(s) and other certificates as may be designated and approved by Lessor. In no event shall Lessee's request for funds exceed the then current outstanding balance of the Building Improvement Funds and Lessor shall have no obligation or liability whatsoever to Lessee for any amount requested over and beyond the outstanding balance of the Building Improvement Funds.
  - (ii) ~~Lessee Estoppel.~~ A written estoppel certificate signed by the Lessee stating that this Lease is valid and in full force and effect, that no event of default, or event or condition that which could ripen into an event of default with the passage of time or the giving of notice or both, has occurred under the Lease, and that the Building Improvements are completed and are satisfactory to Lessee.
  - (iii) ~~Post Completion Inspectors Report.~~ Lessor shall have received evidence from an inspector designated and approved by Lessor, that the work for which Building Improvement Funds are requested has been performed in a good and workmanlike manner.



~~(iv) Evidence of Compliance. Such lien waivers, contractor's sworn statements, receipts, and similar items as may be required by Lessor, from time to time in Lessor's sole and absolute discretion, and such other items as Lessor shall deem necessary or appropriate to evidence Lessee's compliance with the applicable construction lien law.~~

~~(v) Frequency. Unless Lessor shall have furnished Lessee with its prior written waiver in that particular instance (it being understood and agreed that no such waiver shall be deemed continuing or applicable to any subsequent withdrawals), withdrawals shall not be made more frequently than once during any calendar month.~~

~~(vi) Other. Such other items as Lessor may from time to time request of Lessee in writing.~~

Each of the foregoing items must be received by Lessor no later than the twentieth (20th) day of any calendar month in which Lessee seeks disbursement of Building Improvement Funds.

~~(b) Upon Lessee's satisfactory compliance with all of the provisions of this Article VI (including Lessor's receipt of the items described in Section 9.4 (a) above) and provided Lessee is not in default under any of the provisions of this Lease, Lessor shall, on the first day of the calendar month following Lessee's full and faithful compliance with the obligations set forth above, disburse the appropriate amount of Building Improvement Funds to reimburse Lessee for any authorized and approved Replacement Costs.~~

~~(c) In no event shall Lessor be required to disburse Building Improvement Funds to Lessee if Lessee has not satisfied in full all of the requirements of this Article VI.~~

~~(d) In no event shall Lessor be required to disburse Building Improvement Funds to Lessee or to any federal, state or local governmental authority to pay, satisfy or discharge any taxes, assessments, charges, exsises, levies, fees or other governmental impositions and charges of any kind and nature whatsoever which are payable in connection with the interest earned on the Building Improvement Funds.~~

~~(e) At Lessor's sole and absolute discretion, the appropriate amount of Building Improvement Funds may be disbursed to Lessee at any time during the Term of this Lease to reimburse Lessee for additional improvements or Repairs required pursuant to this Lease other than the Building Improvements for the Premises. However, this reference shall not in any way obligate Lessor to make any such disbursements.~~

**§6.5 INSPECTION OF WORK.** Lessor shall have no responsibility to Lessee or to any other person (i) to inspect the Building Improvements; (ii) to see that the Building Improvements are constructed in accordance with applicable plans and specifications, or that the Building Improvements will be completed; or that sufficient funds are available for completion; (iii) for mechanics' liens or claims by contractors, subcontractors or materialmen not disclosed by Lessee in each request for Building Improvement Funds submitted by Lessee; or (iv) for claims which may be found upon waiver of lien and/or paid invoices presented to Lessor which have been forged or otherwise wrongfully procured; nor where such document was executed by a person lacking authority to execute same; provided, however, Lessor or Lessor may inspect the Premises and/or the status of the Building Improvements at any time.

**§6.6 DEFAULT UNDER LEASE.** Notwithstanding any other terms of this Lease, in the event that Lessee is in default under any of the terms, conditions and provisions of this Lease and Lessee fails to cure any such default during any applicable cure period, the Lessor may, at the option of Lessor and in addition to any other remedies available to Lessor under this Lease and applicable law, apply all of the



~~Building Improvement Funds or any part thereof as may be necessary to compensate Lessor towards the payment of the Rent or any other sum in default, or towards any expenditure that Lessor may spend or become obligated to spend by reason of Lessee's uncured default, or to compensate Lessor for any other loss or damage which Lessor may suffer by reason of Lessee's default. If any portion is so used, Lessee shall within five (5) days after written demand therefor, pay to Lessor an amount sufficient to restore the Building Improvement Funds to its original amount just prior to the default, and Lessee's failure to do so shall be a material breach of this Lease. The judgment and determination of Lessor as to any such deficiency or insufficiency shall be final and conclusive. The provisions in this Section 6.5 shall not serve to limit or otherwise reduce Lessor's remedies as set forth in Article IX below.~~

**§6.7 LIMITATION OF LIABILITY.** ~~Lessor's duties under this Article VI are purely ministerial in nature and shall be expressly limited to the safekeeping of the Building Improvement Funds, and the disbursement of same in accordance with this Lease. Lessee agrees that Lessor shall only be liable hereunder for gross negligence, fraud or willful misconduct. Lessee hereby indemnifies Lessor and agrees to hold it harmless from and against any and all claims, liabilities, damages, costs, penalties, fines, actions, suits or proceedings at law or in equity, or any other expenses, fees, or charges of any character or nature, which Lessor may incur or with which Lessor may be threatened, directly or indirectly arising from or in way connected with its duties hereunder, other than those arising out of the gross negligence, fraud or willful misconduct of Lessor, and in connection therewith, indemnify Lessor against any and all reasonable expenses, including attorney's fees and the cost of defending any action, suit, or proceedings or resisting any claim, whether or not litigation is instituted.~~

**§6.8 ASSIGNMENT OR TERMINATION OF LEASE.** Should Lessee fully and faithfully comply with all of the terms, provisions and covenants of this Lease and promptly pay all of the Rent, Additional Charges and other sums payable by Lessee to Lessor as they become due, any Building Improvement Funds not disbursed, applied or retained by Lessor shall be returned to Lessee within sixty (60) days after Lessee has discharged all of its obligations under this Lease, but no earlier than the Original Term Expiration Date (or the sooner termination of this Lease). In the event of a sale of the Land and the Building of which the Premises forms a part, or an assignment of the Lease by Lessor, Lessor shall have the right to transfer the balance of any Building Improvement Funds to the purchaser or assignee, as the case may be, and Lessor shall thereafter be released by Lessee from all liability for the return of the Building Improvement Funds; and Lessee agrees to look solely to the purchaser or assignee for the return of the Building Improvement Funds. In the event of an assignment or transfer of this Lease by Lessee, Lessee shall be obligated to transfer the balance of any Building Improvement Funds to Lessee's assignee, and Lessor shall thereupon be released by Lessee from all liability for the return of the Building Improvement Funds. It is agreed that the provisions hereof shall apply, to every transfer or assignment made of the Building Improvement Funds to a new lessor and/or a new lessee.

**§6.9 NO WAIVER.** The failure of Lessor to enforce strict performance of the terms and conditions hereof, in connection with disbursement or use of any Building Improvement Funds or otherwise, shall not constitute a waiver of its rights to do so at any other time, or shall it constitute a waiver of any of Lessor's rights hereunder.

## **VII. TAXES AND OTHER CHARGES**

### **§7.1 PAYMENT.**

- (a) In the event Lessor elects, at its sole option, to pay any real estate taxes and assessments (both general and special), goods and service taxes, sales taxes, value added taxes, business transfer taxes, any other taxes imposed on Lessor with respect to rent payable by Lessee to Lessor or in respect of the rental of space under this Lease, assessments, charges for public utilities, excises, levies, licenses, permit fees or other governmental impositions and charges of any kind and nature whatsoever (collectively,



the "Charges") which are payable in connection with the ownership, occupancy or possession of the Premises, Lessee shall reimburse Lessor within fifteen (15) days after Lessee receives an invoice for the payment of such Charges.

- (b) in the event Lessor elects not to pay the Charges as set forth in the preceding paragraph, Lessee shall pay on or before the last day on which payment may be made without penalty or interest, all Charges which may be assessed, imposed, or become due and payable in connection with the ownership, occupancy or possession of the Premises or the fixtures or personalty on it, or any Charges which may be imposed in lieu of, or as a substitution for, any such Charges. At any time after the time for payment of each Charge, upon Lessor's request, Lessee shall exhibit to Lessor satisfactory evidence of payment. All Charges assessed or imposed for the fiscal periods in which the Term of this Lease commences and terminates shall be apportioned.

**§7.2 CONTESTS.** Lessee has the right to promptly contest or review any of the Charges by appropriate proceedings ("Proceedings") at its own expense, and if necessary, with the prior written consent of Lessor, in the name of Lessor. Lessee may defer payment of a contested Charge only if, before instituting any Proceedings, Lessee furnishes to Lessor security satisfactory to Lessor and sufficient to cover the amount of each contested Charge, with interest and penalties for the period which the Proceedings may be expected to take. Notwithstanding the furnishing of security (other than a cash deposit), Lessee shall promptly pay each contested Charge if, at any time, the Premises or any part of it are in danger of being sold, forfeited or otherwise lost or Lessor becomes subject to criminal or any other liability for such non-payment, provided that in that event, if Lessee has made a cash deposit to Lessor, Lessor may pay each contested Charge out of the deposit. When any contested Charge is paid or canceled, any balance of any cash deposit not so applied shall be repaid to Lessee without interest. All Proceedings shall be begun as soon as possible after the imposition or assessment of any contested item and shall be diligently prosecuted to final adjudication. If there is any refund with respect to any contested Charge based on a payment by Lessee, Lessee shall be entitled to it to the extent of such payment.

**§7.3 LIMITATION: SUBSTITUTION.** Nothing contained in this Lease shall be construed to require Lessee to pay any inheritance, estate, succession, transfer, gift, franchise, corporation, income or profit tax, or capital levy that is or may be imposed upon Lessor, its successors or assigns; provided, however, that if at any time during the Term of this Lease the methods of taxation prevailing at the Commencement Date are altered so that in lieu of or as a substitute for the whole or any part of the taxes, assessments, levies, impositions or charges (collectively "Assessments") now levied, assessed or imposed ("imposed") on real estate and improvements thereon, there is imposed:

- (1) an Assessment made wholly or partially as a capital levy, or
- (2) an Assessment measured by or based in whole or in part on the Premises, or
- (3) a license fee measured by the Rent payable by Lessee under this Lease,

then to the extent that such Assessments or portion thereof would be payable if the Premises were the only asset of Lessor subject to the Assessments, Lessee shall pay these Assessments in the same manner as provided in this Lease for payment of real estate taxes.

**§7.4 ESCROW FUNDS.** If, during the Term of this Lease, Lessor or any mortgagee requests Lessee to provide an escrow fund for payment of real estate taxes, Lessee agrees that upon such request it will promptly deposit with Lessor or its designated mortgagee, for each month or portion thereof since the due date of the previous tax bill, one-twelfth (1/12) of the latest year's tax obligation (the "Monthly Escrow Sum"), and that it will continue to deposit the Monthly Escrow Sum on the first day of each subsequent month, so that as each installment of real estate taxes becomes due and payable, Lessee will have deposited a sum sufficient to pay it. All of these deposits (the "Escrow Funds") shall be received and held



in trust; provided, however, that unless otherwise required by law, Lessor or its designated mortgagee shall not be required to maintain the Escrow Funds in a segregated account nor invest them in interest bearing accounts or securities nor pay any interest on them. When the real estate taxes become due and payable, Lessor or its mortgagee shall promptly pay them from the Escrow Funds and shall promptly forward to Lessee receipts or other satisfactory evidence of payment. In the event that the amount of the real estate taxes assessed or imposed against the Premises has not been fixed at the time when any Monthly Escrow Sum is due, the Monthly Escrow Sum shall be one-twelfth (1/12) of the amount of real estate taxes assessed or imposed against the Premises for the preceding year, subject to adjustment when the actual amount of the real estate taxes is ascertained. If required by Lessor or any mortgagee, the provisions of this Section 7.4 shall be applicable to any Additional Charges due under this Lease.

## VIII. INDEMNIFICATION

Lessee shall indemnify, defend with counsel reasonably acceptable to Lessor and save Lessor harmless from and against all costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, claims and demands of every kind or nature, including reasonable attorneys' fees, by or on behalf of any person, party or governmental authority whatsoever arising out of (a) any failure or alleged failure by Lessee to perform any of its obligations under this Lease, (b) any accident, injury or damage which occurs in or about the Premises, however occurring, (c) any matter arising out of the condition, occupation, maintenance, alteration, repair, use or operation of the Premises or any part of it, (d) the contest or challenge by Lessee of any imposed tax, Assessment, or other Charges, (e) any other matter arising from or relating to Lessee's occupation of the Premises, or (f) any action taken or omitted by Lessor in performing any of Lessor's duties under Article VI of this Lease.

## IX. ENFORCEMENT

**§9.1 DEFAULT.** Each of the following events is a default and a breach of this Lease by Lessee:

- (a) If Lessee files any proceeding under the United States Bankruptcy Code, any other federal or state bankruptcy, reorganization, receivership, insolvency, or other similar law affecting the rights of creditors generally, or for dissolution under the laws of the United States or of any state, or voluntarily takes advantage of any such law or act or is dissolved or makes an assignment for the benefit of creditors;
- (b) If Involuntary Proceedings under the United States Bankruptcy Code, any other federal or state bankruptcy, reorganization, receivership, insolvency or other similar law or for the dissolution of a corporation are instituted against Lessee or if a receiver or trustee is appointed of all or substantially all of the property of Lessee and such Proceedings are not dismissed or such receivership or trusteeship vacated within ninety (90) days after such institution or appointment;
- (c) If Lessee vacates, abandons or ceases doing business on the Premises or indicates its intention to do so;
- (d) If this Lease or the estate of Lessee hereunder is transferred to any other person or party, except in a manner permitted by the terms of this Lease;
- (e) If Lessee fails to pay Lessor any installment of the Rent, the Building Improvement Payments or Additional Charges when it becomes due and payable and fails to make such payment within ten (10) days after notice thereof by Lessor to Lessee;



- (f) If Lessee fails to perform any of its nonmonetary obligations under this Lease and such non-performance continues for a period within which performance is required to be made by specific provision of this Lease or, if no such period is provided, for a period of thirty (30) days after notice thereof by Lessor to Lessee; or, if such performance cannot be reasonably had within such thirty day period, Lessee has not in good faith commenced such performance within such thirty day period or has not diligently proceeded therewith to completion;
- (g) If the Lessee or any agent of Lessee falsifies any report required to be furnished to Lessor pursuant to the terms of this Lease and fails to notify Lessor of such falsification within sixty (60) days of submission of such report;
- (h) Repeated breaches of provisions of this Lease. If BKC intends to terminate this Lease under this Section 9.1.(h), BKC shall provide notice to Lessee that BKC considers the Lessee to have repeatedly breached this Lease, and that BKC intends to terminate this Lease if Lessee breaches the Lease at any time after said notice. If Lessee after receiving such notice subsequently breaches this Lease in any manner, BKC shall have the right to terminate this Lease upon notice with no further opportunity to cure.
- (i) Failure by Lessee to comply with any provisions of the Franchise Agreement relating to the Premises.

In the event of a default under this Section 9.1, Lessor shall have such remedies as are provided under this Lease and/or under applicable law.

**§9.2 CURE BY LESSOR.** After expiration of the applicable period of notice, or without notice in the event of any emergency, Lessor at its option may, but shall not be obligated to, make any payment required of Lessee or perform any obligation of Lessee, and the amount Lessor pays, or the cost of its performance, together with interest thereon at the highest legal rate permitted, shall be deemed to be an additional charge payable by Lessee on demand. Lessor shall have the right to enter the Premises for the purpose of correcting or remedying any default, but neither any expenditure nor any such performance by Lessor shall be deemed to waive or release Lessee's default or the right of Lessor to take such action as may be otherwise permissible in the case of default. The Lessor shall have no liability to the Lessee for any loss or damages resulting from any such action by the Lessor, and entry by the Lessor under the provisions of Article V or Article IX shall not constitute breach of the covenant for quiet enjoyment or an eviction.

**§9.3 LESSOR'S REMEDIES.** If Lessee is in default under this Lease, Lessor may, at its option, in addition to such other remedies as may be available under applicable law:

- (a) terminate this Lease and Lessee's right of possession, and retake possession for Lessor's account. In such event, Lessor may repair and alter the Premises in any manner as Lessor deems reasonably necessary or advisable. All expenses of every nature which Lessor may incur such as (by way of illustration and not limitation) those for attorneys' fees, brokerage, advertising, and refurbishing the Premises, shall become immediately due and payable by Lessee to Lessor, or
- (b) terminate Lessee's right of possession, but not this Lease, retake possession of the Premises for the Lessee's account, repair, and alter the Premises in any manner as Lessor deems reasonably necessary or advisable, and relet the Premises or any part of it, as the agent of Lessee, for the whole or any part of the remainder of the Term or for a longer period; and Lessor may grant concessions or free rent or charge a higher rental than that reserved in this Lease. Out of any rent collected or received from subtenants or as a result of such letting or reletting, Lessor shall first pay to itself all expenses of every



nature which Lessor may incur such as (by way of illustration and not limitation) those for attorneys' fees, brokerage, advertising, and refurbishing the Premises in good order or preparing them for reletting; and second, Lessor shall pay to itself any balance remaining on account of the liability of Lessee for the sum equal to all Rent, Additional Rent and other Additional Charges due from Lessee through the Original Term Expiration Date. Should Lessor, pursuant to this Section 9.3, not collect rent which, after deductions is sufficient to fully pay to Lessor a sum equal to all Rent, Additional Rent and other Additional Charges payable through the Original Term Expiration Date, the balance or deficiency shall, at the election of Lessor, be paid by Lessee on the first of each month, or

- (c) stand by and do nothing, and hold the Lessee liable for all Rent, Additional Rent and other Additional Charges payable under this Lease through the Original Term Expiration Date.

If Lessor does not notify Lessee which remedy it is pursuing, or if Lessor's notice to Lessee does not expressly state that Lessor is exercising its remedies under Section 9.3(a) or Section 9.3(c), then it shall be deemed that Lessor is pursuing the remedy set forth in Section 9.3(b). If Lessor exercises option (a) or (b) above, Lessee agrees to immediately peacefully surrender the Premises to Lessor, and if Lessee refuses to do so, Lessor may without further notice reenter the Premises either by force or otherwise and dispossess Lessee by summary proceedings or otherwise, as well as the legal representative(s) of Lessee and/or other occupant(s) of the Premises, and remove their effects.

**9.4 ACCELERATION.** If Lessor exercises the remedies in Section 9.3(b) or (c) of this Lease, Lessee shall immediately pay to Lessor as damages for loss of the bargain caused by Lessee's default, and not as a penalty, in addition to any other damages, an aggregate sum which represents the present value of the full amount of the Rent, Additional Rent and all other Additional Charges payable by Lessee hereunder that would have accrued for the balance of the Term. If Lessor exercises the remedy in Section 9.3(b) of this Lease, Lessor shall account to Lessee at the Original Term Expiration Date for amounts actually collected by Lessor as a result of a reletting, net of amounts to be paid to Lessor under Section 9.3(b) of this Lease.

**9.5 SUITS.** Suit or suits for the recovery of the deficiency or damage or for any installment or installments of Rent, Additional Rent or any other charge due under this Lease may be brought by Lessor at any time or, at Lessor's election, from time to time, and nothing in this Lease shall be deemed to require Lessor to wait until the Original Term Expiration Date to bring suit.

**9.6 WAIVER.** Lessee hereby expressly waives service of any notice of intention to reenter. Lessee hereby waives any and all rights to recover or to regain possession of the Premises or to reinstate or to redeem this Lease as permitted or provided by any statute, law or decision now or hereafter in force and effect. No receipt of moneys by Lessor from Lessee after the cancellation or termination of the Lease shall reinstate, continue or extend the Lease, or affect any prior notice given to Lessee or operate as a waiver of the right of Lessor to enforce the payment of Rent and Additional Rent then due or subsequently falling due, or operate as a waiver of the right of Lessor to recover possession of the Premises by suit, action, proceeding or other remedy, and any and all moneys so collected shall be deemed to be payments on account of the use and occupancy of the Premises, or at the election of the Lessor, on account of Lessee's liability under this Lease.

**9.7 PROOF OF CLAIM.** Nothing in this Article shall limit or prejudice the right of Lessor to prove and obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding an amount equal to the maximum allowed by any statute or rule of law governing such proceeding, whether or not such amount is greater, equal to or less than the amount of the damages referred to in any of the preceding sections.



**§8.8 INJUNCTION.** In the event of a breach or a threatened breach by Lessee of any of its Lease obligations, Lessor shall have the right to enjoin and restrain the breach and to invoke any remedy allowed by law or in equity, in addition to other remedies provided in this Lease.

**§8.9 INDEPENDENT RIGHTS.** The rights and remedies of Lessor are distinct, separate and cumulative, and no one of them, whether or not exercised by Lessor, shall be deemed to be to the exclusion of any of the others.

**§8.10 NON-WAIVER.** The failure of Lessor to insist upon strict performance of any of Lessee's obligations under this Lease shall not be deemed a waiver of any rights or remedies that Lessor may have and shall not be deemed a waiver of any subsequent breach or default by Lessee. The exercise of any of the Lessor's options under the Lease "shall not be deemed to be the exclusive remedy of Lessor."

**§8.11 WAIVER OF EXEMPTION FROM DISTRESS.** Lessee agrees that notwithstanding anything contained in any statute, enactment or other law of the state in which the Premises are located or of any other jurisdiction, none of the personally located on the Premises shall be exempt from levy for distress for Rent in arrears, and that if Lessee makes any claim for such an exemption, this Lease may be pleaded as an estoppel against Lessee in any appropriate action.

**§8.12 FRANCHISE AGREEMENT.** Notwithstanding anything in this Lease to the contrary, this Lease is conditioned upon the faithful performance by Lessee of the Franchise Agreement, and a default in the terms of the Franchise Agreement shall be a default of this Lease.

#### **X. NO RENT ABATEMENT**

Unless specifically provided in this Lease, no abatement, diminution, or reduction of Rent, Additional Rent, Additional Charges or other compensation shall be claimed by or allowed to Lessee, or any persons claiming under Lessee, under any circumstances, whether for inconvenience, discomfort, interruption of business, or otherwise.

#### **XI. CONDEMNATION**

**§11.1 ENTIRE AWARD.** In the event that the Premises or any part of it is taken in condemnation proceedings or by exercise of any right of eminent domain (or by settlement agreement in lieu thereof between Lessor and those authorized to exercise such right), Lessor shall be entitled to collect the entire amount of any award made without deduction for any estate vested in or owned by Lessee, subject only to the rights of any mortgagee and to Lessee's rights as set forth in this Lease. Lessee agrees to execute any and all documents that may be required to facilitate collection by Lessor of any and all such awards. Lessee shall have no right to participate in any condemnation proceedings or agreement except for the purposes described in Section 11.5.

**§11.2 SUBSTANTIAL TAKING.** If at any time during the Lease Term, the whole or substantially all of the Premises is taken or condemned, this Lease shall terminate and expire on the date on which title vests in the condemning authority, upon which the Rent provided to be paid by Lessee shall be apportioned and paid to that date, and Lessee shall have no claim against Lessor for the unexpired Term of this Lease or for damage or for any other reason whatsoever. For the purposes of this Section, "substantially all of the Premises" shall be deemed to have been taken if, in the sole opinion of Lessor, the portion of the Premises not taken cannot be repaired or reconstructed in such a way that, by using only the amount of the net award available from the taking, there remains a complete, rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operating expenses, Rent, Additional Rent and all other Additional Charges payable by Lessee, and after performance by the Lessee of all its obligations under this Lease.



**§11.3 PARTIAL TAKING.** In the event of a partial taking (any taking which is not "substantial"), this Lease shall not terminate, and Lessee shall promptly proceed to restore the remainder of the Building on the Land (if affected by the taking) to a complete, independent and self-contained architectural unit, usable for the purposes contemplated by this Lease, and Lessor shall pay to Lessee, subject to the same provisions and limitations specified herein with respect to insurance proceeds, the cost of restoration, which payment shall in no event exceed a sum equal to the amount of any separate award made for such restoration. Any deficiency will be paid by Lessee. Such restoration shall be subject to and shall be performed in accordance with the provisions of Section 5.3, except that any surety bond shall be in the amount, if any, by which the estimated cost of the work exceeds said separate award for the restoration. In the event that there is no separate award for restoration, the amount shall be fixed and settled by mutual agreement or by arbitration as provided in this Lease.

If this Lease does not terminate as provided in Section 11.2, and the taking results in the loss of parking spaces, driveways or accessways which are not or cannot be relocated or replaced elsewhere on the Premises, the Guaranteed Minimum Annual Rental after the date of taking shall be the lesser of (a) the Guaranteed Minimum Annual Rental payable by Lessee immediately prior to the taking, reduced by 12.5% of any portion of the award or awards recovered by Lessor which are not applied to the reduction of any mortgage to which this Lease is subject and subordinate or are not otherwise applied to Lessee's cost of demolition, repair and restoration or (b) the Guaranteed Minimum Annual Rental payable by Lessee immediately prior to the taking reduced in direct proportion to the area of the Premises taken. For example: If prior to the taking the area of the Premises is 30,000 square feet and the Guaranteed Minimum Annual Rental is \$100,000.00, upon the taking of 750 square feet, the Guaranteed Minimum Annual Rental will be reduced by three percent (3%), resulting in a new Guaranteed Minimum Annual Rental of \$97,000.00.

**§11.4 EASEMENTS.** If the taking is (i) of any existing appurtenant easement, or (ii) by easement rather than by fee, then the Lessee shall not be entitled to any reduction in Guaranteed Minimum Annual Rental unless such taking results in (i) receipt of an award by Lessor and (ii) the deprivation of use of the easement area by Lessee for parking, driveways or access. In such case, Lessee's Guaranteed Minimum Annual Rental shall be reduced in accordance with the calculation for a taking of the fee set forth in Section 11.3 above.

**§11.5 LESSEE'S INDEPENDENT AWARD.** Nothing in this article shall preclude Lessee from pursuing any independent action permitted by law or from participating in the condemnation proceedings, but only for the purpose of securing an independent award for loss of business or damage to personality.

## **XII. SUBORDINATION**

This Lease shall be fully subordinate to any mortgage and/or collateral assignment of lease against the Premises which the fee owner, Lessor and/or their assigns has or subsequently obtains upon the Premises; provided, however, that any such mortgage and/or collateral assignment of Lease against the Premises granted by Lessor shall provide that Lessee's possession of the Premises pursuant to this Lease shall not be disturbed in the event of a default by Lessor so long as Lessee shall be in compliance under the terms hereof. This Lease shall be fully subordinate and subject to any senior lease now, or hereafter affecting the Premises. In the event Lessor transfers all or a part of its interest in the Premises to a third party and enters into a lease with said third party (with Lessor as tenant) then this Lease shall be fully subordinate to said lease between such third party and Lessor.

The Lessee hereby grants a power of attorney to the Lessor with full power to act as its attorney in fact and to execute on behalf of the Lessee any and all documents that may be required by a mortgagee and/or assignee evidencing the Lessee's full subordination of the Lessee's interest to any mortgage and/or collateral assignment of lease that may be entered into by Lessor, the fee owner or their assigns. Lessee hereby agrees to execute, without charging Lessor, any and all documents that it is requested to



execute to evidence this subordination. However, Lessee shall not be required to execute any promissory notes or other evidences of indebtedness which would create any personal liability on behalf of Lessee.

### **XIII. ASSIGNMENT**

**§13.1 BY LESSOR.** This Lease shall be fully assignable by the Lessor or its assigns.

**§13.2 BY LESSEE.** Neither Lessee, nor Lessee's successors or assigns, shall (unless expressly permitted in this Lease) assign, mortgage, give as security, pledge or encumber this Lease, in whole or in part, by operation of law or otherwise, or sublet the Premises, in whole or in part, or permit the Premises or any portion of it to be used or occupied by others, or enter into a management contract or other arrangement whereby the Premises shall be managed and operated by anyone other than the owner of Lessee's leasehold estate, without the prior consent in writing of Lessor in each instance. If this Lease is assigned or transferred, or if all or any part of the Premises is sublet or occupied by anybody other than Lessee, Lessor may collect Rent from the assignee, transferee, subtenant or occupant, and apply the net amount collected to the Rent reserved in this Lease, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of any covenant or condition of this Lease, or the acceptance of the assignee, transferee, subtenant or occupant as lessee, or a release of Lessee from the performance or further performance by Lessee of its obligations under this Lease, and Lessee shall continue to be liable for all its obligations under this Lease. The consent by Lessor to an assignment, mortgage, pledge, encumbrance, transfer, management contract or subletting shall not in any way be construed to relieve Lessee from obtaining the express consent in writing of Lessor in each instance to any subsequent similar action that the Lessee may intend to take. Providing Lessee remains liable for all its obligations under this Lease, Lessor shall consent to an assignment of this Lease to an individual, partnership or corporation to which the Franchise Agreement has been assigned.

**§13.3 ASSUMPTION BY ASSIGNEE.** An assignment made with Lessor's consent or as otherwise permitted shall not be effective until Lessee delivers to Lessor an executed counterpart of such assignment containing an agreement, in recordable form, executed by the assignor and the proposed assignee, in which the assignee assumes the performance of the obligations of the assignor under this Lease to the Original Term Expiration Date.

### **XIV. ADDITIONAL PROPERTY**

**§14.1 PURCHASE OF ADDITIONAL PROPERTY.** In the event Lessee (for purposes of this Article, if Lessee is a group of more than one person, the term "Lessee" shall mean any member of the Lessee group) or any corporation, partnership or other entity in which Lessee has an interest or any member of Lessee's immediate family (Lessee or such other person or entity shall hereinafter be referred to as "Vendee") acquires the right to purchase property which, in the sole opinion of Lessor, is capable of being used either as additional parking or for any other purpose connected with the operation of the Premises (the "Additional Property"), Lessor shall have an option to assume Vendee's right to purchase such Additional Property without cost or charge to Lessor for such option. The granting of this option by Vendee to Lessor is in partial consideration for the making of this Lease by Lessor. Vendee agrees to submit to Lessor (i) a copy of the purchase or option contract within ten (10) days after final execution thereof and (ii) all other relevant documents within a reasonable period of time in advance of the scheduled closing date. Lessor shall have twenty (20) days after its receipt of the purchase or option contract and any and all relevant documents within which to notify Vendee of Lessor's intention to accept or reject Lessor's option. If Vendee's rights to purchase such Additional Property are not assignable, or if Vendee purchases the Additional Property without previously granting Lessor the option to acquire the Additional Property, Lessor shall have the additional option to purchase the Additional Property from Vendee, at Vendee's purchase price, under the terms of Lessor's then standard contract for the purchase.



of real property which shall be executed by Vendee and Lessor upon Lessor's exercise of this additional option. The granting of this additional option by Vendee to Lessor is in partial consideration for the making of this Lease by Lessor. Vendee agrees to submit to Lessor a copy of the purchase agreement and all other relevant documents within fifteen (15) days after Vendee acquires the Additional Property, and Lessor shall have thirty (30) days thereafter within which to notify Vendee of its intention to accept or reject this additional option.

In the event Lessor acquires the Additional Property from Vendee as set forth above, Vendee and Lessor agree to amend this Lease to include the Additional Property and to increase the Rent and other Additional Charges payable by Lessee for its use of the Additional Property. The rent for the Additional Property shall be calculated by Lessor in accordance with its then current formula for the calculation of "BKL" lease rentals.

In the event (i) Lessor fails to exercise its options to purchase the Additional Property as set forth above, or (ii) Lessor has not received notice from Vendee that Vendee has purchased the Additional Property, then at such time as (a) Lessor becomes aware of the acquisition by Vendee of the Additional Property or (b) this Lease expires or is terminated, whichever is earlier, Lessor shall have a third option to acquire the Additional Property by purchasing it for its then fair market value or three (3) times Vendee's purchase price, whichever is less, under the terms of Lessor's then standard contract for the purchase of real property, to be executed by Vendee and Lessor upon the exercise by Lessor of this third option. The granting of this third option by Vendee to Lessor is in partial consideration for the making of this Lease by Lessor. Lessor must notify Vendee of its election to exercise this third option within thirty (30) days after (A) the date on which Lessor receives notice of Vendee's acquisition of the Additional Property or (B) the expiration or termination of this Lease, whichever is earlier. Should Lessor and Vendee be unable to agree upon a purchase price within thirty (30) days after Vendee is notified by Lessor that Lessor desires to exercise this third option, Lessor and Vendee shall within ten (10) days following the end of said thirty (30) day period separately hire disinterested, qualified real estate appraisers who are authorized to appraise property in the county where the Additional Property is located and who are members of The Society of Real Estate Appraisers, The American Institute of Real Estate Appraisers or The American Society of Appraisers. If either Lessor or Vendee fails to appoint an appraiser within ten (10) days after being notified of the appraiser retained by the other party, the single appraiser hired shall determine the fair market value of the Additional Property. If both parties select an appraiser, the two appraisers shall meet and attempt to agree on a fair market value of the Additional Property. If they are unable to agree on the value within fifteen (15) days after the second appraiser was appointed, they shall select a third appraiser who shall determine the fair market value. Lessor and Vendee shall be responsible for the fees charged by the respective appraisers they selected and shall split the cost of the third appraiser. If after being informed of the fair market value of the Additional Property, Lessor indicates that the purchase price is unacceptable, it may rescind its election to purchase the Additional Property, upon notice to Vendee within twenty (20) days after being informed of the fair market value of the Additional Property, but must pay the total cost of the appraisal.

In the event Lessor acquires the Additional Property from Vendee under any of the above options, Vendee shall furnish to Lessor evidence that he has good and marketable title to the Additional Property, and title shall be conveyed to Lessor in fee simple, free and clear of any liens, encumbrances, restrictions or violations of any local, state or federal laws, orders, rules or regulations upon payment of the purchase price. Closing shall be within ninety (90) days after determination of the purchase price, subject to any extension permitted under the terms of Lessor's then standard contract for the sale of real property.

Vendee hereby expressly covenants and agrees that, in the event that Vendee acquires Additional Property without complying with the terms and provisions of this Section 14.1, Lessor shall have the absolute and unrestricted option to purchase any such Additional Property, upon the terms and conditions set forth above with respect to the third option to purchase, at any time during the Term of this Lease and for thirty (30) days after the expiration or termination of this Lease. If, during such thirty (30) period, Lessor discovers that Vendee has acquired Additional Property without complying with the terms and provisions of this Section 14.1, then notwithstanding the expiration or termination of this Lease, Vendee

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hereby further expressly covenants and agrees that Vendee shall execute any and all relevant documents in order to transfer fee title to said Additional Property to Lessor in accordance with the terms and provisions of this Section 14.1. The granting of this final option by Vendee to Lessor is in partial consideration for the making of this Lease by Lessor.

**§14.2 LEASE OF ADDITIONAL PROPERTY.** In the event Vendee acquires the right to lease, sublease or license, have an easement across or over, or any other right of any kind, save and except by purchase, to use or occupy the Additional Property (the "Occupancy Right") from any person other than Lessor, Vendee shall give Lessor written notice thereof, which notice shall set forth or be accompanied by a copy of the proposed lease, sublease, license agreement, easement agreement or other use or occupancy agreement (the "Additional Property Lease") and which notice shall be delivered to Lessor prior to the execution of any Additional Property Lease. The Additional Property Lease shall set forth (a) all terms and conditions of the Occupancy Right, including, without limitation, the Rent, Additional Rent, Additional Charges and other consideration payable under the Additional Property Lease, and the term and any options to extend the term; (b) the extent to which the tenant under the Additional Property Lease may make Alterations and/or improvements; (c) any broker or other agent who was involved in the acquisition of the Occupancy Right; (d) a description of the Additional Property; (e) its proposed use; and (f) the name and address of the proposed landlord. Lessor may, within thirty (30) days after receipt of such written notice from Vendee accompanied by or containing all of the items set forth above, in its sole and absolute discretion, choose to enter into the Additional Property Lease, as tenant; in such event, Lessor and Vendee agree to amend this Lease to include the Additional Property and to increase the Rent and other Additional Charges payable by Lessee for its use of the Additional Property. The rent for the Additional Property shall be calculated by Lessor in accordance with its then current formula for the calculation of "BKL" lease rentals. During said thirty (30) day period, Vendee shall not, in any event whatsoever, execute, or cause anyone else to execute on Vendee's behalf or otherwise, the Additional Property Lease. If Lessor chooses not to enter into the Additional Property Lease, then Vendee may choose to enter into the Additional Property Lease, as tenant; in such event, the following paragraph shall be incorporated into the Additional Property Lease in its entirety:

"Notwithstanding anything to the contrary set forth herein, Landlord and Tenant hereby covenant and agree that Tenant may, at any time during the term hereof and without Landlord's consent, assign this Lease to Burger King Corporation or its designee (collectively, "BKC"). The Tenant covenants that, notwithstanding any such assignment to BKC, and notwithstanding the acceptance of rent and/or additional rent by Landlord from BKC, the Tenant shall, during the term hereof, remain fully liable for the payment of the rent and the additional rent hereunder and for the performance and observance of all other obligations of this lease on the part of Tenant to be performed or observed. Additionally, (i) in the event of any default by Tenant hereunder which default has not been cured prior to the expiration of any grace, notice or cure period; or (ii) at such time as any lease between BKC, as landlord, and Tenant, as tenant expires or is terminated, then, in any such event, BKC shall have the option, but shall be under no obligation to exercise said option, exercisable within thirty (30) days after the end of any grace, notice or cure period, or the expiration or termination of any such lease, to assume this lease from Tenant by written notice to Tenant and Landlord and at no cost or charge to BKC. In order to effectuate this provision, Landlord agrees that, if Tenant is in default hereunder, Landlord shall give written notice thereof to BKC at 5707 Blue Lagoon Drive, Miami, Florida 33126, P.O. Box 020783, Miami, Florida 33102-0783, Attention: General Counsel and Landlord further agrees that Landlord shall be obligated to send said notice to BKC whether or not this Lease provides for written notice of default to be sent to the Tenant. The parties hereto acknowledge and agree that BKC may, in its sole and absolute discretion, cure any default by Tenant hereunder, but BKC shall be under no obligation to do so and BKC's decision to cure or not to cure any default by the Tenant shall not be a condition precedent to BKC's assumption of this lease. Landlord and Tenant hereby agree to execute and provide such documents (including, without limitation, a copy of this lease, certified by Landlord and Tenant to be a true and correct copy, and an estoppel certificate from Landlord) and other assurances (including, without limitation, Tenants guarantee to cure all existing defaults hereunder prior to the effective date of said assumption by BKC) reasonably

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required by BKC to give full force and effect to this provision." (The words "Landlord", "Tenant" and "Lease" in the foregoing paragraph shall be changed to "Licensor", "Licensee" and "License", respectively, if Vendee is entering into a license agreement and similar modifications (but only as to form, not substance) may be made to the foregoing paragraph where required in the case of a sublease, an easement agreement or any other type of use or occupancy agreement.)

Upon the execution and delivery of the Additional Property Lease by Vendee and the proposed landlord, Vendee shall deliver a duplicate original of the fully executed Additional Property Lease and any and all other documents relating to the Additional Property Lease to Lessor.

Vendee hereby expressly covenants and agrees that, in the event that Vendee enters into an Additional Property Lease without complying with the terms and provisions of this Section 14.2, Lessor shall have the absolute and unrestricted right to have said Additional Property Lease assigned to Lessor, upon the terms and conditions set forth in this Section 14.2, at any time during the Term or any extensions of the Term of the Additional Property Lease. If Lessor is not notified of the existence of an Additional Property Lease during the Term hereof, Lessor shall have thirty (30) days after the expiration or termination of this Lease to investigate whether such an Additional Property Lease exists. If, during such thirty (30) day period, Lessor discovers that an Additional Property Lease exists, then notwithstanding the expiration or termination of this Lease, Vendee hereby further expressly covenants and agrees that Vendee shall execute any and all relevant documents in order to assign said Additional Property Lease to Lessor. After the Additional Property Lease has been assigned to Lessor (if said assignment occurs prior to the expiration or termination of this Lease), Vendee and Lessor agree to amend this Lease to include the Additional Property. The rent and other charges for the Additional Property shall be calculated by Lessor in accordance with its then current formula for the calculation of "BKL" lease rentals.

For purposes of this Article, notice to the Lessee in the manner indicated in Section 17.2 shall be deemed to be notice to Vendee. The terms and provisions of this Article shall survive the expiration or termination of this Lease.

#### XV. ESTOPPEL CERTIFICATE

Lessee shall from time to time, within five (5) days after being requested to do so by the Lessor, execute, seal, acknowledge and deliver to the Lessor (or, at Lessor's request, to any existing or prospective purchaser, transferee, assignee or mortgagee of any or all of the Premises, any interest therein or any of Lessor's rights under this Lease) an instrument in recordable form:

- (i) certifying (a) that the Lease is unmodified and in full force and effect (or, if there has been any modification thereof, that it is in full force and effect as so modified, stating therein the nature of such modification); (b) as to the dates to which the Rent, the Building Improvement Payments and Additional Charges arising hereunder have been paid; (c) as to the amount of any prepaid rent or any credit due to Lessee hereunder; (d) that the Lessee has accepted possession of the Premises, and the date on which the Term commenced; (e) as to whether, to the best knowledge, information and belief of the signer of such certificate, the Lessor or the Lessee is then in default in performing any of its obligations under the Lease (and, if so, specifying the nature of each such default); and (f) as to any other fact or condition reasonably requested by the Lessor or such other addressee; and
- (ii) acknowledging and agreeing that any statement contained in such certificate may be relied upon by Lessor and any such other addressee.

Lease/Sublease  
Exhibit G1 (03/2021)  
BK #1404



**XVI.  
HAZARDOUS SUBSTANCES**

**§16.1 COMPLIANCE WITH LAWS.** Lessee shall at all times, at its own cost and expense, comply with all federal, state and local laws, ordinances, regulations and standards ("Hazardous Substance Laws") relating to the use, analysis, production, storage, sale, disposal or transportation of any hazardous materials, including oil or petroleum products or their derivatives, solvents, PCB's, explosive substances, asbestos, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, contaminating or pollution materials ("Hazardous Substances") which are now or in the future subject to any governmental regulation. Such compliance shall include any cleanup, removal, remedial action, testing or monitoring (including medical monitoring) which may be required under Hazardous Substance Laws, court order or by any governmental or regulatory agency.

**§16.2 NOTICES TO LESSOR.**

- (a) Except with respect to any substance described in Section 16.2(c) below, Lessee shall give written notice to Lessor within three (3) business days after the date on which Lessee learns or first has reason to believe that:
- (1) There has or will come to be focused on or about the Premises any Hazardous Substance, the production, transportation, storage, use or handling of which requires a permit or license from any federal, state or local governmental agency;
  - (2) Any release, discharge or emission of any Hazardous Substance has occurred on or about the Premises, including the migration of any Hazardous Substance to or from adjoining or nearby properties;
  - (3) Any (i) enforcement, cleanup, removal, remediation, testing, monitoring or other governmental or regulatory action has been threatened or commenced against Lessee with respect to the Premises pursuant to any Hazardous Substances Laws; or (ii) any claim has been made or threatened by any person or entity against Lessee or the Premises on account of any alleged loss or injury claimed to result from the alleged presence or release on or from the Premises of any Hazardous Substance; or (iii) any report, notice, or complaint has been made to or filed with any governmental agency concerning the presence, migration, use or disposal of any Hazardous Substances on or from the Premises. Any such notice shall be accompanied by copies of any such claim, report, complaint, notice, warning or other communication that is in the possession of or is reasonably available to the Lessee.
- (b) Any notice required under this Section 16.2 shall be accompanied by (i) a copy of all permits, licenses, proofs of disclosure to governmental agencies, pertaining to Hazardous Substances that have not previously been furnished to Lessor and; (ii) copies of any Material Safety Data Sheets pertaining to such substances that are required by applicable law to be kept at the Premises.
- (c) The notice provisions of this Article XVI shall not apply to materials that are lawfully discharged from the Premises or lawfully used on the Premises in the ordinary course of Lessee's business.

**§16.3 REMOVAL AND DISPOSAL.** Except for materials that are lawfully discharged from the Premises or lawfully used on the Premises in the ordinary course of Lessee's business, Lessee shall cause any Hazardous Substances to be removed from the Premises solely by duly licensed Hazardous Substances transporters to duly licensed facilities for final disposal to the extent required by and in accordance with



applicable Hazardous Substances Laws, and shall deliver to Lessor copies of any hazardous waste manifest reflecting the lawful transport and disposal of such substances.

#### **§16.4 ENVIRONMENTAL AUDITS BY LESSOR.**

- (a) Rights of Lessor. Lessor may, but shall not be required to, engage such independent contractors as Lessor determines to be appropriate to perform from time to time any audit, including environmental sampling and testing, of (i) the Premises, the surrounding soil and any adjacent areas, and any groundwater located under or adjacent to the Premises and/or any adjoining property, (ii) Lessee's compliance with all Hazardous Substances Laws and the provisions of this Lease, and (iii) the provisions made by Lessee for carrying out any remedial action that may be required by this Lease (collectively an "Environmental Audit"). All costs and expenses incurred by Lessor in connection with any such Environmental Audit shall be paid by Lessor, except that if any such Environmental Audit shows that Lessee has failed to comply with the provisions of this Article XVI, then such costs and expenses shall be paid by Lessee to Lessor as Additional Charges pursuant to Section 3.4 of this Lease.
- (b) Conduct of Audit. Each Environmental Audit shall be conducted (i) only after advance notice thereof has been provided to Lessee at least twenty-four (24) hours prior to the date of such audit, and (ii) in a manner reasonably designed to minimize any interference with the conduct of Lessee's business on the Premises. Lessor shall repair any damages to the Premises or to Lessee's personal property caused by any Environmental Audit conducted by or on behalf of Lessor.
- (c) Submission to Governmental Agency. Notwithstanding any other provision of this Lease to the contrary, to the extent required by law, Lessor shall be entitled to submit the results of any Environmental Audit to any federal, state or local governmental agency having jurisdiction over (a) the Premises or (b) Hazardous Substances with respect to the Premises.

#### **§16.5 REMEDIATION.**

- (a) By Lessee. If any Environmental Audit of the Premises (whether conducted by Lessor, Lessee or any third party) shall recommend the cleanup, abatement, removal, disposal, monitoring or further testing, including medical monitoring or testing (collectively "Remediation") of or for any Hazardous Substances found on or about the Premises, then Lessor shall provide Lessee with a copy of such Environmental Audit and Lessee shall promptly commence such Remediation.

- (b) By Lessor.

If, within thirty (30) days after receiving a copy of such Environmental Audit and such written statement, Lessee fails either (i) to complete such Remediation, or (ii) with respect to any Remediation which cannot be completed within such thirty-day period, fails to proceed with reasonable diligence to complete such Remediation as promptly as practicable, then the Lessor shall be entitled to provide a copy of the Environmental Audit to any federal, state, or local governmental agency having jurisdiction over the Premises or Hazardous Substances.

Notwithstanding any other provision of the Lease to the contrary, if any Environmental Audit reveals a situation which, in Lessor's sole opinion, constitutes an emergency, then Lessor shall have the right, but not the obligation, to carry out any Remediation recommended by such audit or if required by any federal, state or local governmental



agency having jurisdiction over the Premises. If Lessee is responsible for conducting such remediation, Lessor shall have the right to recover all of the costs and expenses thereof from Lessee as Additional Charges pursuant to Section 3.4 of this Lease.

- (c) Actions and Proceedings. Except in emergencies or as otherwise required by law, Lessee shall not perform any Remediation in response to the presence or release of any Hazardous Substances on or about the Premises without first giving written notice to Lessor. Lessee shall not enter into any settlement agreement, consent decree or other compromise with respect to any claims relating to any Hazardous Substances in any way connected with the Premises without first notifying Lessor of Lessee's intention to do so and affording Lessor the opportunity to participate in any such proceedings.

#### **§16.6 REMEDIATION BY THIRD PARTIES.**

- (a) If Lessee receives a request from a third party to enter the Premises for the purposes of Remediation of Hazardous Substances, then Lessee shall so notify Lessor in accordance with the provisions of Section 16.2 above.
- (b) Lessor, in its sole discretion, shall determine if the request should be honored and, if so, under what conditions.
- (c) If Lessor determines that the request should be honored, then Lessee shall cooperate with such Remediation so long as the third party agrees to comply with the provisions of Section 16.4(b) above and with any other reasonable conditions requested by Lessee.
- (d) Lessee agrees to sign any documentation reasonably required by Lessor and/or any such third party in order to effectuate the provisions of this Section 16.6.

**§16.7 LEASE EXPIRATION.** Upon the expiration or earlier termination of the Term of this Lease, Lessee shall (i) cause all Hazardous Substances previously owned, stored or used by Lessee to be removed from the Premises and disposed of in accordance with applicable Hazardous Substances Laws; (ii) remove any aboveground or underground storage tanks or other containers installed or used by Lessee to store any Hazardous Substances on the Premises, and repair any damage to the Premises caused by such removal; (iii) cause any soil or other portion of the Premises which has become contaminated by any Hazardous Substances stored or used by Lessee on the Premises to be decontaminated, detoxified or otherwise remediated in accordance with the requirements of any governmental authorities having jurisdiction over the Premises; and (iv) surrender possession of the Premises to Lessor free of contamination attributable to Hazardous Substances generated or used by Lessee in or on the Premises during the Term of this Lease.

**§16.8 INDEMNIFICATION BY LESSEE.** Lessee shall indemnify, defend with counsel reasonably acceptable to Lessor, and hold Lessor free and harmless from any and all liabilities, damages, claims, penalties, fines, settlements, causes of action, costs or expense, including reasonable attorneys' fees, environmental consultant and laboratory fees and the costs and expense of investigating and defending any claims or proceedings, resulting from or attributable to (i) the presence, disposal, migration, release or threatened release of any Hazardous Substance that is on, from or affecting the Premises including the soil, water, vegetation, buildings, personal property persons, or otherwise; (ii) any bodily injury (including wrongful death) or property damage (real or personal) arising out of or relating to such Hazardous Substance(s); (iii) any lawsuits or administrative order relating to such Hazardous Substance(s); or any violation of any laws applicable to any Hazardous Substance for which Lessee is responsible under this Lease. Lessee's indemnification obligations under this Section shall survive the expiration or earlier termination of this Lease. Notwithstanding anything to the contrary contained herein, Lessee shall have no liability or responsibility to Lessor for liabilities, damages, claims, penalties, fines, settlements, causes of action, cost or expense arising out of any Hazardous Substances that Lessee can demonstrate were



situated on or under the Premises prior to the Lease Date, provided Lessee did not cause or exacerbate the release of any such Hazardous Substance through its negligence or willful misconduct.

## XVII. MISCELLANEOUS

**§17.1 ARBITRATION.** In the event of arbitration under Section 11.3 of this Lease, the arbitration shall be held in the Miami Dade County, Florida, in accordance with the rules of the American Arbitration Association requiring the appointment of three (3) arbitrators.

**§17.2 NOTICES.** Every notice, approval, consent or other communication authorized or required by this Lease shall be effective if given in writing and if hand delivered or sent by United States Registered or Certified Mail, Return Receipt Requested, with postage prepaid, and addressed directly to Lessor at its offices at the address set forth on the Key Contract Data Page, and to Lessee at the address set forth on the Key Contract Data Page, or at such other address as either party shall from time to time designate in writing. Every notice shall be deemed to be effective upon delivery, if delivered, or on the second business day after mailing, if mailed.

**§17.3 ADDRESS FOR PAYMENTS.** Payments are to be made via BK® ePay, ACH or Wire Transfer unless otherwise notified in writing by Lessor. If BK® ePay, ACH or Wire Transfer are unavailable at any time a payment is due, then such payment shall be sent by Regular or Overnight Mail: Global Business Services – Accounts Receivable, 5707 Blue Lagoon Drive, 3<sup>rd</sup> Floor, Miami, FL 33128.

**§17.4 CONSTRUCTION.** In the event that any of the provisions of this Lease shall by court order be held invalid or in contravention of any of the laws of the United States or of any state having jurisdiction over the subject matter or of any dispute arising under it, such invalidation shall not serve to affect the remaining portion of this Lease. To the extent permitted by the laws of the state where the Premises are located, this Lease shall be governed by and construed in accordance with the laws of the State of Florida.

**§17.5 SUCCESSORS.** This Lease shall bind Lessor and Lessee and their successors, heirs, assigns, administrators, and legal representatives, as the case may be.

**§17.6 RECORDING.** Lessee shall upon request of Lessor execute a short form of this Lease on a written document witnessed and acknowledged in a form capable of being recorded in the public records of the county where the Premises are located. Lessee shall not record this Lease without prior written consent of Lessor.

**§17.7 COUNTERPARTS.** This Lease is being executed simultaneously in counterparts, any one of which shall be deemed an original.

**§17.8 NO AGENCY.** The parties hereto agree that the business relationship created by this Lease is solely that of Lessor and Lessee. Nothing contained in this Lease shall make Lessee an agent, legal representative, partner, subsidiary, joint venturer or employee of Lessor. Lessee shall have no right or power to, and shall not bind or obligate Lessor in any way, manner or thing whatsoever, nor represent that it has any right to do so.

**§17.9 TIME OF THE ESSENCE.** Time shall be of the essence in every part of this Lease.

**§17.10 BINDING EFFECT.** This Lease shall become immediately binding on the parties to this Lease on the date the last party signs it, notwithstanding that the Term of this Lease shall commence upon a future date.



**§17.11 HEADINGS.** The table of contents preceding this Lease and the headings of the paragraphs and subparagraphs are inserted solely for the convenience of reference and shall not constitute a part of this Lease, nor limit, define or describe the scope or intent of this Lease.

**§17.12 JOINT AND SEVERAL LIABILITY.** If Lessee consists of more than one person, each individual's liability under this Lease shall be joint and several.

**§17.13 ENTIRE AGREEMENT.** This Lease constitutes the entire agreement between the parties hereto with respect to the subject matter of this Lease, and this Lease shall not be modified, amended, altered or changed except by prior written agreement signed by both parties. If any provision herein is invalid, it shall be considered deleted from this Lease and shall not invalidate the remaining provisions.

**§17.14 TERMINATION OR EXPIRATION OF THE FRANCHISE AGREEMENT.** In the event that Lessee's Franchise Agreement expires or is terminated for any reason whatsoever, this Lease shall be terminated forthwith and upon such termination, Lessor shall have the right to re-enter and take immediate possession of the Premises.

**§17.15 LEASE CONTINGENT ON FRANCHISE AGREEMENT.** Lessee acknowledges and agrees that the execution of the Franchise Agreement by both THUSA and Lessee shall constitute a condition precedent to the effectiveness and validity of this Lease.

**§17.14 DEFINITIONS**

- (a) The term "Lessor" as used in this Lease shall mean the owner in fee of the Premises for the time being, or the owner of the leasehold estate created by an underlying lease, or the mortgagee of the fee or of such underlying lease in possession for the time being, so that in the event of any sale or sales of the Premises, or of the making of any such underlying lease, or of any transfer or assignment or other conveyance of such underlying lease and the leasehold estate created by it, the seller, lessor, transferor or assignor shall be and is hereby entirely freed and relieved of all agreements, covenants and obligations of Lessor herein and it shall be deemed and construed without further agreement between the parties or their successors in interest or between the parties and the purchaser, lessee, transferee or assignee on any such sale, leasing, transfer or assignment that such purchaser, lessee, transferee or assignee has assumed and agreed to carry out any and all agreements, covenants and obligations of Lessor under this Lease.
- (b) The term "Lessee" shall mean the lessee named in this Lease, and from and after any valid assignment or sublease of Lessee's interest in this Lease pursuant to its provisions, the assignee or sublessee of this Lease.
- (c) The term "mortgage" shall mean any mortgage, security interest, charge, deed of trust or other similar encumbrance resulting from the financing or refinancing of the Premises.
- (d) The term "mortgagee" shall include any individual, firm, partnership, corporation, joint venture, investment trust bank or institution, or other business group or association lending funds to Lessor upon the security of the Premises devised by this Lease whether or not such mortgage is recorded, or upon Lessor's independent covenant not to otherwise encumber this Lease or the Premises.
- (e) The term "fixture(s)" as used in this Lease means such items of personalty which have been (i) installed by Lessor and/or (ii) so affixed to the Premises that removal would cause, in Lessor's sole opinion, material damage to the Premises. By way of example, and not limitation, fixtures include the following: heating, ventilating and air conditioning

systems, water heaters or softeners, core-drilled tables and seating, walk-in boxes, walk-in freezers, and toilet fixtures consisting of the lavatories and water closets.

[THIS SPACE LEFT INTENTIONALLY BLANK]

Lease/Sublease  
Exhibit G1 (03/2021)  
BK #1404



The Lessor and Lessee have respectively signed this Lease as of the date indicated on the first page of this Lease.

WITNESS:

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_


WITNESS:

Print Name: Cassie Wilson

Print Name: Lindsey Hartin


LESSOR

BURGER KING CORPORATION

By:   
Print Name: Ryan Smith  
Its: Sr. Asset Manager

LESSEE

PREMIER KINGS OF GEORGIA INC.,  
an Georgia corporation

By:   
Manraj S. Sidhu, Managing Owner

**EXHIBIT "A" BK#1404**  
**LEGAL DESCRIPTION**

Lease/Sublease  
Exhibit G1 (03/2021)  
BK #1404

**ADDENDUM TO THAT LEASE/SUBLEASE  
DATED THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021,  
BETWEEN BURGER KING CORPORATION, AS LESSOR AND  
PREMIER KINGS OF GEORGIA INC., AS LESSEE**

In the event of any conflicts between the terms of the Lease/Sublease Agreement (the "Lease") and the terms of this Addendum, the terms of this Addendum shall control. Capitalized terms used in the Addendum shall have the same definitions and meanings as those set forth in the Lease, unless herein provided to the contrary, or unless the context otherwise requires.

1. This Lease/Sublease Agreement, dated the date indicated on the Key Contract Data Page demising the Premises commonly known as BURGER KING® Restaurant 1404 replaces and supersedes all previous lease and/or sublease agreements entered into by Lessor and Lessee, and/or Lessor and Lessee's predecessor-in-interest, with respect to the Premises, if any.

2. Lessee acknowledges that it takes this Lease subject to any and all reservations, restrictions, easements, rights of way, limitations and conditions now or hereinafter of record.

3. **IF BKL EXECUTED PRIOR TO REMODEL / DEFERRED REMODEL** Lessee acknowledges that Lessee, as franchisee, has, contemporaneously with the execution of this Lease, executed that certain Franchise Agreement with the Lessor, as franchisor, for the operation of the BURGER KING® restaurant on the Premises (the "Franchise Agreement") which requires the franchisee to complete certain renovations, repairs, replacements, remodelings and/or rebuildings of the franchised restaurant that will conform with the specification and standards set forth in the scope of work previously provided by Lessor, as franchisor (hereinafter referred to herein as the "Remodel Work"), the completion of which was material consideration for and inducement of the Lessor, as franchisor, to enter into the Franchise Agreement. Lessee further acknowledges and agrees to the following: (i) to complete the Remodel Work in accordance with the Franchise Agreement; and (ii) that all work associated with the Remodel Work, including, without limitation, all demolition and/or construction work, shall be completed in compliance with all Regulations. Without limiting the foregoing, Lessee agrees to provide the Lessor with the following:

a. at the time of submittal of the construction plans and specifications (the "Plans") of the Remodel Work to Lessor for approval, a certificate, on a form to be provided by Lessor, from an architect, licensed in the State where the Premises are located ("Architect"), certifying that the Plans comply with (i) the requirements of Title III of the Americans With Disabilities Act of 1990 ("ADA") (ii) the Americans With Disabilities Act Accessibility Guidelines 1991 ("ADAAG") which is a part of the ADA; (iii) the 2010 ADA Standards; and (iv) all state and local building codes including any disabilities related statutes or codes (collectively, the "Codes") in the applicable jurisdiction where the Premises are located; and

b. upon completion of the construction of the remodeled restaurant contemplated by the Remodel Work (the "Remodeled Restaurant"), the Architect shall inspect the Remodeled Restaurant and complete the Burger King® 2004 ADAAG Checklist V1.2 (which is currently under revision to reflect the 2010 ADA Standards), and complete a certificate of inspection, on a form to be provided by Lessor, certifying that the Remodeled Restaurant is in compliance with Title III of the ADA, the ADAAG, the 2010 ADA Standards and the Codes.

4. Except as modified or amended in this Addendum, all other terms and conditions contained in the Lease remain in full force and effect.

5. The Lessor and Lessee have respectively signed this Addendum as of the date indicated on the first page of the foregoing attached Lease.

Lease/Sublease  
Exhibit G1 (03/2021)  
BK #1404



**SCHEDULE "A"**  
**MASTER LEASE**

Lease/Sublease  
Exhibit G1 (03/2021)  
BK #1404

WITNESS:

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

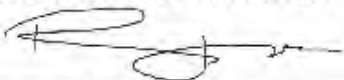
WITNESS:

Print Name: Cassie Wilson

Print Name: Lindsey Hartin


LESSOR

BURGER KING CORPORATION

By:   
Print Name: Ryan Smith  
Its: Sr. Asset Manager

LESSEE

PREMIER KINGS OF GEORGIA INC.,  
an Georgia corporation

By:   
Manraj S. Sidhu, Managing Owner

Lease/Sublease  
Exhibit G1 (03/2021)  
BK #1404

# LEASE/SUBLEASE

## KEY CONTRACT DATA PAGE

This Key Contract Data Page forms a part of the Lease and is incorporated by reference into the Lease.

**Lease Date:** \_\_\_\_\_, 2021

**Lessee:** **Premier Kings of Georgia Inc.** an Georgia corporation

**Guarantor(s):** **Manraj S. Sidhu**

**Premises (Section 1.1):** **BURGER KING® Restaurant # 1551**, located at 4241 Augusta Rd Garden City, GA 31408-2120, as more particularly described on Exhibit A

**Commencement Date (Section 2.1):** Upon the earlier of (i) \_\_\_\_\_, 2021 and (ii) the earliest of the following dates:

- (a) The date ten (10) days following the date of the issuance of a Certificate of Occupancy for the Premises by appropriate governmental authorities; and
- (b) The date ten (10) days following date of certification of Lessor's architect that the Land has been improved and the Building constructed is substantially in conformance with the plans and specifications; or
- (c) The date Lessee opens for business.

**Term (Section 2.1):** Twenty (20) years

**Original Term Expiration Date (Section 2.1):** October 31, 2041

**Guaranteed Minimum Annual Rent (Section 3.1):**

<u>Lease Year:</u>	<u>Guaranteed Minimum Annual Rental:</u>	<u>Monthly Installment:</u>
Commencement Date – 10/31/2026	\$102,332.00	\$8527.66
11/1/2026 – 10/31/2031	\$114,611.84	\$9550.91
11/1/2031 – 10/31/2036	\$128,365.26	\$10697.08
11/1/2036 – 10/31/2041	\$143,769.09	\$11980.75

**Percentage Rental Data Schedule (Section 3.2):**

<u>Monthly Gross Sales:</u>	<u>Percentage:</u>
\$0 - \$133,333.33	8.5%
\$133,333.34 or higher	10.0%

**Building Improvement Funds (Section 6.4):**

<u>Annual Sum:</u>	<u>Monthly Installment:</u>
\$6,000	\$500

**Address for Notices**

Lessor: **BURGER KING CORPORATION**  
5707 Blue Lagoon Drive

Lease/Sublease  
Exhibit G1 (03/2021)  
BK # 1551



**(Section 17.2):**

Miami, Florida 33126

With a copy to:

P. O. Box 020783,  
General Mail Facility  
Miami, Florida 33102-0783

Lessee:

**Premier Kings of Georgia Inc.**  
c/o Burger King® Restaurant# 1551  
3300 Eastern Boulevard,  
Montgomery, AL 36116.

Lease/Sublease  
Exhibit G1 (03/2021)  
BK # 1551

# LEASE/SUBLEASE

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## LEASE/SUBLEASE AGREEMENT

THIS AGREEMENT (the "Lease"), is made as of the Lease Date set forth on the Key Contract Data Page, by and between **BURGER KING CORPORATION**, a Florida corporation (the "Lessor") and the Lessee set forth on the Key Contract Data Page. The terms "Lessor" and "Lessee" shall mean respectively "Sublessor" and "Sublessee" whenever the context requires or permits it.

In consideration of the covenants contained in this Lease, the parties agree as follows:

### I. PROPERTY LEASED

**§1.1 DEMISE.** Lessor leases to Lessee and Lessee leases from Lessor the property set forth on the Key Contract Data Page (the "Land") along with the **BURGER KING®** restaurant (the "Building") and other improvements to be constructed on it (collectively called the "Premises").

Subject to any and all reservations, restrictions, easements, rights of way, limitations and conditions of record, if any.

~~**§1.2 ERECTION OF BUILDING.** Commencement of this Lease is conditioned on the completion of the Building in accordance with plans and specifications prepared by Lessor's architect. Lessor has agreed to construct or contract for the construction of the Building promptly and to complete or contract to complete it as promptly as conditions will permit, but in any event before one hundred eighty (180) days from the lease date, provided, however, that this period shall be extended by any time lost in construction due to delays caused by strike, lockout, acts of God, shortage of materials, or other conditions beyond the control of Lessor. In the event the Building is not completed within one (1) year from the date of this Lease, this Lease may be terminated at the option of either party, on fifteen (15) days' notice to the other party.~~

**§1.3 COVENANT OF QUIET ENJOYMENT.** The Lessor promises, subject to Lessee's performance of all of the terms and conditions of the Lease, that Lessee shall be entitled to the quiet and peaceful enjoyment and undisturbed possession of the Premises for the term of this Lease.

### II. TERM

**§2.1 TERM.** The term of this Lease (the "Term") shall commence upon the Commencement Date set forth on the Key Contract Data Page and expire at midnight the Original Term Expiration Date set forth on the Key Contract Data Page (i.e., the day preceding the 20th anniversary of the Commencement Date) unless sooner terminated as provided in this Lease. The Commencement Date shall be designated by the parties in a form capable of being recorded among the public records of the county where the Premises are located.

**§2.2 POSSESSION.** Possession of the Premises shall be delivered to the Lessee on the Commencement Date.

**§2.3 HOLDOVER.** Any holdover at the expiration of the Term with the written consent of Lessor shall be on a month to month basis, which tenancy may be terminated by Lessor giving Lessee not less than fifteen (15) days notice. During such holdover tenancy, Lessee agrees to pay Lessor on a monthly basis all increased rentals and other charges that would have been due under this Lease and agrees to continue to be bound by all of the terms of this Lease which are applicable at that time. In the event Lessee holds over without consent of Lessor, the rent during any holdover period shall be double the average rent that was due during the last year of the Lease Term.



## **§2.4 END OF TERM.**

- (a) **Fixtures and Personalty.** At the expiration or earlier termination of this Lease, any fixtures, as defined in Section 17.14(e) of this Lease, located on the Premises and not already owned by Lessor shall become the property of the Lessor. If, at that time, Lessee has fully complied with Lease terms and conditions, Lessor hereby waives any right to claim any personalty owned or leased by Lessee and located on the Premises. The personalty may then be removed by Lessee or the lessor of such personalty provided that the Premises are restored to their original condition. Any such personalty not removed within fifteen (15) days after the Lease expiration or termination shall be deemed abandoned and become the property of Lessor.
- (b) **Joint Inspection.** During a period no earlier than three (3) weeks and no later than one (1) week prior to the end of the Term, Lessor and Lessee shall conduct a joint inspection of the Premises and Lessor shall make a list of any items of repair and maintenance which may be needed to put the Premises in good condition and repair. If the items on such list cannot be completed by Lessee by the end of the Term, then Lessee shall pay to Lessor by the end of the Term the reasonable cost of such repairs as estimated by Lessor. Lessee's obligation to make such payment shall survive the termination of this Lease. Any failure by the parties to conduct the joint inspection shall not constitute a waiver of Lessee's obligations under this Section 2.4, Section 5.2 and Article VI of this Lease.

## **III.** **CONSIDERATION**

**§3.1 RENT.** Lessee agrees to pay and Lessor agrees to accept the Guaranteed Minimum Annual Rental as indicated on the Key Contract Data Page, for each year of the Term of this Lease (such being hereinafter referred to as "Guaranteed Minimum Annual Rental"), to be due and payable in monthly installments in advance on the first day of each month during the Term of this Lease. The first monthly installment of the Guaranteed Minimum Annual Rental shall be due on the Commencement Date. If this Lease shall commence on any day other than the first day of a calendar month, the monthly installment for the first and last month of the Lease Term shall be prorated.

\*The term "Lease Year" shall mean and refer to the first consecutive twelve (12) month period beginning on the Commencement Date of the Lease and each succeeding twelve (12) month period thereafter, whether fiscal or annual.

## **§3.2 PERCENTAGE RENTAL.**

- (a) **Percentage Rental.** In addition to the Guaranteed Minimum Annual Rental, and as part of the total rent to be paid by Lessee to Lessor during the Lease Term, Lessee covenants and agrees to pay to Lessor as percentage rental ("Percentage Rental"), a sum equal to a percentage (as set forth as the Percentage Rental Data Schedule on the Key Contract Data Page) of the "Gross Sales" (defined in Section 3.2(b) below) for each month of each Lease Year in excess of the monthly installment of the Guaranteed Minimum Annual Rental to be paid for such month. The Percentage Rental shall be payable in monthly installments and computed in accordance with the terms and conditions of Section 3.2 (a) (i) below.
- (i) **Monthly Accounting and Payment.** Beginning with the tenth (10th) day of the month following the calendar month in which the Term commences and continuing monthly thereafter, Lessee shall deliver to Lessor a statement in writing on a form furnished by the Lessor, setting forth all of the Gross Sales for



the preceding calendar month, and simultaneously upon submission of such statement, Lessee shall pay to the Lessor the Percentage Rental due, being an amount equal to the amount set forth on the Key Contract Data Page, less the monthly installment of Guaranteed Minimum Annual Rental paid by Lessee for the month in question; provided that in no event shall Lessee ever become liable to pay less than the monthly installment of Guaranteed Minimum Annual Rental for any such month.

- (ii) Annual Accounting. Within thirty (30) days following each Lease Year, the Lessee agrees to deliver to Lessor a statement prepared by a Certified Public Accountant and sworn to by Lessee setting forth Gross Sales for the preceding Lease Year.
- (b) Gross Sales. The term "Gross Sales" as used in this Lease includes all sums charged for goods, merchandise or services sold at or from the Premises including all promotional items or premiums unless exempted by Lessor. The sale of BURGER KING products away from the Premises is not authorized; however, should any such sales be approved in the future, they will be included within the definition of Gross Sales. Gross Sales excludes any federal, state, county or city sales tax, excise tax, or other similar taxes collected by Lessee from customers based upon sales, and cash received as payment in credit transactions where the extension of credit itself has already been included in the figure upon which any previous Percentage Rental has been computed.

The Guaranteed Minimum Annual Rental and the Percentage Rental shall sometimes hereinafter be referred to collectively as the "Rent."

### §3.3 FINANCIAL REPORTS

- (a) Financial Statements. During the Term of this Lease, Lessee and any other persons or entities who are guarantors, who have personal liability, or who have joint and several liability under this Lease ("Guarantors") shall deliver to Lessor the following financial statements:

As to Lessee:

- (i) Within ninety (90) days after the end of each fiscal year of Lessee, balance sheets as of the end of such year and statements of income and of changes in financial condition for such year;
- (ii) Within twenty-five (25) days after the end of each fiscal quarter of Lessee, balance sheets as of the end of such quarter, and statements of income and changes in financial condition for such fiscal quarter and for the current fiscal year to the end of such fiscal quarter;

As to Guarantor:

- (iii) Within ninety (90) days after the end of each fiscal year of Guarantors, a personal net worth statement and a copy of the most recent federal income tax return filed as to each individual Guarantor;

As to Lessee and Guarantors:

- (iv) The balance sheets and financial statements referred to in subparagraphs (i), (ii), and (iii) above shall be prepared in accordance with generally accepted



accounting principles consistently applied (except as noted), and be accompanied by certificates of the Lessee and each Guarantor or the chief financial officer of the Lessee and each Guarantor, as the case may be, stating that such financial statements have been prepared in accordance with generally accepted accounting principles consistently applied (except as noted) and fairly present the financial condition of the Lessee or each Guarantor at the date thereof and for the periods covered thereby.

- (v) If requested by Lessor, the balance sheets and financial statements referred to in subparagraphs (i) and (ii) above shall be certified by a Certified Public Accountant.
- (b) Release of Financial Information. Lessee and Guarantors give permission to Lessor to release to Lessor's landlord, lenders or prospective landlord or lenders and/or any prospective purchaser of all or part of Lessor's interest in the Premises and/or the Lease any financial and operational information relating to Lessee, Guarantors and/or the business operated at the Premises.
- (c) Records and Audit. Lessee agrees to keep true, accurate and complete records of the business conducted at the Premises in such form as Lessor now or hereafter may require. Lessee shall retain for a period of at least twenty-four (24) months and upon request submit to Lessor copies of all state sales tax returns and all supporting data and records relating to sales made from the business operated at the Premises and such other records as Lessor may reasonably request from time to time. Lessee agrees that Lessor or its representatives, at Lessor's expense, shall at all reasonable times have the right to examine or audit the books, records, state sales tax returns or accounts of Lessee. Lessor shall similarly have the right to examine or audit the books, records, state sales tax returns or accounts of any and all Guarantors. In the event the audit discloses an understatement of Gross Sales for any period or periods, Lessee shall, within fifteen (15) days after the receipt of the audit report, pay Lessor the Percentage Rental of the amount of each understatement plus the late charge identified in Section 3.8 of this Lease from the date such payments were originally due. Additionally, if this audit discloses an understatement of Gross Sales which exceeds two percent (2%) for any period or periods, Lessee shall, within fifteen (15) days after receipt of the audit report, reimburse Lessor for all costs of the audit including travel, lodging and wages, reasonably incurred, and Lessor may terminate this Lease upon five (5) days' notice to Lessee unless the understatement was due to inadvertent clerical error. In the event this audit discloses an overstatement of Gross Sales for any period or periods, any excess payment paid shall be allowed as a credit to Lessee on the rental payment next accruing under the Lease. The acceptance by the Lessor of payment of any Percentage Rental is without prejudice to Lessor's right to audit the books and records of Gross Sales and other papers required to be kept hereunder.

**§3.4 ADDITIONAL CHARGES.** Lessee and Lessor agree that the Rent accruing under this Lease and the "Building Improvement Payments" described in Section 6.1 of this Lease shall be net to Lessor and that all Charges (as hereinafter defined), taxes, costs, common area maintenance fees, expenses and charges of every kind and nature ("Additional Charges") relating to the Premises (except the taxes of Lessor referred to in Section 7.3 and any payments for interest or principal under any mortgage relating to the Premises) which may arise or become due during the Term or any extension of this Lease, shall be paid by Lessee, and that Lessee shall indemnify and save harmless Lessor from and against them. All Additional Charges which Lessee assumes or agrees to pay under any provisions of this Lease, together with all interest and penalties that may accrue on these Additional Charges in the event Lessee fails to pay them, as well as all other damages, costs and expenses, including, without limitation, reasonable attorneys' fees and other legal and court costs which Lessor may incur in enforcing this Lease, and any and all other sums which may become due by reason of Lessee's default or failure to comply with its

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obligations under this Lease, shall be deemed to be "Additional Rent." In the event of non-payment, Lessor shall have all the rights and remedies as provided in the case of non-payment of Rent.

**§3.5 ALTERNATIVE METHOD OF PAYMENT.** Lessor or its assigns, mortgagee or designated agent, may, at its/their option, require payment of (i) the Rent and/or (ii) the monthly escrow sums described in Section 6.1 and Section 7.4 of the Lease and/or (iii) if applicable, any common area maintenance or similar charge assessed pursuant to the Lease and/or (iv) any Additional Charges due pursuant to Section 3.4 of this Lease by making direct monthly withdrawals in the appropriate amount(s) from Lessee's bank account. In the event that this option is exercised, Lessee agrees to execute and deliver to its bank and to Lessor those documents necessary to authorize such withdrawals and to make payment or deposit as directed by Lessor. Lessee further agrees that it will not thereafter terminate such authorization so long as this Lease is in effect. Lessee also agrees that in the event that a direct monthly withdrawal program is not available at the bank at which Lessee then does its business, it will take all reasonable and necessary steps to establish an account at a bank which does have such a program.

**§3.6 LATE CHARGES.** All Rent, the Building Improvement Payments described in Section 6.1 of this Lease, Additional Charges and any other charges shall be paid to Lessor without notice or demand and without abatement, deduction or set-off, except as otherwise expressly provided in this Lease. All payments not paid when due shall bear interest at the maximum rate allowed by Florida law. In the event such interest rate shall be void or unenforceable under the laws of the jurisdiction where the Premises are located, the highest rate of interest permitted within such jurisdiction shall be charged.

**§3.7 LESSOR'S LIEN.** To secure the payment of all Rent, Additional Charges and Charges or any other sums due and to become due under this Lease, the faithful performance of this Lease by Lessee and to secure all other indebtedness and liabilities of Lessee to Lessor now existing or hereafter incurred, Lessee hereby grants to Lessor a lien and security interest on all furniture, furnishings, trade fixtures, equipment and other personal property (collectively, "Personal Property") to which Lessee has legal title and which is placed in the Premises. The Lessee further agrees that if Lessee vacates the Premises while any Rent or Additional Charges owing under this Lease is unpaid, Lessor, in addition to any remedy otherwise provided by law or in this Lease, may seize and sell the Personal Property at any place to which Lessee or any other person may have removed them in the same manner as if the Personal Property had remained at the Premises. If requested by Lessor, Lessee shall execute and deliver to Lessor any and all documentation necessary to evidence Lessor's lien on the Personal Property.

#### IV. INSURANCE

**§4.1 COVERAGE.** During the Term, Lessee, at its own cost and expense, shall:

- (a) Keep the Premises and the fixtures and personalty on it insured with an all risk property insurance policy (including business interruption coverage with an indemnity period of at least 12 months) in an amount sufficient to cover the cost of replacement (without deduction for depreciation). Such replacement cost shall be determined from time to time at the request of Lessor, but not more frequently than once in any twelve (12) consecutive calendar months. Replacement cost shall be determined by one of the insurers or, at the option of Lessor, by an appraiser, architect or contractor who is mutually and reasonably acceptable to Lessor and Lessee, and whom shall be retained and paid by Lessee. Such insurance shall name Lessor and any other entity that Lessor acting reasonably requests as a loss payee as its interest may appear and shall include a waiver of subrogation in favor of Lessor and any other loss payee.



(b) Provide and keep in force:

- (i) commercial general liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Premises or the adjoining streets and property, in a primary and excess limit of not less than \$5,000,000 per occurrence for bodily injury, death, personal injury, property damage, non-owned automobile, blanket contractual and products and completed operations liability, with the annual aggregate liability limit to be maintained on the commercial general liability insurance (which can be achieved through a combination of primary and excess annual aggregate liability limits) based on the number of BURGER KING restaurants owned by Lessee and certain of its affiliates as follows: (1) for 1-10 restaurants, an annual aggregate liability limit of not less than \$5,000,000 per year, (2) for 11-50 restaurants, an annual aggregate liability limit of not less than \$10,000,000 per year, and (3) for more than 50 restaurants, an annual aggregate liability limit of not less than \$20,000,000 per year;
- (ii) automobile liability insurance on all owned and/or leased vehicles, with a combination of primary and excess limits of not less than \$1,000,000.00;
- (iii) broad form Boiler and Machinery insurance covering all boilers, pressure vessels and HVAC equipment within the Premises in an amount not less than the full replacement cost thereof; and
- (iv) such other insurance and in such amounts as reasonably may be required by Lessor for its own and Lessee's protection.

The foregoing policies shall name Lessor and any other entity that Lessor acting reasonably requests as an additional insured and shall include a waiver of subrogation in favor of BKC and any other loss payee.

- (c) Provide and keep in force plate glass insurance covering the glass in the Premises, unless waived by Lessor.
- (d) If requested by Lessor, provide and keep in force rent insurance (and/or, as the case may require, use and occupancy insurance) in an amount not less than the then current Guaranteed Minimum Annual Rental plus the estimated annual taxes, water charges, sewer rents, common area maintenance and other assessments and the annual premiums for the insurance required by this Article.
- (e) If requested by Lessor or any mortgagee, provide and keep in force insurance for such other insurable hazards in such amounts as similarly situated Premises are then commonly insured.

**§4.2. POLICIES.** Lessee's obligation to obtain and maintain the foregoing policy or policies in the amounts specified shall not be limited in any way by reason of any insurance which may be maintained by Lessor. All insurance maintained by Lessee shall be primary and shall not call into contribution any insurance maintained by Lessor. All insurance required by Lessor and provided by Lessee shall be carried in favor of Lessor and Lessee, as their respective interests may appear, and any underlying lessor, fee owner, affiliate corporation, trustee, mortgagee or other person designated by Lessor. If requested by Lessor, insurance against fire or other casualty shall provide that the proceeds of any loss shall be payable to the mortgagee under a standard mortgagee clause. Any rent insurance or use and occupancy insurance carried by Lessee shall provide that, in the event of loss or damage to the Premises, the proceeds shall be payable to Lessor to be held by Lessor as security for the payment of the Rent, the Building Improvement Payments described in Section 6.1 of this Lease and Additional Charges.

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due under this Lease until the Premises are restored. All insurance shall be obtained from companies licensed to do business in the state in which the Premises are located and be with insurers with a minimum A. M. Best A(X) rating or Standard & Poor's Rating of A. Lessee shall procure policies for all insurance for periods of not less than one year and shall deliver to Lessor all policies or certificates of insurance with evidence of payment of all premiums. Lessee shall procure renewals of these policies from time to time before their respective expiration dates. All insurance policies shall be non-assessable and shall require thirty (30) days' notice by registered mail to Lessor of any cancellation or change affecting Lessor's coverage under the policies. All property damage and business interruption policies of Lessee shall contain a waiver of any subrogation rights which Lessee's insurers may have against Lessor, even if the loss suffered is caused by the act, omission or negligence of Lessor.

**§4.3 ADJUSTING PROCEEDS.** Claims for loss due to damage to the Premises under any policies provided for in this Lease shall be adjusted with the insurance companies:

- (a) by Lessee in the case of any particular casualty resulting in damage or destruction not exceeding \$25,000, or
- (b) by Lessor and Lessee, in the case of any particular casualty resulting in damage or destruction exceeding \$25,000 in the aggregate. Subject to the rights of any mortgagee, the proceeds of any insurance shall be payable as follows:
  - (1) With respect to any loss not exceeding \$25,000 in the aggregate, proceeds shall be paid to Lessee, who shall hold them in trust for the purpose of paying the costs of repair and restoration; and
  - (2) With respect to losses exceeding \$25,000 in the aggregate, the proceeds shall be paid to Lessor and shall be applied to pay the costs of repair and restoration.

**§4.4 JOINT EFFORTS.** Lessee and Lessor shall cooperate in attempts to collect any insurance proceeds that may be due in the event of loss, and Lessee shall execute and deliver to Lessor such proofs of loss and other instruments which may be required for the purpose of recovering these proceeds.

**§4.5 WAIVER OF SUBROGATION.** Lessee agrees to look solely to the proceeds of his own insurer for indemnity against exposure for loss of property or business interruption. Lessee warrants that its property and business interruption insurers shall have no rights against Lessor by virtue of assignment, subrogation, loan agreement or otherwise.

**§4.6 CANCELLATION OF INSURANCE.** If any insurance policy covering the Premises or any part of it is canceled or is threatened by the insurer to be canceled, or if the coverage thereunder is reduced in any way by the insurer for any reason, and if Lessee fails to remedy the condition giving rise to cancellation, threatened cancellation, or reduction of coverage within forty-eight (48) hours after notice thereof by Lessor, Lessor may, at its option, either (i) reenter the Premises forthwith by leaving upon the Premises a notice in writing of its intention to do so (in which case the provisions of Article IX shall apply) or (ii) enter the Premises and remedy the condition giving rise to such cancellation, threatened cancellation or reduction, and Lessee shall forthwith pay the cost thereof to Lessor (which cost may be collected by Lessor as Additional Rent) and Lessor shall not be liable for any damage or injury caused to any property of Lessee or of others located on the Premises as a result of any such entry.

**§4.7 LOSS AND DAMAGE.** Lessor shall not be liable for any death or injury occurring on the Premises, nor for the loss of or damage to any of the personality or other property of Lessee or of others by theft or otherwise, from any cause whatsoever. Without limiting the generality of the foregoing, Lessor shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, dampness, gas, electricity, water, rain, snow, or leaks from any part of the Premises or from the pipes, appliances or plumbing works or from the roof, street or subsurface or from any other place by any



other cause whatsoever. Lessor shall not be liable for any such damage caused by other persons or occupants of adjacent property, or the public, or caused by operations in construction of any private, public or quasi-public work. All of the personalty or any other property of Lessee kept or stored on the Premises shall be kept or stored at the risk of Lessee.

## V. THE PREMISES

**§5.1 USE AND SERVICES.** During the Term of this Lease, Lessee shall continuously operate a BURGER KING restaurant on the Premises in accordance with the terms of the BURGER KING Franchise Agreement entered into by Lessee contemporaneously with this Lease (the "Franchise Agreement"), unless Lessee is prevented from doing so due to acts of God or other causes beyond Lessee's control. The Premises shall not be used for any other purpose. Lessee shall not use in connection with the operation of or as additional parking for its business on the Premises any property other than the Premises, except in accordance with the provisions of Article XIV of this Lease.

Except as may be otherwise specifically provided by the terms of this Lease or the Franchise Agreement, Lessor shall not be required to furnish to Lessee any facilities or services of any kind whatsoever, such as, but not limited to water, sewer, steam, heat, gas, hot water, electricity, light and power.

**§5.2 REPAIRS AND MAINTENANCE.** Lessee shall, at all times during the Term, at its own cost and expense, put, keep and maintain the Premises and all fixtures and personalty located on it in first-class order and condition, and subject to all applicable terms of Section 5.3 and Section 5.8, shall make all necessary and desirable repairs, restorations and replacements thereof, structural and nonstructural, foreseen or unforeseen (hereinafter collectively called "Repairs"), and shall use all reasonable precaution to prevent waste, damage or injury. Lessee shall also put, keep and maintain in good repair and free from dirt, snow, ice, rubbish and other obstructions or encumbrances, the sidewalks, parking areas, yards, plantings, gutters and curbs in front of and adjacent to the Building.

In the event that Lessee fails or neglects to make all necessary Repairs or fulfill its other obligations as set forth above, Lessor or its agents may enter the Premises for the purpose of making such Repairs or fulfilling those obligations. All costs and expenses incurred as a consequence of Lessor's action together with a service charge of fifteen percent (15%) thereof shall be repaid by Lessee to Lessor within fifteen (15) days after Lessee receives copies of receipts showing payment by Lessor for such Repairs or other obligations. These receipts shall be prima facie evidence of the payment of the charges paid by Lessor. Except in the case of emergency, Lessor shall give Lessee ten (10) days notice before taking any such action. If Lessee fails to pay any such amounts due to Lessor under this Section 5.2, Lessor may add the same to Lessee's "Rent" and recover the same by all remedies available to Lessor for recovery of Rent in arrears.

**§5.3 ALTERATIONS.** Lessee agrees that it will at its own cost and expense make such reasonable alterations to the interior or exterior of the Premises as may reasonably be requested by Lessor from time to time in order to modify the appearance of the Building to reflect the then current image of BURGER KING restaurants.

Lessee shall not at any time make any alteration, change, addition or improvement (hereinafter collectively called "Alterations") in or to the interior or exterior of the Premises without the prior written consent of Lessor. In the event consent is given:

- (a) the Alterations shall be performed in a first class workmanlike manner at Lessee's sole expense, and shall not weaken or impair the structural strength or lessen the value of the Premises, or change the purpose for which the Premises may be used;



- (b) the Alterations shall be made according to plans and specifications therefor, which shall be first submitted to and approved in writing by Lessor;
- (c) before the commencement of work on any Alterations, such plans and specifications shall be approved by all governmental authorities having jurisdiction and any public utility company having an interest in the Alterations;
- (d) before the commencement of any Alterations, Lessee shall pay the amount of any increase in premiums on insurance policies for endorsements covering the risk during work on the Alterations and workmen's compensation insurance covering all persons employed in connection with that work;
- (e) if the estimated cost of the Alteration exceeds \$50,000.00, Lessee shall furnish to Lessor a surety bond of a company acceptable to Lessor, in an amount equal to the estimated cost of such work, or other security satisfactory to Lessor, guaranteeing the completion of such work, free and clear of all liens and encumbrances;
- (f) the Alterations shall comply with (i) the requirements of Title III of the Americans With Disabilities Act of 1990 ("ADA") as same may be amended from time to time; (ii) the Americans With Disabilities Act Accessibility Guidelines 1991 ("ADAAG") as same may be amended from time to time which is a part of the ADA; (iii) the 2010 ADA Standards; and (iv) all state and local building codes including any disabilities related statutes or codes (collectively, the "Codes") in the applicable jurisdiction where the Premises are located; and
- (g) upon completion of the Alterations, an architect shall inspect the Alterations and complete the Burger King® 2004 ADAAG Checklist V-1.2 (which is currently under revision to reflect the 2010 ADA Standards) and complete a certificate of inspection, on a form to be provided by Lessor, certifying that the Alterations are in compliance with Title III of the ADA, the ADAAG, the 2010 ADA Standards and the Codes, as same may be amended from time to time.

All buildings, additions, improvements, fixtures and appurtenances in or on the Premises at the Commencement Date and those which may be erected, affixed or installed in or on the Premises during the Term are deemed to be and shall immediately become part of the Premises and the sole property of Lessor. All personalty installed by Lessee (except signs, trademarks and other insignia of Lessor) shall remain the property of Lessee.

Notwithstanding the foregoing, if requested by Lessor, the Lessee will remove from the Premises any or all alterations, additions, and improvements, brought upon or affixed to the Premises and make good any damage caused thereby.

**§5.4 LIENS.** Should Lessee cause any Alterations or Repairs to be made to the Premises, or cause any labor to be performed or material to be furnished, neither Lessor nor the Premises shall under any circumstances be liable for the payment of any expense incurred, and all such Alterations and Repairs shall be made and performed at Lessee's expense. If, because of any act or omission of Lessee, any mechanic's or other lien, charge, claim or order for the payment of money shall be filed against the Premises or against Lessor, Lessee shall, at its own cost and expense, cause it to be canceled and discharged of record or bonded within fifteen (15) days after filing or notice of filing thereof. In the event that the Lessee fails to cause any such mechanics' or other lien, charge or order to be canceled and discharged or bonded, then, in addition, to any other right or remedy of the Lessor, the Lessor may, at its option, cancel or discharge such lien, charge or order by paying the amount claimed to be due into court or directly to any claimant, without inquiring into the validity or merits of such lien, charge or order, and the amount so paid by Lessor and all costs and expenses including attorneys' fees incurred for the







(3) the cost of the Restoration required to be done does not exceed the insurance proceeds, and

(b) that there have not been filed against the Premises any vendors, contractor's, mechanic's, laborers or materialman's statutory or similar lien ("Liens") which has not been discharged of record, except those that will be discharged upon payment of the sum requested in the Certificate, or bonded or contested in accordance with Section 5.4.

Upon compliance with the above provisions, Lessor or the insurance trustee shall, out of such insurance proceeds and such other funds as may have been made available, pay or cause to be paid to Lessee or its designee, the respective amounts due.

If the insurance proceeds and other funds deposited with Lessor or the insurance trustee, less the actual cost, fees and expenses, if any, incurred in connection with the adjustment of the loss, are insufficient to pay the entire cost of the Restoration, Lessee will pay the deficiency.

At least ten (10) days before the commencement of Restoration, Lessee shall notify Lessor of its intention to restore the Premises. During Restoration, this Lease shall not terminate, nor shall the Rent and the Additional Charges payable under this Lease be abated or be affected in any manner.

**§5.9 WARRANTIES; DISCLAIMER.** Lessor shall provide Lessee with the benefit of any warranties provided by the building contractor. Lessor expressly disclaims any other warranty, either express or implied, and Lessee acknowledges that neither Lessor nor its agents have made any representations or promises with respect to the Premises except as expressly set forth in this Lease, and no rights, easements or licenses are acquired by Lessee by implication or otherwise except as expressly set forth herein. The taking of possession of the Premises by Lessee shall be conclusive evidence that the Lessee has accepted the Premises "AS IS," including any latent or patent defects. Lessee acknowledges that Lessee is relying on its own independent inspection. Lessor agrees to cooperate with and assist Lessee in asserting claims against contractors or others providing work and/or services to the Premises.

**§5.10 CONTRACTS.** Lessee shall not without Lessor's consent enter into any service contract or agreement relating to the furnishing of any services to the Premises or the occupants of it unless such contract or agreement shall by its terms be terminable on no more than thirty (30) days notice or shall expressly provide that it shall not become binding on Lessor in the event that this Lease is terminated or expires. Lessee shall furnish Lessor with copies of all service contracts or agreements affecting the Premises that are now in existence or that are subsequently entered into.

**§5.11 REFUSE.** Lessee shall not allow any refuse, garbage or other loose or objectionable materials to accumulate on or about the Premises, will at all times keep the Premises in a clean and wholesome condition, and shall be responsible for the removal of all garbage or loose or objectionable materials emanating from the Premises. Lessee shall not dispose of any trash or garbage in or about the Premises except for in areas provided therefor by Lessor.

**§5.12 LOADING AND UNLOADING.** Lessee shall take all reasonable precautions to ensure that loading and unloading of merchandise, supplies, materials or chattels shall be made only through or by means of doorways and openings designated by Lessor.

**§5.13 CONDUCT AND HOURS OF OPERATION.** Lessee covenants to operate and conduct its business in a high-class and reputable manner and to conduct its business in the Premises during such hours as set out in the Franchise Agreement.



**§5.14 HEAT.** Lessee covenants to heat the Premises so as, at all times, to protect the Premises and all of its contents from damage by cold or frost.

## VI. BUILDING IMPROVEMENT FUNDS

**§6.1 BUILDING IMPROVEMENT FUNDS.** ~~In addition to, and without limiting or diminishing in any manner whatsoever Lessee's repair and maintenance obligations set forth in Section 5.2 of this Lease, Lessee is required to fund a building improvement reserve for the replacement of certain improvements now or hereafter located at the Premises. Lessee shall, in addition to the Rent, Additional Rent and Additional Charges due under this Lease, pay to Lessor for each Lease Year the annual sum as set forth on the Key Contract Data Page, payable in equal monthly installments as set forth on the Key Contract Data Page in advance on the first day of each month during the Term of this Lease. Such payments are herein called the "Building Improvement Payments" and the amounts so paid together with any interest accruing thereon are hereinafter referred to as the "Building Improvement Funds". The first monthly installment shall be due on the Commencement Date. If this Lease shall commence on any day other than the first day of a calendar month, the monthly installment for the first and last month of the Lease Term shall be pro-rated.~~

**§6.2 STATUS OF BUILDING IMPROVEMENT FUNDS.** ~~Lessor shall hold the Building Improvement Funds in accordance with the terms of this Article VI and not as an advance rental deposit or as a measure of Lessor's damage in case of Lessee's default. Lessee shall not pledge, hypothecate, encumber or otherwise transfer any interest in the Building Improvement Funds. The Building Improvement Funds shall be held by Lessor as non-segregated, interest-accruing funds and may be commingled with the other general assets of Lessor. The interest accruing on the Building Improvement Funds shall be determined and fixed annually by Lessor in its sole and absolute discretion and shall be based on the then current weekly average yield for Three Month U.S. Treasury Constant Maturities as published in the Federal Reserve Statistical Release H-15 (the "Index"), less one half percent (50%). If for any reason the Index is not published for any particular week or month during the Lease Term as may be required for the foregoing computation of interest, then the Index next published shall be used in its stead; and in the event that the Index shall no longer be published, or if the method of computing the Index shall be substantially altered, then Lessor, in its sole and absolute discretion, shall select another index generally recognized as authoritative and reflecting data substantially similar to the information used to compute the Index. All Building Improvement Payments not reserved by Lessor when due (i.e. on the first day of each month during the Term of this Lease) shall not accrue any interest until the following calendar month. Interest accrued or earned on the Building Improvement Funds shall become a part of the Building Improvement Funds and be subject to the terms hereof. Lessor shall report all interest earned on the Building Improvement Funds for the account of Lessee and Lessee shall execute and provide to Lessor a W-9 form and any other form required by Lessor for this purpose.~~

**§6.3 USE OF BUILDING IMPROVEMENT FUNDS.** ~~The Building Improvement Funds shall be used to reimburse Lessee for the cost of any "Building Improvement(s)" (as that term is defined below). All reasonable costs, expenses, and fees associated with any Building Improvements shall hereinafter be referred to as the "Replacement Costs." Without limiting the effect of any provision hereof, unless otherwise specifically agreed to by Lessor in writing, the Building Improvement Funds shall not be used to pay for any costs of repairing or maintaining the Premises under Section 5.2 of this Lease. The judgment and determination of Lessor as to whether a cost or expense incurred by Lessee is a "Replacement Cost" within the meaning contemplated by this Article VI shall be final and conclusive.~~

~~As used herein the term "Building Improvement" shall mean any of the following:~~

- ~~(a) the replacement of the entire air conditioning system including heating unit(s) for the Premises;~~



- ~~(b) the replacement of the entire mansard roof, fascia, soffit and related roofing structural components of the Premises;~~
- ~~(c) the replacement of the entire asphalt parking lot overlay located on the Premises; and~~
- ~~(d) the painting of the entire exterior surface of the Building.~~

~~The judgment and determination of Lessor as to whether an improvement to the Premises is a "Building Improvement" within the meaning contemplated by this Article VI shall be final and conclusive.~~

~~Lessee agrees that it will, at its own cost and expense, make any and all Building Improvements to the Premises as may be requested by Lessor from time to time. Lessee understands and agrees that Lessor may, in its sole and absolute discretion, require the same Building Improvement to be performed by Lessee on more than one occasion during the Term of the Lease, notwithstanding the balance of the Building Improvement Funds held by Lessor. Said Building Improvements must be completed by Lessee within the time periods specified by Lessor. Lessee shall not at any time make any Building Improvement to the Premises without the prior written consent of Lessor.~~

~~All approved Building Improvements shall be performed by Lessee in accordance with Section 5.3 of this Lease. Lessee shall be solely responsible for the payment of all Replacement Costs, as well as any increase in real estate taxes or assessments levied, certified and/or pending against the Premises resulting from the Building Improvements.~~

~~**§6.4 REIMBURSEMENT OF REPLACEMENT COSTS.** Lessee may request in writing that Lessor reimburse Lessee for Replacement Costs from the Building Improvement Funds, within thirty (30) days after completion of a Building Improvement. Lessor shall disburse the Building Improvement Funds as follows:~~

- ~~(a) To Lessee in such amounts designated and approved by Lessor, and only upon Lessor's receipt of the following items:~~
  - ~~(i) Request for Funds. Lessee's written request for Building Improvement Funds, addressed to Lessor, specifying the amount of the disbursement sought and a description of the Replacement Costs incurred since the date of the last disbursement, together with supporting invoices or receipts for performance of the Building Improvement(s) and other certificates as may be designated and approved by Lessor. In no event shall Lessee's request for funds exceed the then current outstanding balance of the Building Improvement Funds and Lessor shall have no obligation or liability whatsoever to Lessee for any amount requested over and beyond the outstanding balance of the Building Improvement Funds.~~
  - ~~(ii) Lessee Estoppel. A written estoppel certificate signed by the Lessee stating that this Lease is valid and in full force and effect, that no event of default, or event or condition that which could ripen into an event of default with the passage of time or the giving of notice or both, has occurred under the Lease, and that the Building Improvements are completed and are satisfactory to Lessee.~~
  - ~~(iii) Post Completion Inspectors Report. Lessor shall have received evidence from an inspector designated and approved by Lessor, that the work for which Building Improvement Funds are requested has been performed in a good and workmanlike manner.~~



- ~~(iv) Evidence of Compliance. Such lien waivers, contractor's sworn statements, receipts, and similar items as may be required by Lessor, from time to time in Lessor's sole and absolute discretion, and such other items as Lessor shall deem necessary or appropriate to evidence Lessee's compliance with the applicable construction lien law.~~
- ~~(v) Frequency. Unless Lessor shall have furnished Lessee with its prior written waiver in that particular instance (it being understood and agreed that no such waiver shall be deemed continuing or applicable to any subsequent withdrawals), withdrawals shall not be made more frequently than once during any calendar month.~~
- ~~(vi) Other. Such other items as Lessor may from time to time request of Lessee in writing.~~

~~Each of the foregoing items must be received by Lessor no later than the twentieth (20th) day of any calendar month in which Lessee seeks disbursement of Building Improvement Funds.~~

- ~~(b) Upon Lessee's satisfactory compliance with all of the provisions of this Article VI (including Lessor's receipt of the items described in Section 5.4 (a) above) and provided Lessee is not in default under any of the provisions of this Lease, Lessor shall, on the first day of the calendar month following Lessee's full and faithful compliance with the obligations set forth above, disburse the appropriate amount of Building Improvement Funds to reimburse Lessee for any authorized and approved Replacement Costs.~~
- ~~(c) In no event shall Lessor be required to disburse Building Improvement Funds to Lessee if Lessee has not satisfied in full all of the requirements of this Article VI.~~
- ~~(d) In no event shall Lessor be required to disburse Building Improvement Funds to Lessee or to any federal, state or local governmental authority to pay, satisfy or discharge any taxes, assessments, charges, excises, levies, fees or other governmental impositions and charges of any kind and nature whatsoever which are payable in connection with the interest earned on the Building Improvement Funds.~~
- ~~(e) At Lessor's sole and absolute discretion, the appropriate amount of Building Improvement Funds may be disbursed to Lessee at any time during the Term of the Lease to reimburse Lessee for additional improvements or Repairs required pursuant to this Lease other than the Building Improvements for the Premises. However, this reference shall not in any way obligate Lessor to make any such disbursements.~~

~~**§5.5 INSPECTION OF WORK.** Lessor shall have no responsibility to Lessee or to any other person (i) to inspect the Building Improvements; (ii) to see that the Building Improvements are constructed in accordance with applicable plans and specifications, or that the Building Improvements will be completed, or that sufficient funds are available for completion; (iii) for mechanics' liens or claims by contractors, subcontractors or materialmen not disclosed by Lessee in each request for Building Improvement Funds submitted by Lessee; or (iv) for claims which may be found upon waiver of lien and/or paid invoices presented to Lessor which have been forged or otherwise wrongfully procured; nor where such document was executed by a person lacking authority to execute same; provided, however, Lessor or Lessor may inspect the Premises and/or the status of the Building Improvements at any time.~~

~~**§5.6 DEFAULT UNDER LEASE.** Notwithstanding any other terms of this Lease, in the event that Lessee is in default under any of the terms, conditions and provisions of this Lease and Lessee fails to cure any such default during any applicable cure period, the Lessor may, at the option of Lessor and in addition to any other remedies available to Lessor under this Lease and applicable law, apply all of the~~



~~Building Improvement Funds or any part thereof as may be necessary to compensate Lessor towards the payment of the Rent or any other sum in default, or towards any expenditure that Lessor may spend or become obligated to spend by reason of Lessee's uninsured default, or to compensate Lessor for any other loss or damage which Lessor may suffer by reason of Lessee's default. If any portion is so used, Lessee shall within five (5) days after written demand therefor, pay to Lessor an amount sufficient to restore the Building Improvement Funds to its original amount just prior to the default, and Lessee's failure to do so shall be a material breach of this Lease. The judgment and determination of Lessor as to any such deficiency or insufficiency shall be final and conclusive. The provisions in this Section 6.6 shall not serve to limit or otherwise reduce Lessor's remedies as set forth in Article IX below.~~

~~**6.7 LIMITATION OF LIABILITY.** Lessor's duties under this Article VI are purely ministerial in nature and shall be expressly limited to the safekeeping of the Building Improvement Funds, and the disbursement of same in accordance with this Lease. Lessee agrees that Lessor shall only be liable hereunder for gross negligence, fraud or willful misconduct. Lessee hereby indemnifies Lessor and agrees to hold it harmless from and against any and all claims, liabilities, damages, costs, penalties, losses, actions, suits or proceedings at law or in equity, or any other expenses, fees, or charges of any character or nature, which Lessor may incur or with which Lessor may be threatened, directly or indirectly arising from or in way connected with its duties hereunder, other than those arising out of the gross negligence, fraud or willful misconduct of Lessor, and in connection therewith, indemnify Lessor against any and all reasonable expenses, including attorney's fees and the cost of defending any action, suit, or proceedings or resisting any claim, whether or not litigation is instituted.~~

**6.8 ASSIGNMENT OR TERMINATION OF LEASE.** Should Lessee fully and faithfully comply with all of the terms, provisions and covenants of this Lease and promptly pay all of the Rent, Additional Charges and other sums payable by Lessee to Lessor as they become due, any Building Improvement Funds not disbursed, applied or retained by Lessor shall be returned to Lessee within sixty (60) days after Lessee has discharged all of its obligations under this Lease, but no earlier than the Original Term Expiration Date (or the sooner termination of this Lease). In the event of a sale of the Land and the Building of which the Premises forms a part, or an assignment of the Lease by Lessor, Lessor shall have the right to transfer the balance of any Building Improvement Funds to the purchaser or assignee, as the case may be, and Lessor shall thereafter be released by Lessee from all liability for the return of the Building Improvement Funds; and Lessee agrees to look solely to the purchaser or assignee for the return of the Building Improvement Funds. In the event of an assignment or transfer of this Lease by Lessee, Lessee shall be obligated to transfer the balance of any Building Improvement Funds to Lessee's assignee, and Lessor shall thereupon be released by Lessee from all liability for the return of the Building Improvement Funds. It is agreed that the provisions hereof shall apply, to every transfer or assignment made of the Building Improvement Funds to a new lessor and/or a new lessee.

**6.9 NO WAIVER.** The failure of Lessor to enforce strict performance of the terms and conditions hereof, in connection with disbursement or use of any Building Improvement Funds or otherwise, shall not constitute a waiver of its rights to do so at any other time, or shall it constitute a waiver of any of Lessor's rights hereunder.

## **VII. TAXES AND OTHER CHARGES**

### **7.1 PAYMENT.**

- (a) In the event Lessor elects, at its sole option, to pay any real estate taxes and assessments (both general and special), goods and service taxes, sales taxes, value added taxes, business transfer taxes, any other taxes imposed on Lessor with respect to rent payable by Lessee to Lessor or in respect of the rental of space under this Lease, assessments, charges for public utilities, excises, levies, licenses, permit fees or other governmental impositions and charges of any kind and nature whatsoever (collectively,



the "Charges") which are payable in connection with the ownership, occupancy or possession of the Premises, Lessee shall reimburse Lessor within fifteen (15) days after Lessee receives an invoice for the payment of such Charges.

- (b) In the event Lessor elects not to pay the Charges as set forth in the preceding paragraph, Lessee shall pay on or before the last day on which payment may be made without penalty or interest, all Charges which may be assessed, imposed, or become due and payable in connection with the ownership, occupancy or possession of the Premises or the fixtures or personalty on it, or any Charges which may be imposed in lieu of, or as a substitution for, any such Charges. At any time after the time for payment of each Charge, upon Lessor's request, Lessee shall exhibit to Lessor satisfactory evidence of payment. All Charges assessed or imposed for the fiscal periods in which the Term of this Lease commences and terminates shall be apportioned.

**57.2 CONTESTS.** Lessee has the right to promptly contest or review any of the Charges by appropriate proceedings ("Proceedings") at its own expense, and if necessary, with the prior written consent of Lessor, in the name of Lessor. Lessee may defer payment of a contested Charge only if, before instituting any Proceedings, Lessee furnishes to Lessor security satisfactory to Lessor and sufficient to cover the amount of each contested Charge, with interest and penalties for the period which the Proceedings may be expected to take. Notwithstanding the furnishing of security (other than a cash deposit), Lessee shall promptly pay each contested Charge if, at any time, the Premises or any part of it are in danger of being sold, forfeited or otherwise lost or Lessor becomes subject to criminal or any other liability for such non-payment, provided that in that event, if Lessee has made a cash deposit to Lessor, Lessor may pay each contested Charge out of the deposit. When any contested Charge is paid or canceled, any balance of any cash deposit not so applied shall be repaid to Lessee without interest. All Proceedings shall be begun as soon as possible after the imposition or assessment of any contested item and shall be diligently prosecuted to final adjudication. If there is any refund with respect to any contested Charge based on a payment by Lessee, Lessee shall be entitled to it to the extent of such payment.

**57.3 LIMITATION: SUBSTITUTION.** Nothing contained in this Lease shall be construed to require Lessee to pay any inheritance, estate, succession, transfer, gift, franchise, corporation, income or profit tax, or capital levy that is or may be imposed upon Lessor, its successors or assigns, provided, however, that if at any time during the Term of this Lease the methods of taxation prevailing at the Commencement Date are altered so that in lieu of or as a substitute for the whole or any part of the taxes, assessments, levies, impositions or charges (collectively "Assessments") now levied, assessed or imposed ("Imposed") on real estate and improvements thereon, there is imposed

- (1) an Assessment made wholly or partially as a capital levy, or
- (2) an Assessment measured by or based in whole or in part on the Premises, or
- (3) a license fee measured by the Rent payable by Lessee under this Lease,

then to the extent that such Assessments or portion thereof would be payable if the Premises were the only asset of Lessor subject to the Assessments, Lessee shall pay these Assessments in the same manner as provided in this Lease for payment of real estate taxes.

**57.4 ESCROW FUNDS.** If, during the Term of this Lease, Lessor or any mortgagee requests Lessee to provide an escrow fund for payment of real estate taxes, Lessee agrees that upon such request it will promptly deposit with Lessor or its designated mortgagee, for each month or portion thereof since the due date of the previous tax bill, one-twelfth (1/12) of the latest year's tax obligation (the "Monthly Escrow Sum"), and that it will continue to deposit the Monthly Escrow Sum on the first day of each subsequent month, so that as each installment of real estate taxes becomes due and payable, Lessee will have deposited a sum sufficient to pay it. All of these deposits (the "Escrow Funds") shall be received and held



In trust; provided, however, that unless otherwise required by law, Lessor or its designated mortgagee shall not be required to maintain the Escrow Funds in a segregated account nor invest them in interest bearing accounts or securities nor pay any interest on them. When the real estate taxes become due and payable, Lessor or its mortgagee shall promptly pay them from the Escrow Funds and shall promptly forward to Lessee receipts or other satisfactory evidence of payment. In the event that the amount of the real estate taxes assessed or imposed against the Premises has not been fixed at the time when any Monthly Escrow Sum is due, the Monthly Escrow Sum shall be one-twelfth (1/12) of the amount of real estate taxes assessed or imposed against the Premises for the preceding year, subject to adjustment when the actual amount of the real estate taxes is ascertained. If required by Lessor or any mortgagee, the provisions of this Section 7.4 shall be applicable to any Additional Charges due under this Lease.

#### VIII. INDEMNIFICATION

Lessee shall indemnify, defend with counsel reasonably acceptable to Lessor and save Lessor harmless from and against all costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, claims and demands of every kind or nature, including reasonable attorneys' fees, by or on behalf of any person, party or governmental authority whatsoever arising out of (a) any failure or alleged failure by Lessee to perform any of its obligations under this Lease, (b) any accident, injury or damage which occurs in or about the Premises, however occurring, (c) any matter arising out of the condition, occupation, maintenance, alteration, repair, use or operation of the Premises or any part of it, (d) the contest or challenge by Lessee of any imposed tax, Assessment, or other Charges, (e) any other matter arising from or relating to Lessee's occupation of the Premises, or (f) any action taken or omitted by Lessor in performing any of Lessor's duties under Article VI of this Lease.

#### IX. ENFORCEMENT

**§9.1 DEFAULT.** Each of the following events is a default and a breach of this Lease by Lessee:

- (a) If Lessee files any proceeding under the United States Bankruptcy Code, any other federal or state bankruptcy, reorganization, receivership, insolvency, or other similar law affecting the rights of creditors generally, or for dissolution under the laws of the United States or of any state, or voluntarily takes advantage of any such law or act or is dissolved or makes an assignment for the benefit of creditors;
- (b) If involuntary Proceedings under the United States Bankruptcy Code, any other federal or state bankruptcy, reorganization, receivership, insolvency or other similar law or for the dissolution of a corporation are instituted against Lessee or if a receiver or trustee is appointed of all or substantially all of the property of Lessee and such Proceedings are not dismissed or such receivership or trusteeship vacated within ninety (90) days after such institution or appointment;
- (c) If Lessee vacates, abandons or ceases doing business on the Premises or indicates its intention to do so;
- (d) If this Lease or the estate of Lessee hereunder is transferred to any other person or party, except in a manner permitted by the terms of this Lease;
- (e) If Lessee fails to pay Lessor any installment of the Rent, the Building Improvement Payments or Additional Charges when it becomes due and payable and fails to make such payment within ten (10) days after notice thereof by Lessor to Lessee;



- (f) If Lessee fails to perform any of its nonmonetary obligations under this Lease and such non-performance continues for a period within which performance is required to be made by specific provision of this Lease or, if no such period is provided, for a period of thirty (30) days after notice thereof by Lessor to Lessee; or, if such performance cannot be reasonably had within such thirty day period, Lessee has not in good faith commenced such performance within such thirty day period or has not diligently proceeded therewith to completion;
- (g) If the Lessee or any agent of Lessee falsifies any report required to be furnished to Lessor pursuant to the terms of this Lease and fails to notify Lessor of such falsification within sixty (60) days of submission of such report.
- (h) Repeated breaches of provisions of this Lease. If BKC intends to terminate this Lease under this Section 9.1.(h), BKC shall provide notice to Lessee that BKC considers the Lessee to have repeatedly breached this Lease, and that BKC intends to terminate this Lease if Lessee breaches the Lease at any time after said notice. If Lessee after receiving such notice subsequently breaches this Lease in any manner, BKC shall have the right to terminate this Lease upon notice with no further opportunity to cure.
- (i) Failure by Lessee to comply with any provisions of the Franchise Agreement relating to the Premises.

In the event of a default under this Section 9.1, Lessor shall have such remedies as are provided under this Lease and/or under applicable law.

**§9.2 CURE BY LESSOR.** After expiration of the applicable period of notice, or without notice in the event of any emergency, Lessor at its option may, but shall not be obligated to, make any payment required of Lessee or perform any obligation of Lessee, and the amount Lessor pays, or the cost of its performance, together with interest thereon at the highest legal rate permitted, shall be deemed to be an additional charge payable by Lessee on demand. Lessor shall have the right to enter the Premises for the purpose of correcting or remedying any default, but neither any expenditure nor any such performance by Lessor shall be deemed to waive or release Lessee's default or the right of Lessor to take such action as may be otherwise permissible in the case of default. The Lessor shall have no liability to the Lessee for any loss or damages resulting from any such action by the Lessor, and entry by the Lessor under the provisions of Article V or Article IX shall not constitute breach of the covenant for quiet enjoyment or an eviction.

**§9.3 LESSOR'S REMEDIES.** If Lessee is in default under this Lease, Lessor may, at its option, in addition to such other remedies as may be available under applicable law:

- (a) terminate this Lease and Lessee's right of possession, and retake possession for Lessor's account. In such event, Lessor may repair and alter the Premises in any manner as Lessor deems reasonably necessary or advisable. All expenses of every nature which Lessor may incur such as (by way of illustration and not limitation) those for attorneys' fees, brokerage, advertising, and refurbishing the Premises, shall become immediately due and payable by Lessee to Lessor, or
- (b) terminate Lessee's right of possession, but not this Lease, retake possession of the Premises for the Lessee's account, repair, and alter the Premises in any manner as Lessor deems reasonably necessary or advisable, and relet the Premises or any part of it, as the agent of Lessee, for the whole or any part of the remainder of the Term or for a longer period, and Lessor may grant concessions or free rent or charge a higher rental than that reserved in this Lease. Out of any rent collected or received from subtenants or as a result of such letting or reletting, Lessor shall first pay to itself all expenses of every



nature which Lessor may incur such as (by way of illustration and not limitation) those for attorneys' fees, brokerage, advertising, and refurbishing the Premises in good order of preparing them for reletting; and second, Lessor shall pay to itself any balance remaining on account of the liability of Lessee for the sum equal to all Rent, Additional Rent and other Additional Charges due from Lessee through the Original Term Expiration Date. Should Lessor, pursuant to this Section 9.3, not collect rent which, after deductions is sufficient to fully pay to Lessor a sum equal to all Rent, Additional Rent and other Additional Charges payable through the Original Term Expiration Date, the balance or deficiency shall, at the election of Lessor, be paid by Lessee on the first of each month; or

- (c) stand by and do nothing, and hold the Lessee liable for all Rent, Additional Rent and other Additional Charges payable under this Lease through the Original Term Expiration Date.

If Lessor does not notify Lessee which remedy it is pursuing, or if Lessor's notice to Lessee does not expressly state that Lessor is exercising its remedies under Section 9.3(a) or Section 9.3(c), then it shall be deemed that Lessor is pursuing the remedy set forth in Section 9.3(b). If Lessor exercises option (a) or (b) above, Lessee agrees to immediately peacefully surrender the Premises to Lessor, and if Lessee refuses to do so, Lessor may without further notice reenter the Premises either by force or otherwise and dispossess Lessee by summary proceedings or otherwise, as well as the legal representative(s) of Lessee and/or other occupant(s) of the Premises, and remove their effects.

**§9.4 ACCELERATION.** If Lessor exercises the remedies in Section 9.3(b) or (c) of this Lease, Lessee shall immediately pay to Lessor as damages for loss of the bargain caused by Lessee's default, and not as a penalty, in addition to any other damages, an aggregate sum which represents the present value of the full amount of the Rent, Additional Rent and all other Additional Charges payable by Lessee hereunder that would have accrued for the balance of the Term. If Lessor exercises the remedy in Section 9.3(b) of this Lease, Lessor shall account to Lessee at the Original Term Expiration Date for amounts actually collected by Lessor as a result of a reletting, net of amounts to be paid to Lessor under Section 9.3(b) of this Lease.

**§9.5 SUITS.** Suit or suits for the recovery of the deficiency or damage or for any installment or installments of Rent, Additional Rent or any other charge due under this Lease may be brought by Lessor at any time or, at Lessor's election, from time to time, and nothing in this Lease shall be deemed to require Lessor to wait until the Original Term Expiration Date to bring suit.

**§9.6 WAIVER.** Lessee hereby expressly waives service of any notice of intention to reenter. Lessee hereby waives any and all rights to recover or to regain possession of the Premises or to reinstate or to redeem this Lease as permitted or provided by any statute, law or decision now or hereafter in force and effect. No receipt of moneys by Lessor from Lessee after the cancellation or termination of the Lease shall reinstate, continue or extend the Lease, or affect any prior notice given to Lessee or operate as a waiver of the right of Lessor to enforce the payment of Rent and Additional Rent then due or subsequently falling due, or operate as a waiver of the right of Lessor to recover possession of the Premises by suit, action, proceeding or other remedy, and any and all moneys so collected shall be deemed to be payments on account of the use and occupancy of the Premises, or at the election of the Lessor, on account of Lessee's liability under this Lease.

**§9.7 PROOF OF CLAIM.** Nothing in this Article shall limit or prejudice the right of Lessor to prove and obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding an amount equal to the maximum allowed by any statute or rule of law governing such proceeding, whether or not such amount is greater, equal to or less than the amount of the damages referred to in any of the preceding sections.



**§9.8 INJUNCTION.** In the event of a breach or a threatened breach by Lessee of any of its Lease obligations, Lessor shall have the right to enjoin and restrain the breach and to invoke any remedy allowed by law or in equity, in addition to other remedies provided in this Lease.

**§9.9 INDEPENDENT RIGHTS.** The rights and remedies of Lessor are distinct, separate and cumulative, and no one of them, whether or not exercised by Lessor, shall be deemed to be to the exclusion of any of the others.

**§9.10 NON-WAIVER.** The failure of Lessor to insist upon strict performance of any of Lessee's obligations under this Lease shall not be deemed a waiver of any rights or remedies that Lessor may have and shall not be deemed a waiver of any subsequent breach or default by Lessee. The exercise of any of the Lessor's options under the Lease "shall not be deemed to be the exclusive remedy of Lessor."

**§9.11 WAIVER OF EXEMPTION FROM DISTRESS.** Lessee agrees that notwithstanding anything contained in any statute, enactment or other law of the state in which the Premises are located or of any other jurisdiction, none of the personalty located on the Premises shall be exempt from levy for distress for Rent in arrears, and that if Lessee makes any claim for such an exemption, this Lease may be pleaded as an estoppel against Lessee in any appropriate action.

**§9.12 FRANCHISE AGREEMENT.** Notwithstanding anything in this Lease to the contrary, this Lease is conditioned upon the faithful performance by Lessee of the Franchise Agreement, and a default in the terms of the Franchise Agreement shall be a default of this Lease.

#### **X. NO RENT ABATEMENT**

Unless specifically provided in this Lease, no abatement, diminution, or reduction of Rent, Additional Rent, Additional Charges or other compensation shall be claimed by or allowed to Lessee, or any persons claiming under Lessee, under any circumstances, whether for inconvenience, discomfort, interruption of business, or otherwise.

#### **XI. CONDEMNATION**

**§11.1 ENTIRE AWARD.** In the event that the Premises or any part of it is taken in condemnation proceedings or by exercise of any right of eminent domain (or by settlement agreement in lieu thereof between Lessor and those authorized to exercise such right), Lessor shall be entitled to collect the entire amount of any award made without deduction for any estate vested in or owned by Lessee, subject only to the rights of any mortgagee and to Lessee's rights as set forth in this Lease. Lessee agrees to execute any and all documents that may be required to facilitate collection by Lessor of any and all such awards. Lessee shall have no right to participate in any condemnation proceedings or agreement except for the purposes described in Section 11.5.

**§11.2 SUBSTANTIAL TAKING.** If at any time during the Lease Term, the whole or substantially all of the Premises is taken or condemned, this Lease shall terminate and expire on the date on which title vests in the condemning authority, upon which the Rent provided to be paid by Lessee shall be apportioned and paid to that date, and Lessee shall have no claim against Lessor for the unexpired Term of this Lease or for damage or for any other reason whatsoever. For the purposes of this Section, "substantially all of the Premises" shall be deemed to have been taken if, in the sole opinion of Lessor, the portion of the Premises not taken cannot be repaired or reconstructed in such a way that, by using only the amount of the net award available from the taking, there remains a complete, rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operating expenses, Rent, Additional Rent and all other Additional Charges payable by Lessee, and after performance by the Lessee of all its obligations under this Lease.



**§11.3 PARTIAL TAKING.** In the event of a partial taking (any taking which is not "substantial"), this Lease shall not terminate, and Lessee shall promptly proceed to restore the remainder of the Building on the Land (if affected by the taking) to a complete, independent and self-contained architectural unit, usable for the purposes contemplated by this Lease, and Lessor shall pay to Lessee, subject to the same provisions and limitations specified herein with respect to insurance proceeds, the cost of restoration, which payment shall in no event exceed a sum equal to the amount of any separate award made for such restoration. Any deficiency will be paid by Lessee. Such restoration shall be subject to and shall be performed in accordance with the provisions of Section 5.3, except that any surety bond shall be in the amount, if any, by which the estimated cost of the work exceeds said separate award for the restoration. In the event that there is no separate award for restoration, the amount shall be fixed and settled by mutual agreement or by arbitration as provided in this Lease.

If this Lease does not terminate as provided in Section 11.2, and the taking results in the loss of parking spaces, driveways or accesses which are not or cannot be relocated or replaced elsewhere on the Premises, the Guaranteed Minimum Annual Rental after the date of taking shall be the lesser of (a) the Guaranteed Minimum Annual Rental payable by Lessee immediately prior to the taking, reduced by 12.5% of any portion of the award or awards recovered by Lessor which are not applied to the reduction of any mortgage to which this Lease is subject and subordinate or are not otherwise applied to Lessee's cost of demolition, repair and restoration or (b) the Guaranteed Minimum Annual Rental payable by Lessee immediately prior to the taking reduced in direct proportion to the area of the Premises taken. For example: if prior to the taking the area of the Premises is 30,000 square feet and the Guaranteed Minimum Annual Rental is \$100,000.00, upon the taking of 750 square feet, the Guaranteed Minimum Annual Rental will be reduced by three percent (3%), resulting in a new Guaranteed Minimum Annual Rental of \$97,000.00.

**§11.4 EASEMENTS.** If the taking is (i) of any existing appurtenant easement, or (ii) by easement rather than by fee, then the Lessee shall not be entitled to any reduction in Guaranteed Minimum Annual Rental unless such taking results in (i) receipt of an award by Lessor and (ii) the deprivation of use of the easement area by Lessee for parking, driveways or access. In such case, Lessee's Guaranteed Minimum Annual Rental shall be reduced in accordance with the calculation for a taking of the fee set forth in Section 11.3 above.

**§11.5 LESSEE'S INDEPENDENT AWARD.** Nothing in this article shall preclude Lessee from pursuing any independent action permitted by law or from participating in the condemnation proceedings, but only for the purpose of securing an independent award for loss of business or damage to personally.

## **XII. SUBORDINATION**

This Lease shall be fully subordinate to any mortgage and/or collateral assignment of lease against the Premises which the fee owner, Lessor and/or their assigns has or subsequently obtains upon the Premises; provided, however, that any such mortgage and/or collateral assignment of Lease against the Premises granted by Lessor shall provide that Lessee's possession of the Premises pursuant to this Lease shall not be disturbed in the event of a default by Lessor so long as Lessee shall be in compliance under the terms hereof. This Lease shall be fully subordinate and subject to any senior lease now, or hereafter affecting the Premises. In the event Lessor transfers all or a part of its interest in the Premises to a third party and enters into a lease with said third party (with Lessor as tenant) then this Lease shall be fully subordinate to said lease between such third party and Lessor.

The Lessee hereby grants a power of attorney to the Lessor with full power to act as its attorney in fact and to execute on behalf of the Lessee any and all documents that may be required by a mortgagee and/or assignee evidencing the Lessee's full subordination of the Lessee's interest to any mortgage and/or collateral assignment of lease that may be entered into by Lessor, the fee owner or their assigns. Lessee hereby agrees to execute, without charging Lessor, any and all documents that it is requested to



execute to evidence this subordination. However, Lessee shall not be required to execute any promissory notes or other evidences of indebtedness which would create any personal liability on behalf of Lessee.

### **XIII. ASSIGNMENT**

**§13.1 BY LESSOR.** This Lease shall be fully assignable by the Lessor or its assigns.

**§13.2 BY LESSEE.** Neither Lessee, nor Lessee's successors or assigns, shall (unless expressly permitted in this Lease) assign, mortgage, give as security, pledge or encumber this Lease, in whole or in part, by operation of law or otherwise, or sublet the Premises, in whole or in part, or permit the Premises or any portion of it to be used or occupied by others, or enter into a management contract or other arrangement whereby the Premises shall be managed and operated by anyone other than the owner of Lessor's leasehold estate, without the prior consent in writing of Lessor in each instance. If this Lease is assigned or transferred, or if all or any part of the Premises is sublet or occupied by anybody other than Lessee, Lessor may collect Rent from the assignee, transferee, subtenant or occupant, and apply the net amount collected to the Rent reserved in this Lease, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of any covenant or condition of this Lease, or the acceptance of the assignee, transferee, subtenant or occupant as lessee, or a release of Lessee from the performance or further performance by Lessee of its obligations under this Lease, and Lessee shall continue to be liable for all its obligations under this Lease. The consent by Lessor to an assignment, mortgage, pledge, encumbrance, transfer, management contract or subletting shall not in any way be construed to relieve Lessee from obtaining the express consent in writing of Lessor in each instance to any subsequent similar action that the Lessee may intend to take. Providing Lessee remains liable for all its obligations under this Lease, Lessor shall consent to an assignment of this Lease to an individual, partnership or corporation to which the Franchise Agreement has been assigned.

**§13.3 ASSUMPTION BY ASSIGNEE.** An assignment made with Lessor's consent or as otherwise permitted shall not be effective until Lessee delivers to Lessor an executed counterpart of such assignment containing an agreement, in recordable form, executed by the assignor and the proposed assignee, in which the assignee assumes the performance of the obligations of the assignor under this Lease to the Original Term Expiration Date.

### **XIV. ADDITIONAL PROPERTY**

**§14.1 PURCHASE OF ADDITIONAL PROPERTY.** In the event Lessee (for purposes of this Article, if Lessee is a group of more than one person, the term "Lessee" shall mean any member of the Lessee group) or any corporation, partnership or other entity in which Lessee has an interest or any member of Lessee's immediate family (Lessee or such other person or entity shall hereinafter be referred to as "Vendee") acquires the right to purchase property which, in the sole opinion of Lessor, is capable of being used either as additional parking or for any other purpose connected with the operation of the Premises (the "Additional Property"), Lessor shall have an option to assume Vendee's right to purchase such Additional Property without cost or charge to Lessor for such option. The granting of this option by Vendee to Lessor is in partial consideration for the making of this Lease by Lessor. Vendee agrees to submit to Lessor (i) a copy of the purchase or option contract within ten (10) days after final execution thereof and (ii) all other relevant documents within a reasonable period of time in advance of the scheduled closing date. Lessor shall have twenty (20) days after its receipt of the purchase or option contract and any and all relevant documents within which to notify Vendee of Lessor's intention to accept or reject Lessor's option. If Vendee's rights to purchase such Additional Property are not assignable, or if Vendee purchases the Additional Property without previously granting Lessor the option to acquire the Additional Property, Lessor shall have the additional option to purchase the Additional Property from Vendee, at Vendee's purchase price, under the terms of Lessor's then standard contract for the purchase

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of real property which shall be executed by Vendee and Lessor upon Lessor's exercise of this additional option. The granting of this additional option by Vendee to Lessor is in partial consideration for the making of this Lease by Lessor. Vendee agrees to submit to Lessor a copy of the purchase agreement and all other relevant documents within fifteen (15) days after Vendee acquires the Additional Property, and Lessor shall have thirty (30) days thereafter within which to notify Vendee of its intention to accept or reject this additional option.

In the event Lessor acquires the Additional Property from Vendee as set forth above, Vendee and Lessor agree to amend this Lease to include the Additional Property and to increase the Rent and other Additional Charges payable by Lessee for its use of the Additional Property. The rent for the Additional Property shall be calculated by Lessor in accordance with its then current formula for the calculation of "BKL" lease rentals.

In the event (i) Lessor fails to exercise its options to purchase the Additional Property as set forth above, or (ii) Lessor has not received notice from Vendee that Vendee has purchased the Additional Property, then at such time as (a) Lessor becomes aware of the acquisition by Vendee of the Additional Property or (b) this Lease expires or is terminated, whichever is earlier, Lessor shall have a third option to acquire the Additional Property by purchasing it for its then fair market value or three (3) times Vendee's purchase price, whichever is less, under the terms of Lessor's then standard contract for the purchase of real property, to be executed by Vendee and Lessor upon the exercise by Lessor of this third option. The granting of this third option by Vendee to Lessor is in partial consideration for the making of this Lease by Lessor. Lessor must notify Vendee of its election to exercise this third option within thirty (30) days after (A) the date on which Lessor receives notice of Vendee's acquisition of the Additional Property or (B) the expiration or termination of this Lease, whichever is earlier. Should Lessor and Vendee be unable to agree upon a purchase price within thirty (30) days after Vendee is notified by Lessor that Lessor desires to exercise this third option, Lessor and Vendee shall within ten (10) days following the end of said thirty (30) day period separately hire disinterested, qualified real estate appraisers who are authorized to appraise property in the county where the Additional Property is located and who are members of The Society of Real Estate Appraisers, The American Institute of Real Estate Appraisers or The American Society of Appraisers. If either Lessor or Vendee fails to appoint an appraiser within ten (10) days after being notified of the appraiser retained by the other party, the single appraiser hired shall determine the fair market value of the Additional Property. If both parties select an appraiser, the two appraisers shall meet and attempt to agree on a fair market value of the Additional Property. If they are unable to agree on the value within fifteen (15) days after the second appraiser was appointed, they shall select a third appraiser who shall determine the fair market value. Lessor and Vendee shall be responsible for the fee charged by the respective appraisers they selected and shall split the cost of the third appraiser. If after being informed of the fair market value of the Additional Property, Lessor indicates that the purchase price is unacceptable, it may rescind its election to purchase the Additional Property, upon notice to Vendee within twenty (20) days after being informed of the fair market value of the Additional Property but must pay the total cost of the appraisal.

In the event Lessor acquires the Additional Property from Vendee under any of the above options, Vendee shall furnish to Lessor evidence that he has good and marketable title to the Additional Property, and title shall be conveyed to Lessor in fee simple, free and clear of any liens, encumbrances, restrictions or violations of any local, state or federal laws, orders, rules or regulations upon payment of the purchase price. Closing shall be within ninety (90) days after determination of the purchase price, subject to any extension permitted under the terms of Lessor's then standard contract for the sale of real property.

Vendee hereby expressly covenants and agrees that, in the event that Vendee acquires Additional Property without complying with the terms and provisions of this Section 14.1, Lessor shall have the absolute and unrestricted option to purchase any such Additional Property, upon the terms and conditions set forth above with respect to the third option to purchase, at any time during the Term of this Lease and for thirty (30) days after the expiration or termination of this Lease. If, during such thirty (30) period, Lessor discovers that Vendee has acquired Additional Property without complying with the terms and provisions of this Section 14.1, then notwithstanding the expiration or termination of this Lease, Vendee

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hereby further expressly covenants and agrees that Vendee shall execute any and all relevant documents in order to transfer fee title to said Additional Property to Lessor in accordance with the terms and provisions of this Section 14.1. The granting of this final option by Vendee to Lessor is in partial consideration for the making of this Lease by Lessor.

**§14.2 LEASE OF ADDITIONAL PROPERTY.** In the event Vendee acquires the right to lease, sublease or license, have an easement across or over, or any other right of any kind, save and except by purchase, to use or occupy the Additional Property (the "Occupancy Right") from any person other than Lessor, Vendee shall give Lessor written notice thereof, which notice shall set forth or be accompanied by a copy of the proposed lease, sublease, license agreement, easement agreement or other use or occupancy agreement (the "Additional Property Lease") and which notice shall be delivered to Lessor prior to the execution of any Additional Property Lease. The Additional Property Lease shall set forth (a) all terms and conditions of the Occupancy Right, including, without limitation, the Rent, Additional Rent, Additional Charges and other consideration payable under the Additional Property Lease, and the term and any options to extend the term; (b) the extent to which the tenant under the Additional Property Lease may make Alterations and/or Improvements; (c) any broker or other agent who was involved in the acquisition of the Occupancy Right; (d) a description of the Additional Property; (e) its proposed use; and (f) the name and address of the proposed landlord. Lessor may, within thirty (30) days after receipt of such written notice from Vendee accompanied by or containing all of the items set forth above, in its sole and absolute discretion, choose to enter into the Additional Property Lease, as tenant; in such event, Lessor and Vendee agree to amend this Lease to include the Additional Property and to increase the Rent and other Additional Charges payable by Lessee for its use of the Additional Property. The rent for the Additional Property shall be calculated by Lessor in accordance with its then current formula for the calculation of "BKL" lease rentals. During said thirty (30) day period, Vendee shall not, in any event whatsoever, execute, or cause anyone else to execute on Vendee's behalf or otherwise, the Additional Property Lease. If Lessor chooses not to enter into the Additional Property Lease, then Vendee may choose to enter into the Additional Property Lease, as tenant; in such event, the following paragraph shall be incorporated into the Additional Property Lease in its entirety:

"Notwithstanding anything to the contrary set forth herein, Landlord and Tenant hereby covenant and agree that Tenant may, at any time during the term hereof and without Landlord's consent, assign this Lease to Burger King Corporation or its designee (collectively, "BKC"). The Tenant covenants that, notwithstanding any such assignment to BKC, and notwithstanding the acceptance of rent and/or additional rent by Landlord from BKC, the Tenant shall, during the term hereof, remain fully liable for the payment of the rent and the additional rent hereunder and for the performance and observance of all other obligations of this lease on the part of Tenant to be performed or observed. Additionally, (i) in the event of any default by Tenant hereunder which default has not been cured prior to the expiration of any grace, notice or cure period; or (ii) at such time as any lease between BKC, as landlord, and Tenant, as tenant expires or is terminated, then, in any such event, BKC shall have the option, but shall be under no obligation to exercise said option, exercisable within thirty (30) days after the end of any grace, notice or cure period, or the expiration or termination of any such lease, to assume this lease from Tenant by written notice to Tenant and Landlord and at no cost or charge to BKC. In order to effectuate this provision, Landlord agrees that, if Tenant is in default hereunder, Landlord shall give written notice thereof to BKC at 5707 Blue Lagoon Drive, Miami, Florida 33126, P.O. Box 020783, Miami, Florida 33102-0783, Attention: General Counsel and Landlord further agrees that Landlord shall be obligated to send said notice to BKC whether or not this Lease provides for written notice of default to be sent to the Tenant. The parties hereto acknowledge and agree that BKC may, in its sole and absolute discretion, cure any default by Tenant hereunder, but BKC shall be under no obligation to do so and BKC's decision to cure or not to cure any default by the Tenant shall not be a condition precedent to BKC's assumption of this lease. Landlord and Tenant hereby agree to execute and provide such documents (including, without limitation, a copy of this lease, certified by Landlord and Tenant to be a true and correct copy, and an estoppel certificate from Landlord) and other assurances (including, without limitation, Tenant's guarantee to cure all existing defaults hereunder prior to the effective date of said assumption by BKC) reasonably



required by BKC to give full force and effect to this provision." [The words "Landlord", "Tenant" and "Lease" in the foregoing paragraph shall be changed to "Licensor", "Licensee" and "License", respectively, if Vendee is entering into a license agreement and similar modifications (but only as to form, not substance) may be made to the foregoing paragraph where required in the case of a sublease, an easement agreement or any other type of use or occupancy agreement.]

Upon the execution and delivery of the Additional Property Lease by Vendee and the proposed landlord, Vendee shall deliver a duplicate original of the fully executed Additional Property Lease and any and all other documents relating to the Additional Property Lease to Lessor.

Vendee hereby expressly covenants and agrees that, in the event that Vendee enters into an Additional Property Lease without complying with the terms and provisions of this Section 14.2, Lessor shall have the absolute and unrestricted right to have said Additional Property Lease assigned to Lessor, upon the terms and conditions set forth in this Section 14.2, at any time during the Term or any extensions of the Term of the Additional Property Lease. If Lessor is not notified of the existence of an Additional Property Lease during the Term hereof, Lessor shall have thirty (30) days after the expiration or termination of this Lease to investigate whether such an Additional Property Lease exists. If, during such thirty (30) day period, Lessor discovers that an Additional Property Lease exists, then notwithstanding the expiration or termination of this Lease, Vendee hereby further expressly covenants and agrees that Vendee shall execute any and all relevant documents in order to assign said Additional Property Lease to Lessor. After the Additional Property Lease has been assigned to Lessor (if said assignment occurs prior to the expiration or termination of this Lease), Vendee and Lessor agree to amend this Lease to include the Additional Property. The rent and other charges for the Additional Property shall be calculated by Lessor in accordance with its then current formula for the calculation of "BKL" lease rentals.

For purposes of this Article, notice to the Lessee in the manner indicated in Section 17.2 shall be deemed to be notice to Vendee. The terms and provisions of this Article shall survive the expiration or termination of this Lease.

#### **XV. ESTOPPEL CERTIFICATE**

Lessee shall from time to time, within five (5) days after being requested to do so by the Lessor, execute, enseal, acknowledge and deliver to the Lessor (or, at Lessor's request, to any existing or prospective purchaser, transferee, assignee or mortgagee of any or all of the Premises, any interest therein or any of Lessor's rights under this Lease) an instrument in recordable form:

- (i) certifying (a) that the Lease is unmodified and in full force and effect (or, if there has been any modification thereof, that it is in full force and effect as so modified, stating therein the nature of such modification); (b) as to the dates to which the Rent, the Building Improvement Payments and Additional Charges arising hereunder have been paid; (c) as to the amount of any prepaid rent or any credit due to Lessee hereunder; (d) that the Lessee has accepted possession of the Premises, and the date on which the Term commenced; (e) as to whether, to the best knowledge, information and belief of the signer of such certificate, the Lessor or the Lessee is then in default in performing any of its obligations under the Lease (and, if so, specifying the nature of each such default); and (f) as to any other fact or condition reasonably requested by the Lessor or such other addressee; and
- (ii) acknowledging and agreeing that any statement contained in such certificate may be relied upon by Lessor and any such other addressee.



**XVI.  
HAZARDOUS SUBSTANCES**

**§16.1 COMPLIANCE WITH LAWS.** Lessee shall at all times, at its own cost and expense, comply with all federal, state and local laws, ordinances, regulations and standards ("Hazardous Substance Laws") relating to the use, analysis, production, storage, sale, disposal or transportation of any hazardous materials, including oil or petroleum products or their derivatives, solvents, PCB's, explosive substances, asbestos, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, contaminating or pollution materials ("Hazardous Substances") which are now or in the future subject to any governmental regulation. Such compliance shall include any cleanup, removal, remedial action, testing or monitoring (including medical monitoring) which may be required under Hazardous Substance Laws, court order or by any governmental or regulatory agency.

**§16.2 NOTICES TO LESSOR.**

- (a) Except with respect to any substance described in Section 16.2(c) below, Lessee shall give written notice to Lessor within three (3) business days after the date on which Lessee learns or first has reason to believe that:
  - (1) There has or will come to be located on or about the Premises any Hazardous Substance, the production, transportation, storage, use or handling of which requires a permit or license from any federal, state or local governmental agency;
  - (2) Any release, discharge or emission of any Hazardous Substance has occurred on or about the Premises, including the migration of any Hazardous Substance to or from adjoining or nearby properties;
  - (3) Any (i) enforcement, cleanup, removal, remediation, testing, monitoring or other governmental or regulatory action has been threatened or commenced against Lessee with respect to the Premises pursuant to any Hazardous Substances Laws; or (ii) any claim has been made or threatened by any person or entity against Lessee or the Premises on account of any alleged loss or injury claimed to result from the alleged presence or release on or from the Premises of any Hazardous Substance; or (iii) any report, notice, or complaint has been made to or filed with any governmental agency concerning the presence, migration, use or disposal of any Hazardous Substances on or from the Premises. Any such notice shall be accompanied by copies of any such claim, report, complaint, notice, warning or other communication that is in the possession of or is reasonably available to the Lessee.
- (b) Any notice required under this Section 16.2 shall be accompanied by (i) a copy of all permits, licenses, proofs of disclosure to governmental agencies, pertaining to Hazardous Substances that have not previously been furnished to Lessor and; (ii) copies of any Material Safety Data Sheets pertaining to such substances that are required by applicable law to be kept at the Premises.
- (c) The notice provisions of this Article XVI shall not apply to materials that are lawfully discharged from the Premises or lawfully used on the Premises in the ordinary course of Lessee's business.

**§16.3 REMOVAL AND DISPOSAL.** Except for materials that are lawfully discharged from the Premises or lawfully used on the Premises in the ordinary course of Lessee's business, Lessee shall cause any Hazardous Substances to be removed from the Premises solely by duly licensed Hazardous Substances transporters to duly licensed facilities for final disposal to the extent required by and in accordance with



applicable Hazardous Substances Laws, and shall deliver to Lessor copies of any hazardous waste manifest reflecting the lawful transport and disposal of such substances.

#### **§16.4 ENVIRONMENTAL AUDITS BY LESSOR.**

- (a) **Rights of Lessor** Lessor may, but shall not be required to, engage such independent contractors as Lessor determines to be appropriate to perform from time to time any audit, including environmental sampling and testing, of (i) the Premises, the surrounding soil and any adjacent areas, and any groundwater located under or adjacent to the Premises and/or any adjoining property, (ii) Lessee's compliance with all Hazardous Substances Laws and the provisions of this Lease, and (iii) the provisions made by Lessee for carrying out any remedial action that may be required by this Lease (collectively an "Environmental Audit"). All costs and expenses incurred by Lessor in connection with any such Environmental Audit shall be paid by Lessor, except that if any such Environmental Audit shows that Lessee has failed to comply with the provisions of this Article XVI, then such costs and expenses shall be paid by Lessee to Lessor as Additional Charges pursuant to Section 3.4 of this Lease.
- (b) **Conduct of Audit** Each Environmental Audit shall be conducted (i) only after advance notice thereof has been provided to Lessee at least twenty-four (24) hours prior to the date of such audit, and (ii) in a manner reasonably designed to minimize any interference with the conduct of Lessee's business on the Premises. Lessor shall repair any damages to the Premises or to Lessee's personal property caused by any Environmental Audit conducted by or on behalf of Lessor.
- (c) **Submission to Governmental Agency** Notwithstanding any other provision of this Lease to the contrary, to the extent required by law, Lessor shall be entitled to submit the results of any Environmental Audit to any federal, state or local governmental agency having jurisdiction over (a) the Premises or (b) Hazardous Substances with respect to the Premises.

#### **§16.5 REMEDIATION.**

- (a) **By Lessee** if any Environmental Audit of the Premises (whether conducted by Lessor, Lessee or any third party) shall recommend the cleanup, abatement, removal, disposal, monitoring or further testing, including medical monitoring or testing (collectively "Remediation") of or for any Hazardous Substances found on or about the Premises, then Lessor shall provide Lessee with a copy of such Environmental Audit and Lessee shall promptly commence such Remediation.

- (b) **By Lessor**

If, within thirty (30) days after receiving a copy of such Environmental Audit and such written statement, Lessee fails either (i) to complete such Remediation, or (ii) with respect to any Remediation which cannot be completed within such thirty-day period, fails to proceed with reasonable diligence to complete such Remediation as promptly as practicable, then the Lessor shall be entitled to provide a copy of the Environmental Audit to any federal, state, or local governmental agency having jurisdiction over the Premises or Hazardous Substances.

Notwithstanding any other provision of the Lease to the contrary, if any Environmental Audit reveals a situation which, in Lessor's sole opinion, constitutes an emergency, then Lessor shall have the right, but not the obligation, to carry out any Remediation recommended by such audit or if required by any federal, state or local governmental



agency having jurisdiction over the Premises. If Lessee is responsible for conducting such remediation, Lessor shall have the right to recover all of the costs and expenses thereof from Lessee as Additional Charges pursuant to Section 3.4 of this Lease.

- (c) Actions and Proceedings. Except in emergencies or as otherwise required by law, Lessee shall not perform any Remediation in response to the presence or release of any Hazardous Substances on or about the Premises without first giving written notice to Lessor. Lessee shall not enter into any settlement agreement, consent decree or other compromise with respect to any claims relating to any Hazardous Substances in any way connected with the Premises without first notifying Lessor of Lessee's intention to do so and affording Lessor the opportunity to participate in any such proceedings.

#### **516.6 REMEDIATION BY THIRD PARTIES.**

- (a) If Lessee receives a request from a third party to enter the Premises for the purposes of Remediation of Hazardous Substances, then Lessee shall so notify Lessor in accordance with the provisions of Section 16.2 above.
- (b) Lessor, in its sole discretion, shall determine if the request should be honored and, if so, under what conditions.
- (c) If Lessor determines that the request should be honored, then Lessee shall cooperate with such Remediation so long as the third party agrees to comply with the provisions of Section 16.4(b) above and with any other reasonable conditions requested by Lessee.
- (d) Lessee agrees to sign any documentation reasonably required by Lessor and/or any such third party in order to effectuate the provisions of this Section 16.6.

**516.7 LEASE EXPIRATION** Upon the expiration or earlier termination of the Term of this Lease, Lessee shall (i) cause all Hazardous Substances previously owned, stored or used by Lessee to be removed from the Premises and disposed of in accordance with applicable Hazardous Substances Laws; (ii) remove any aboveground or underground storage tanks or other containers installed or used by Lessee to store any Hazardous Substances on the Premises, and repair any damage to the Premises caused by such removal; (iii) cause any soil or other portion of the Premises which has become contaminated by any Hazardous Substances stored or used by Lessee on the Premises to be decontaminated, detoxified or otherwise remediated in accordance with the requirements of any governmental authorities having jurisdiction over the Premises; and (iv) surrender possession of the Premises to Lessor free of contamination attributable to Hazardous Substances generated or used by Lessee in or on the Premises during the Term of this Lease.

**516.8 INDEMNIFICATION BY LESSEE** Lessee shall indemnify, defend with counsel reasonably acceptable to Lessor, and hold Lessor free and harmless from any and all liabilities, damages, claims, penalties, fines, settlements, causes of action, costs or expense, including reasonable attorneys' fees, environmental consultant and laboratory fees and the costs and expense of investigating and defending any claims or proceedings, resulting from or attributable to (i) the presence, disposal, migration, release or threatened release of any Hazardous Substance that is on, from or affecting the Premises including the soil, water, vegetation, buildings, personal property persons, or otherwise; (ii) any bodily injury (including wrongful death) or property damage (real or personal) arising out of or relating to such Hazardous Substance(s); (iii) any lawsuits or administrative order relating to such Hazardous Substance(s); or any violation of any laws applicable to any Hazardous Substance for which Lessee is responsible under this Lease. Lessee's indemnification obligations under this Section shall survive the expiration or earlier termination of this Lease. Notwithstanding anything to the contrary contained herein, Lessee shall have no liability or responsibility to Lessor for liabilities, damages, claims, penalties, fines, settlements, causes of action, cost or expense arising out of any Hazardous Substances that Lessee can demonstrate were



situated on or under the Premises prior to the Lease Date, provided Lessee did not cause or exacerbate the release of any such Hazardous Substance through its negligence or willful misconduct.

**XVII.  
MISCELLANEOUS**

**§17.1 ARBITRATION.** In the event of arbitration under Section 11.3 of this Lease, the arbitration shall be held in the Miami Dade County, Florida, in accordance with the rules of the American Arbitration Association requiring the appointment of three (3) arbitrators.

**§17.2 NOTICES.** Every notice, approval, consent or other communication authorized or required by this Lease shall be effective if given in writing and it hand delivered or sent by United States Registered or Certified Mail, Return Receipt Requested, with postage prepaid, and addressed directly to Lessor at its offices at the address set forth on the Key Contract Data Page, and to Lessee at the address set forth on the Key Contract Data Page, or at such other address as either party shall from time to time designate in writing. Every notice shall be deemed to be effective upon delivery, if delivered, or on the second business day after mailing, if mailed.

**§17.3 ADDRESS FOR PAYMENTS.** Payments are to be made via BK® ePay, ACH or Wire Transfer unless otherwise notified in writing by Lessor. If BK® ePay, ACH or Wire Transfer are unavailable at any time a payment is due, then such payment shall be sent by Regular or Overnight Mail: Global Business Services – Accounts Receivable, 5707 Blue Lagoon Drive, 3<sup>rd</sup> Floor, Miami, FL 33126.

**§17.4 CONSTRUCTION.** In the event that any of the provisions of this Lease shall by court order be held invalid or in contravention of any of the laws of the United States or of any state having jurisdiction over the subject matter or of any dispute arising under it, such invalidation shall not serve to affect the remaining portion of this Lease. To the extent permitted by the laws of the state where the Premises are located, this Lease shall be governed by and construed in accordance with the laws of the State of Florida.

**§17.5 SUCCESSORS.** This Lease shall bind Lessor and Lessee and their successors, heirs, assigns, administrators, and legal representatives, as the case may be.

**§17.6 RECORDING.** Lessee shall upon request of Lessor execute a short form of this Lease on a written document witnessed and acknowledged in a form capable of being recorded in the public records of the county where the Premises are located. Lessee shall not record this Lease without prior written consent of Lessor.

**§17.7 COUNTERPARTS.** This Lease is being executed simultaneously in counterparts, any one of which shall be deemed an original.

**§17.8 NO AGENCY.** The parties hereto agree that the business relationship created by this Lease is solely that of Lessor and Lessee. Nothing contained in this Lease shall make Lessee an agent, legal representative, partner, subsidiary, joint venturer or employee of Lessor. Lessee shall have no right or power to, and shall not bind or obligate Lessor in any way, manner or thing whatsoever, nor represent that it has any right to do so.

**§17.9 TIME OF THE ESSENCE.** Time shall be of the essence in every part of this Lease.

**§17.10 BINDING EFFECT.** This Lease shall become immediately binding on the parties to this Lease on the date the last party signs it, notwithstanding that the Term of this Lease shall commence upon a future date.



**§17.11 HEADINGS.** The table of contents preceding this Lease and the headings of the paragraphs and subparagraphs are inserted solely for the convenience of reference and shall not constitute a part of this Lease, nor limit, define or describe the scope or intent of this Lease.

**§17.12 JOINT AND SEVERAL LIABILITY.** If Lessee consists of more than one person, each individual's liability under this Lease shall be joint and several.

**§17.13 ENTIRE AGREEMENT.** This Lease constitutes the entire agreement between the parties hereto with respect to the subject matter of this Lease, and this Lease shall not be modified, amended, altered or changed except by prior written agreement signed by both parties. If any provision herein is invalid, it shall be considered deleted from this Lease and shall not invalidate the remaining provisions.

**§17.14 TERMINATION OR EXPIRATION OF THE FRANCHISE AGREEMENT.** In the event that Lessee's Franchise Agreement expires or is terminated for any reason whatsoever, this Lease shall be terminated forthwith and upon such termination, Lessor shall have the right to re-enter and take immediate possession of the Premises.

**§17.15 LEASE CONTINGENT ON FRANCHISE AGREEMENT.** Lessee acknowledges and agrees that the execution of the Franchise Agreement by both THUSA and Lessee shall constitute a condition precedent to the effectiveness and validity of this Lease.

**§17.14 DEFINITIONS**

- (a) The term "Lessor" as used in this Lease shall mean the owner in fee of the Premises for the time being, or the owner of the leasehold estate created by an underlying lease, or the mortgagee of the fee or of such underlying lease in possession for the time being, so that in the event of any sale or sales of the Premises, or of the making of any such underlying lease, or of any transfer or assignment or other conveyance of such underlying lease and the leasehold estate created by it, the seller, lessor, transferor or assignor shall be and is hereby entirely freed and relieved of all agreements, covenants and obligations of Lessor herein and it shall be deemed and construed without further agreement between the parties or their successors in interest or between the parties and the purchaser, lessee, transferee or assignee on any such sale, leasing, transfer or assignment that such purchaser, lessee, transferee or assignee has assumed and agreed to carry out any and all agreements, covenants and obligations of Lessor under this Lease.
- (b) The term "Lessee" shall mean the lessee named in this Lease, and from and after any valid assignment or sublease of Lessee's interest in this Lease pursuant to its provisions, the assignee or sublessee of this Lease.
- (c) The term "mortgage" shall mean any mortgage, security interest, charge, deed of trust, or other similar encumbrance resulting from the financing or refinancing of the Premises.
- (d) The term "mortgagee" shall include any individual, firm, partnership, corporation, joint venture, investment trust bank or institution, or other business group or association lending funds to Lessor upon the security of the Premises demised by this Lease whether or not such mortgage is recorded, or upon Lessor's independent covenant not to otherwise encumber this Lease or the Premises.
- (e) The term "fixtura(s)" as used in this Lease means such items of personalty which have been (i) installed by Lessor and/or (ii) so affixed to the Premises that removal would cause, in Lessor's sole opinion, material damage to the Premises. By way of example, and not limitation, fixtures include the following: heating, ventilating and air conditioning

systems, water heaters or softeners, core-drilled tables and seating, walk-in boxes, walk-in freezers, and toilet fixtures consisting of the lavatories and water closets.

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Lease/Sublease  
Exhibit G1 (03/2021)  
BK # 1551



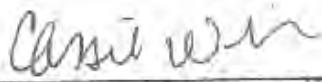
The Lessor and Lessee have respectively signed this Lease as of the date indicated on the first page of this Lease.

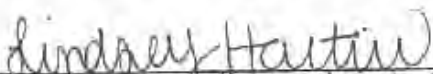
WITNESS:

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_


WITNESS:

  
Print Name: CASSIE WILSON

  
Print Name: LINDSEY HARTIN

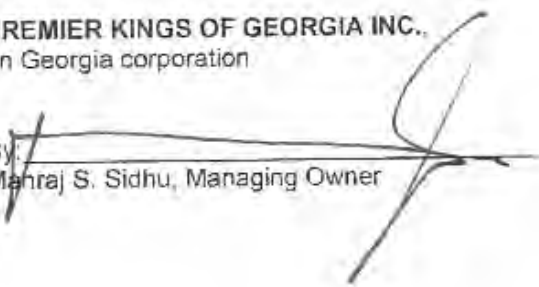
LESSOR

BURGER KING CORPORATION

By:   
Print Name: Ryan Smith  
Its: Sr. Asset Manager

LESSEE

PREMIER KINGS OF GEORGIA INC.,  
an Georgia corporation

By:   
Mahraj S. Sidhu, Managing Owner

**EXHIBIT "A" BK#1551**  
**LEGAL DESCRIPTION**

Lease/Sublease  
Exhibit G1 (03/2021)  
BK #1404



**ADDENDUM TO THAT LEASE/SUBLEASE  
DATED THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021,  
BETWEEN BURGER KING CORPORATION, AS LESSOR AND  
PREMIER KINGS OF GEORGIA INC., AS LESSEE**

In the event of any conflicts between the terms of the Lease/Sublease Agreement (the "Lease") and the terms of this Addendum, the terms of this Addendum shall control. Capitalized terms used in this Addendum shall have the same definitions and meanings as those set forth in the Lease, unless herein provided to the contrary, or unless the context otherwise requires.

1. This Lease/Sublease Agreement, dated the date indicated on the Key Contract Data Page demising the Premises commonly known as BURGER KING® Restaurant 1551 replaces and supersedes all previous lease and/or sublease agreements entered into by Lessor and Lessee, and/or Lessor and Lessee's predecessor-in-interest, with respect to the Premises, if any.

2. Lessee acknowledges that it takes this Lease subject to any and all reservations, restrictions, easements, rights of way, limitations and conditions now or hereinafter of record.

3. **IF BKL EXECUTED PRIOR TO REMODEL / DEFERRED REMODEL** Lessee acknowledges that Lessee, as franchisee, has, contemporaneously with the execution of this Lease, executed that certain Franchise Agreement with the Lessor, as franchisor, for the operation of the BURGER KING® restaurant on the Premises (the "Franchise Agreement"), which requires the franchisee to complete certain renovations, repairs, replacements, remodelings and/or rebuildings of the franchised restaurant that will conform with the specification and standards set forth in the scope of work previously provided by Lessor, as franchisor (hereinafter referred to herein as the "Remodel Work"), the completion of which was material consideration for and inducement of the Lessor, as franchisor, to enter into the Franchise Agreement. Lessee further acknowledges and agrees to the following: (i) to complete the Remodel Work in accordance with the Franchise Agreement; and (ii) that all work associated with the Remodel Work, including, without limitation, all demolition and/or construction work, shall be completed in compliance with all Regulations. Without limiting the foregoing, Lessee agrees to provide the Lessor with the following:

a. at the time of submittal of the construction plans and specifications (the "Plans") of the Remodel Work to Lessor for approval, a certificate, on a form to be provided by Lessor, from an architect, licensed in the State where the Premises are located ("Architect"), certifying that the Plans comply with (i) the requirements of Title III of the Americans With Disabilities Act of 1990 ("ADA") (ii) the Americans With Disabilities Act Accessibility Guidelines 1991 ("ADAAG") which is a part of the ADA; (iii) the 2010 ADA Standards; and (iv) all state and local building codes including any disabilities related statutes or codes (collectively, the "Codes") in the applicable jurisdiction where the Premises are located; and

b. upon completion of the construction of the remodeled restaurant contemplated by the Remodel Work (the "Remodeled Restaurant"), the Architect shall inspect the Remodeled Restaurant and complete the Burger King® 2004 ADAAG Checklist V1.2 (which is currently under revision to reflect the 2010 ADA Standards), and complete a certificate of inspection, on a form to be provided by Lessor, certifying that the Remodeled Restaurant is in compliance with Title III of the ADA, the ADAAG, the 2010 ADA Standards and the Codes.

4. Except as modified or amended in this Addendum, all other terms and conditions contained in the Lease remain in full force and effect.

5. The Lessor and Lessee have respectively signed this Addendum as of the date indicated on the first page of the foregoing attached Lease.

Lessee/Sublease  
Exhibit Q1 (03/2021)  
BK # 7551

WITNESS

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

WITNESS:

Cassie Wilson  
Print Name: Cassie Wilson

Lindsey Hartin  
Print Name: Lindsey Hartin

LESSOR

BURGER KING CORPORATION

By: [Signature]  
Print Name: Ryan Smith  
Its: Sr. Asset Manager

LESSEE

PREMIER KINGS OF GEORGIA INC.,  
an Georgia corporation

By: [Signature]  
Mahraj S. Sidhu, Managing Owner



**SCHEDULE "A"**  
**MASTER LEASE**

Lease/Sublease  
Exhibit G1 (03/2021)  
BK # 1551

# LEASE/SUBLEASE

## KEY CONTRACT DATA PAGE

This Key Contract Data Page forms a part of the Lease and is incorporated by reference into the Lease.

**Lease Date:** \_\_\_\_\_, 2021

**Lessee:** Premier Kings of Georgia Inc. an Georgia corporation

**Guarantor(s):** Manraj S. Sidhu

**Premises (Section 1.1):** BURGER KING® Restaurant # 1551, located at 4241 Augusta Rd Garden City, GA 31408-2120, as more particularly described on Exhibit A

**Commencement Date (Section 2.1):** Upon the earlier of (i) \_\_\_\_\_, 2021 and (ii) the earliest of the following dates:

- (a) The date ten (10) days following the date of the issuance of a Certificate of Occupancy for the Premises by appropriate governmental authorities; and
- (b) The date ten (10) days following date of certification of Lessor's architect that the Land has been improved and the Building constructed is substantially in conformance with the plans and specifications; or
- (c) The date Lessee opens for business.

**Term (Section 2.1):** Twenty (20) years

**Original Term Expiration Date (Section 2.1):** October 31, 2041

**Guaranteed Minimum Annual Rent (Section 3.1):**

<u>Lease Year</u>	<u>Guaranteed Minimum Annual Rental</u>	<u>Monthly Installment</u>
Commencement Date - 10/31/2026	\$102,332.00	\$8527.66
11/1/2026 - 10/31/2031	\$114,611.84	\$9550.91
11/1/2031 - 10/31/2036	\$128,365.26	\$10697.08
11/1/2036 - 10/31/2041	\$143,769.09	\$11980.75

**Percentage Rental Data Schedule (Section 3.2):**

<u>Monthly Gross Sales:</u>	<u>Percentage:</u>
\$0 - \$133,333.33	8.5%
\$133,333.34 or higher	10.0%

**Building Improvement Funds (Section 5.4):**

<u>Annual Sum:</u>	<u>Monthly Installment:</u>
\$6,000	\$500

**Address for Notices**

**Lessor:** BURGER KING CORPORATION  
5707 Blue Lagoon Drive

Lease/Sublease:  
Exhibit G1 (03/2021)  
BK # 1551

**(Section 17.2):**

Miami, Florida 33126

With a copy to:

P. O. Box 020783,  
General Mail Facility  
Miami, Florida 33102-0783

Lessee:

**Premier Kings of Georgia Inc.**  
c/o Burger King® Restaurant# 1551  
3300 Eastern Boulevard,  
Montgomery, AL 36116.

Lease/Sublease  
Exhibit G1 (03/2021)  
BK # 1551



# LEASE/SUBLEASE

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Exhibit G1 (03/2021)  
BK # 1551



## LEASE/SUBLEASE AGREEMENT

THIS AGREEMENT (the "Lease"), is made as of the Lease Date set forth on the Key Contract Data Page, by and between **BURGER KING CORPORATION**, a Florida corporation (the "Lessor") and the Lessee set forth on the Key Contract Data Page. The terms "Lessor" and "Lessee" shall mean respectively "Sublessor" and "Sublessee" whenever the context requires or permits it.

In consideration of the covenants contained in this Lease, the parties agree as follows:

### I. PROPERTY LEASED

**§1.1 DEMISE.** Lessor leases to Lessee and Lessee leases from Lessor the property set forth on the Key Contract Data Page (the "Land") along with the **BURGER KING®** restaurant (the "Building") and other improvements to be constructed on it (collectively called the "Premises")

Subject to any and all reservations, restrictions, easements, rights of way, limitations and conditions of record, if any.

~~**§1.2 ERECTION OF BUILDING.** Commencement of this Lease is conditioned on the completion of the Building in accordance with plans and specifications prepared by Lessor's architect. Lessor has agreed to construct or contract for the construction of the Building promptly and to complete or contract to complete it as promptly as conditions will permit, but in any event before one hundred eighty (180) days from the lease date; provided, however, that this period shall be extended by any time lost in construction due to delays caused by strike, lockout, acts of God, shortage of materials, or other conditions beyond the control of Lessor. In the event the Building is not completed within one (1) year from the date of this Lease, this Lease may be terminated at the option of either party, on fifteen (15) days' notice to the other party.~~

**§1.3 COVENANT OF QUIET ENJOYMENT.** The Lessor promises, subject to Lessee's performance of all of the terms and conditions of the Lease, that Lessee shall be entitled to the quiet and peaceful enjoyment and undisturbed possession of the Premises for the term of this Lease.

### II. TERM

**§2.1 TERM.** The term of this Lease (the "Term") shall commence upon the Commencement Date set forth on the Key Contract Data Page and expire at midnight the Original Term Expiration Date set forth on the Key Contract Data Page (i.e., the day preceding the 20th anniversary of the Commencement Date) unless sooner terminated as provided in this Lease. The Commencement Date shall be designated by the parties in a form capable of being recorded among the public records of the county where the Premises are located.

**§2.2 POSSESSION.** Possession of the Premises shall be delivered to the Lessee on the Commencement Date.

**§2.3 HOLDOVER.** Any holdover at the expiration of the Term with the written consent of Lessor shall be on a month to month basis, which tenancy may be terminated by Lessor giving Lessee not less than fifteen (15) days notice. During such holdover tenancy, Lessee agrees to pay Lessor on a monthly basis all increased rentals and other charges that would have been due under this Lease and agrees to continue to be bound by all of the terms of this Lease which are applicable at that time. In the event Lessee holds over without consent of Lessor, the rent during any holdover period shall be double the average rent that was due during the last year of the Lease Term.

Lessor/Sublessor:  
Exhibit B1 (03/2021)  
BK #1404

## **§2.4 END OF TERM.**

- (a) **Fixtures and Personally.** At the expiration or earlier termination of this Lease, any fixtures, as defined in Section 17.14(e) of this Lease, located on the Premises and not already owned by Lessor shall become the property of the Lessor. If, at that time, Lessee has fully complied with Lease terms and conditions, Lessor hereby waives any right to claim any personally owned or leased by Lessee and located on the Premises. The personally may then be removed by Lessee or the lessor of such personally provided that the Premises are restored to their original condition. Any such personally not removed within fifteen (15) days after the Lease expiration or termination shall be deemed abandoned and become the property of Lessor.
- (b) **Joint Inspection.** During a period no earlier than three (3) weeks and no later than one (1) week prior to the end of the Term, Lessor and Lessee shall conduct a joint inspection of the Premises and Lessor shall make a list of any items of repair and maintenance which may be needed to put the Premises in good condition and repair. If the items on such list cannot be completed by Lessee by the end of the Term, then Lessee shall pay to Lessor by the end of the Term the reasonable cost of such repairs as estimated by Lessor. Lessee's obligation to make such payment shall survive the termination of this Lease. Any failure by the parties to conduct the joint inspection shall not constitute a waiver of Lessee's obligations under this Section 2.4, Section 5.2 and Article VI of this Lease.

## **III. CONSIDERATION**

**§3.1 RENT.** Lessee agrees to pay and Lessor agrees to accept the Guaranteed Minimum Annual Rental as indicated on the Key Contract Data Page, for each year of the Term of this Lease (such being hereinafter referred to as "Guaranteed Minimum Annual Rental"), to be due and payable in monthly installments in advance on the first day of each month during the Term of this Lease. The first monthly installment of the Guaranteed Minimum Annual Rental shall be due on the Commencement Date. If this Lease shall commence on any day other than the first day of a calendar month, the monthly installment for the first and last month of the Lease Term shall be prorated.

"The term "Lease Year" shall mean and refer to the first consecutive twelve (12) month period beginning on the Commencement Date of the Lease and each succeeding twelve (12) month period thereafter, whether fiscal or annual.

## **§3.2 PERCENTAGE RENTAL.**

- (a) **Percentage Rental.** In addition to the Guaranteed Minimum Annual Rental, and as part of the total rent to be paid by Lessee to Lessor during the Lease Term, Lessee covenants and agrees to pay to Lessor as percentage rental ("Percentage Rental"), a sum equal to a percentage (as set forth as the Percentage Rental Data Schedule on the Key Contract Data Page) of the "Gross Sales" (defined in Section 3.2(b) below) for each month of each Lease Year in excess of the monthly installment of the Guaranteed Minimum Annual Rental to be paid for such month. The Percentage Rental shall be payable in monthly installments and computed in accordance with the terms and conditions of Section 3.2 (a) (i) below.
- (i) **Monthly Accounting and Payment.** Beginning with the tenth (10th) day of the month following the calendar month in which the Term commences and continuing monthly thereafter, Lessee shall deliver to Lessor a statement in writing on a form furnished by the Lessor, setting forth all of the Gross Sales for



the preceding calendar month, and simultaneously upon submission of such statement, Lessee shall pay to the Lessor the Percentage Rental due, being an amount equal to the amount set forth on the Key Contract Data Page, less the monthly installment of Guaranteed Minimum Annual Rental paid by Lessee for the month in question; provided that in no event shall Lessee ever become liable to pay less than the monthly installment of Guaranteed Minimum Annual Rental for any such month.

- (ii) Annual Accounting. Within thirty (30) days following each Lease Year, the Lessee agrees to deliver to Lessor a statement prepared by a Certified Public Accountant and sworn to by Lessee setting forth Gross Sales for the preceding Lease Year.

- (b) Gross Sales. The term "Gross Sales" as used in this Lease includes all sums charged for goods, merchandise or services sold at or from the Premises including all promotional items or premiums unless exempted by Lessor. The sale of BURGER KING products away from the Premises is not authorized; however, should any such sales be approved in the future, they will be included within the definition of Gross Sales. Gross Sales excludes any federal, state, county or city sales tax, excise tax, or other similar taxes collected by Lessee from customers based upon sales, and cash received as payment in credit transactions where the extension of credit itself has already been included in the figure upon which any previous Percentage Rental has been computed.

The Guaranteed Minimum Annual Rental and the Percentage Rental shall sometimes hereinafter be referred to collectively as the "Rent."

### §3.3 FINANCIAL REPORTS

- (a) Financial Statements. During the Term of this Lease, Lessee and any other persons or entities who are guarantors, who have personal liability, or who have joint and several liability under this Lease ("Guarantors") shall deliver to Lessor the following financial statements:

As to Lessee:

- (i) Within ninety (90) days after the end of each fiscal year of Lessee, balance sheets as of the end of such year and statements of income and of changes in financial condition for such year;
- (ii) Within twenty-five (25) days after the end of each fiscal quarter of Lessee, balance sheets as of the end of such quarter, and statements of income and changes in financial condition for such fiscal quarter and for the current fiscal year to the end of such fiscal quarter;

As to Guarantor:

- (iii) Within ninety (90) days after the end of each fiscal year of Guarantors, a personal net worth statement and a copy of the most recent federal income tax return filed as to each individual Guarantor;

As to Lessee and Guarantors:

- (iv) The balance sheets and financial statements referred to in subparagraphs (i), (ii), and (iii) above shall be prepared in accordance with generally accepted



accounting principles consistently applied (except as noted), and be accompanied by certificates of the Lessee and each Guarantor or the chief financial officer of the Lessee and each Guarantor, as the case may be, stating that such financial statements have been prepared in accordance with generally accepted accounting principles consistently applied (except as noted) and fairly present the financial condition of the Lessee or each Guarantor at the date thereof and for the periods covered thereby.

- (v) If requested by Lessor, the balance sheets and financial statements referred to in subparagraphs (i) and (ii) above shall be certified by a Certified Public Accountant.

- (b) Release of Financial Information. Lessee and Guarantors give permission to Lessor to release to Lessor's landlord, lenders or prospective landlord or lenders and/or any prospective purchaser of all or part of Lessor's interest in the Premises and/or the Lease, any financial and operational information relating to Lessee, Guarantors and/or the business operated at the Premises.

- (c) Records and Audit. Lessee agrees to keep true, accurate and complete records of the business conducted at the Premises in such form as Lessor now or hereafter may require. Lessee shall retain for a period of at least twenty-four (24) months and upon request submit to Lessor copies of all state sales tax returns and all supporting data and records relating to sales made from the business operated at the Premises and such other records as Lessor may reasonably request from time to time. Lessee agrees that Lessor or its representatives, at Lessor's expense, shall at all reasonable times have the right to examine or audit the books, records, state sales tax returns or accounts of Lessee. Lessor shall similarly have the right to examine or audit the books, records, state sales tax returns or accounts of any and all Guarantors. In the event the audit discloses an understatement of Gross Sales for any period or periods, Lessee shall, within fifteen (15) days after the receipt of the audit report, pay Lessor the Percentage Rental of the amount of each understatement plus the late charge identified in Section 3.6 of this Lease from the date such payments were originally due. Additionally, if this audit discloses an understatement of Gross Sales which exceeds two percent (2%) for any period or periods, Lessee shall, within fifteen (15) days after receipt of the audit report, reimburse Lessor for all costs of the audit including travel, lodging and wages, reasonably incurred, and Lessor may terminate this Lease upon five (5) days' notice to Lessee unless the understatement was due to inadvertent clerical error. In the event the audit discloses an overstatement of Gross Sales for any period or periods, any excess payment paid shall be allowed as a credit to Lessee on the rental payment next accruing under the Lease. The acceptance by the Lessor of payment of any Percentage Rental is without prejudice to Lessor's right to audit the books and records of Gross Sales and other papers required to be kept hereunder.

**53.4 ADDITIONAL CHARGES.** Lessee and Lessor agree that the Rent accruing under this Lease and the "Building Improvement Payments" described in Section 5.1 of this Lease shall be net to Lessor and that all Charges (as hereinafter defined), taxes, costs, common area maintenance fees, expenses and charges of every kind and nature ("Additional Charges") relating to the Premises (except the taxes of Lessor referred to in Section 7.3 and any payments for interest or principal under any mortgage relating to the Premises) which may arise or become due during the Term or any extension of this Lease, shall be paid by Lessee, and that Lessee shall indemnify and save harmless Lessor from and against them. All Additional Charges which Lessee assumes or agrees to pay under any provisions of this Lease, together with all interest and penalties that may accrue on these Additional Charges in the event Lessee fails to pay them, as well as all other damages, costs and expenses, including, without limitation, reasonable attorneys' fees and other legal and court costs which Lessor may incur in enforcing this Lease, and any and all other sums which may become due by reason of Lessee's default or failure to comply with its

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obligations under this Lease, shall be deemed to be "Additional Rent." In the event of non-payment, Lessor shall have all the rights and remedies as provided in the case of non-payment of Rent.

**§3.5 ALTERNATIVE METHOD OF PAYMENT.** Lessor or its assigns, mortgagee or designated agent, may, at its/their option, require payment of (i) the Rent and/or (ii) the monthly escrow sums described in Section 6.1 and Section 7.4 of the Lease and/or (iii) if applicable, any common area maintenance or similar charge assessed pursuant to the Lease and/or (iv) any Additional Charges due pursuant to Section 3.4 of this Lease by making direct monthly withdrawals in the appropriate amount(s) from Lessee's bank account. In the event that this option is exercised, Lessee agrees to execute and deliver to its bank and to Lessor those documents necessary to authorize such withdrawals and to make payment or deposit as directed by Lessor. Lessee further agrees that it will not thereafter terminate such authorization so long as this Lease is in effect. Lessee also agrees that in the event that a direct monthly withdrawal program is not available at the bank at which Lessee then does its business, it will take all reasonable and necessary steps to establish an account at a bank which does have such a program.

**§3.6 LATE CHARGES.** All Rent, the Building Improvement Payments described in Section 6.1 of this Lease, Additional Charges and any other charges shall be paid to Lessor without notice or demand and without abatement, deduction or set-off, except as otherwise expressly provided in this Lease. All payments not paid when due shall bear interest at the maximum rate allowed by Florida law. In the event such interest rate shall be void or unenforceable under the laws of the jurisdiction where the Premises are located, the highest rate of interest permitted within such jurisdiction shall be charged.

**§3.7 LESSOR'S LIEN.** To secure the payment of all Rent, Additional Charges and Charges or any other sums due and to become due under this Lease, the faithful performance of this Lease by Lessee and to secure all other indebtedness and liabilities of Lessee to Lessor now existing or hereafter incurred, Lessee hereby grants to Lessor a lien and security interest on all furniture, furnishings, trade fixtures, equipment and other personal property (collectively, "Personal Property") to which Lessee has legal title and which is placed in the Premises. The Lessee further agrees that if Lessee vacates the Premises while any Rent or Additional Charges owing under this Lease is unpaid, Lessor, in addition to any remedy otherwise provided by law or in this Lease, may seize and sell the Personal Property at any place to which Lessee or any other person may have removed them in the same manner as if the Personal Property had remained at the Premises. If requested by Lessor, Lessee shall execute and deliver to Lessor any and all documentation necessary to evidence Lessor's lien on the Personal Property.

#### **IV, INSURANCE**

**§4.1 COVERAGE.** During the Term, Lessee, at its own cost and expense, shall:

- (a) Keep the Premises and the fixtures and personalty on it insured with an all risk property insurance policy (including business interruption coverage with an indemnity period of at least 12 months) in an amount sufficient to cover the cost of replacement (without deduction for depreciation). Such replacement cost shall be determined from time to time at the request of Lessor, but not more frequently than once in any twelve (12) consecutive calendar months. Replacement cost shall be determined by one of the insurers or, at the option of Lessor, by an appraiser, architect or contractor who is mutually and reasonably acceptable to Lessor and Lessee, and whom shall be retained and paid by Lessee. Such insurance shall name Lessor and any other entity that Lessor acting reasonably requests as a loss payee as its interest may appear and shall include a waiver of subrogation in favor of Lessor and any other loss payee.



(b) Provide and keep in force:

- (i) commercial general liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Premises or the adjoining streets and property, in a primary and excess limit of not less than \$5,000,000 per occurrence for bodily injury, death, personal injury, property damage, non-owned automobile, blanket contractual and products and completed operations liability, with the annual aggregate liability limit to be maintained on the commercial general liability insurance (which can be achieved through a combination of primary and excess annual aggregate liability limits) based on the number of BURGER KING restaurants owned by Lessee and certain of its affiliates as follows: (1) for 1-10 restaurants, an annual aggregate liability limit of not less than \$5,000,000 per year; (2) for 11-50 restaurants, an annual aggregate liability limit of not less than \$10,000,000 per year; and (3) for more than 50 restaurants, an annual aggregate liability limit of not less than \$20,000,000 per year;
- (ii) automobile liability insurance on all owned and/or leased vehicles, with a combination of primary and excess limits of not less than \$1,000,000.00;
- (iii) broad form Boiler and Machinery insurance covering all boilers, pressure vessels and HVAC equipment within the Premises in an amount not less than the full replacement cost thereof; and
- (iv) such other insurance and in such amounts as reasonably may be required by Lessor for its own and Lessee's protection.

The foregoing policies shall name Lessor and any other entity that Lessor acting reasonably requests as an additional insured and shall include a waiver of subrogation in favor of BKC and any other loss payee.

- (c) Provide and keep in force plate glass insurance covering the glass in the Premises, unless waived by Lessor.
- (d) If requested by Lessor, provide and keep in force rent insurance (and/or, as the case may require, use and occupancy insurance) in an amount not less than the then current Guaranteed Minimum Annual Rental plus the estimated annual taxes, water charges, sewer rents, common area maintenance and other assessments and the annual premiums for the insurance required by this Article.
- (e) If requested by Lessor or any mortgagee, provide and keep in force insurance for such other insurable hazards in such amounts as similarly situated Premises are then commonly insured.

**§4.2 POLICIES.** Lessee's obligation to obtain and maintain the foregoing policy or policies in the amounts specified shall not be limited in any way by reason of any insurance which may be maintained by Lessor. All insurance maintained by Lessee shall be primary and shall not call into contribution any insurance maintained by Lessor. All insurance required by Lessor and provided by Lessee shall be carried in favor of Lessor and Lessee, as their respective interests may appear, and any underlying lessor, fee owner, affiliate corporation, trustee, mortgagee or other person designated by Lessor. If requested by Lessor, insurance against fire or other casualty shall provide that the proceeds of any loss shall be payable to the mortgagee under a standard mortgagee clause. Any rent insurance or use and occupancy insurance carried by Lessee shall provide that, in the event of loss or damage to the Premises, the proceeds shall be payable to Lessor to be held by Lessor as security for the payment of the Rent, the Building Improvement Payments described in Section 5.1 of this Lease and Additional Charges.



due under this Lease until the Premises are restored. All insurance shall be obtained from companies licensed to do business in the state in which the Premises are located and be with insurers with a minimum A. M. Best A(X) rating or Standard & Poor's Rating of A. Lessee shall procure policies for all insurance for periods of not less than one year and shall deliver to Lessor all policies or certificates of insurance with evidence of payment of all premiums. Lessee shall procure renewals of these policies from time to time before their respective expiration dates. All insurance policies shall be non-assessable and shall require thirty (30) days' notice by registered mail to Lessor of any cancellation or change affecting Lessor's coverage under the policies. All property damage and business interruption policies of Lessee shall contain a waiver of any subrogation rights which Lessee's insurers may have against Lessor, even if the loss suffered is caused by the act, omission or negligence of Lessor.

**54.3 ADJUSTING PROCEEDS.** Claims for loss due to damage to the Premises under any policies provided for in this Lease shall be adjusted with the insurance companies:

- (a) by Lessee in the case of any particular casualty resulting in damage or destruction not exceeding \$25,000, or
- (b) by Lessor and Lessee, in the case of any particular casualty resulting in damage or destruction exceeding \$25,000 in the aggregate. Subject to the rights of any mortgagee, the proceeds of any insurance shall be payable as follows:
  - (1) With respect to any loss not exceeding \$25,000 in the aggregate, proceeds shall be paid to Lessee, who shall hold them in trust for the purpose of paying the costs of repair and restoration; and
  - (2) With respect to losses exceeding \$25,000 in the aggregate, the proceeds shall be paid to Lessor and shall be applied to pay the costs of repair and restoration.

**54.4 JOINT EFFORTS.** Lessee and Lessor shall cooperate in attempts to collect any insurance proceeds that may be due in the event of loss, and Lessee shall execute and deliver to Lessor such proofs of loss and other instruments which may be required for the purpose of recovering these proceeds.

**54.5 WAIVER OF SUBROGATION.** Lessee agrees to look solely to the proceeds of his own insurer for indemnity against exposure for loss of property or business interruption. Lessee warrants that its property and business interruption insurers shall have no rights against Lessor by virtue of assignment, subrogation, loan agreement or otherwise.

**54.6 CANCELLATION OF INSURANCE.** If any insurance policy covering the Premises or any part of it is canceled or is threatened by the insurer to be canceled, or if the coverage thereunder is reduced in any way by the insurer for any reason, and if Lessee fails to remedy the condition giving rise to cancellation, threatened cancellation, or reduction of coverage within forty-eight (48) hours after notice thereof by Lessor, Lessor may, at its option, either (i) reenter the Premises forthwith by leaving upon the Premises a notice in writing of its intention to do so (in which case the provisions of Article IX shall apply) or (ii) enter the Premises and remedy the condition giving rise to such cancellation, threatened cancellation or reduction, and Lessee shall forthwith pay the cost thereof to Lessor (which cost may be collected by Lessor as Additional Rent) and Lessor shall not be liable for any damage or injury caused to any property of Lessee or of others located on the Premises as a result of any such entry.

**54.7 LOSS AND DAMAGE.** Lessor shall not be liable for any death or injury occurring on the Premises, nor for the loss of or damage to any of the personality or other property of Lessee or of others by theft or otherwise, from any cause whatsoever. Without limiting the generality of the foregoing, Lessor shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, dampness, gas, electricity, water, rain, snow, or leaks from any part of the Premises or from the pipes, appliances or plumbing works or from the roof, street or subsurface or from any other place by any



other cause whatsoever. Lessor shall not be liable for any such damage caused by other persons or occupants of adjacent property, or the public, or caused by operations in construction of any private, public or quasi-public work. All of the personalty or any other property of Lessee kept or stored on the Premises shall be kept or stored at the risk of Lessee.

## V. THE PREMISES

**§5.1 USE AND SERVICES.** During the Term of this Lease, Lessee shall continuously operate a BURGER KING restaurant on the Premises in accordance with the terms of the BURGER KING Franchise Agreement entered into by Lessee contemporaneously with this Lease (the "Franchise Agreement"); unless Lessee is prevented from doing so due to acts of God or other causes beyond Lessee's control. The Premises shall not be used for any other purpose. Lessee shall not use in connection with the operation of or as additional parking for its business on the Premises any property other than the Premises, except in accordance with the provisions of Article XIV of this Lease.

Except as may be otherwise specifically provided by the terms of this Lease or the Franchise Agreement, Lessor shall not be required to furnish to Lessee any facilities or services of any kind whatsoever, such as, but not limited to water, sewer, steam, heat, gas, hot water, electricity, light and power.

**§5.2 REPAIRS AND MAINTENANCE.** Lessee shall, at all times during the Term, at its own cost and expense, put, keep and maintain the Premises and all fixtures and personalty located on it in first-class order and condition, and subject to all applicable terms of Section 5.3 and Section 5.8, shall make all necessary and desirable repairs, restorations and replacements thereof, structural and nonstructural, foreseen or unforeseen (hereinafter collectively called "Repairs"), and shall use all reasonable precaution to prevent waste, damage or injury. Lessee shall also put, keep and maintain in good repair and free from dirt, snow, ice, rubbish and other obstructions or encumbrances, the sidewalks, parking areas, yards, plantings, gutters and curbs in front of and adjacent to the Building.

In the event that Lessee fails or neglects to make all necessary Repairs or fulfill its other obligations as set forth above, Lessor or its agents may enter the Premises for the purpose of making such Repairs or fulfilling those obligations. All costs and expenses incurred as a consequence of Lessor's action together with a service charge of fifteen percent (15%) thereof shall be repaid by Lessee to Lessor within fifteen (15) days after Lessee receives copies of receipts showing payment by Lessor for such Repairs or other obligations. These receipts shall be prima facie evidence of the payment of the charges paid by Lessor. Except in the case of emergency, Lessor shall give Lessee ten (10) days notice before taking any such action. If Lessee fails to pay any such amounts due to Lessor under this Section 5.2, Lessor may add the same to Lessee's "Rent" and recover the same by all remedies available to Lessor for recovery of Rent in arrears.

**§5.3 ALTERATIONS.** Lessee agrees that it will at its own cost and expense make such reasonable alterations to the interior or exterior of the Premises as may reasonably be requested by Lessor from time to time in order to modify the appearance of the Building to reflect the then current image of BURGER KING restaurants.

Lessee shall not at any time make any alteration, change, addition or improvement (hereinafter collectively called "Alterations") in or to the interior or exterior of the Premises without the prior written consent of Lessor. In the event consent is given:

- (a) the Alterations shall be performed in a first class workmanlike manner at Lessee's sole expense, and shall not weaken or impair the structural strength or lessen the value of the Premises, or change the purpose for which the Premises may be used;



- (b) the Alterations shall be made according to plans and specifications therefor, which shall be first submitted to and approved in writing by Lessor;
- (c) before the commencement of work on any Alterations, such plans and specifications shall be approved by all governmental authorities having jurisdiction and any public utility company having an interest in the Alterations;
- (d) before the commencement of any Alterations, Lessee shall pay the amount of any increase in premiums on insurance policies for endorsements covering the risk during work on the Alterations and workmen's compensation insurance covering all persons employed in connection with that work;
- (e) if the estimated cost of the Alteration exceeds \$50,000.00, Lessee shall furnish to Lessor a surety bond of a company acceptable to Lessor, in an amount equal to the estimated cost of such work, or other security satisfactory to Lessor, guaranteeing the completion of such work, free and clear of all liens and encumbrances;
- (f) the Alterations shall comply with (i) the requirements of Title III of the Americans With Disabilities Act of 1990 ("ADA") as same may be amended from time to time; (ii) the Americans With Disabilities Act Accessibility Guidelines 1991 ("ADAAG") as same may be amended from time to time which is a part of the ADA; (iii) the 2010 ADA Standards; and (iv) all state and local building codes including any disabilities related statutes or codes (collectively, the "Codes") in the applicable jurisdiction where the Premises are located; and
- (g) upon completion of the Alterations, an architect shall inspect the Alterations and complete the Burger King® 2004 ADAAG Checklist V1.2 (which is currently under revision to reflect the 2010 ADA Standards), and complete a certificate of inspection, on a form to be provided by Lessor, certifying that the Alterations are in compliance with Title III of the ADA, the ADAAG, the 2010 ADA Standards and the Codes, as same may be amended from time to time.

All buildings, additions, improvements, fixtures and appurtenances in or on the Premises at the Commencement Date and those which may be erected, affixed or installed in or on the Premises during the Term are deemed to be and shall immediately become part of the Premises and the sole property of Lessor. All personally installed by Lessee (except signs, trademarks and other insignia of Lessor) shall remain the property of Lessee.

Notwithstanding the foregoing, if requested by Lessor, the Lessee will remove from the Premises any or all alterations, additions, and improvements, brought upon or affixed to the Premises and make good any damage caused thereby.

**§5.4 LIENS.** Should Lessee cause any Alterations or Repairs to be made to the Premises, or cause any labor to be performed or material to be furnished, neither Lessor nor the Premises shall under any circumstances be liable for the payment of any expense incurred, and all such Alterations and Repairs shall be made and performed at Lessee's expense. If, because of any act or omission of Lessee, any mechanic's or other lien, charge, claim or order for the payment of money shall be filed against the Premises or against Lessor, Lessee shall, at its own cost and expense, cause it to be canceled and discharged of record or bonded within fifteen (15) days after filing or notice of filing thereof. In the event that the Lessee fails to cause any such mechanics' or other lien, charge or order to be canceled and discharged or bonded, then, in addition, to any other right or remedy of the Lessor, the Lessor may, at its option, cancel or discharge such lien, charge or order by paying the amount claimed to be due into court or directly to any claimant, without inquiring into the validity or merits of such lien, charge or order, and the amount so paid by Lessor and all costs and expenses including attorneys' fees incurred for the



cancellation or discharge of such lien shall be due from the Lessee to the Lessor as an additional charge payable on demand.

**§5.5 SIGNS.** Lessee shall not place any signs or symbols on any portion of the Premises without the prior written approval of Lessor.

**§5.6 INSPECTION.** Fee owner, Lessor or their representatives shall have the right to enter the Premises at reasonable hours of any business day to ascertain if the Premises are in proper repair and condition.

**§5.7 LICENSE AND LAWS.** The Lessee shall, at its own cost and expense, obtain all necessary licenses and/or permits which may be required for the conduct of its business; and Lessee shall, at its own cost and expense, promptly observe and comply with all present and future laws, ordinances, requirements, orders, directions, rules and regulations (referred to generally as "Regulations") of governmental authorities having or claiming jurisdiction over the Premises or the conduct of Lessee's business. By way of example, and not limitation, compliance with governmental Regulations shall include, but not be limited to, the following: (i) alterations and/or additions to the Premises if required under the Americans with Disabilities Act of 1990 and (ii) testing, remediation or abatement of environmental conditions (defined as conditions affecting the air, soil, ground water and improvements) affecting the Premises or property adjacent to or near the Premises, if so required by governmental authority. Lessee may contest in good faith, after notice to Lessor, by appropriate proceedings conducted promptly at Lessee's own expense, in Lessee's name (and/or whenever necessary and with Lessor's consent, in Lessor's name), the validity or enforcement of any such regulation; provided that (i) such contest or any associated deferment of payment does not subject Lessor to a fine or other criminal liability, or subject the Premises to any encumbrance, (ii) Lessee diligently prosecutes such contest to a final determination by the governing authority, and (iii) Lessee furnishes Lessor with any security that Lessor may reasonably request in connection with such contest.

**§5.8 DAMAGE OR DESTRUCTION.** If, during the Term, the Premises or the personalty or fixtures on it are destroyed or damaged in whole or in part by fire or other cause, Lessee shall give Lessor immediate notice, and Lessee, at its own cost and expense, shall cause the prompt repair, replacement and rebuilding of same ("Restoration"), subject to Section 5.2 and Section 5.3 of this Lease. The restored building, personalty or fixtures shall reflect the then current image of BURGER KING restaurants and conform to the then current design and specifications of Lessor. Lessor shall in no event be called upon to repair, replace or rebuild any such buildings, fixtures or personalty, nor to pay any of the costs or expenses thereof beyond or in excess of any insurance proceeds, as provided in this Lease.

All insurance proceeds received by Lessor or by any insurance trustee on account of such damage or destruction, less the actual cost, fees and expenses, if any, incurred in connection with adjustment of the loss, shall be applied by Lessor to pay or reimburse Lessee for the payment of the cost of the Restoration, including the cost of temporary repairs or for the protection of property pending the completion of permanent Restoration, and shall be paid out from time to time as Restoration progresses upon the written request of Lessee, accompanied by evidence satisfactory to Lessor that:

- (a) (1) the sum then requested either has been paid by Lessee or is justly due to contractors, subcontractors, materialmen, or other persons who have rendered services or furnished materials for the Restoration pursuant to a certificate or claim for payment ("Certificate"), and that the sum then requested does not exceed the amount of the services and materials described in the Certificate;
- (2) except for the amount, if any, stated in the Certificate to be due for services or materials, there is no outstanding indebtedness known to the persons signing such Certificate, after due inquiry; which is then due for labor, wages, materials, supplies, or services in connection with the Restoration;



(3) the cost of the Restoration required to be done does not exceed the insurance proceeds, and

(b) that there have not been filed against the Premises any vendors, contractor's, mechanic's, laborers or materialman's statutory or similar lien ("Liens") which has not been discharged of record, except those that will be discharged upon payment of the sum requested in the Certificate, or bonded or contested in accordance with Section 5.4.

Upon compliance with the above provisions, Lessor or the Insurance trustee shall, out of such insurance proceeds and such other funds as may have been made available, pay or cause to be paid to Lessee or its designee, the respective amounts due.

If the insurance proceeds and other funds deposited with Lessor or the insurance trustee less the actual cost, fees and expenses, if any, incurred in connection with the adjustment of the loss, are insufficient to pay the entire cost of the Restoration, Lessee will pay the deficiency.

At least ten (10) days before the commencement of Restoration, Lessee shall notify Lessor of its intention to restore the Premises. During Restoration, this Lease shall not terminate, nor shall the Rent and the Additional Charges payable under this Lease be abated or be affected in any manner.

**§5.9 WARRANTIES: DISCLAIMER.** Lessor shall provide Lessee with the benefit of any warranties provided by the building contractor. Lessor expressly disclaims any other warranty, either express or implied, and Lessee acknowledges that neither Lessor nor its agents have made any representations or promises with respect to the Premises except as expressly set forth in this Lease, and no rights, easements or licenses are acquired by Lessee by implication or otherwise except as expressly set forth herein. The taking of possession of the Premises by Lessee shall be conclusive evidence that the Lessee has accepted the Premises "AS IS," including any latent or patent defects. Lessee acknowledges that Lessee is relying on its own independent inspection. Lessor agrees to cooperate with and assist Lessee in asserting claims against contractors or others providing work and/or services to the Premises.

**§5.10 CONTRACTS.** Lessee shall not without Lessor's consent enter into any service contract or agreement relating to the furnishing of any services to the Premises or the occupants of it unless such contract or agreement shall by its terms be terminable on no more than thirty (30) days notice or shall expressly provide that it shall not become binding on Lessor in the event that this Lease is terminated or expires. Lessee shall furnish Lessor with copies of all service contracts or agreements affecting the Premises that are now in existence or that are subsequently entered into.

**§5.11 REFUSE.** Lessee shall not allow any refuse, garbage or other loose or objectionable materials to accumulate on or about the Premises, will at all times keep the Premises in a clean and wholesome condition, and shall be responsible for the removal of all garbage or loose or objectionable materials emanating from the Premises. Lessee shall not dispose of any trash or garbage in or about the Premises except for in areas provided therefor by Lessor.

**§5.12 LOADING AND UNLOADING.** Lessee shall take all reasonable precautions to ensure that loading and unloading of merchandise, supplies, materials or chattels shall be made only through or by means of doorways and openings designated by Lessor.

**§5.13 CONDUCT AND HOURS OF OPERATION.** Lessee covenants to operate and conduct its business in a high-class and reputable manner and to conduct its business in the Premises during such hours as set out in the Franchise Agreement.



**§5.14 HEAT.** Lessee covenants to heat the Premises so as, at all times, to protect the Premises and all of its contents from damage by cold or frost.

## VI. BUILDING IMPROVEMENT FUNDS

~~**§6.1 BUILDING IMPROVEMENT FUNDS.** In addition to, and without limiting or diminishing in any manner whatsoever Lessee's repair and maintenance obligations set forth in Section 5.2 of this Lease, Lessee is required to fund a building improvement reserve for the replacement of certain improvements now or hereafter located at the Premises. Lessee shall, in addition to the Rent, Additional Rent and Additional Charges due under this Lease, pay to Lessor for each Lease Year the annual sum as set forth on the Key Contract Data Page, payable in equal monthly installments as set forth on the Key Contract Data Page in advance on the first day of each month during the Term of this Lease. Such payments are herein called the "Building Improvement Payments" and the amounts so paid together with any interest accruing thereon are hereinafter referred to as the "Building Improvement Funds". The first monthly installment shall be due on the Commencement Date. If this Lease shall commence on any day other than the first day of a calendar month, the monthly installment for the first and last month of the Lease Term shall be prorated.~~

~~**§6.2 STATUS OF BUILDING IMPROVEMENT FUNDS.** Lessor shall hold the Building Improvement Funds in accordance with the terms of this Article VI and not as an advance rental deposit or as a measure of Lessor's damage in case of Lessee's default. Lessee shall not pledge, hypothecate, encumber or otherwise transfer any interest in the Building Improvement Funds. The Building Improvement Funds shall be held by Lessor as non-segregated, interest-accruing funds and may be commingled with the other general assets of Lessor. The interest accruing on the Building Improvement Funds shall be determined and fixed annually by Lessor in its sole and absolute discretion and shall be based on the then-current weekly average yield for Three-Month U.S. Treasury Constant Maturity as published in the Federal Reserve Statistical Release H-15 (the "Index"), less one-half percent (1/2%). If for any reason the Index is not published for any particular week or month during the Lease Term as may be required for the foregoing computation of interest, then the Index next published shall be used in its stead; and in the event that the Index shall no longer be published, or if the method of computing the Index shall be substantially altered, then Lessor, in its sole and absolute discretion, shall select another index generally recognized as authoritative and reflecting data substantially similar to the information used to compute the Index. All Building Improvement Payments not received by Lessor when due (i.e., on the first day of each month during the Term of this Lease) shall not accrue any interest until the following calendar month. Interest accrued or earned on the Building Improvement Funds shall become a part of the Building Improvement Funds and be subject to the terms hereof. Lessor shall report all interest earned on the Building Improvement Funds for the account of Lessee and Lessee shall execute and provide to Lessor a W-9 form and any other form required by Lessor for this purpose.~~

~~**§6.3 USE OF BUILDING IMPROVEMENT FUNDS.** The Building Improvement Funds shall be used to reimburse Lessee for the cost of any "Building Improvement(s)" (as that term is defined below). All reasonable costs, expenses and fees associated with any Building Improvements shall hereinafter be referred to as the "Replacement Costs." Without limiting the effect of any provision hereof, unless otherwise specifically agreed to by Lessor in writing, the Building Improvement Funds shall not be used to pay for any costs of repairing or maintaining the Premises under Section 5.2 of this Lease. The judgment and determination of Lessor as to whether a cost or expense incurred by Lessee is a "Replacement Cost" within the meaning contemplated by this Article VI shall be final and conclusive.~~

~~As used herein the term "Building Improvement" shall mean any of the following:~~

- ~~(a) the replacement of the entire air conditioning system including heating unit(s) for the Premises;~~



- (b) ~~the replacement of the entire mansard roof, fascia, soffit and related roofing structural components of the Premises;~~
- (c) ~~the replacement of the entire asphalt parking lot overlay located on the Premises; and~~
- (d) ~~the painting of the entire exterior surface of the Building.~~

The judgment and determination of Lessor as to whether an improvement to the Premises is a "Building Improvement" within the meaning contemplated by this Article VI shall be final and conclusive.

Lessee agrees that it will, at its own cost and expense, make any and all Building Improvements to the Premises as may be requested by Lessor from time to time. Lessee understands and agrees that Lessor may, in its sole and absolute discretion, require the same Building Improvement to be performed by Lessee on more than one occasion during the Term of the Lease, notwithstanding the balance of the Building Improvement Funds held by Lessor. Said Building Improvements must be completed by Lessee within the time periods specified by Lessor. Lessee shall not at any time make any Building Improvement to the Premises without the prior written consent of Lessor.

All approved Building Improvements shall be performed by Lessee in accordance with Section 5.3 of this Lease. Lessee shall be solely responsible for the payment of all Replacement Costs, as well as any increase in real estate taxes or assessments levied, certified and/or pending against the Premises resulting from the Building Improvements.

**§6.4 REIMBURSEMENT OF REPLACEMENT COSTS.** Lessee may request in writing that Lessor reimburse Lessee for Replacement Costs from the Building Improvement Funds, within thirty (30) days after completion of a Building Improvement. Lessor shall disburse the Building Improvement Funds as follows:

- (a) ~~To Lessee in such amounts designated and approved by Lessor, and only upon Lessor's receipt of the following items:~~
  - (i) ~~Request for Funds.~~ Lessee's written request for Building Improvement Funds, addressed to Lessor, specifying the amount of the disbursement sought and a description of the Replacement Costs incurred since the date of the last disbursement, together with supporting invoices or receipts for performance of the Building Improvement(s) and other certificates as may be designated and approved by Lessor. In no event shall Lessee's request for funds exceed the then current outstanding balance of the Building Improvement Funds and Lessor shall have no obligation or liability whatsoever to Lessee for any amount requested over and beyond the outstanding balance of the Building Improvement Funds.
  - (ii) ~~Lessee Estoppel.~~ A written estoppel certificate signed by the Lessee stating that this Lease is valid and in full force and effect; that no event of default, or event or condition that which could ripen into an event of default with the passage of time or the giving of notice or both, has occurred under the Lease; and that the Building Improvements are completed and are satisfactory to Lessee.
  - (iii) ~~Past Completion Inspectors Report.~~ Lessor shall have received evidence from an inspector designated and approved by Lessor, that the work for which Building Improvement Funds are requested has been performed in a good and workmanlike manner.



~~(iv) Evidence of Compliance. Such lien waivers, contractor's sworn statements, receipts, and similar items as may be required by Lessor, from time to time in Lessor's sole and absolute discretion, and such other items as Lessor shall deem necessary or appropriate to evidence Lessee's compliance with the applicable construction law.~~

~~(v) Frequency. Unless Lessor shall have furnished Lessee with its prior written waiver in that particular instance (it being understood and agreed that no such waiver shall be deemed continuing or applicable to any subsequent withdrawals), withdrawals shall not be made more frequently than once during any calendar month.~~

~~(vi) Other. Such other items as Lessor may from time to time request of Lessee in writing.~~

~~Each of the foregoing items must be received by Lessor no later than the twentieth (20th) day of any calendar month in which Lessee seeks disbursement of Building Improvement Funds.~~

~~(b) Upon Lessee's satisfactory compliance with all of the provisions of this Article VI (including Lessor's receipt of the items described in Section 6.4 (a) above) and provided Lessee is not in default under any of the provisions of this Lease, Lessor shall, on the first day of the calendar month following Lessee's full and faithful compliance with the obligations set forth above, disburse the appropriate amount of Building Improvement Funds to reimburse Lessee for any authorized and approved Replacement Costs.~~

~~(c) In no event shall Lessor be required to disburse Building Improvement Funds to Lessee if Lessee has not satisfied in full all of the requirements of this Article VI.~~

~~(d) In no event shall Lessor be required to disburse Building Improvement Funds to Lessee or to any federal, state or local governmental authority to pay, satisfy or discharge any taxes, assessments, charges, excises, levies, fees or other governmental impositions and charges of any kind and nature whatsoever which are payable in connection with the interest earned on the Building Improvement Funds.~~

~~(e) At Lessor's sole and absolute discretion, the appropriate amount of Building Improvement Funds may be disbursed to Lessee at any time during the Term of the Lease to reimburse Lessee for additional improvements or Repairs required pursuant to this Lease other than the Building Improvements for the Premises. However, this reference shall not in any way obligate Lessor to make any such disbursements.~~

~~**§6.5 INSPECTION OF WORK.** Lessor shall have no responsibility to Lessee or to any other person (i) to inspect the Building Improvements; (ii) to see that the Building Improvements are constructed in accordance with applicable plans and specifications, or that the Building Improvements will be completed; or that sufficient funds are available for completion; (iii) for mechanics' liens or claims by contractors, subcontractors or materialmen not disclosed by Lessee in each request for Building Improvement Funds submitted by Lessee; or (iv) for claims which may be found upon waiver of lien and/or paid invoices presented to Lessor which have been forged or otherwise wrongfully procured, nor where such document was executed by a person lacking authority to execute same; provided, however, Lessor or Lessor may inspect the Premises and/or the status of the Building Improvements at any time.~~

~~**§6.6 DEFAULT UNDER LEASE.** Notwithstanding any other terms of this Lease, in the event that Lessee is in default under any of the terms, conditions and provisions of this Lease and Lessee fails to cure any such default during any applicable cure period, the Lessor, may, at the option of Lessor and in addition to any other remedies available to Lessor under this Lease and applicable law, apply all of the~~



Building Improvement Funds or any part thereof as may be necessary to compensate Lessor towards the payment of the Rent or any other sum in default, or towards any expenditure that Lessor may spend or become obligated to spend by reason of Lessee's uncured default, or to compensate Lessor for any other loss or damage which Lessor may suffer by reason of Lessee's default. If any portion is so used, Lessee shall within five (5) days after written demand therefor, pay to Lessor an amount sufficient to restore the Building Improvement Funds to its original amount just prior to the default, and Lessee's failure to do so shall be a material breach of this Lease. The judgment and determination of Lessor as to any such deficiency or insufficiency shall be final and conclusive. The provisions in this Section 5.6 shall not serve to limit or otherwise reduce Lessor's remedies as set forth in Article IX below.

**§6.7 LIMITATION OF LIABILITY.** Lessor's duties under this Article VI are purely ministerial in nature and shall be expressly limited to the safekeeping of the Building Improvement Funds, and the disbursement of same in accordance with this Lease. Lessee agrees that Lessor shall only be liable hereunder for gross negligence, fraud or willful misconduct. Lessee hereby indemnifies Lessor and agrees to hold it harmless from and against any and all claims, liabilities, damages, costs, penalties, losses, actions, suits or proceedings at law or in equity, or any other expenses, fees, or charges of any character or nature, which Lessor may incur or with which Lessor may be threatened, directly or indirectly arising from or in way connected with its duties hereunder, other than those arising out of the gross negligence, fraud or willful misconduct of Lessor, and in connection therewith, indemnify Lessor against any and all reasonable expenses, including attorney's fees and the cost of defending any action, suit, or proceedings or resisting any claim, whether or not litigation is instituted.

**§6.8 ASSIGNMENT OR TERMINATION OF LEASE.** Should Lessee fully and faithfully comply with all of the terms, provisions and covenants of this Lease and promptly pay all of the Rent, Additional Charges and other sums payable by Lessee to Lessor as they become due, any Building Improvement Funds not disbursed, applied or retained by Lessor shall be returned to Lessee within sixty (60) days after Lessee has discharged all of its obligations under this Lease, but no earlier than the Original Term Expiration Date (or the sooner termination of this Lease). In the event of a sale of the Land and the Building of which the Premises forms a part, or an assignment of the Lease by Lessor, Lessor shall have the right to transfer the balance of any Building Improvement Funds to the purchaser or assignee, as the case may be, and Lessor shall thereafter be released by Lessee from all liability for the return of the Building Improvement Funds, and Lessee agrees to look solely to the purchaser or assignee for the return of the Building Improvement Funds. In the event of an assignment or transfer of this Lease by Lessee, Lessee shall be obligated to transfer the balance of any Building Improvement Funds to Lessee's assignee, and Lessor shall thereupon be released by Lessee from all liability for the return of the Building Improvement Funds. It is agreed that the provisions hereof shall apply, to every transfer or assignment made of the Building Improvement Funds to a new lessor and/or a new lessee.

**§6.9 NO WAIVER.** The failure of Lessor to enforce strict performance of the terms and conditions hereof, in connection with disbursement or use of any Building Improvement Funds or otherwise, shall not constitute a waiver of its rights to do so at any other time, or shall it constitute a waiver of any of Lessor's rights hereunder.

## **VII. TAXES AND OTHER CHARGES**

### **47.1 PAYMENT**

- (a) In the event Lessor elects, at its sole option, to pay any real estate taxes and assessments (both general and special), goods and service taxes, sales taxes, value added taxes, business transfer taxes, any other taxes imposed on Lessor with respect to rent payable by Lessee to Lessor or in respect of the rental of space under this Lease, assessments, charges for public utilities, excises, levies, licenses, permit fees or other governmental impositions and charges of any kind and nature whatsoever (collectively,



the "Charges") which are payable in connection with the ownership, occupancy or possession of the Premises, Lessee shall reimburse Lessor within fifteen (15) days after Lessee receives an invoice for the payment of such Charges.

- (b) In the event Lessor elects not to pay the Charges as set forth in the preceding paragraph, Lessee shall pay on or before the last day on which payment may be made without penalty or interest, all Charges which may be assessed, imposed, or become due and payable in connection with the ownership, occupancy or possession of the Premises or the fixtures or personalty on it, or any Charges which may be imposed in lieu of, or as a substitution for, any such Charges. At any time after the time for payment of each Charge, upon Lessor's request, Lessee shall exhibit to Lessor satisfactory evidence of payment. All Charges assessed or imposed for the fiscal periods in which the Term of this Lease commences and terminates shall be apportioned.

**§7.2 CONTESTS.** Lessee has the right to promptly contest or review any of the Charges by appropriate proceedings ("Proceedings") at its own expense, and if necessary, with the prior written consent of Lessor, in the name of Lessor. Lessee may defer payment of a contested Charge only if, before instituting any Proceedings, Lessee furnishes to Lessor security satisfactory to Lessor and sufficient to cover the amount of each contested Charge, with interest and penalties for the period which the Proceedings may be expected to take. Notwithstanding the furnishing of security (other than a cash deposit), Lessee shall promptly pay each contested Charge if, at any time, the Premises or any part of it are in danger of being sold, forfeited or otherwise lost or Lessor becomes subject to criminal or any other liability for such non-payment, provided that in that event, if Lessee has made a cash deposit to Lessor, Lessor may pay each contested Charge out of the deposit. When any contested Charge is paid or canceled, any balance of any cash deposit not so applied shall be repaid to Lessee without interest. All Proceedings shall be begun as soon as possible after the imposition or assessment of any contested item and shall be diligently prosecuted to final adjudication. If there is any refund with respect to any contested Charge based on a payment by Lessee, Lessee shall be entitled to it to the extent of such payment.

**§7.3 LIMITATION: SUBSTITUTION.** Nothing contained in this Lease shall be construed to require Lessee to pay any inheritance, estate, succession, transfer, gift, franchise, corporation, income or profit tax, or capital levy that is or may be imposed upon Lessor, its successors or assigns; provided, however, that if at any time during the Term of this Lease the methods of taxation prevailing at the Commencement Date are altered so that in lieu of or as a substitute for the whole or any part of the taxes, assessments, levies, impositions or charges (collectively "Assessments") now levied, assessed or imposed ("Imposed") on real estate and improvements thereon, there is imposed

- (1) an Assessment made wholly or partially as a capital levy, or
- (2) an Assessment measured by or based in whole or in part on the Premises, or
- (3) a license fee measured by the Rent payable by Lessee under this Lease,

then to the extent that such Assessments or portion thereof would be payable if the Premises were the only asset of Lessor subject to the Assessments, Lessee shall pay these Assessments in the same manner as provided in this Lease for payment of real estate taxes.

**§7.4 ESCROW FUNDS.** If, during the Term of this Lease, Lessor or any mortgagee requests Lessee to provide an escrow fund for payment of real estate taxes, Lessee agrees that upon such request it will promptly deposit with Lessor or its designated mortgagee, for each month or portion thereof since the due date of the previous tax bill, one-twelfth (1/12) of the latest year's tax obligation (the "Monthly Escrow Sum"), and that it will continue to deposit the Monthly Escrow Sum on the first day of each subsequent month, so that as each installment of real estate taxes becomes due and payable, Lessee will have deposited a sum sufficient to pay it. All of these deposits (the "Escrow Funds") shall be received and held



in trust; provided, however, that unless otherwise required by law, Lessor or its designated mortgagee shall not be required to maintain the Escrow Funds in a segregated account nor invest them in interest bearing accounts or securities nor pay any interest on them. When the real estate taxes become due and payable, Lessor or its mortgagee shall promptly pay them from the Escrow Funds and shall promptly forward to Lessee receipts or other satisfactory evidence of payment. In the event that the amount of the real estate taxes assessed or imposed against the Premises has not been fixed at the time when any Monthly Escrow Sum is due, the Monthly Escrow Sum shall be one-twelfth (1/12) of the amount of real estate taxes assessed or imposed against the Premises for the preceding year, subject to adjustment when the actual amount of the real estate taxes is ascertained. If required by Lessor or any mortgagee, the provisions of this Section 7.4 shall be applicable to any Additional Charges due under this Lease.

#### VIII. INDEMNIFICATION

Lessee shall indemnify, defend with counsel reasonably acceptable to Lessor and save Lessor harmless from and against all costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, claims and demands of every kind or nature, including reasonable attorneys' fees, by or on behalf of any person, party or governmental authority whatsoever arising out of (a) any failure or alleged failure by Lessee to perform any of its obligations under this Lease, (b) any accident, injury or damage which occurs in or about the Premises, however occurring, (c) any matter arising out of the condition, occupation, maintenance, alteration, repair, use or operation of the Premises or any part of it, (d) the contest or challenge by Lessee of any imposed tax, Assessment, or other Charges, (e) any other matter arising from or relating to Lessee's occupation of the Premises, or (f) any action taken or omitted by Lessor in performing any of Lessor's duties under Article VI of this Lease.

#### IX. ENFORCEMENT

**§9.1 DEFAULT.** Each of the following events is a default and a breach of this Lease by Lessee:

- (a) If Lessee files any proceeding under the United States Bankruptcy Code, any other federal or state bankruptcy, reorganization, receivership, insolvency, or other similar law affecting the rights of creditors generally, or for dissolution under the laws of the United States or of any state, or voluntarily takes advantage of any such law or act or is dissolved or makes an assignment for the benefit of creditors;
- (b) If involuntary Proceedings under the United States Bankruptcy Code, any other federal or state bankruptcy, reorganization, receivership, insolvency or other similar law or for the dissolution of a corporation are instituted against Lessee or if a receiver or trustee is appointed of all or substantially all of the property of Lessee and such Proceedings are not dismissed or such receivership or trusteeship vacated within ninety (90) days after such institution or appointment;
- (c) If Lessee vacates, abandons or ceases doing business on the Premises or indicates its intention to do so;
- (d) If this Lease or the estate of Lessee hereunder is transferred to any other person or party, except in a manner permitted by the terms of this Lease;
- (e) If Lessee fails to pay Lessor any installment of the Rent, the Building Improvement Payments or Additional Charges when it becomes due and payable and fails to make such payment within ten (10) days after notice thereof by Lessor to Lessee;



- (f) If Lessee fails to perform any of its nonmonetary obligations under this Lease and such non-performance continues for a period within which performance is required to be made by specific provision of this Lease or, if no such period is provided, for a period of thirty (30) days after notice thereof by Lessor to Lessee; or, if such performance cannot be reasonably had within such thirty day period, Lessee has not in good faith commenced such performance within such thirty day period or has not diligently proceeded therewith to completion;
- (g) If the Lessee or any agent of Lessee falsifies any report required to be furnished to Lessor pursuant to the terms of this Lease and fails to notify Lessor of such falsification within sixty (60) days of submission of such report.
- (h) Repeated breaches of provisions of this Lease. If BKC intends to terminate this Lease under this Section 9.1.(h), BKC shall provide notice to Lessee that BKC considers the Lessee to have repeatedly breached this Lease, and that BKC intends to terminate this Lease if Lessee breaches the Lease at any time after said notice. If Lessee after receiving such notice subsequently breaches this Lease in any manner, BKC shall have the right to terminate this Lease upon notice with no further opportunity to cure.
- (i) Failure by Lessee to comply with any provisions of the Franchise Agreement relating to the Premises.

In the event of a default under this Section 9.1, Lessor shall have such remedies as are provided under this Lease and/or under applicable law.

**§9.2 CURE BY LESSOR.** After expiration of the applicable period of notice, or without notice in the event of any emergency, Lessor at its option may, but shall not be obligated to, make any payment required of Lessee or perform any obligation of Lessee, and the amount Lessor pays, or the cost of its performance, together with interest thereon at the highest legal rate permitted, shall be deemed to be an additional charge payable by Lessee on demand. Lessor shall have the right to enter the Premises for the purpose of correcting or remedying any default, but neither any expenditure nor any such performance by Lessor shall be deemed to waive or release Lessee's default or the right of Lessor to take such action as may be otherwise permissible in the case of default. The Lessor shall have no liability to the Lessee for any loss or damages resulting from any such action by the Lessor, and entry by the Lessor under the provisions of Article V or Article IX shall not constitute breach of the covenant for quiet enjoyment or an eviction.

**§9.3 LESSOR'S REMEDIES.** If Lessee is in default under this Lease, Lessor may, at its option, in addition to such other remedies as may be available under applicable law:

- (a) terminate this Lease and Lessee's right of possession, and retake possession for Lessor's account. In such event, Lessor may repair and alter the Premises in any manner as Lessor deems reasonably necessary or advisable. All expenses of every nature which Lessor may incur such as (by way of illustration and not limitation) those for attorneys' fees, brokerage, advertising, and refurbishing the Premises, shall become immediately due and payable by Lessee to Lessor, or
- (b) terminate Lessee's right of possession, but not this Lease, retake possession of the Premises for the Lessee's account, repair, and alter the Premises in any manner as Lessor deems reasonably necessary or advisable, and relet the Premises or any part of it, as the agent of Lessee, for the whole or any part of the remainder of the Term or for a longer period, and Lessor may grant concessions or free rent or charge a higher rental than that reserved in this Lease. Out of any rent collected or received from subtenants or as a result of such letting or reletting, Lessor shall first pay to itself all expenses of every



nature which Lessor may incur such as (by way of illustration and not limitation) those for attorneys' fees, brokerage, advertising, and refurbishing the Premises in good order or preparing them for reletting; and second, Lessor shall pay to itself any balance remaining on account of the liability of Lessee for the sum equal to all Rent, Additional Rent and other Additional Charges due from Lessee through the Original Term Expiration Date. Should Lessor, pursuant to this Section 9.3, not collect rent which, after deductions is sufficient to fully pay to Lessor a sum equal to all Rent, Additional Rent and other Additional Charges payable through the Original Term Expiration Date, the balance or deficiency shall, at the election of Lessor, be paid by Lessee on the first of each month, or

- (c) stand by and do nothing, and hold the Lessee liable for all Rent, Additional Rent and other Additional Charges payable under this Lease through the Original Term Expiration Date.

If Lessor does not notify Lessee which remedy it is pursuing, or if Lessor's notice to Lessee does not expressly state that Lessor is exercising its remedies under Section 9.3(a) or Section 9.3(c), then it shall be deemed that Lessor is pursuing the remedy set forth in Section 9.3(b). If Lessor exercises option (a) or (b) above, Lessee agrees to immediately peacefully surrender the Premises to Lessor, and if Lessee refuses to do so, Lessor may without further notice reenter the Premises either by force or otherwise and dispossess Lessee by summary proceedings or otherwise, as well as the legal representative(s) of Lessee and/or other occupant(s) of the Premises, and remove their effects.

**§9.4 ACCELERATION.** If Lessor exercises the remedies in Section 9.3(b) or (c) of this Lease, Lessee shall immediately pay to Lessor as damages for loss of the bargain caused by Lessee's default, and not as a penalty, in addition to any other damages, an aggregate sum which represents the present value of the full amount of the Rent, Additional Rent and all other Additional Charges payable by Lessee hereunder that would have accrued for the balance of the Term. If Lessor exercises the remedy in Section 9.3(b) of this Lease, Lessor shall account to Lessee at the Original Term Expiration Date for amounts actually collected by Lessor as a result of a reletting, net of amounts to be paid to Lessor under Section 9.3(b) of this Lease.

**§9.5 SUITS.** Suit or suits for the recovery of the deficiency or damage or for any installment or installments of Rent, Additional Rent or any other charge due under this Lease may be brought by Lessor at any time or, at Lessor's election, from time to time, and nothing in this Lease shall be deemed to require Lessor to wait until the Original Term Expiration Date to bring suit.

**§9.6 WAIVER.** Lessee hereby expressly waives service of any notice of intention to reenter. Lessee hereby waives any and all rights to recover or to regain possession of the Premises or to reinstate or to redeem this Lease as permitted or provided by any statute, law or decision now or hereafter in force and effect. No receipt of moneys by Lessor from Lessee after the cancellation or termination of the Lease shall reinstate, continue or extend the Lease, or affect any prior notice given to Lessee or operate as a waiver of the right of Lessor to enforce the payment of Rent and Additional Rent then due or subsequently falling due, or operate as a waiver of the right of Lessor to recover possession of the Premises by suit, action, proceeding or other remedy, and any and all moneys so collected shall be deemed to be payments on account of the use and occupancy of the Premises, or at the election of the Lessor, on account of Lessee's liability under this Lease.

**§9.7 PROOF OF CLAIM.** Nothing in this Article shall limit or prejudice the right of Lessor to prove and obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding an amount equal to the maximum allowed by any statute or rule of law governing such proceeding, whether or not such amount is greater, equal to or less than the amount of the damages referred to in any of the preceding sections.



**§9.8 INJUNCTION.** In the event of a breach or a threatened breach by Lessee of any of its Lease obligations, Lessor shall have the right to enjoin and restrain the breach and to invoke any remedy allowed by law or in equity, in addition to other remedies provided in this Lease.

**§9.9 INDEPENDENT RIGHTS.** The rights and remedies of Lessor are distinct, separate and cumulative, and no one of them, whether or not exercised by Lessor, shall be deemed to be to the exclusion of any of the others.

**§9.10 NON-WAIVER.** The failure of Lessor to insist upon strict performance of any of Lessee's obligations under this Lease shall not be deemed a waiver of any rights or remedies that Lessor may have and shall not be deemed a waiver of any subsequent breach or default by Lessee. The exercise of any of the Lessor's options under the Lease shall not be deemed to be the exclusive remedy of Lessor."

**§9.11 WAIVER OF EXEMPTION FROM DISTRESS.** Lessee agrees that notwithstanding anything contained in any statute, enactment or other law of the state in which the Premises are located or of any other jurisdiction, none of the personally located on the Premises shall be exempt from levy for distress for Rent in arrears, and that if Lessee makes any claim for such an exemption, this Lease may be pleaded as an estoppel against Lessee in any appropriate action.

**§9.12 FRANCHISE AGREEMENT.** Notwithstanding anything in this Lease to the contrary, this Lease is conditioned upon the faithful performance by Lessee of the Franchise Agreement, and a default in the terms of the Franchise Agreement shall be a default of this Lease.

#### **X. NO RENT ABATEMENT**

Unless specifically provided in this Lease, no abatement, diminution, or reduction of Rent, Additional Rent, Additional Charges or other compensation shall be claimed by or allowed to Lessee, or any persons claiming under Lessee, under any circumstances, whether for inconvenience, discomfort, interruption of business, or otherwise.

#### **XI. CONDEMNATION**

**§11.1 ENTIRE AWARD.** In the event that the Premises or any part of it is taken in condemnation proceedings or by exercise of any right of eminent domain (or by settlement agreement in lieu thereof between Lessor and those authorized to exercise such right), Lessor shall be entitled to collect the entire amount of any award made without deduction for any estate vested in or owned by Lessee, subject only to the rights of any mortgagee and to Lessee's rights as set forth in this Lease. Lessee agrees to execute any and all documents that may be required to facilitate collection by Lessor of any and all such awards. Lessee shall have no right to participate in any condemnation proceedings or agreement except for the purposes described in Section 11.5.

**§11.2 SUBSTANTIAL TAKING.** If at any time during the Lease Term, the whole or substantially all of the Premises is taken or condemned, this Lease shall terminate and expire on the date on which title vests in the condemning authority, upon which the Rent provided to be paid by Lessee shall be apportioned and paid to that date, and Lessee shall have no claim against Lessor for the unexpired Term of this Lease or for damage or for any other reason whatsoever. For the purposes of this Section, "substantially all of the Premises" shall be deemed to have been taken if, in the sole opinion of Lessor, the portion of the Premises not taken cannot be repaired or reconstructed in such a way that, by using only the amount of the net award available from the taking, there remains a complete, rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operating expenses, Rent, Additional Rent and all other Additional Charges payable by Lessee, and after performance by the Lessee of all its obligations under this Lease.



**§11.3 PARTIAL TAKING.** In the event of a partial taking (any taking which is not "substantial"), this Lease shall not terminate, and Lessee shall promptly proceed to restore the remainder of the Building on the Land (if affected by the taking) to a complete, independent and self-contained architectural unit, usable for the purposes contemplated by this Lease, and Lessor shall pay to Lessee, subject to the same provisions and limitations specified herein with respect to insurance proceeds, the cost of restoration, which payment shall in no event exceed a sum equal to the amount of any separate award made for such restoration. Any deficiency will be paid by Lessee. Such restoration shall be subject to and shall be performed in accordance with the provisions of Section 5.3, except that any surety bond shall be in the amount, if any, by which the estimated cost of the work exceeds said separate award for the restoration. In the event that there is no separate award for restoration, the amount shall be fixed and settled by mutual agreement or by arbitration as provided in this Lease.

If this Lease does not terminate as provided in Section 11.2, and the taking results in the loss of parking spaces, driveways or accesses which are not or cannot be relocated or replaced elsewhere on the Premises, the Guaranteed Minimum Annual Rental after the date of taking shall be the lesser of (a) the Guaranteed Minimum Annual Rental payable by Lessee immediately prior to the taking, reduced by 12.5% of any portion of the award or awards recovered by Lessor which are not applied to the reduction of any mortgage in which this Lease is subject and subordinate or are not otherwise applied to Lessee's cost of demolition, repair and restoration or (b) the Guaranteed Minimum Annual Rental payable by Lessee immediately prior to the taking reduced in direct proportion to the area of the Premises taken. For example: If prior to the taking the area of the Premises is 30,000 square feet and the Guaranteed Minimum Annual Rental is \$100,000.00, upon the taking of 750 square feet, the Guaranteed Minimum Annual Rental will be reduced by three percent (3%), resulting in a new Guaranteed Minimum Annual Rental of \$97,000.00.

**§11.4 EASEMENTS.** If the taking is (i) of any existing appurtenant easement, or (ii) by easement rather than by fee, then the Lessee shall not be entitled to any reduction in Guaranteed Minimum Annual Rental unless such taking results in (i) receipt of an award by Lessor and (ii) the deprivation of use of the easement area by Lessee for parking, driveways or access. In such case, Lessee's Guaranteed Minimum Annual Rental shall be reduced in accordance with the calculation for a taking of the fee set forth in Section 11.3 above.

**§11.5 LESSEE'S INDEPENDENT AWARD.** Nothing in this article shall preclude Lessee from pursuing any independent action permitted by law or from participating in the condemnation proceedings, but only for the purpose of securing an independent award for loss of business or damage to personality.

## XII. SUBORDINATION

This Lease shall be fully subordinate to any mortgage and/or collateral assignment of lease against the Premises which the fee owner, Lessor and/or their assigns has or subsequently obtains upon the Premises; provided, however, that any such mortgage and/or collateral assignment of Lease against the Premises granted by Lessor shall provide that Lessee's possession of the Premises pursuant to this Lease shall not be disturbed in the event of a default by Lessor so long as Lessee shall be in compliance under the terms hereof. This Lease shall be fully subordinate and subject to any senior lease now, or hereafter affecting the Premises. In the event Lessor transfers all or a part of its interest in the Premises to a third party and enters into a lease with said third party (with Lessor as tenant) then this Lease shall be fully subordinate to said lease between such third party and Lessor.

The Lessee hereby grants a power of attorney to the Lessor with full power to act as its attorney in fact and to execute on behalf of the Lessee any and all documents that may be required by a mortgagee and/or assignee evidencing the Lessee's full subordination of the Lessee's interest to any mortgage and/or collateral assignment of lease that may be entered into by Lessor, the fee owner or their assigns. Lessee hereby agrees to execute, without charging Lessor, any and all documents that it is requested to



execute to evidence this subordination. However, Lessee shall not be required to execute any promissory notes or other evidences of indebtedness which would create any personal liability on behalf of Lessee.

### **XIII. ASSIGNMENT**

**§13.1 BY LESSOR.** This Lease shall be fully assignable by the Lessor or its assigns.

**§13.2 BY LESSEE.** Neither Lessee, nor Lessee's successors or assigns, shall (unless expressly permitted in this Lease) assign, mortgage, give as security, pledge or encumber this Lease, in whole or in part, by operation of law or otherwise, or sublet the Premises, in whole or in part, or permit the Premises or any portion of it to be used or occupied by others, or enter into a management contract or other arrangement whereby the Premises shall be managed and operated by anyone other than the owner of Lessee's leasehold estate, without the prior consent in writing of Lessor in each instance. If this Lease is assigned or transferred, or if all or any part of the Premises is sublet or occupied by anybody other than Lessee, Lessor may collect Rent from the assignee, transferee, subtenant or occupant, and apply the net amount collected to the Rent reserved in this Lease, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of any covenant or condition of this Lease, or the acceptance of the assignee, transferee, subtenant or occupant as lessee, or a release of Lessee from the performance or further performance by Lessee of its obligations under this Lease, and Lessee shall continue to be liable for all its obligations under this Lease. The consent by Lessor to an assignment, mortgage, pledge, encumbrance, transfer, management contract or subletting shall not in any way be construed to relieve Lessee from obtaining the express consent in writing of Lessor in each instance to any subsequent similar action that the Lessee may intend to take. Providing Lessee remains liable for all its obligations under this Lease, Lessor shall consent to an assignment of this Lease to an individual, partnership or corporation to which the Franchise Agreement has been assigned.

**§13.3 ASSUMPTION BY ASSIGNEE.** An assignment made with Lessor's consent or as otherwise permitted shall not be effective until Lessee delivers to Lessor an executed counterpart of such assignment containing an agreement, in recordable form, executed by the assignor and the proposed assignee, in which the assignee assumes the performance of the obligations of the assignor under this Lease to the Original Term Expiration Date.

### **XIV. ADDITIONAL PROPERTY**

**§14.1 PURCHASE OF ADDITIONAL PROPERTY.** In the event Lessee (for purposes of this Article, if Lessee is a group of more than one person, the term "Lessee" shall mean any member of the Lessee group) or any corporation, partnership or other entity in which Lessee has an interest or any member of Lessee's immediate family (Lessee or such other person or entity shall hereinafter be referred to as "Vendee") acquires the right to purchase property which, in the sole opinion of Lessor, is capable of being used either as additional parking or for any other purpose connected with the operation of the Premises (the "Additional Property"), Lessor shall have an option to assume Vendee's right to purchase such Additional Property without cost or charge to Lessor for such option. The granting of this option by Vendee to Lessor is in partial consideration for the making of this Lease by Lessor. Vendee agrees to submit to Lessor (i) a copy of the purchase or option contract within ten (10) days after final execution thereof and (ii) all other relevant documents within a reasonable period of time in advance of the scheduled closing date. Lessor shall have twenty (20) days after its receipt of the purchase or option contract and any and all relevant documents within which to notify Vendee of Lessor's intention to accept or reject Lessor's option. If Vendee's rights to purchase such Additional Property are not assignable, or if Vendee purchases the Additional Property without previously granting Lessor the option to acquire the Additional Property, Lessor shall have the additional option to purchase the Additional Property from Vendee, at Vendee's purchase price, under the terms of Lessor's then standard contract for the purchase.



of real property which shall be executed by Vendee and Lessor upon Lessor's exercise of this additional option. The granting of this additional option by Vendee to Lessor is in partial consideration for the making of this Lease by Lessor. Vendee agrees to submit to Lessor a copy of the purchase agreement and all other relevant documents within fifteen (15) days after Vendee acquires the Additional Property, and Lessor shall have thirty (30) days thereafter within which to notify Vendee of its intention to accept or reject this additional option.

In the event Lessor acquires the Additional Property from Vendee as set forth above, Vendee and Lessor agree to amend this Lease to include the Additional Property and to increase the Rent and other Additional Charges payable by Lessee for its use of the Additional Property. The rent for the Additional Property shall be calculated by Lessor in accordance with its then current formula for the calculation of "BKL" lease rentals.

In the event (i) Lessor fails to exercise its options to purchase the Additional Property as set forth above, or (ii) Lessor has not received notice from Vendee that Vendee has purchased the Additional Property, then at such time as (a) Lessor becomes aware of the acquisition by Vendee of the Additional Property or (b) this Lease expires or is terminated, whichever is earlier, Lessor shall have a third option to acquire the Additional Property by purchasing it for its then fair market value or three (3) times Vendee's purchase price, whichever is less, under the terms of Lessor's then standard contract for the purchase of real property, to be executed by Vendee and Lessor upon the exercise by Lessor of this third option. The granting of this third option by Vendee to Lessor is in partial consideration for the making of this Lease by Lessor. Lessor must notify Vendee of its election to exercise this third option within thirty (30) days after (A) the date on which Lessor receives notice of Vendee's acquisition of the Additional Property or (B) the expiration or termination of this Lease, whichever is earlier. Should Lessor and Vendee be unable to agree upon a purchase price within thirty (30) days after Vendee is notified by Lessor that Lessor desires to exercise this third option, Lessor and Vendee shall within ten (10) days following the end of said thirty (30) day period separately hire disinterested, qualified real estate appraisers who are authorized to appraise property in the county where the Additional Property is located and who are members of The Society of Real Estate Appraisers, The American Institute of Real Estate Appraisers or The American Society of Appraisers. If either Lessor or Vendee fails to appoint an appraiser within ten (10) days after being notified of the appraiser retained by the other party, the single appraiser hired shall determine the fair market value of the Additional Property. If both parties select an appraiser, the two appraisers shall meet and attempt to agree on a fair market value of the Additional Property. If they are unable to agree on the value within fifteen (15) days after the second appraiser was appointed, they shall select a third appraiser who shall determine the fair market value. Lessor and Vendee shall be responsible for the fee charged by the respective appraisers they selected and shall split the cost of the third appraiser. If after being informed of the fair market value of the Additional Property, Lessor indicates that the purchase price is unacceptable, it may rescind its election to purchase the Additional Property, upon notice to Vendee within twenty (20) days after being informed of the fair market value of the Additional Property, but must pay the total cost of the appraisal.

In the event Lessor acquires the Additional Property from Vendee under any of the above options, Vendee shall furnish to Lessor evidence that he has good and marketable title to the Additional Property, and title shall be conveyed to Lessor in fee simple, free and clear of any liens, encumbrances, restrictions or violations of any local, state or federal laws, orders, rules or regulations upon payment of the purchase price. Closing shall be within ninety (90) days after determination of the purchase price, subject to any extension permitted under the terms of Lessor's then standard contract for the sale of real property.

Vendee hereby expressly covenants and agrees that, in the event that Vendee acquires Additional Property without complying with the terms and provisions of this Section 14.1, Lessor shall have the absolute and unrestricted option to purchase any such Additional Property, upon the terms and conditions set forth above with respect to the third option to purchase, at any time during the Term of this Lease and for thirty (30) days after the expiration or termination of this Lease. If, during such thirty (30) period, Lessor discovers that Vendee has acquired Additional Property without complying with the terms and provisions of this Section 14.1, then notwithstanding the expiration or termination of this Lease, Vendee

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hereby further expressly covenants and agrees that Vendee shall execute any and all relevant documents in order to transfer fee title to said Additional Property to Lessor in accordance with the terms and provisions of this Section 14.1. The granting of this final option by Vendee to Lessor is in partial consideration for the making of this Lease by Lessor.

**§14.2 LEASE OF ADDITIONAL PROPERTY.** In the event Vendee acquires the right to lease, sublease or license, have an easement across or over, or any other right of any kind, save and except by purchase, to use or occupy the Additional Property (the "Occupancy Right") from any person other than Lessor, Vendee shall give Lessor written notice thereof, which notice shall set forth or be accompanied by a copy of the proposed lease, sublease, license agreement, easement agreement or other use or occupancy agreement (the "Additional Property Lease") and which notice shall be delivered to Lessor prior to the execution of any Additional Property Lease. The Additional Property Lease shall set forth (a) all terms and conditions of the Occupancy Right, including, without limitation, the Rent, Additional Rent, Additional Charges and other consideration payable under the Additional Property Lease, and the term and any options to extend the term; (b) the extent to which the tenant under the Additional Property Lease may make Alterations and/or improvements; (c) any broker or other agent who was involved in the acquisition of the Occupancy Right; (d) a description of the Additional Property; (e) its proposed use, and (f) the name and address of the proposed landlord. Lessor may, within thirty (30) days after receipt of such written notice from Vendee accompanied by or containing all of the items set forth above, in its sole and absolute discretion, choose to enter into the Additional Property Lease, as tenant; in such event, Lessor and Vendee agree to amend this Lease to include the Additional Property and to increase the Rent and other Additional Charges payable by Lessee for its use of the Additional Property. The rent for the Additional Property shall be calculated by Lessor in accordance with its then current formula for the calculation of "BKL" lease rentals. During said thirty (30) day period, Vendee shall not, in any event whatsoever, execute, or cause anyone else to execute on Vendee's behalf or otherwise, the Additional Property Lease. If Lessor chooses not to enter into the Additional Property Lease, then Vendee may choose to enter into the Additional Property Lease, as tenant; in such event, the following paragraph shall be incorporated into the Additional Property Lease in its entirety:

"Notwithstanding anything to the contrary set forth herein, Landlord and Tenant hereby covenant and agree that Tenant may, at any time during the term hereof and without Landlord's consent, assign this Lease to Burger King Corporation or its designee (collectively, "BKC"). The Tenant covenants that, notwithstanding any such assignment to BKC, and notwithstanding the acceptance of rent and/or additional rent by Landlord from BKC, the Tenant shall, during the term hereof, remain fully liable for the payment of the rent and the additional rent hereunder and for the performance and observance of all other obligations of this lease on the part of Tenant to be performed or observed. Additionally, (i) in the event of any default by Tenant hereunder which default has not been cured prior to the expiration of any grace, notice or cure period; or (ii) at such time as any lease between BKC, as landlord, and Tenant, as tenant expires or is terminated, then, in any such event, BKC shall have the option, but shall be under no obligation to exercise said option, exercisable within thirty (30) days after the end of any grace, notice or cure period, or the expiration or termination of any such lease, to assume this lease from Tenant by written notice to Tenant and Landlord and at no cost or charge to BKC. In order to effectuate this provision, Landlord agrees that, if Tenant is in default hereunder, Landlord shall give written notice thereof to BKC at 5707 Blue Lagoon Drive, Miami, Florida 33126, P.O. Box 020783, Miami, Florida 33102-0783, Attention: General Counsel and Landlord further agrees that Landlord shall be obligated to send said notice to BKC whether or not this Lease provides for written notice of default to be sent to the Tenant. The parties hereto acknowledge and agree that BKC may, in its sole and absolute discretion, cure any default by Tenant hereunder, but BKC shall be under no obligation to do so and BKC's decision to cure or not to cure any default by the Tenant shall not be a condition precedent to BKC's assumption of this lease. Landlord and Tenant hereby agree to execute and provide such documents (including, without limitation, a copy of this lease, certified by Landlord and Tenant to be a true and correct copy, and an estoppel certificate from Landlord) and other assurances (including, without limitation, Tenants guarantee to cure all existing defaults hereunder prior to the effective date of said assumption by BKC) reasonably

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required by BKC to give full force and effect to this provision." [The words "Landlord", "Tenant" and "Lease" in the foregoing paragraph shall be changed to "Licensor", "Licensee" and "License", respectively, if Vendee is entering into a license agreement and similar modifications (but only as to form, not substance) may be made to the foregoing paragraph where required in the case of a sublease, an easement agreement or any other type of use or occupancy agreement.]

Upon the execution and delivery of the Additional Property Lease by Vendee and the proposed landlord, Vendee shall deliver a duplicate original of the fully executed Additional Property Lease and any and all other documents relating to the Additional Property Lease to Lessor.

Vendee hereby expressly covenants and agrees that, in the event that Vendee enters into an Additional Property Lease without complying with the terms and provisions of this Section 14.2, Lessor shall have the absolute and unrestricted right to have said Additional Property Lease assigned to Lessor, upon the terms and conditions set forth in this Section 14.2, at any time during the Term or any extensions of the Term of the Additional Property Lease. If Lessor is not notified of the existence of an Additional Property Lease during the Term hereof, Lessor shall have thirty (30) days after the expiration or termination of this Lease to investigate whether such an Additional Property Lease exists. If, during such thirty (30) day period, Lessor discovers that an Additional Property Lease exists, then notwithstanding the expiration or termination of this Lease, Vendee hereby further expressly covenants and agrees that Vendee shall execute any and all relevant documents in order to assign said Additional Property Lease to Lessor. After the Additional Property Lease has been assigned to Lessor (if said assignment occurs prior to the expiration or termination of this Lease), Vendee and Lessor agree to amend this Lease to include the Additional Property. The rent and other charges for the Additional Property shall be calculated by Lessor in accordance with its then current formula for the calculation of "BKL" lease rentals.

For purposes of this Article, notice to the Lessee in the manner indicated in Section 17.2 shall be deemed to be notice to Vendee. The terms and provisions of this Article shall survive the expiration or termination of this Lease.

#### **XV. ESTOPPEL CERTIFICATE**

Lessee shall from time to time, within five (5) days after being requested to do so by the Lessor, execute, enseat, acknowledge and deliver to the Lessor (or, at Lessor's request, to any existing or prospective purchaser, transferee, assignee or mortgagee of any or all of the Premises, any interest therein or any of Lessor's rights under this Lease) an instrument in recordable form:

- (i) certifying (a) that the Lease is unmodified and in full force and effect (or, if there has been any modification thereof, that it is in full force and effect as so modified, stating therein the nature of such modification); (b) as to the dates to which the Rent, the Building Improvement Payments and Additional Charges arising hereunder have been paid; (c) as to the amount of any prepaid rent or any credit due to Lessee hereunder; (d) that the Lessee has accepted possession of the Premises, and the date on which the Term commenced; (e) as to whether, to the best knowledge, information and belief of the signer of such certificate, the Lessor or the Lessee is then in default in performing any of its obligations under the Lease (and, if so, specifying the nature of each such default); and (f) as to any other fact or condition reasonably requested by the Lessor or such other addressee; and
- (ii) acknowledging and agreeing that any statement contained in such certificate may be relied upon by Lessor and any such other addressee.



**XVI.  
HAZARDOUS SUBSTANCES**

**§16.1 COMPLIANCE WITH LAWS.** Lessee shall at all times, at its own cost and expense, comply with all federal, state and local laws, ordinances, regulations and standards ("Hazardous Substance Laws") relating to the use, analysis, production, storage, sale, disposal or transportation of any hazardous materials, including oil or petroleum products or their derivatives, solvents, PCB's, explosive substances, asbestos, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, contaminating or pollution materials ("Hazardous Substances") which are now or in the future subject to any governmental regulation. Such compliance shall include any cleanup, removal, remedial action, testing or monitoring (including medical monitoring) which may be required under Hazardous Substance Laws, court order or by any governmental or regulatory agency.

**§16.2 NOTICES TO LESSOR.**

- (a) Except with respect to any substance described in Section 16.2(c) below, Lessee shall give written notice to Lessor within three (3) business days after the date on which Lessee learns or first has reason to believe that:
- (1) There has or will come to be located on or about the Premises any Hazardous Substance, the production, transportation, storage, use or handling of which requires a permit or license from any federal, state or local governmental agency;
  - (2) Any release, discharge or emission of any Hazardous Substance has occurred on or about the Premises, including the migration of any Hazardous Substance to or from adjoining or nearby properties;
  - (3) Any (i) enforcement, cleanup, removal, remediation, testing, monitoring or other governmental or regulatory action has been threatened or commenced against Lessee with respect to the Premises pursuant to any Hazardous Substances Laws; or (ii) any claim has been made or threatened by any person or entity against Lessee or the Premises on account of any alleged loss or injury claimed to result from the alleged presence or release on or from the Premises of any Hazardous Substance; or (iii) any report, notice, or complaint has been made to or filed with any governmental agency concerning the presence, migration, use or disposal of any Hazardous Substances on or from the Premises. Any such notice shall be accompanied by copies of any such claim, report, complaint, notice, warning or other communication that is in the possession of or is reasonably available to the Lessee.
- (b) Any notice required under this Section 16.2 shall be accompanied by (i) a copy of all permits, licenses, proofs of disclosure to governmental agencies, pertaining to Hazardous Substances that have not previously been furnished to Lessor; and; (ii) copies of any Material Safety Data Sheets pertaining to such substances that are required by applicable law to be kept at the Premises.
- (c) The notice provisions of this Article XVI shall not apply to materials that are lawfully discharged from the Premises or lawfully used on the Premises in the ordinary course of Lessee's business.

**§16.3 REMOVAL AND DISPOSAL.** Except for materials that are lawfully discharged from the Premises or lawfully used on the Premises in the ordinary course of Lessee's business, Lessee shall cause any Hazardous Substances to be removed from the Premises solely by duly licensed Hazardous Substances transporters to duly licensed facilities for final disposal to the extent required by and in accordance with

applicable Hazardous Substances Laws, and shall deliver to Lessor copies of any hazardous waste manifest reflecting the lawful transport and disposal of such substances.

#### **§16.4 ENVIRONMENTAL AUDITS BY LESSOR.**

- (a) **Rights of Lessor.** Lessor may, but shall not be required to, engage such independent contractors as Lessor determines to be appropriate to perform from time to time any audit, including environmental sampling and testing, of (i) the Premises, the surrounding soil and any adjacent areas, and any groundwater located under or adjacent to the Premises and/or any adjoining property, (ii) Lessee's compliance with all Hazardous Substances Laws and the provisions of this Lease, and (iii) the provisions made by Lessee for carrying out any remedial action that may be required by this Lease (collectively an "Environmental Audit"). All costs and expenses incurred by Lessor in connection with any such Environmental Audit shall be paid by Lessor, except that if any such Environmental Audit shows that Lessee has failed to comply with the provisions of this Article XVI, then such costs and expenses shall be paid by Lessee to Lessor as Additional Charges pursuant to Section 3.4 of this Lease.
- (b) **Conduct of Audit.** Each Environmental Audit shall be conducted (i) only after advance notice thereof has been provided to Lessee at least twenty-four (24) hours prior to the date of such audit, and (ii) in a manner reasonably designed to minimize any interference with the conduct of Lessee's business on the Premises. Lessor shall repair any damages to the Premises or to Lessee's personal property caused by any Environmental Audit conducted by or on behalf of Lessor.
- (c) **Submission to Governmental Agency.** Notwithstanding any other provision of this Lease to the contrary, to the extent required by law, Lessor shall be entitled to submit the results of any Environmental Audit to any federal, state or local governmental agency having jurisdiction over (a) the Premises or (b) Hazardous Substances with respect to the Premises.

#### **§16.5 REMEDIATION.**

- (a) **By Lessee.** If any Environmental Audit of the Premises (whether conducted by Lessor, Lessee or any third party) shall recommend the cleanup, abatement, removal, disposal, monitoring or further testing, including medical monitoring or testing (collectively "Remediation") of or for any Hazardous Substances found on or about the Premises, then Lessor shall provide Lessee with a copy of such Environmental Audit and Lessee shall promptly commence such Remediation.

- (b) **By Lessor.**

If, within thirty (30) days after receiving a copy of such Environmental Audit and such written statement, Lessee fails either (i) to complete such Remediation, or (ii) with respect to any Remediation which cannot be completed within such thirty-day period, fails to proceed with reasonable diligence to complete such Remediation as promptly as practicable, then the Lessor shall be entitled to provide a copy of the Environmental Audit to any federal, state, or local governmental agency having jurisdiction over the Premises or Hazardous Substances.

Notwithstanding any other provision of the Lease to the contrary, if any Environmental Audit reveals a situation which, in Lessor's sole opinion, constitutes an emergency, then Lessor shall have the right, but not the obligation, to carry out any Remediation recommended by such audit or if required by any federal, state or local governmental



agency having jurisdiction over the Premises. If Lessee is responsible for conducting such remediation, Lessor shall have the right to recover all of the costs and expenses thereof from Lessee as Additional Charges pursuant to Section 3.4 of this Lease.

- (c) Actions and Proceedings. Except in emergencies or as otherwise required by law, Lessee shall not perform any Remediation in response to the presence or release of any Hazardous Substances on or about the Premises without first giving written notice to Lessor. Lessee shall not enter into any settlement agreement, consent decree or other compromise with respect to any claims relating to any Hazardous Substances in any way connected with the Premises without first notifying Lessor of Lessee's intention to do so and affording Lessor the opportunity to participate in any such proceedings.

#### **§16.6 REMEDIATION BY THIRD PARTIES.**

- (a) If Lessee receives a request from a third party to enter the Premises for the purposes of Remediation of Hazardous Substances, then Lessee shall so notify Lessor in accordance with the provisions of Section 16.2 above.
- (b) Lessor, in its sole discretion, shall determine if the request should be honored and, if so, under what conditions.
- (c) If Lessor determines that the request should be honored, then Lessee shall cooperate with such Remediation so long as the third party agrees to comply with the provisions of Section 16.4(b) above and with any other reasonable conditions requested by Lessee.
- (d) Lessee agrees to sign any documentation reasonably required by Lessor and/or any such third party in order to effectuate the provisions of this Section 16.6.

**§16.7 LEASE EXPIRATION.** Upon the expiration or earlier termination of the Term of this Lease, Lessee shall (i) cause all Hazardous Substances previously owned, stored or used by Lessee to be removed from the Premises and disposed of in accordance with applicable Hazardous Substances Laws; (ii) remove any aboveground or underground storage tanks or other containers installed or used by Lessee to store any Hazardous Substances on the Premises, and repair any damage to the Premises caused by such removal; (iii) cause any soil or other portion of the Premises which has become contaminated by any Hazardous Substances stored or used by Lessee on the Premises to be decontaminated, detoxified or otherwise remediated in accordance with the requirements of any governmental authorities having jurisdiction over the Premises; and (iv) surrender possession of the Premises to Lessor free of contamination attributable to Hazardous Substances generated or used by Lessee in or on the Premises during the Term of this Lease.

**§16.8 INDEMNIFICATION BY LESSEE.** Lessee shall indemnify, defend with counsel reasonably acceptable to Lessor, and hold Lessor free and harmless from any and all liabilities, damages, claims, penalties, fines, settlements, causes of action, costs or expense, including reasonable attorneys' fees, environmental consultant and laboratory fees and the costs and expense of investigating and defending any claims or proceedings, resulting from or attributable to (i) the presence, disposal, migration, release or threatened release of any Hazardous Substance that is on, from or affecting the Premises including the soil, water, vegetation, buildings, personal property persons, or otherwise; (ii) any bodily injury (including wrongful death) or property damage (real or personal) arising out of or relating to such Hazardous Substance(s); (iii) any lawsuits or administrative order relating to such Hazardous Substance(s); or any violation of any laws applicable to any Hazardous Substance for which Lessee is responsible under this Lease. Lessee's indemnification obligations under this Section shall survive the expiration or earlier termination of this Lease. Notwithstanding anything to the contrary contained herein, Lessee shall have no liability or responsibility to Lessor for liabilities, damages, claims, penalties, fines, settlements, causes of action, cost or expense arising out of any Hazardous Substances that Lessee can demonstrate were



situated on or under the Premises prior to the Lease Date, provided Lessee did not cause or exacerbate the release of any such Hazardous Substance through its negligence or willful misconduct.

**XVII.  
MISCELLANEOUS**

**§17.1 ARBITRATION** In the event of arbitration under Section 11.3 of this Lease, the arbitration shall be held in the Miami Dade County, Florida, in accordance with the rules of the American Arbitration Association requiring the appointment of three (3) arbitrators.

**§17.2 NOTICES** Every notice, approval, consent or other communication authorized or required by this Lease shall be effective if given in writing and if hand delivered or sent by United States Registered or Certified Mail, Return Receipt Requested, with postage prepaid, and addressed directly to Lessor at its offices at the address set forth on the Key Contract Data Page, and to Lessee at the address set forth on the Key Contract Data Page, or at such other address as either party shall from time to time designate in writing. Every notice shall be deemed to be effective upon delivery, if delivered, or on the second business day after mailing, if mailed.

**§17.3 ADDRESS FOR PAYMENTS** Payments are to be made via BK® ePay, ACH or Wire Transfer unless otherwise notified in writing by Lessor. If BK® ePay, ACH or Wire Transfer are unavailable at any time a payment is due, then such payment shall be sent by Regular or Overnight Mail: Global Business Services – Accounts Receivable, 5707 Blue Lagoon Drive, 3<sup>rd</sup> Floor, Miami, FL 33126.

**§17.4 CONSTRUCTION** In the event that any of the provisions of this Lease shall by court order be held invalid or in contravention of any of the laws of the United States or of any state having jurisdiction over the subject matter or of any dispute arising under it, such invalidation shall not serve to affect the remaining portion of this Lease. To the extent permitted by the laws of the state where the Premises are located, this Lease shall be governed by and construed in accordance with the laws of the State of Florida.

**§17.5 SUCCESSORS** This Lease shall bind Lessor and Lessee and their successors, heirs, assigns, administrators, and legal representatives, as the case may be.

**§17.6 RECORDING** Lessee shall upon request of Lessor execute a short form of this Lease on a written document witnessed and acknowledged in a form capable of being recorded in the public records of the county where the Premises are located. Lessee shall not record this Lease without prior written consent of Lessor.

**§17.7 COUNTERPARTS** This Lease is being executed simultaneously in counterparts, any one of which shall be deemed an original.

**§17.8 NO AGENCY** The parties hereto agree that the business relationship created by this Lease is solely that of Lessor and Lessee. Nothing contained in this Lease shall make Lessee an agent, legal representative, partner, subsidiary, joint venturer or employee of Lessor. Lessee shall have no right or power to, and shall not bind or obligate Lessor in any way, manner or thing whatsoever, nor represent that it has any right to do so.

**§17.9 TIME OF THE ESSENCE** Time shall be of the essence in every part of this Lease.

**§17.10 BINDING EFFECT** This Lease shall become immediately binding on the parties to this Lease on the date the last party signs it, notwithstanding that the Term of this Lease shall commence upon a future date.



**§17.11 HEADINGS.** The table of contents preceding this Lease and the headings of the paragraphs and subparagraphs are inserted solely for the convenience of reference and shall not constitute a part of this Lease, nor limit, define or describe the scope or intent of this Lease.

**§17.12 JOINT AND SEVERAL LIABILITY.** If Lessee consists of more than one person, each individual's liability under this Lease shall be joint and several.

**§17.13 ENTIRE AGREEMENT.** This Lease constitutes the entire agreement between the parties herein with respect to the subject matter of this Lease, and this Lease shall not be modified, amended, altered or changed except by prior written agreement signed by both parties. If any provision herein is invalid, it shall be considered deleted from this Lease and shall not invalidate the remaining provisions.

**§17.14 TERMINATION OR EXPIRATION OF THE FRANCHISE AGREEMENT.** In the event that Lessee's Franchise Agreement expires or is terminated for any reason whatsoever, this Lease shall be terminated forthwith and upon such termination, Lessor shall have the right to re-enter and take immediate possession of the Premises.

**§17.15 LEASE CONTINGENT ON FRANCHISE AGREEMENT.** Lessee acknowledges and agrees that the execution of the Franchise Agreement by both THUSA and Lessee shall constitute a condition precedent to the effectiveness and validity of this Lease.

**§17.14 DEFINITIONS.**

- (a) The term "Lessor" as used in this Lease shall mean the owner in fee of the Premises for the time being, or the owner of the leasehold estate created by an underlying lease, or the mortgagee of the fee or of such underlying lease in possession for the time being, so that in the event of any sale or sales of the Premises, or of the making of any such underlying lease, or of any transfer or assignment or other conveyance of such underlying lease and the leasehold estate created by it, the seller, lessor, transferor or assignor shall be and is hereby entirely freed and relieved of all agreements, covenants and obligations of Lessor herein and it shall be deemed and construed without further agreement between the parties or their successors in interest or between the parties and the purchaser, lessee, transferee or assignee on any such sale, leasing, transfer or assignment that such purchaser, lessee, transferee or assignee has assumed and agreed to carry out any and all agreements, covenants and obligations of Lessor under this Lease.
- (b) The term "Lessee" shall mean the lessee named in this Lease, and from and after any valid assignment or sublease of Lessee's interest in this Lease pursuant to its provisions, the assignee or sublessee of this Lease.
- (c) The term "mortgage" shall mean any mortgage, security interest, charge, deed of trust, or other similar encumbrance resulting from the financing or refinancing of the Premises.
- (d) The term "mortgagee" shall include any individual, firm, partnership, corporation, joint venture, investment trust bank or institution, or other business group or association lending funds to Lessor upon the security of the Premises demised by this Lease whether or not such mortgage is recorded, or upon Lessor's independent covenant not to otherwise encumber this Lease or the Premises.
- (e) The term "fixture(s)" as used in this Lease means such items of personalty which have been (i) installed by Lessor and/or (ii) so affixed to the Premises that removal would cause, in Lessor's sole opinion, material damage to the Premises. By way of example, and not limitation, fixtures include the following: heating, ventilating and air conditioning

systems, water heaters or softeners, core-drilled tables and seating, walk-in boxes, walk-in freezers, and toilet fixtures consisting of the lavatories and water closets.

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Lease/Sublease  
Exhibit G1 (03/2021)  
BK # 1551



The Lessor and Lessee have respectively signed this Lease as of the date indicated on the first page of this Lease.

WITNESS:

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

LESSOR

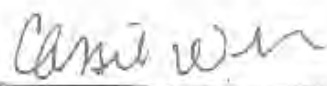
BURGER KING CORPORATION

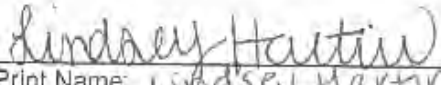
By: 

Print Name: Ryan Smith

Its: Sr. Asset Manager


WITNESS:

  
Print Name: Cassie Wilson

  
Print Name: Lindsey Hartin

LESSEE

PREMIER KINGS OF GEORGIA INC.,  
an Georgia corporation

By:   
Manraj S. Sidhu, Managing Owner

**EXHIBIT "A" BK#1551**  
**LEGAL DESCRIPTION**

Lease/Sublease  
Exhibit G1 (03/2021)  
BK #1404



**ADDENDUM TO THAT LEASE/SUBLEASE  
DATED THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021,  
BETWEEN BURGER KING CORPORATION, AS LESSOR AND  
PREMIER KINGS OF GEORGIA INC., AS LESSEE**

In the event of any conflicts between the terms of the Lease/Sublease Agreement (the "Lease") and the terms of this Addendum, the terms of this Addendum shall control. Capitalized terms used in this Addendum shall have the same definitions and meanings as those set forth in the Lease, unless herein provided to the contrary, or unless the context otherwise requires.

1. This Lease/Sublease Agreement, dated the date indicated on the Key Contract Data Page demising the Premises commonly known as BURGER KING® Restaurant 1551 replaces and supersedes all previous lease and/or sublease agreements entered into by Lessor and Lessee, and/or Lessor and Lessee's predecessor-in-interest, with respect to the Premises, if any.

2. Lessee acknowledges that it takes this Lease subject to any and all reservations, restrictions, easements, rights of way, limitations and conditions now or hereinafter of record.

3. **IF BKL EXECUTED PRIOR TO REMODEL / DEFERRED REMODEL** Lessee acknowledges that Lessee, as franchisee, has, contemporaneously with the execution of this Lease, executed that certain Franchise Agreement with the Lessor, as franchisor, for the operation of the BURGER KING® restaurant on the Premises (the "Franchise Agreement"), which requires the franchisee to complete certain renovations, repairs, replacements, remodelings and/or rebuildings of the franchised restaurant that will conform with the specification and standards set forth in the scope of work previously provided by Lessor, as franchisor (hereinafter referred to herein as the "Remodel Work"), the completion of which was material consideration for and inducement of the Lessor, as franchisor, to enter into the Franchise Agreement. Lessee further acknowledges and agrees to the following: (i) to complete the Remodel Work in accordance with the Franchise Agreement; and (ii) that all work associated with the Remodel Work, including, without limitation, all demolition and/or construction work, shall be completed in compliance with all Regulations. Without limiting the foregoing, Lessee agrees to provide the Lessor with the following:

a. at the time of submittal of the construction plans and specifications (the "Plans") of the Remodel Work to Lessor for approval, a certificate, on a form to be provided by Lessor, from an architect, licensed in the State where the Premises are located ("Architect"), certifying that the Plans comply with (i) the requirements of Title III of the Americans With Disabilities Act of 1990 ("ADA"); (ii) the Americans With Disabilities Act Accessibility Guidelines 1991 ("ADAAG") which is a part of the ADA; (iii) the 2010 ADA Standards; and (iv) all state and local building codes including any disabilities related statutes or codes (collectively, the "Codes") in the applicable jurisdiction where the Premises are located; and

b. upon completion of the construction of the remodeled restaurant contemplated by the Remodel Work (the "Remodeled Restaurant"), the Architect shall inspect the Remodeled Restaurant and complete the Burger King® 2004 ADAAG Checklist V1.2 (which is currently under revision to reflect the 2010 ADA Standards), and complete a certificate of inspection, on a form to be provided by Lessor, certifying that the Remodeled Restaurant is in compliance with Title III of the ADA, the ADAAG, the 2010 ADA Standards and the Codes.

4. Except as modified or amended in this Addendum, all other terms and conditions contained in the Lease remain in full force and effect.

5. The Lessor and Lessee have respectively signed this Addendum as of the date indicated on the first page of the foregoing attached Lease.

Lease/Sublease  
Exhibit G1 (03/2021)  
BK # 1551

WITNESS:

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

LESSOR

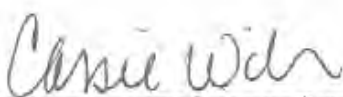
**BURGER KING CORPORATION**

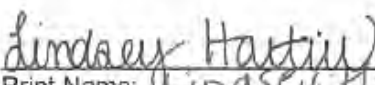
By: 

Print Name: Ryan Smith

Its: Sr. Asset Manager

WITNESS:

  
Print Name: Cassie Wilson

  
Print Name: Lindsey Martin

LESSEE

**PREMIER KINGS OF GEORGIA INC.**  
an Georgia corporation

By: 

Mahraj S. Sidhu, Managing Owner



**SCHEDULE "A"**  
**MASTER LEASE**

Lease/Sublease  
Exhibit G1 (03/2021)  
BK # 1551

## **LEASE AGREEMENT**

**THIS LEASE AGREEMENT** is made and entered into by and between **Premier Holdings of Georgia, LLC** (hereinafter called the "**Lessor**") and **Premier Kings of Georgia Inc.** (hereinafter called the "**Lessee**") on or about March 1, 2019.

## **WITNESSETH:**

WHEREAS, Lessor and Lessee desire to establish in writing their agreement concerning their relationship, obligations and rights with respect to the rent or lease of the following property located in Brantley County, Georgia known as Burger King Store No. \_\_\_\_\_, \_\_\_\_\_ W. Cleveland Street, Nahunta, Georgia 31553 also described on Exhibit "A".

WHEREAS, Lessor and Lessee acknowledge that the lease of the premises is made subject to the provisions hereof, and the terms and conditions of any bank loan, the proceeds of which were used to construct the improvements on the premises (hereinafter called the "Bank Loan").

WHEREAS, Lessor and Lessee acknowledge that the lease of the premises is made subject to the provisions hereof, all matters of record, and the terms and conditions of that certain franchise agreement entered into between Premier Kings of Georgia Inc. and Burger King Corporation (hereinafter called the "Franchise Agreement").

**NOW, THEREFORE**, in consideration of the rents and other payments hereinafter agreed to be paid and the mutual covenants and agreements hereinafter set forth and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. Premises: Lessor, for and in consideration of the rents, covenants, agreements and stipulations hereinafter mentioned, reserved and contained, to be paid, kept and performed by Lessee, by these presents does lease and rent unto Lessee, and Lessee hereby agrees to lease and take upon the terms and conditions hereinafter set forth (the "Lease"), the land, buildings and/or improvements described as: SEE EXHIBIT "A", together with and subject to all easements, rights and appurtenances, if any, appearing of record and affecting said property (the "Real Property"). The Real Property is sometimes hereinafter collectively referred to as the "Premises." Lessee has examined the Premises and accepts same in the physical condition in which same now exists.

2. Use of Premises: The Premises shall be used as a Burger King restaurant, or any other lawful use approved by Lessor in writing.

3. Term: The term of the Lease shall commence on the date the Franchise Agreement commences (hereinafter called the "Commencement Date") and shall terminate upon the greater of 20 years or termination of the Franchise Agreement.

4. Rental. Lessee agrees to pay to Lessor for the Premises, without deduction, set

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CONFIDENTIAL

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off or abatement, and without previous notice or demand therefore, basic rent equal to eight and one half (8.5%) of gross sales or debt service payment, whichever is greater.

5. Maintenance and Repair: Lessee agrees to keep and maintain the land and buildings and all other improvements, furniture and furnishings, and appliances and equipment on the Premises in as good a state of repair as the same are in when turned over to it, and in a safe condition, free of hazardous or toxic waste and materials. Lessee agrees to make all necessary repairs, interior, exterior, and structural, to said appliances, equipment, furniture and furnishings, buildings and other improvements during the term of this Lease, including repairs required due to misuse or neglect by Lessee or Lessee's agents, servants, visitors or licensees. Lessee further agrees to clean up any hazardous or toxic waste or material placed on the Premises by Lessee, and reclaim said Premises if required. Lessee shall pay and hold Lessor free and harmless from bills or assessments for clean up, light, heat, water, gas, sewer rentals or charges, and any other expenses arising out of or incidental to the use or occupancy of said Premises. Lessee agrees to repair and restore all improvements on the Premises following any damage to or loss or destruction of the Premises or any part thereof from any cause whatsoever, at Lessee's expense, and without cost to Lessor, except as provided in this Agreement.

6. Taxes and Assessments: As additional rent, Lessee agrees and covenants to pay and discharge, before they become delinquent, all ad valorem or property taxes, all sanitary taxes, general and special charges or assessments, and other taxes levied or assessed against the Premises or arising in respect to the occupancy, use or possession of the Premises, and which are assessed or become a lien or become due and payable during the term of this Lease. This obligation of Lessee shall include the obligation, imposed by any law, ordinance or regulation now in existence or hereafter enacted or adopted, to pay any taxes, assessments or charges for public improvements or services levied or imposed in whole or in part as a capital or other levy against the Premises or on the rents hereunder, or in substitution for ad valorem taxes, charges or assessments for public improvements or services as now imposed by law. Lessee shall, within thirty (30) days following the last day on which any such taxes or assessments may be paid without incurring any interest or penalty, furnish to Lessor receipts or other evidence demonstrating payment thereof. There shall be an apportionment of all such taxes between Lessor and Lessee with respect to the first and last year of the term hereof. Lessee may, in good faith and in a lawful manner and upon giving notice to Lessor of its intention so to do, contest in Lessor's name any tax, assessment or charge against the Premises, but all costs and expenses incidental to such contest shall be paid by Lessee, and in case of an adjudication adverse to Lessee, then Lessee shall promptly pay such tax, assessment or charge. Lessee shall indemnify and save Lessor harmless against any loss or damage arising from such contest and shall, if necessary to prevent a sale or other loss or damage to Lessor, pay such tax, assessment or charge under protest and take such other steps as may be necessary to prevent any sale or loss.

7. Lessee's Improvements: Lessee, during the full term of this Lease, shall have the right, at any time, and from time to time, at its own and sole expense and liability, to place or install on the Premises such additional improvements which it shall desire, all of which shall be and remain, from the time of construction or installation, the property of Lessor, without payment or offset; provided that Lessee shall first obtain the prior written consent of Lessor and Lessor's mortgagee, if such mortgagee's consent is required. If any such improvements shall involve structural changes in the improvements existing or external appearance changes, then no such



installation or construction shall violate any lawful rule or regulation, plat or zoning restriction or other law, ordinance or regulation applicable thereto, and shall be done and performed in a good and workmanlike manner. All costs of any such improvements shall be paid by Lessee and Lessee shall allow no liens for labor or materials to attach to the Premises by virtue thereof. Lessee shall submit drawings and specifications to Lessor for Lessor's approval, and no work shall be commenced until Lessor has approved such drawings and specifications, or a reasonable period of time shall have elapsed.

8. Insurance: Lessee agrees to pay as additional rental all premiums required during the term hereof, to provide and keep in force policies of insurance as follows:

(a) Hazard Insurance. Fire and extended coverage insurance in some insurance company or companies authorized to do business in the State of Alabama in an amount acceptable to Lessor. Such policy or policies shall insure Lessor and Lessee, and in the event there shall be a lien on the Premises which is created pursuant to the lien of a mortgage, Lessee shall cause such insurance policy to be endorsed to include such mortgagee as a named insured as its interest may appear.

(b) Public Liability and Property Damage Insurance. Public liability and property damage insurance insuring Lessor and Lessee, with limits acceptable to Lessor.

(c) Workmen's Compensation Insurance. Lessee, at its cost, shall maintain Workers Compensation Insurance coverage for all employees.

All policies required by this paragraph shall be carried in such companies and upon such forms as both parties hereto from time to time approve.

Lessee hereby covenants that no policy shall be subject to cancellation or material modification except after prior written notice to Lessor and Lessor's mortgagee, if applicable, and each policy shall so provide.

9. Damage or Destruction of Premises: In the event that the Premises are totally or partially destroyed, the parties agree as follows:

(a) If the Premises are totally destroyed by storm, fire, lightning, earthquake or other casualty, Lessor shall have the option of either (i) terminating this Lease as of the date of such destruction, in which case rental shall be accounted for as of that date, or (ii) restoring the Premises within six (6) months of said destruction to substantially the same condition as before destruction out of insurance proceeds which will be assigned to Lessor for said purpose, in which case rental shall abate during the period of restoration, but not longer than six (6) months. Said option shall be exercised within sixty (60) days from the date of such destruction.

(b) If the Premises are partially destroyed by storm, fire, lightning, earthquake or other casualty, rental shall abate in the same proportion as use of the Premises has been destroyed, and Lessor shall restore the Premises to substantially the same



condition as before such damage as speedily as practicable, but within six (6) months, whereupon full rental shall recommence; provided, however, that if the damage shall be so extensive that the same cannot be reasonably repaired and restored within six (6) months from the date of casualty, or if the estimated cost of restoration exceeds insurance proceeds received as a result of such damage, then Lessor shall have the option of either (i) restoring the Premises or (ii) terminating this Lease. Said option shall be exercised by the giving of written notice to Lessee within thirty (30) days from date of such casualty.

Anything to the contrary contained in paragraphs (a) or (b) of this Paragraph 9 notwithstanding, upon receipt of notice of Lessor's election to terminate this Lease under such paragraphs (a) or (b) above, Lessee may, within sixty (60) days of the date of such destruction, notify Lessor of its intent to restore and rebuild to substantially the same condition as before such destruction. In the event of Lessee's election to so rebuild, Lessee shall provide Lessor with evidence of Lessee's financial ability to pay for such reconstruction (for this purpose, Lessee shall be entitled to include the proceeds of insurance), and upon Lessor's receipt of satisfactory evidence, Lessee shall be entitled to receive the proceeds of all insurance provided for in Paragraph 8 hereof to the extent that the same are required to rebuild and such proceeds shall be disbursed by Lessor to Lessee, from time to time as such rebuilding progresses, upon written request of Lessee, accompanied by a certificate of the architect or engineer in charge of the work that such distribution is appropriate for the work performed. In the event such proceeds are inadequate to reimburse Lessee for such repair or restoration, Lessee shall pay any additional amounts required from its own funds.

10. Lessor Indemnified: Lessee agrees to indemnify and save Lessor harmless against and from any and all claims by and on behalf of any persons, firms or corporations arising from the conduct or management of, or from any work or thing whatsoever done in or about, the Premises during the term of this Lease.

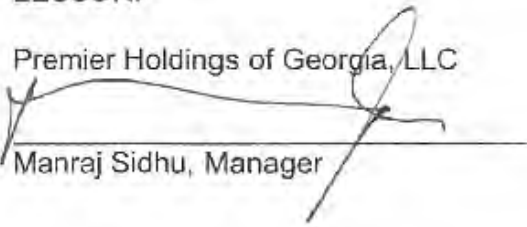
11. Net Lease Intended: It is the intention of the parties that Lessor shall receive rental specified herein as net rental, free from all charges, expenses, damages and deductions.

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**IN WITNESS WHEREOF**, the parties hereto have caused this Lease to be executed in their respective names by their respective authorized representatives as of the day and year first above written.

**LESSOR:**

Premier Holdings of Georgia, LLC

  
\_\_\_\_\_  
Manraj Sidhu, Manager

**LESSEE:**

Premier Kings of Georgia Inc.

  
\_\_\_\_\_  
Manraj Sidhu, President



Exhibit A

Legal Description

All that certain lot, tract or parcel of land situate, lying and being in Land Lot No. 88 of the 2<sup>nd</sup> Land District of the City of Nahant, Brantley County, Georgia, consisting of 1.49 acres more or less. Said real property being more particularly described as follows:

Commencing at the intersection of the Southerly 100' Right of Way of US Hwy 82 / W Cleveland Street and the Westerly 40' Right of Way of Jackson Street proceed in a northwesterly direction along the aforesaid Right of Way of US Hwy 82 / W Cleveland Street a distance of 167.20 feet to an Iron Pin Found (#5 Rebar); thence along the aforesaid Right of Way of US Hwy 82 / W Cleveland Street proceed N 80° 50' 08"W a distance of 50.08 feet to an Iron Pin Found (#5 Rebar). Said Iron Pin Found (#5 Rebar) being the Point of Beginning.

From said Point of Beginning proceed S 09° 06' 33"W a distance of 309.96 feet to an Iron Pin Found (#5 Rebar); thence along the northerly 40' Right of Way of Plum Street proceed N 80° 56' 24"W a distance of 209.86 feet to an Iron Pin Found (#5 Rebar); thence proceed N 09° 05' 34"E a distance of 310.14 feet to an Iron Pin Found (#5 Rebar); thence along the aforesaid Right of Way of US Hwy 82 / W Cleveland Street proceed S 80° 53' 27"E a distance of 209.95 feet to an Iron Pin Found (#5 Rebar) being the Point of Beginning.



Premier Kings Leases by Location - Burger King

Notes:

- Information herein comes directly from Company.

Open Burger King Stores- Lessor by Type	
Related Party ("RP")	53
Burger King Corporation ("BCK")	46
Third Party ("TP")	75
Owned by Op Co ("Owned")	2
Total	174

Open Burger King Stores by State	
Alabama	89
Florida	14
Georgia	62
South Carolina	6
Tennessee	3
Total	174

Open Burger Kings by Op Co	
Premier Kings of Georgia, Inc.	82
Premier Kings of North Alabama, LLC	42
Premier Kings, Inc.	50
	174

Store Number	Franchise Name (i.e. Burger King)	State	City	Store Address	Zip Code	Type	Lessor	Fee/Sublease	Lessee/Op Entity	Lease Terms	Lease Amount
247	Burger King	GA	Atlanta	2304 North Druid Hills Road	30329	BCK	Burger King Corporation		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	7,503
252	Burger King	AL	Huntsville	1004 North Memorial Parkway	35803	BCK	Burger King Corporation		Premier Kings of North Alabama, LLC	Fixed Monthly Amount	10,978
322	Burger King	GA	Savannah	501 Martin Luther King Blvd	31401	TP	Crown Premier Properties, LLC		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	13,779
435	Burger King	AL	Florence	1244 Florence Blvd	35630	BCK	Burger King Corporation		Premier Kings of North Alabama, LLC	Fixed Monthly Amount	10,062
461	Burger King	AL	Birmingham	290 Oxmoor Road	35209	BCK	Burger King Corporation		Premier Kings, Inc.	Fixed Monthly Amount	11,667
469	Burger King	AL	Gadsden	414 East Meighan Blvd	35903	BCK	Burger King Corporation		Premier Kings of North Alabama, LLC	Fixed Monthly Amount	13,537
524	Burger King	GA	Savannah	7923 White Bluff Road	31406	BCK	Burger King Corporation		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	8,448
634	Burger King	GA	Atlanta	199 North Side Drive NW	30303	BCK	Burger King Corporation		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	12,224
828	Burger King	GA	Lawrenceville	544 West Pike Street	30045	BCK	Burger King Corporation		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	5,290
846	Burger King	GA	Decatur	2642 Candler Road	30034	BCK	Burger King Corporation		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	10,899
987	Burger King	GA	Stone Mtn	5287 Highway 78	30087	BCK	Burger King Corporation		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	7,943
1069	Burger King	AL	Birmingham	1524 6th Ave South	35233	BCK	Burger King Corporation		Premier Kings, Inc.	Fixed Monthly Amount	14,088
1117	Burger King	FL	Jacksonville	290 Monument Road	32225	BCK	Burger King Corporation		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	6,430
1225	Burger King	AL	Huntsville	308 Jordan Lane #1225	35805	TP	Preston Properties, LLC		Premier Kings of North Alabama, LLC	Fixed Monthly Amount	11,059
1316	Burger King	GA	Savannah	14 W. DeRenzo Ave	31405	TP	Crown Premier Properties, LLC		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	13,231
1404	Burger King	GA	Savannah	11711 Abercorn Street	31419	BCK	Burger King Corporation		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	7,933
1471	Burger King	SC	Beaufort	1295 RUSSELL RD	29902	TP	YSB Capital		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	9,095
1486	Burger King	AL	Cullman	1605 Town Square	35055	TP	Traymore Properties, LLC		Premier Kings of North Alabama, LLC	Fixed Monthly Amount	3,500
1551	Burger King	GA	Garden City	4241 Augusta Road	31408	BCK	Burger King Corporation		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	5,528
1577	Burger King	AL	Selma	312 Highland Avenue	36702	BCK	Burger King Corporation		Premier Kings, Inc.	Fixed Monthly Amount	20,083
1697	Burger King	GA	Brunswick	5015 New Jesup Hwy	31520	TP	BCK 5015, LLC		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	5,000
1724	Burger King	FL	Jacksonville	5922 Merrill Road	32277	BCK	Burger King Corporation		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	3,666
2124	Burger King	GA	Waycross	1710 Memorial Drive	31501	TP	3R Ventures		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	7,147
2261	Burger King	AL	Scottsboro	3204 South Broad Street	35769	TP	Traymore Properties, LLC		Premier Kings of North Alabama, LLC	Fixed Monthly Amount	9,815
2297	Burger King	AL	Huntsville	2116 Whitesburg Drive	35801	TP	Traymore Properties, LLC		Premier Kings of North Alabama, LLC	Fixed Monthly Amount	10,632
2371	Burger King	GA	Stone Mtn	6038 Memorial Drive	30083	BCK	Burger King Corporation		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	10,237
2387	Burger King	GA	Jesup	998 Sunset Blvd Loc 173	31545	BCK	Burger King Corporation		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	8,441
2430	Burger King	GA	College Park	5068 Old National Hwy	30349	BCK	Burger King Corporation		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	7,091
2544	Burger King	GA	Decatur	4622 Memorial Drive	30032	BCK	Burger King Corporation		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	7,742
2626	Burger King	AL	Tuskegee	504 North Main Street	36083	TP	Premier Kings Holdings, LLC	Fee	Premier Kings, Inc.	Fixed Monthly Amount	8,945
2872	Burger King	AL	Jasper	708 Hwy 14 East	35501	BCK	Burger King Corporation		Premier Kings, Inc.	Fixed Monthly Amount	11,852
2873	Burger King	FL	Tallahassee	2940 S. 8th Street	32304	TP	South Coast Enterprises, LLC		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	10,670
3043	Burger King	SC	Hardeeville	28770 WYTHE HARDEE BLVD	29517	TP	Ruthtown Villas Apartments, LLC		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	8,687
3155	Burger King	GA	Rocky	4094 Lawrenceville Highway	30084	BCK	Burger King Corporation		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	6,152
3242	Burger King	AL	Alberville	7300 Highway #31 N	35950	TP	Traymore Properties, LLC		Premier Kings of North Alabama, LLC	Fixed Monthly Amount	20,856
3276	Burger King	GA	Decatur	3542 Memorial Drive	30032	BCK	Burger King Corporation		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	5,393
3345	Burger King	AL	Dothan	3092 Ross Clark Cr SW Loc 115	36901	TP	ARC CAFEUSA001, LLC c/o Varatt, Inc.		Premier Kings, Inc.	Fixed Monthly Amount	11,269
3410	Burger King	AL	Dothan	12091 Ross Clark Cr SW Loc 124	36901	TP	A R T Investments, LLC		Premier Kings, Inc.	Fixed Monthly Amount	5,922
3641	Burger King	GA	Atlanta	2701 Metropolitan Ave	30315	BCK	Burger King Corporation		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	7,377
3643	Burger King	GA	Urburn	4734 Highway 25	30047	BCK	Burger King Corporation		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	7,230
3929	Burger King	SC	Beaufort	2434 BOUNDARY ST	29906	TP	Beaufort Plaza, Inc.		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	5,000
3942	Burger King	AL	Madison	9805 Madison Blvd	35758	TP	Preston Properties, LLC		Premier Kings of North Alabama, LLC	Fixed Monthly Amount	9,240
3986	Burger King	GA	Cluth	7111 Pleasant Hill Road	30096	BCK	Burger King Corporation		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	10,387
4009	Burger King	GA	Lake City	5141 Jonesboro Rd	30260	BCK	Burger King Corporation		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	6,275
4027	Burger King	GA	Fayetteville	865 N Glynn St w/playground	30224	TP	Hacht Family LP		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	20,418
4052	Burger King	AL	Troy	432 US 31 S Loc 114	36061	TP	ARC CAFEUSA001, LLC c/o Varatt, Inc.		Premier Kings, Inc.	Fixed Monthly Amount	23,575
4272	Burger King	AL	Athens	1111 SE Jefferson Street	38611	TP	Traymore Properties, LLC		Premier Kings of North Alabama, LLC	Fixed Monthly Amount	23,612
4283	Burger King	GA	Atlanta	336 North Avenue NE	30306	BCK	Burger King Corporation		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	6,567
4433	Burger King	AL	Hoover	1555 Montgomery Highway	35216	BCK	Burger King Corporation		Premier Kings, Inc.	Fixed Monthly Amount	10,550
4467	Burger King	GA	Lithonia	2827 Parola Road	30098	BCK	Burger King Corporation		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	14,109
4705	Burger King	AL	Guntersville	1929 Gunter Avenue	35976	TP	Westam		Premier Kings of North Alabama, LLC	Fixed Monthly Amount	9,359
4814	Burger King	GA	Forest Pk	247 Forest Parkway #1954 (w/playground)	30297	TP	Joe Almond, ground lease/American Realty	building acquired	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	5,013
4848	Burger King	AL	Enterprise	701 Boll Weevil Cr Loc 111	36680	TP	ARC CAFEUSA001, LLC c/o Varatt, Inc.		Premier Kings, Inc.	Fixed Monthly Amount	9,073
4885	Burger King	AL	Decatur	2057 Beltline Road	35603	TP	Traymore Properties, LLC		Premier Kings of North Alabama, LLC	Fixed Monthly Amount	14,159
4959	Burger King	GA	Doraville	3994 Pleasantdale Road	30340	TP	GAI Realty Group Inc.		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	10,000
5000	Burger King	GA	McDonough	1088 Hwy 20 West #5090 (w/playground)	30253	TP	Premier Kings Holdings of Georgia, LLC	Fee	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	9,056



5238	Burger King	AL	Montgomery	601 Madison Avenue	36104	TP	601 Kings, LLC	Premier Kings, Inc.	Fixed Monthly Amount	7,917
5266	Burger King	GA	Savilleville	1357 Main Street	30078	RP	Premier Kings Holdings of Georgia, LLC	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	8,916
5571	Burger King	GA	Pooler	415 IIS HIGHWAY 40 E, POOLER	31322	TP	College Street Station, LLC	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	8,392
6065	Burger King	AL	Montgomery	5525 Calhoun Road	36117	TP	George C. Salmon	Premier Kings, Inc.	Fixed Monthly Amount	10,750
6150	Burger King	AL	Port Payne	1506 Glenn Blvd. SW Loc 110	35967	TP	Glenda Reed, ground lease /Sandy Wilson	Premier Kings of North Alabama, LLC	Fixed Monthly Amount	7,187
6202	Burger King	GA	Conyers	2130 Salem Road	30025	RP	Premier Kings Holdings of Georgia, LLC	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	13,503
6455	Burger King	GA	Macon	1380 Establin Highway	30650	RP	Premier Kings Holdings of Georgia, LLC	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	8,429
6466	Burger King	AL	Huntsville	3541 North Memorial Parkway	35810	TP	M.L. Horns Alabama, LLC	Premier Kings of North Alabama, LLC	Fixed Monthly Amount	12,696
6534	Burger King - Closed	AL	Dothan	5182 Montgomery Hwy	36303	Closed	Najen Nyström	Premier Kings, Inc.	Fixed Monthly Amount	8,456
6584	Burger King	GA	Jackson	472 East 3rd Street	30233	RP	Premier Kings Holdings of Georgia, LLC	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	13,136
6642	Burger King	AL	Greenville	108 Winterscale Dr. Loc 121	36037	BCR	Burger King Corporation	Premier Kings, Inc.	Fixed Monthly Amount	8,247
6684	Burger King	GA	Duluth	1690 Pleasant Hill Road	30096	TP	IPSOS Realty	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	7,500
6986	Burger King	FL	Jacksonville	11031 Old St. Augustine Rd.	92257	TP	South Coast Enterprises, LLC	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	10,570
7066	Burger King	FL	Jacksonville	13180 Atlantic Blvd	32225	BCR	Burger King Corporation	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	10,014
7121	Burger King	FL	Jacksonville	10142 Phillip's Hwy	32250	BCR	Burger King Corporation	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	9,458
7329	Burger King - Closed	AL	Dothan	1228 Andrews St. Loc 120	36360	Closed	HFB Real Estate, Inc.	Premier Kings, Inc.	Fixed Monthly Amount	7,364
7390	Burger King	AL	Prichard	1740 East Main Street	36067	TP	Franka Khatun	Premier Kings, Inc.	Fixed Monthly Amount	10,158
7554	Burger King	AL	Brewton	1701 Douglas Ave. Loc 116	36425	TP	ARC/CAFEUSA001, LLC d/b/a Verett, Inc.	Premier Kings, Inc.	Fixed Monthly Amount	10,508
8152	Burger King	AL	Birmingham	5963 Chalkville Main Hwy	35252	TP	Schwartz Enterprises	Premier Kings, Inc.	Fixed Monthly Amount	6,358
8173	Burger King	AL	Huntsville	2331 Jordan Lake #8173	35815	TP	Traymore Properties, LLC	Premier Kings of North Alabama, LLC	Fixed Monthly Amount	6,995
8657	Burger King	AL	Opp	505 E. Cumming Ave. Loc 113	36467	TP	ARC/CAFEUSA001, LLC d/b/a Verett, Inc.	Premier Kings, Inc.	Fixed Monthly Amount	8,868
8907	Burger King	GA	Kingsland	1162 Boone Ave Loc 1	31548	RP	Premier Kings Holdings of Georgia, LLC	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	13,006
9006	Burger King	AL	Macon	376 Hughes Road	39758	TP	Traymore Properties, LLC	Premier Kings of North Alabama, LLC	Fixed Monthly Amount	10,214
9594	Burger King	AL	Muscle Shoals	3105 Woodward Avenue #9694	35661	TP	Traymore Properties, LLC	Premier Kings of North Alabama, LLC	Fixed Monthly Amount	11,550
9783	Burger King	AL	Hartsville	601 Highway 31 North	35640	TP	Traymore Properties, LLC	Premier Kings of North Alabama, LLC	Fixed Monthly Amount	10,210
9834	Burger King	AL	Bessemer	740 Academy Drive	35022	BCR	Burger King Corporation	Premier Kings, Inc.	Fixed Monthly Amount	10,992
9942	Burger King	FL	Jacksonville	9090 Merrill Road	32225	TP	Gray Mami	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	7,187
10241	Burger King	GA	Darien	Highway 551 Magnolia Bluffs	31305	RP	Premier Kings Holdings of Georgia, LLC	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	6,209
10327	Burger King	AL	Albany	681 1st Street South W	35007	BCR	Burger King Corporation	Premier Kings, Inc.	Fixed Monthly Amount	14,385
10432	Burger King	FL	Callahan	542370 US Highway 1	32011	TP	DEWOLLA Investments LLC	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	10,870
10714	Burger King	AL	Florence	807 Cox Creek Parkway	35630	TP	Traymore Properties, LLC	Premier Kings of North Alabama, LLC	Fixed Monthly Amount	14,188
10728	Burger King	GA	Porterdale	99 South Broad Street	30014	RP	Premier Kings Holdings of Georgia, LLC	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	10,316
10881	Burger King	AL	Rainbow City	3171 S Rainbow Drive	35506	TP	Traymore Properties, LLC	Premier Kings of North Alabama, LLC	Fixed Monthly Amount	10,789
10893	Burger King	GA	Hinesville	818 Elma G. Miles Parkway	31313	TP	Crown Premier Properties, LLC	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	12,941
11000	Burger King	AL	Mountain	11257 Alabama Highway 157	35650	TP	Traymore Properties, LLC	Premier Kings of North Alabama, LLC	Fixed Monthly Amount	9,758
11309	Burger King	FL	Wilder	462561 52 200	32097	TP	South Coast Enterprises, LLC	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	10,670
11481	Burger King	AL	Andalusia	1127 N Bypass Loc 117	36420	TP	ARC/CAFEUSA001, LLC d/b/a Verett, Inc.	Premier Kings, Inc.	Fixed Monthly Amount	8,930
11664	Burger King	AL	Atlat	354 Brumley AL Parkway	35016	TP	Traymore Properties, LLC	Premier Kings of North Alabama, LLC	Fixed Monthly Amount	9,571
11814	Burger King	AL	Cullman	5940 Alabama Highway 157	35055	TP	Traymore Properties, LLC	Premier Kings of North Alabama, LLC	Fixed Monthly Amount	11,058
12003	Burger King	AL	Birmingham	2224 Bessemer Road	35208	BCR	Burger King Corporation	Premier Kings, Inc.	Fixed Monthly Amount	7,917
13107	Burger King	GA	Brunswick	115 Golden Isles Plaza	31520	RP	Premier Kings Holdings of Georgia, LLC	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	11,874
13291	Burger King	GA	Lawrenceville	1849 Cruse Road	30044	TP	ZPT, LLC	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	12,130
13235	Burger King	AL	Fultonville	1701 Patton Road	35068	BCR	Burger King Corporation	Premier Kings, Inc.	Fixed Monthly Amount	7,500
13437	Burger King	AL	Birmingham	802 3rd Ave West	35204	BCR	Burger King Corporation	Premier Kings, Inc.	Fixed Monthly Amount	6,250
13520	Burger King	AL	Anniston	220 S Main St. Loc 118	36502	TP	ARC/CAFEUSA001, LLC d/b/a Verett, Inc.	Premier Kings, Inc.	Fixed Monthly Amount	7,179
13710	Burger King	AL	Huntsville	6353 University Drive #12710	35806	TP	Traymore Properties, LLC	Premier Kings of North Alabama, LLC	Fixed Monthly Amount	11,691
13792	Burger King	GA	Blackshear	3527 Highway 84 West	31516	RP	Premier Kings Holdings of Georgia, LLC	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	5,516
13906	Burger King	SC	Midgeland	8257 E Main St	29936	TP	J Gisel LLC	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	7,463
13984	Burger King	AL	Huntsville	11957 South Memorial Parkway	35803	TP	Traymore Properties, LLC	Premier Kings of North Alabama, LLC	Fixed Monthly Amount	9,572
13106	Burger King	FL	Jacksonville	13404 Junon Park Dr.	32220	TP	South Coast Enterprises, LLC	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	10,670
13212	Burger King	AL	Rainville	123 Main St. W	35986	RP	Premier Kings Holdings of Alabama, LLC	Premier Kings of North Alabama, LLC	Fixed Monthly Amount	10,147
13243	Burger King	GA	Dawley	154 S. Main St.	31513	RP	Premier Kings Holdings of Georgia, LLC	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	10,534
13272	Burger King	GA	Decatur	971 Dekalb Industrial Way	30030	BCR	Burger King Corporation	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	10,012
13277	Burger King	AL	Athens	1600 Highway 72 East	35611	TP	Traymore Properties, LLC	Premier Kings of North Alabama, LLC	Fixed Monthly Amount	9,035
13386	Burger King	GA	Ellenwood	81 Fairview Rd #13386 (w/playground)	30294	RP	Premier Kings Holdings of Georgia, LLC	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	9,025
13912	Burger King	AL	Tusculumb	105 Highway 72 West	35674	TP	Traymore Properties, LLC	Premier Kings of North Alabama, LLC	Fixed Monthly Amount	9,676
14209	Burger King	SC	Hilton Head Island	201 MUSEUM ST	29926	TP	GRD Family Properties	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	9,750
14210	Burger King	GA	Socorroville	3580 Centerville Highway	30039	RP	Premier Kings Holdings of Georgia, LLC	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	11,804
14433	Burger King	AL	Decatur	2113 6th Avenue	35601	TP	Traymore Properties, LLC	Premier Kings of North Alabama, LLC	Fixed Monthly Amount	11,207
14614	Burger King	GA	Statesboro	602 Fair Road	30458	TP	Crown Premier Properties, LLC	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	11,019
15499	Burger King	FL	Jacksonville	13047 North Main St #15499 (w/play)	32214	RP	Premier Kings Holdings of Georgia, LLC	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	14,020
15700	Burger King	GA	Savannah	4168 Ogeechie Road	31405	TP	375 W. Arenas Ave-Riggs, LLC	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	11,317
15117	Burger King	GA	Atlanta	1150 Marshland Avenue SE	30316	BCR	Burger King Corporation	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	10,777
16437	Burger King	AL	Birmingham	7757 Crestwood Blvd	35210	BCR	Burger King Corporation	Premier Kings, Inc.	Fixed Monthly Amount	9,766
15460	Burger King	AL	Etta	509 Claxton Ave. Loc 119	36323	TP	DRIS Group, LLC	Premier Kings, Inc.	Fixed Monthly Amount	9,258
16472	Burger King - Closed	AL	Pellham	613 Cornelia Valley Road	35424	Closed	Burger Kings Corp	Premier Kings, Inc.	Terminated as of Aug	-
16951	Burger King	FL	East Palatka	184 S. Hwy 17	32933	TP	South Coast Enterprises, LLC	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	10,670



17009	Burger King	AL	Bessemer	5001 Bond Blvd	35022	SC	Burger King Corporation		Premier Kings, Inc.	Fixed Monthly Amount	10,433
17090	Burger King	GA	Doraville	3928 Flat Shoals Parkway	30094	BC	Burger King Corporation		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	13,722
17389	Burger King	AL	Birmingham	2700 University Blvd	35233	BC	Burger King Corporation		Premier Kings, Inc.	Fixed Monthly Amount	10,197
17831	Burger King	FL	Jacksonville	11761 Beach Blvd Ste 15	32246	TP	South Coast Enterprises, LLC/Hakimian Holdings		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	11,952
18106	Burger King	AL	Hope Hull	7581 Mobile Highway	36043	RR	Premier Kings Holdings, LLC	Fee	Premier Kings, Inc.	Fixed Monthly Amount	9,862
18807	Burger King	AL	Montgomery	2232 East South Blvd #18307	36116	RR	Premier Kings Holdings, LLC	Fee	Premier Kings, Inc.	Fixed Monthly Amount	17,008
19242	Burger King	AL	Montgomery	819 Ann Street #19242	36107	RP	Premier Kings Holdings, LLC	Fee	Premier Kings, Inc.	Fixed Monthly Amount	9,953
19411	Burger King	FL	St Augustine	2455 SR 207	32084	TP	South Coast Enterprises, LLC		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	10,520
19879	Burger King	AL	Pemopolis	1003 Highway 80 East	36732	RP	Premier Kings Holdings, LLC	Fee	Premier Kings, Inc.	Fixed Monthly Amount	9,750
19958	Burger King	AL	Hueytown	3016 Allison Bennett Memorial Drive	35029	RP	Premier Kings Holdings, LLC	Fee	Premier Kings, Inc.	Fixed Monthly Amount	10,089
20519	Burger King - Closed	GA	Gilbert	4004 Lawrenceville Highway NW	30047	Closed	Wal-Mart		Premier Kings of Georgia, Inc.	Terminated	-
20816	Burger King	AL	Gardendale	530 Flanders Rd	35071	RR	Walter Smith, ground lease to Premier Holdings	GL with PH, PH subleases to RK for \$3,309 / month (paid from PH to 3rd party), shortfall to Holdings as they have loan but no lease with RK, other than sublease for GL	Premier Kings, Inc.	Fixed Monthly Amt with 3rd Party GL (no RP lease in place)	9,249
21340	Burger King	AL	Hazel Green	1468 Hwy 231/431	36750	RR	Premier Kings Holdings, LLC	Fee	Premier Kings of North Alabama, LLC	Fixed Monthly Amount	13,475
21441	Burger King	AL	Montgomery	3190 Taylor Rd	36116	RP	Premier Kings Holdings, LLC	Fee	Premier Kings, Inc.	Fixed Monthly Amount	10,120
21650	Burger King	AL	Montgomery	4910 Atlanta Highway	36109	RR	The Eschbach Company, ground lease to Premier Holdings	GL with PH, PH subleases to RK for \$5,450 / month (paid from PH to 3rd party), shortfall to holding as they have loan but no lease with RK, other than sublease for GL	Premier Kings, Inc.	Fixed Monthly Amt with 3rd Party GL (no RP lease in place)	5,450
21883	Burger King	AL	Calera	5078 Hwy 34	35090	RR	Lumpkin Development, LLC ground lease to Premier Holdings	GL with PH, PH subleases to RK, RK makes payment to 3rd party	Premier Kings, Inc.	Fixed Monthly Amount	13,000
22245	Burger King	AL	Doak	1752 Hwy 431	35957	RP	Premier Kings Holdings, LLC	Fee	Premier Kings of North Alabama, LLC	Fixed Monthly Amount	13,694
22426	Burger King	GA	McNair	2060 West Spring St	30655	RP	Premier Kings Holdings of Georgia, LLC	Fee	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	10,582
22803	Burger King	AL	Montgomery	1630 Federal Drive	36117	RP	Premier Kings Holdings of Alabama, LLC	Fee	Premier Kings, Inc.	Fixed Monthly Amount	7,375
22824	Burger King	IN	Ardenmore	26388 Main St	38443	RP	Premier Kings Holdings, LLC	Fee	Premier Kings of North Alabama, LLC	Fixed Monthly Amount	7,380
22834	Burger King	AL	Forestdale	1484 Forestdale Blvd	35214	RP	Premier Kings Holdings of Alabama, LLC	Fee	Premier Kings, Inc.	Fixed Monthly Amount	9,865
22937	Burger King	AL	Madison	8670 Hwy 72 aka 8680 Hwy 72	35758	RR	Premier Kings Holdings of Alabama, LLC	Fee	Premier Kings of North Alabama, LLC	Fixed Monthly Amount	12,008
23049	Burger King	GA	Savannah	496 Jimmy Deloach Parkway	31407	TP	Crown Premier Properties, LLC		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	11,244
23135	Burger King	AL	Montgomery	250 Northeastern Blvd	36117	RP	Premier Kings Holdings, LLC	Fee	Premier Kings, Inc.	Fixed Monthly Amount	7,748
23155	Burger King	SC	Okeech	3184 FLORENCE DR	29909	TP	Rave RE, LLC		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	11,250
23208	Burger King	AL	Jamison	12560 County Rd 42 Lot 95	35085	TP	Sweet Melinda Smithyrem, ground lease	GL to PH, has been assigned to RK	Premier Kings, Inc.	Fixed Monthly Amount	5,500
23235	Burger King	AL	Haverhill	3035 Jeff Rd #23235	35743	RP	Premier Kings Holdings of Alabama, LLC	Fee	Premier Kings of North Alabama, LLC	Fixed Monthly Amount	10,704
23237	Burger King	AL	Stevenson	4137 US Hwy 72	35772	RP	Premier Kings Holdings of Alabama, LLC	Fee	Premier Kings of North Alabama, LLC	Fixed Monthly Amount	9,709
23805	Burger King	AL	Pinson	4520 Phylon Blvd	35124	TP	Jimmy Hale Mission, ground lease	Building built using WF development funds	Premier Kings, Inc.	Fixed Monthly Amount	9,322
23806	Burger King	GA	St Mary's	7430 Osborne Rd	30558	RP	Premier Kings Holdings of Georgia, LLC	Fee	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	8,111
24052	Burger King	AL	Collinsville	5615 Alabama Hwy 68	35561	TP	BW Collinsville LLC		Premier Kings of North Alabama, LLC	Fixed Monthly Amount	10,390
24123	Burger King	AL	Springville	20 Springville Station Blvd	35146	TP	GEWI 2 LLC (sale lease back occurred, paid off loan but not equipment lease)		Premier Kings, Inc.	Fixed Monthly Amount	8,854
24560	Burger King	GA	Savannah	5010 Ogeechee Road	31418	TP	Grant Realty Corp		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	11,867
24563	Burger King	AL	Geneva	155 Premier Drive	36340	RP	Premier Kings Holdings, LLC	Fee	Premier Kings, Inc.	Fixed Monthly Amount	12,587
24564	Burger King	AL	Surley	5860 Highway 72 East, AL	36748	RP	Premier Kings Holdings, LLC	Fee	Premier Kings of North Alabama, LLC	Fixed Monthly Amount	12,050
24565	Burger King	AL	Hedden	16752 US Hwy 331 South	36345	RP	Premier Kings Holdings, LLC	Fee	Premier Kings, Inc.	Fixed Monthly Amount	12,106
25426	Burger King	AL	Southside	1480 Highway 77	35907	RP	Premier Holdings, LLC	Fee	Premier Kings of North Alabama, LLC	8.5% of sales	-
25532	Burger King	GA	Dallas	1073 Merchants Drive	30182	TP	108 Charleston Street Realty		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	11,308
25564	Burger King	AL	New Hope	100 Peter Lane	35760	Owned	Owned by PRNA	Fee	Premier Kings of North Alabama, LLC	Owned	-
25565	Burger King	AL	Locust Fork	30024 State Hwy 79	35087	RP	Premier Holdings, LLC	Fee	Premier Kings, Inc.	8.5% of sales	-
25607	Burger King	GA	Greensboro	2010 Hospital Drive	30642	RP	Premier Holdings of Georgia, LLC	Fee	Premier Kings of Georgia, Inc.	8.5% of sales or debt service payment, whichever is greater	-
25743	Burger King	AL	Jasper	123 Carl Canyon Blvd	35501	RP	Premier Holdings, LLC	Fee	Premier Kings, Inc.	8.5% of sales	-
25817	Burger King	TP	Lawrenceburg	1214 Locust Ave	38464	Owned	Owned by PRNA	Fee	Premier Kings of North Alabama, LLC	Owned	-
25862	Burger King	GA	Clarkston	106 N Duval St	30417	RP	Premier Holdings of Georgia, LLC	Fee	Premier Kings of Georgia, Inc.	8.5% of sales or debt service payment, whichever is greater	-
25937	Burger King	GA	Richmond Hill	4860 Hwy 17	31324	RP	Premier Holdings of Georgia, LLC	Fee	Premier Kings of Georgia, Inc.	8.5% of sales or debt service payment, whichever is greater	-
26113	Burger King	GA	Covington	5301 Hwy 378 - Covington, GA	30417	TP	Cheran and Marissa Holdings, LLC		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	11,317
26579	Burger King	AL	McCalla	22183 AL 116	35111	RP	Conner Family Trust, ground lease to Premier Holdings	GL leased to PH, PH subleases to RK for 8.5% of Debt service potential shortfall to holding as they have to pay both 8.5% to 3rd party for GL and Debt service on loans	Premier Kings, Inc.	8.5% of sales or debt service payment, whichever is greater	8,060
26748	Burger King	GA	Temple	515 Conviction St	30179	RP	Premier Holdings of Georgia, LLC	Fee	Premier Kings of Georgia, Inc.	8.5% of sales or debt service payment, whichever is greater	-
26749	Burger King	GA	Alpharetta	23708 East Oglethorpe Hwy	31320	RP	Premier Holdings of Georgia, LLC	Fee	Premier Kings of Georgia, Inc.	8.5% of sales or debt service payment, whichever is greater	-



26868	Burger King	GA	Port Wentworth	7304 Hwy 21	31407	TP	Port Wentworth, GL to Premier Kings of GA. PK-GA pays devel fee to Premier Holdings of GA	GL b/t 3rd party and PKGA; Development agreement b/t PKGA and PHGA for Debt Serv Pmt plus \$100.	Premier Kings of Georgia, Inc.
26914	Burger King	AL	Shorter	395 Main St	36075	RP	Premier Holdings, LLC	Fee	Premier Kings, Inc.
27281	Burger King	AL	Harpersville	5482 Hwy 280	35078	RP	Premier Holdings, LLC	Fee	Premier Kings, Inc.
27690	Burger King	GA	Nahunta	13200 W Cleveland Street	31553	RP	Premier Holdings of Georgia, LLC	Fee	Premier Kings of Georgia, Inc.
29043	Burger King	AL	Florence	4240 Florence Blvd	35634	RP	Premier Holdings, LLC	Fee	Premier Kings of North Alabama, LLC
29518	Burger King	TN	Loretto	103 North Military Street	38469	RP	Premier Holdings, LLC	Fee	Premier Kings of North Alabama, LLC
Office	Huntsville Office	AL	Huntsville	400 Jordan Lane NW	35805	Office	Wesfam		Premier Kings of North Alabama, LLC
Office	Office / Maint Bldg	AL	Huntsville	306 Jordan Lane NW	35805	Office	Preston Properties, LLC		Premier Kings of North Alabama, LLC
Office	Corporate Office	AL	Montgomery	3500 East Blvd	36116	Office	JP Premier Enterprises, LLC (owns the loan)		Premier Kings, Inc.
Office	Office/Train Facil	AL	Montgomery	5529 Carmichael Road	36117	Office	George C. Salmon		Premier Kings, Inc.
Office	Office/Maint-Bldg	AL	Pelham	2671 Pelham Parkway #OFC	35124	Office	S.N.O., Inc.		Premier Kings, Inc.
Office	ATL Office	GA	Norcross	7078 Peachtree Industrial Boulevard	30071	Office	JP Premier Enterprises, LLC (owns the loan, there are 5 tenants total, once being PKGA)		Premier Kings of Georgia, Inc.
Office	Office - Savannah	GA	Richmond Hill	527 Edsel Drive	31324	Office	Lugene Broome Jr.		Premier Kings of Georgia, Inc.
Storage	Storage Building	AL	Boaz	1752 Hwy 431 (storage bldg)	35927	Office	PK Holdings (or PKHA)		Premier Kings of North Alabama, LLC

	3rd party (5k + CAM) and Related Party (Debt Serv Pmt + \$100)	5,588
	8.5% of sales	
	8.5% of sales or \$127,500 whichever is greater	
	8.5% of sales or debt service payment, whichever is greater	
	8.5% of sales	
	8.5% of sales	
	Fixed Monthly Amount	650
	Fixed Monthly Amount	2,454
	Fixed Monthly Amount	2,160
	Fixed Monthly Amount	Included in rent for 6065
	Fixed Monthly Amount	1,460
	Fixed Monthly Amount	3,500
	Fixed Monthly Amount	2,800
	No Lease in effect	

Premier Kings Leases by Location - Burger King

**Note:**  
\* Information herein comes directly from Company

Open Burger King Stores - Lessors by Type	
Related Party ("RP")	4
Burger King Corporation ("BCK")	3
Third Party ("TP")	5
Owned by Op Co ("Owned")	0
Total	12

Open Burger King Stores by State	
Alabama	7
Florida	1
Georgia	4
South Carolina	0
Tennessee	0
Total	12

Open Burger Kings by Op Co	
Premier Kings of Georgia, Inc.	5
Premier Kings of North Alabama, LLC	1
Premier Kings, Inc.	6
	12

Store Number	Franchise Name (i.e. Burger King)	State	City	Store Address	Zip Code	Type	Lessor	Fee/Sublease	Lessee/Op Entity	Lease Terms	Lease Amount
305	Burger King	AL	Montgomery	1621 Carter Hill Road	36105	TP	Wang Family Trust and Chang Family Trust		Premier Kings, Inc.		
4856	Burger King	GA	Stockbridge	115 Hwy 138	30281	TP	Genea Property, LLC		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	7,500
5490	Burger King	AL	Birmingham	517 Cahaba Circle Loc 8	35242	BCK	Burger King Corporation		Premier Kings, Inc.	Fixed Monthly Amount	3,442
9423	Burger King	GA	Rincon	421 S. Columbus Ave	31326	TP	Bearheart Properties, LLC		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	10,358
12279	Burger King	AL	Dodhan	1165 Ross Clark Cr Loc 112	36301	TP	ARC CAFEUSA001, LLC c/o Vereit, Inc.		Premier Kings, Inc.	Fixed Monthly Amount	3,194
15339	Burger King	FL	Jacksonville	141 Gateway Cr #15339 (w/playground)	32258	BCK	Burger King Corporation (2 leases)		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	11,264
16228	Burger King	AL	Midfield	100 Wiabel Drive	35228	BCK	Burger King Corporation		Premier Kings, Inc.	Fixed Monthly Amount	13,320
16268	Burger King	GA	Springfield	5262 Highway 21 S	31328	TP	Crown Premier Properties, LLC		Premier Kings of Georgia, Inc.	Fixed Monthly Amount	10,525
18636	Burger King	AL	Montgomery	345 West Smith Blvd	36105	RP	Premier Kings Holdings, LLC	Fee	Premier Kings, Inc.	Fixed Monthly Amount	12,802
22010	Burger King	AL	Pelham	3076 Pelham Pkwy	35124	RP	Premier Kings Holdings, LLC	Fee	Premier Kings, Inc.	Fixed Monthly Amount	3,471
24532	Burger King	GA	Watkinsville	2271 Hog Mountain Road New BLDG 12/31	30677	RP	Premier Kings Holdings of Georgia, LLC	Fee	Premier Kings of Georgia, Inc.	Fixed Monthly Amount	8,644
28954	Burger King	AL	Piedmont	204 US 278 Piedmont, AL 36272	36272	RP	Premier Holdings, LLC	Fee	Premier Kings of North Alabama, LLC	Fixed Monthly Amount	10,500
										8.5% of sales	



Premier Kings  
Store Addresses  
January 2024 Rent Calculation - Prorated

Store #	Street	City	State	Zip Code	Market	Sub-Market	January 2024 Rent (Full Month)	Jan Days	Jan Prorated	Landlord	Bidder	Close Date	Royal Jan Pmt	New rent rate	Using original Jan rents	Revised January rents where applicable	Rent rates going forward	
1197	250 Monument Road	Jacksonville	FL	32225	PKGA	Jacksonville-Brunswick, FL	6,360.00	15.00	3,077.42	Burger King Corporation	Royal Restaurant Group (Jacksonville)	1/15/2024	3,282.58	#N/A			1197-Jacksonville	6,360.00
1404	11711 Abercorn Street	Savannah	GA	31419	PKGA	Savannah, GA	7,933.33	15.00	3,838.71	Burger King Corporation	Royal Restaurant Group (Savannah)	1/15/2024	4,094.62	#N/A			1404-Savannah	7,933.33
1471	1295 RIBAUT RD	Beaufort	SC	29902	PKGA	Savannah, GA	9,295.13	15.00	4,497.64	YSB Capital	Royal Restaurant Group (Savannah)	1/15/2024	4,797.49	#N/A			1471-Beaufort	9,295.13
1551	4241 Augusta Road	Garden City	GA	31408	PKGA	Savannah, GA	8,527.66	15.00	4,126.29	Burger King Corporation	Royal Restaurant Group (Savannah)	1/15/2024	4,401.37	#N/A			1551-Garden City	8,527.66
1691	5015 New Jesup Hwy	Brunswick	GA	31520	PKGA	Jacksonville-Brunswick, FL	5,000.00	15.00	2,419.35	BQK 5015, LLC	Royal Restaurant Group (Savannah)	1/15/2024	2,580.65	#N/A			1691 - Brunswick	5,000.00
1724	5922 Merrill Road	Jacksonville	FL	32277	PKGA	Jacksonville-Brunswick, FL	3,885.88	15.00	1,880.26	Burger King Corporation	Royal Restaurant Group (Jacksonville)	1/15/2024	2,005.62	#N/A			1724-Jacksonville	3,885.88
2124	1710 Memorial Drive	Waycross	GA	31501	PKGA	Jacksonville-Brunswick, FL	7,290.10	15.00	3,527.47	SRI Ventures	Royal Restaurant Group (Savannah)	1/15/2024	3,121.29	6047.5			2124 - Waycross	6,047.50
2397	998 Sunset Blvd Loc 129	Jesup	GA	31545	PKGA	Savannah, GA	9,284.83	15.00	4,492.66	Burger King Corporation	Royal Restaurant Group (Savannah)	1/15/2024	4,792.17	#N/A			2397 - Jesup / Savannah	9,284.83
3048	18770 WHYTE HARDEE BLVD	Hardeeville	SC	29927	PKGA	Savannah, GA	8,587.02	15.00	4,203.40	Dutchtown Villas Apartments, LLC	Royal Restaurant Group (Savannah)	1/15/2024	3,590.54	6956.67			3048-Hardeeville	6,956.67
5571	415 US HIGHWAY 80 E, POOLER	Pooler	GA	31322	PKGA	Savannah, GA	8,991.71	15.00	4,350.83	College Street Station, LLC	Royal Restaurant Group (Savannah)	1/15/2024	3,260.60	6317.42			5571-Pooler	6,317.42
322	601 Martin Luther King Blvd	Savannah	GA	31401	PKGA	Savannah, GA	13,779.07	15.00	6,667.29	Crown Premier Properties, LLC	Royal Restaurant Group (Savannah)	1/15/2024	7,111.78	#N/A			322-Savannah	13,779.07
7068	13180 Atlantic Blvd	Jacksonville	FL	32225	PKGA	Jacksonville-Brunswick, FL	9,920.28	15.00	4,800.14	Burger King Corporation	Royal Restaurant Group (Jacksonville)	1/15/2024	5,120.14	#N/A			7068-Jacksonville	9,920.28
1226	14 W. DeRenne Ave	Savannah	GA	31405	PKGA	Savannah, GA	13,251.44	15.00	6,411.98	Crown Premier Properties, LLC	Royal Restaurant Group (Savannah)	1/15/2024	7,111.78	#N/A			1226-Savannah	13,251.44
8907	1162 Boone Ave Ext E	Kingsland	GA	31548	PKGA	Jacksonville-Brunswick, FL	7,086.25	15.00	6,583.55	Premier Kings Holdings of Georgia, LLC	Royal Restaurant Group (Savannah)	1/15/2024	6,839.45	#N/A			8907 - Kingsland	13,606.00
9942	9090 Merrill Road	Jacksonville	FL	32225	PKGA	Jacksonville-Brunswick, FL	6,809.00	15.00	3,428.83	Isram Merrill	Royal Restaurant Group (Jacksonville)	1/15/2024	3,657.42	NA	7,022.45	7,022	9942-Jacksonville	7,086.25
10241	Highway 251 Magnolia Bluffs	Darien	GA	31305	PKGA	Savannah, GA	12,940.96	15.00	3,294.68	Premier Kings Holdings of Georgia, LLC	Royal Restaurant Group (Savannah)	1/15/2024	3,514.32	#N/A	3,514.32	3,514	10241 - Darien	6,809.00
10893	815 Elma G. Miles Parkway	Hinesville	GA	31313	PKGA	Savannah, GA	15,019.10	15.00	6,261.75	Crown Premier Properties, LLC	Royal Restaurant Group (Savannah)	1/15/2024	6,679.21	#N/A			10893-Hinesville	12,940.96
14614	602 Fair Road	Statesboro	GA	30458	PKGA	Savannah, GA	11,244.03	15.00	5,440.66	Crown Premier Properties, LLC	Royal Restaurant Group (Savannah)	1/15/2024	5,803.37	#N/A			14614-Statesboro	15,019.10
23049	496 Jimmy DeLoach Parkway	Savannah	GA	31407	PKGA	Jacksonville-Brunswick, FL	12,874.00	15.00	6,229.35	Premier Kings Holdings of Georgia, LLC	Royal Restaurant Group (Savannah)	1/15/2024	6,644.65		6,644.65	6,645	23049-Savannah	11,244.03
12107	115 Golden Isles Plaza	Brunswick	GA	31520	PKGA	Savannah, GA	9,916.00	15.00	4,798.06	Premier Kings Holdings of Georgia, LLC	Royal Restaurant Group (Savannah)	1/15/2024	5,117.94		5,117.94	5,118	12107 - Brunswick	12,874.00
12792	3527 Highway 84 West	Blackshear	GA	31516	PKGA	Savannah, GA	7,463.10	15.00	3,611.18	J Gisel LLC	Royal Restaurant Group (Savannah)	1/15/2024	4,650.49	9010.33			12792 - Blackshear	9,916.00
12906	8257 E MAIN ST	Ridgeland	SC	29936	PKGA	Savannah, GA	9,729.71	15.00	4,707.92	GRD Family Properties	Royal Restaurant Group (Savannah)	1/15/2024	3,827.91	7416.58			12906-Ridgeland	9,190.54
14209	201 MUSEUM ST	Hilton Head Island	SC	29926	PKGA	Savannah, GA	10,534.00	15.00	5,097.10	Premier Kings Holdings of Georgia, LLC	Royal Restaurant Group (Savannah)	1/15/2024	5,436.90		5,436.90	5,437	14209-Hilton Head	10,534.00
13243	154 S. Main St.	Baxley	GA	31513	PKGA	Savannah, GA	6,164.92	15.00	2,983.03	Port Wentworth Fee Owner	Royal Restaurant Group (Savannah)	1/15/2024	5,419.35	#N/A			13243-Baxley	10,534.00
26868	7304 Hwy 21	Port Wentworth	GA	31407	PKGA	Savannah, GA	14,022.00	15.00	6,784.84	Premier Kings Holdings of Georgia, LLC	Royal Restaurant Group (Savannah)	1/15/2024	5,806.45	#N/A			26868-Port Wen	6,164.92
15499	13049 North Main St #15499 (w/playg)	Jacksonville	FL	32218	PKGA	Jacksonville-Brunswick, FL	11,250.00	15.00	5,443.55	Rave RE, LLC	Royal Restaurant Group (Jacksonville)	1/15/2024	5,149.35	10500	7,237.16	5,419	15499-Jacksonville	10,500.00
23155	3 BAYLOR BROOK DR	Okatie	SC	29909	PKGA	Savannah, GA	11,077.50	15.00	5,360.08	South Coast Enterprises, LLC	Royal Restaurant Group (Savannah)	1/15/2024	5,717.42	#N/A			23155-Okatie	11,250.00
11309	462581 SR 200	Yulee	FL	32097	PKGA	Jacksonville-Brunswick, FL	11,077.50	15.00	5,360.08	South Coast Enterprises, LLC	Royal Restaurant Group (Jacksonville)	1/15/2024	5,717.42	#N/A			11309-Yulee	11,077.50
16751	184 S. Hwy 17	East Palatka	FL	32131	PKGA	Jacksonville-Brunswick, FL	11,025.00	15.00	5,334.68	South Coast Enterprises, LLC	Royal Restaurant Group (Savannah)	1/15/2024	5,690.32	#N/A			16751-East Palat	11,077.50
19411	2455 SR 207	St Augustine	FL	32084	PKGA	Jacksonville-Brunswick, FL	9,111.00	15.00	4,408.55	Premier Kings Holdings of Georgia, LLC	Royal Restaurant Group (Jacksonville)	1/15/2024	4,172.04	8083.33			19411-Jacksonville	11,025.00
23806	2430 Osborne Rd	St Mary's	GA	31558	PKGA	Jacksonville-Brunswick, FL	12,541.67	15.00	6,068.55	Grant Realty Corp	Royal Restaurant Group (Savannah)	1/15/2024	5,310.54	10289.17			23806-St Mary's	8,083.33
24560	5910 Ogeehee Road	Savannah	GA	31419	PKGA	Savannah, GA	13,538.18	15.00	6,550.73	Premier Holdings of Georgia, LLC	Royal Restaurant Group (Savannah)	1/15/2024	5,161.29	10000			24560-Savannah	10,289.17
25937	4660 Hwy 17	Richmond Hill	GA	31324	PKGA	Savannah, GA	13,376.90	15.00	6,472.69	Premier Holdings of Georgia, LLC	Royal Restaurant Group (Savannah)	1/15/2024	4,946.23	9583.33			25937-Richmont	10,000.00
26749	13708 East Oglethorpe Hwy	Midway	GA	31320	PKGA	Savannah, GA	11,130.00	15.00	5,385.48	TYLER BK ASSOCIATES LLC	Royal Restaurant Group (Savannah)	1/15/2024	4,053.25	7853.17			26749-Midway	9,583.33
13106	13404 Sutton Park Dr.	Jacksonville	FL	32224	PKGA	Jacksonville-Brunswick, FL	12,230.14	15.00	5,917.81	Premier Holdings of Georgia, LLC	Royal Restaurant Group (Jacksonville)	1/15/2024	5,053.38	10666.67			13106-Jacksonville	7,853.17
27690	13200 W Cleveland Street	Nahunta	GA	31553	PKGA	Jacksonville-Brunswick, FL					Royal Restaurant Group (Savannah)	1/15/2024	5,505.38		6,312.33	5,505	27690-Nahunta	10,666.67

340,766.26













Store #	Store	TTM Q2 23					SLEBITDA After G&A	Price	2022				
		Sales	Rent	Rent %	SLEBITDA	SLEB %			Sales	Rent	Rent %	SLEBITDA	SLEB %
10893	Hinesville	2,511	155	6.2%	558	22.2% Low	483	2,414	2,367	146	6.2%	573	24.2% Low
12107	Brmswk / Golden Isle	2,066	154	7.5%	390	18.9% Low	328	1,639	1,977	145	7.3%	423	21.4% Low
1691	Brmswk / Josup	2,002	138	6.9%	372	18.6% Low	312	1,562	1,961	136	6.9%	406	20.7% Low
14614	Statesboro	2,099	180	8.6%	329	15.7% Low	266	1,263	1,968	170	8.6%	352	17.9% Low
12906	Ridgeland	1,631	111	6.8%	305	18.7% Low	256	1,216	1,602	116	7.2%	332	20.7% Low
13243	Baxley	1,669	132	7.9%	280	16.8% Low	230	1,092	1,663	129	7.8%	326	19.6% Low
1226	Savannah	1,594	159	10.0%	271	17.0% Low	223	1,059	1,512	150	9.9%	271	17.9% Low
12792	Blackshear	1,464	119	8.1%	220	15.0% Low	176	834	1,427	112	7.9%	266	18.7% Low
1471	Beaufort	1,424	113	7.9%	198	13.9% Low	155	737	1,415	111	7.8%	230	16.2% Low
24560	Savannah	1,597	144	9.0%	192	12.0% Low	144	684	1,484	132	8.9%	171	11.6% Some
2124	Waycross	1,445	106	7.4%	179	12.4% Low	136	646	1,456	110	7.6%	212	14.6% Low
23049	Savannah	1,538	135	8.8%	179	11.7% Some	133	633	1,371	127	9.3%	148	10.8% Some
27690	Nahunta	1,505	211	14.0%	178	11.8% Some	132	629	1,443	169	11.7%	199	13.8% Low
1551	Garden City	1,455	125	8.6%	164	11.3% Some	120	570	1,369	111	8.1%	199	14.6% Low
2397	Josup / Sunset Blvd	1,340	109	8.1%	147	11.0% Some	107	508	1,276	97	7.6%	172	13.5% Low
10241	Darien	1,260	82	6.5%	145	11.5% Some	107	508	1,229	77	6.3%	170	13.9% Low
23155	Okatie	1,317	137	10.4%	137	10.4% Some	97	461	1,298	127	9.8%	171	13.2% Low
25937	Richmond Hill	1,415	162	11.5%	112	7.9% Mod	70	280	1,370	133	9.7%	145	10.6% Some
322	Savannah	1,561	165	10.6%	92	5.9% Mod	45	179	1,519	156	10.3%	140	9.2% Mod
3929	Beaufort	1,062	73	6.9%	91	8.6% Mod	59	238	1,041	77	7.4%	73	7.0% Mod
1404	Savannah	1,087	96	8.8%	86	7.9% Mod	53	213	975	90	9.2%	72	7.4% Mod
26868	Port Wentworth	1,145	166	14.5%	29	2.5% High	(5)	180	1,038	161	15.5%	11	1.1% High
14209	Hilton Head Island	979	117	11.9%	27	2.8% High	(2)	180	941	110	11.7%	33	3.5% High
5571	Pooler	994	108	10.9%	24	2.4% High	(6)	180	903	102	11.3%	7	0.8% High
26749	Midway	1,144	161	14.0%	14	1.2% High	(20)	180	1,019	120	11.8%	(0)	0.0% High
3048	Hardeeville	1,073	104	9.7%	6	0.5% High	(26)	180	956	98	10.3%	(48)	-5.0% High
25882	Claxton	966	129	13.4%	(12)	-1.2% High	(41)	180	895	122	13.6%	(25)	-2.8% High
521	Savannah	891	101	11.4%	(60)	-6.8% High	(87)	180	897	96	10.7%	(39)	-4.3% High
15760	Savannah	877	126	14.4%	(93)	-10.6% High	(119)	180	946	115	12.1%	(14)	-1.5% High
		41,112	3,820	9.3%	4,558	11.1%		18,806	39,315	3,544	9.0%	4,978	12.7%
				5	22,792.10	16,625.34	High	4.0					
				29	785.93	573.29	Mod	4.50					
				200	5,800.00		Some	4.75					
					1.3		Low	5					
								13500000					
								465517.2					

## PLAINTIFF'S EXHIBIT 28



## DUE DILIGENCE REQUEST LIST

### **A. Financials**

1. Audited or reviewed financial statements for last 3 years
2. Internal Financial statements by store including G&A for last 3 years and current year by month
3. Variance analysis from budget and prior year for the last 3 years and current year by month
4. Same store sales by store by month for last 3 years and current year by month
5. Avg Tickets and Customer counts by store by month for last 3 years and current year by month
6. Product Mix reports by store by month for last 3 years and current year by month
7. G&A detail for last 3 years and current year by month
8. Expense trend analysis for last 3 years and current year by month
9. Detail any extraordinary and/or non-recurring expenses for last 3 years and current year by month
10. Discussion of noteworthy accounting practices (i.e., how rebates are accounted for, intercompany rent, G&A allocations)
11. Schedule of leased assets with leases and description of accounting policy
12. Consolidated balance sheets for last 3 years and current YTD
13. Capex Policy
14. Accounting Calendar for last 3 years, current year, next year
15. If applicable, when was last and when is next 53-week year?
16. Fixed Asset Listing, by store
17. Coca Cola and Dr. Pepper reconciliation for last 3 years
18. BSI rebates for last 3 years
19. Schedule of invoice approval authority
20. Latest AP Aging and accrued liability listing (agreeing to the GL)
21. Details of reversals on significant accruals in the last 3 years
22. Latest bank reconciliations with outstanding check lists (agreeing to the GL)
23. Credit Card and other receivable details agreeing to the GL
24. Other liability descriptions or details
25. Listing of reversals of significant accruals over the last 3 years

### **B. Legal & Agreements:**

1. Franchise Agreement for each store
2. Lease agreement for each store
3. Schedule of any lease modifications currently in place
4. Development Agreement, if any
5. Summary lease abstract for each store, detailing expirations, escalations, renewal options, base and % rent terms
6. Schedule of all contracts in place which buyer may assume
7. Schedule of historical litigation over last 3 years
8. Schedule of pending litigation
9. Schedule of any known, pending, or existing condemnations
10. List of defaults with the Franchisor, if any
11. Prior Title Policies on any real estate owned
12. Burger King's consent to assignment of Franchise Agreement

## **PLAINTIFF'S EXHIBIT31**

13. Master Lease Schedule

**C. Organization**

1. Detail of Company's organization structure, including operating entities and real estate entities
2. Related party relationships - details of all transactions (arm's length and non-arm's length)

**D. Restaurant Information**

1. List of site #'s, physical addresses, opening dates, building type, square footage, seating capacity
2. Whether real estate is owned or leased; Ground lease or land and building
3. Remodel status and requirements
4. Schedule of new stores and remodels for last 3 years, including cost
5. Capital Expenditures: 3 year history of major capital expenditures by store
6. Repair & maintenance expenditures: 3 year history by store by type of expenditure (HVAC, roof, etc.)
7. POS: brand, model, quantity, age, condition
8. Local market information (demographics, competitors, growth opportunities) if available
9. Menu pricing details, including date and amount of increases over the last 2 years
10. Day part detail for prior year and current YTD, including dine-in and drive thru data
11. Facility inspection reports from Burger King
12. Back of House system
13. Version of MS Windows installed
14. Armored car provider and contract
15. Office Safe, Provider, age, Condition
16. Alarm Provider, Contract
17. Drop boxes and list of keys and key holders
18. Schedule of restaurants with Freestyle, separately identifying dining room and PUW
19. Historical KPI's including but not limited to food cost variance, labor hours guide variance and turnover

**E. Tax Returns**

1. Federal Income Tax returns for last 3 years
2. State Franchise Tax returns for last 3 years
3. Tangible or Personal Property Tax filings for last 3 years
4. 941's for last 3 years
5. Copies of Sales & Use tax returns for last 3 years
6. Real Estate tax statements for last 3 years
7. Federal and State tax notices for the last 3 years
8. Quarterly State Unemployment tax returns for the last 3 years
9. List of Federal and State Audits for the last 3 years with findings
10. Lien or assessment notices with status and findings



**F. HR**

1. Personnel Files for all active employees
2. Bonus plan details
3. Schedule of health insurance and other benefits
4. Schedule of wages and salary rates by employee
5. Payroll provider if outsourced, payroll system if done in house
6. Employment Policies; employee handbook
7. Schedule of pay periods for prior 2 years, current year, next year
8. Schedule of people and positions to be included in transaction
9. Schedule of people and positions to be excluded in transaction
10. Details of most recent pay increases to all employees
11. Payroll reports for last 2 years
12. Payroll provider and contract
13. EPLI policy
14. Workers comp policy
15. Benefit details and related liability (bonus, ITI, vacation, 401(k), defined contribution plan ..)
16. Employee census report in Excel including First Name, Middle Name, Last Name, social security #, date of birth, hire date, job title, Full or part time, Hourly or salary, compensation/pay rate, mailing address, phone number and email address
17. Annual allowance of PTO (vacation/sick) and current employee balances

**G. Insurance:**

1. Loss runs for last 3 years for Workers Comp, General Liability, and Property
2. Abstract schedule of all insurance policies and coverages
3. Flood certificates for any / all stores, as applicable
4. Copy of all insurance policies

**H. Licenses / Permits:**

- A. Provide copy of every license and/or permit for each store
- B. Provide most recent health department inspections

**I. I/T**

1. Restaurant corporate number/phone number/contact information
2. Sicom Server make/model
3. Manager Workstation make/model
4. Manager Printer
5. Remote connectivity
6. POS registers make/model
7. Registers quantity
8. Kitchen Display System quantity
9. Receipt Printer quantity
10. Headset make /model

11. Headset quantity
12. SoS Timer make/model
13. Outside Order Confirmation make/model
14. Inside Order Confirmation quantity
15. Overhead music
16. DirecTV service
17. Dining Room TV make/model/quantity
18. Internet Service Vendor
19. Internet Speed upload/download
20. Backup Internet Cell service
21. Telephone Service Vendor
22. Analog line quantity
23. DVR Camera System
24. DVR type, age and password
25. Camera system, age and quantity per location
26. Firewall Vendor
27. Sicom Support Vendor
28. Amount and age of kitchen controllers
29. List of existing licensing/services/maintenance
30. List of available hardware inventory
31. Age and quantity of indoor digital menu boards
32. Age and quantity of outside digital menu boards

**J. Other**

1. Provide any environmental studies or surveys conducted
2. Details on any company vehicles conveying (Year, model, make, VIN)
3. Existing surveys on each property
4. Existing appraisals on each property owned
5. List of all suppliers, including contact information and account number
6. Schedule of all deposits in place
7. Schedule of all utility bonds in place



**RRG of Jacksonville, LLC**  
**525 South Flagler Drive, Suite 201**  
**West Palm Beach, FL 33401**

December 26, 2023

By E-Mail As Set Forth Below

Premier Kings of Georgia, Inc.  
Premier Kings Inc., et al.  
c/o Aurora Management Partners  
112 South Tryon Street, Suite 1770  
Charlotte, NC 28284  
Attn: David Baker  
dbaker@auroramp.com

Cole Schotz, P. C.  
1201 Willis Street, Suite 320  
Baltimore, MD 21231  
Attn: Gary Leibowitz and Irving E. Walker  
GLEibowitz@coleschotz.com  
IWalker@coleschotz.com

**Re: Asset Purchase Agreement by and between Premier Kings of Georgia, Inc. ("Seller") and RRG of Jacksonville, LLC, or its nominee(s) ("Buyer") dated as of October 25, 2023, as amended by that certain First Amendment to Asset Purchase Agreement dated as of December 11, 2023 (collectively, the "APA") Premier Kings, Inc., et al Chapter 11 Case No. 23-02871-TOM (United States Bankruptcy Court N.D. Ala.)**

Gentlemen:

Buyer is writing in accordance with Section 1.3(e) of the APA. In accordance with Section 1.3(e) of the APA, Buyer provides notice that:

- A. Buyer hereby elects to remove the following Designed Leases from Schedule 1.3(a)-2 of the APA, such that the following Designated Leases are no longer Designated Leases and are now Rejected Leases:

Store Number	Store Address
6986	11031 Old St. Augustine Rd, Jacksonville, FL
7121	10142 Phillip's Hwy, Jacksonville, FL
17831	11761 Beach Blvd Ste 15, Jacksonville, FL
25882	106 N. Duval Street, Clanton, GA

- B. Further, the Assignable Franchise Agreement that corresponds to each Rejected Lease shall not be assumed by Buyer and is designated as a Rejected Franchise Agreement.

- C. For purposes of clarity: (i) Schedule A enclosed with this letter contains the Designated Leases that Buyer will assume (subject to Buyer's continuing rights pursuant to Section 1.3(e) of the APA) and constitutes Schedule 1.3(a)-2 of the APA; and (ii) Schedule B enclosed with this letter contains the Rejected Leases that Buyer does not intend to assume.

Very Truly Yours,

RRG of Jacksonville, LLC

By: 

Name: Randy Dianin

Title: Manager

Enclosures:

Schedule A – Designated Leases / Schedule 1.3(a)-2 to the APA

Schedule B – Rejected Leases

cc:

Nelson Mullins Riley & Scarborough LLP

1905 NW Corporate Blvd., Suite 310

Boca Raton, FL 33431

Attn: Matthew M. Thompson

Email: [matthew.thompson@nelsonmullins.com](mailto:matthew.thompson@nelsonmullins.com)

and

Attn: Peter Haley

Email: [peter.haley@nelsonmullins.com](mailto:peter.haley@nelsonmullins.com)



## Schedule A - Designated Leases / Schedule 1.3(a)-2

The following Leases, identified by Store Number and Store Address, will be assumed by Buyer (subject to the reservation of rights set forth in the foregoing letter):

Store Number	Store Address
322	601 Martin Luther King Blvd., Savannah, GA
1197	250 Monument Road, Jacksonville, FL
1226	14 W. DeRenne Ave., Savannah, GA
1404	11711 Abercorn Street, Savannah, GA
1471	1295 Ribaut Road, Beaufort, GA
1551	4241 August Road, Garden City, GA
1691	5015 New Jesup Hwy, Brunswick, GA
1724	5922 Merrill Road, Jacksonville, FL
2124	1710 Memorial Drive, Waycross, GA
2397	998 Sunset Blvd., Loc 129, Jesup, GA
3048	8770 Whyte Hardee Blvd, Hardenville, SC
5371	415 US-80 East, Pooler, GA
7068	13180 Atlantic Blvd, Jacksonville, FL
8907	1162 Boone Ave., Ext E, Kingsland, GA
9942	9090 Merrill Road, Jacksonville, FL
10241	13660 Hwy. 251, Darien, GA
10893	815 Elma G. Miles Parkway, Hinesville, GA
11309	462581 SR 200, Yulee, FL
12107	115 Golden Isles Plaza, Brunswick, GA
12792	3527 Hwy. 84 West, Blackshear, GA
12906	8257 E. Main Street, Ridgeland, SC
13106	13404 Sutton Park Drive, Jacksonville, FL
13243	154 S. Main Street, Baxley, GA
14209	201 Museum Street, Hilton Head Island, SC
14614	602 Fair Road, Statesboro, GA
15499	13049 N. Main Street, Jacksonville, FL
16751	184 S. Hwy. 17, East Palatka, FL
19411	2455 SR 207, St. Augustine, FL
23049	496 Jimmy DeLoach Parkway, Savannah, GA
23155	3 Baylor Brook Drive, Okatie, SC
23806	2430 Osborn Rd., St. Mary's, GA
24560	5910 Ogeehee Road, Savannah, GA
25937	4660 Hwy. 17, Richmond Hill, GA
26749	13708 East Oglethorpe Hwy., Midway, GA
26868	7304 Hwy. 21, Port Wentworth, GA
27690	13200 W. Cleveland Street, Nahama, GA

### Schedule B - Rejected Leases

The following Leases, identified by Store Number and Store Address, will not be assumed by Buyer:

Store Number	Store Address
521	7923 White Bluff Road, Savannah, GA
2873	1940 S. 8th Street, Fernandina Beach, FL
6986	11031 Old St. Augustine Rd, Jacksonville, FL
7121	10142 Phillip's Hwy, Jacksonville, FL
10422	542370 US Highway 1, Callahan, FL
15760	4268 Ogeechee Road, Savannah, GA
17831	11761 Beach Blvd Ste 15, Jacksonville, FL
25882	106 N. Duval Street, Claxton, GA



# PLAINTIFF'S EXHIBIT 34

Execution Version

## ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT (this "Assignment") is made and entered into as of January 16, 2024, by and between Premier Kings of Georgia, Inc., a Georgia corporation ("Assignor"), and BRG of Jacksonville, LLC, a Florida limited liability company ("Assignee"). Assignor and Assignee are referred to collectively as "Parties" herein, and each individually, a "Party".

### RECITALS

WHEREAS, Assignor, as tenant, and Port Wentworth Fee Owner, LLC, as landlord, are parties to that certain Ground Lease, dated as of May 8, 2018, as amended by that certain Amendment to Ground Lease, dated August 3, 2018, and as subject to that certain Development Agreement between Premier Holdings of Georgia, LLC and Assignor, dated May 17, 2019 (collectively, the "Lease");

WHEREAS, Assignor and Assignee are parties to that certain Asset Purchase Agreement dated as of October 25, 2023 (as amended, the "Purchase Agreement"), pursuant to which to which Assignor agreed to assign, and Assignee agreed to assume, all of Assignor's right, title and interest in, to and under the Lease;

WHEREAS, in connection with the consummation of the transactions contemplated by the Purchase Agreement, Assignor agreed to assign, and Assignee agreed to assume, pay, perform, discharge or otherwise satisfy the Assumed Liabilities; and

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

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

### AGREEMENT

1. Assignment of Lease. Subject to the terms and conditions set forth in the Purchase Agreement, for valuable consideration received from Assignee, Assignor hereby assigns, transfers and conveys to Assignee all of Assignor's right, title and interest in, to and under the Lease and Assignee accepts such assignment.

2. Assumption of Assumed Liabilities. Subject to the terms and conditions set forth in the Purchase Agreement, Assignor hereby assigns to Assignee the Assumed Liabilities and Assignee hereby accepts such assignment and agrees to pay, perform, discharge or otherwise satisfy the Assumed Liabilities. Other than as specifically set forth herein, Assignee assumes no debt, liability, or obligation of Assignor, all of which shall remain the responsibility of Assignor and shall be Excluded Liabilities.

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

4. Instrument of Conveyance Only. This Assignment is being made by the Parties pursuant to the requirements of the Purchase Agreement, the terms and conditions of which are incorporated herein by this reference, and this Assignment shall be subject to such terms and conditions. Except for the actual conveyance of the Lease as set forth in Section 1 of this Assignment and the assumption of the Assumed Liabilities as set forth in Section 2 of this Assignment, nothing set forth in this Assignment is intended to or shall expand, enlarge, modify, restrict, limit, or abridge any of the terms, representations, warranties, covenants, conditions, agreements, provisions, rights, benefits, obligations or liabilities of Assignors or Assignee beyond that set forth in the Purchase Agreement. In the event of any conflict, ambiguity or discrepancy between the terms or conditions of the Purchase Agreement and this Assignment, the terms and conditions of the Purchase Agreement shall be controlling in all respects.

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

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

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

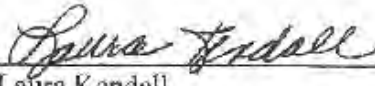
[Signature Page Follows]



IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment effective as of the date first set forth above.

**ASSIGNOR:**

**PREMIER KINGS OF GEORGIA, INC.,**  
a Georgia corporation

By:   
Name: Laura Kendall  
Title: Deputy Restructuring Office

**ASSIGNEE:**

**RRG OF JACKSONVILLE, LLC,**  
a Florida limited liability company

By: \_\_\_\_\_  
Name: Randy Pianin  
Title: Manager

[SIGNATURE PAGE TO ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment effective as of the date first set forth above.

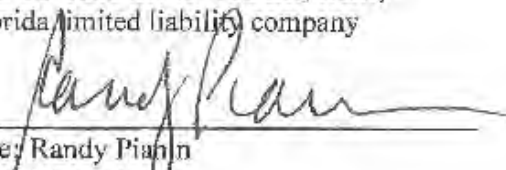
**ASSIGNOR:**

**PREMIER KINGS OF GEORGIA, INC.,**  
a Georgia corporation

By: \_\_\_\_\_  
Name: Laura Kendall  
Title: Deputy Restructuring Office

**ASSIGNEE:**

**RRG OF JACKSONVILLE, LLC,**  
a Florida limited liability company

By:  \_\_\_\_\_  
Name: Randy Pihl  
Title: Manager

[SIGNATURE PAGE TO ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT]



## LANDLORD CONSENT TO ASSIGNMENT AND ASSUMPTION OF LEASE

To the extent required under the Lease, effective as of the date (the "Effective Date") of the Assignment and Assumption of Lease Agreement enclosed herewith (the "Assignment Agreement"), the undersigned ("Landlord") hereby (a) consents to the assignment effected by the Assignment Agreement; (b) waives any right of refusal to repossess the space, any option to purchase, and any termination option which may arise as a result of Assignor's assignment of the Lease to Assignee pursuant to the Assignment Agreement; (c) agrees to recognize Assignee as the "Owner/Operator" under the Lease, and to thereby establish direct privity of estate and privity of contract with Assignee; (d) waives any right of Landlord to charge any fee or other amount in connection with Assignor's assignment of the Lease to Assignee pursuant to the Assignment Agreement; and (e) certifies and agrees that (i) Landlord has all requisite power and authority to execute and deliver this consent to the Assignment Agreement (this "Consent"), without the need to obtain the consent or approval of, or to deliver notice to, any other person or entity, and the Assignment Agreement and this Consent are binding upon and enforceable against Landlord, its successors and assigns; (ii) Landlord is the current, sole fee simple owner of record of all real and personal property, and all other equipment, fixtures, buildings, structures, and premises currently leased by Assignor under and pursuant to the Lease; (iii) the consummation of Assignor's assignment of the Lease to Assignee pursuant to the Assignment Agreement shall not be deemed a breach or violation of, or default or event of default under, any provision of the Lease; and (iv) except to the extent mutually amended, restated, supplemented, or otherwise modified by Assignee and Landlord in accordance with the terms and conditions of the Lease, the Lease shall remain in full force and effect from and after the Effective Date, in accordance with its terms and conditions. All capitalized terms used but not defined in this Consent shall have the respective meanings ascribed thereto in the Assignment Agreement.

### LANDLORD:

**PORT WENTWORTH FEE OWNER, LLC,**

a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## DEVELOPER CONSENT TO ASSIGNMENT AND ASSUMPTION OF LEASE

To the extent required under the Development Agreement between Premier Kings of Georgia, Inc., a Georgia corporation, and the undersigned ("Counterparty"), dated May 17, 2019 (the "Development Agreement"), effective as of the date (the "Effective Date") of the Assignment and Assumption of Lease Agreement enclosed herewith (the "Assignment Agreement"), Counterparty hereby: (a) consents to the assignment effected by the Assignment Agreement; (b) waives any right of refusal to repossess the space, any option to purchase, and any termination option which may arise as a result of Assignor's assignment of the Lease and/or the Development Agreement (as applicable) to Assignee pursuant to the Assignment Agreement; (c) agrees to recognize Assignee as the "Tenant" under the Lease and (as applicable) the "Owner/Operator" under the Development Agreement, and to thereby establish direct privity of estate and privity of contract with Assignee; (d) waives any right of Counterparty to charge any fee or other amount in connection with Assignor's assignment of the Lease and/or the Development Agreement (as applicable) to Assignee pursuant to the Assignment Agreement; and (e) certifies and agrees that (i) Counterparty has all requisite power and authority to execute and deliver this consent to the Assignment Agreement (this "Consent"), without the need to obtain the consent or approval of, or to deliver notice to, any other person or entity, and the Assignment Agreement and this Consent are binding upon and enforceable against Counterparty, its successors and assigns, (ii) the consummation of Assignor's assignment of the Lease and/or the Development Agreement (as applicable) to Assignee pursuant to the Assignment Agreement shall not be deemed a breach or violation of, or default or event of default under, any provision of the Lease or the Development Agreement, and (iv) except to the extent mutually amended, restated, supplemented, or otherwise modified by Assignee and Counterparty in accordance with the terms and conditions of the Lease and the Development Agreement, the Lease and the Development Agreement shall remain in full force and effect from and after the Effective Date, in accordance with their respective terms and conditions. All capitalized terms used but not defined in this Consent shall have the respective meanings ascribed thereto in the Assignment Agreement.

### COUNTERPARTY:

**PREMIER HOLDINGS OF GEORGIA, LLC,**  
a Georgia limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



In re:	)	Chapter 11
PREMIER KINGS, INC., et al.,	)	CASE NO. 23-02871 (TOM11)
	)	(Jointly Administered)
Debtor.	)	
<hr/>		
PREMIER HOLDINGS OF GEORGIA, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adv. Proc. No. _____
RRG OF JACKSONVILLE, LLC	)	
	)	
Defendant.	)	

**COMES NOW** Premier Holdings of Georgia, LLC ("PHGA"), by and through its undersigned counsel of record, and hereby brings this Complaint against RRG of Jacksonville, LLC ("RRG") and in support thereof avers as follows:

1. PHGA files this action seeking, among other relief, a declaratory judgment against RRG that, pursuant to the Asset Purchase Agreement dated October 25, 2023 by and between Premier Kings of Georgia, Inc. ("PKGI") and RRG (as amended, the "APA"), RRG assumed PKGI's obligations under that certain Development Agreement dated May 17, 2019 by and between PKGI and PHGA (the "Development Agreement"), and therefore is contractually required to perform its obligations due under the Development Agreement.

## 57870494-57

### PARTIES, VENUE, AND JURISDICTION

2. PHGA is a Georgia limited liability company with its principal place of business at 7078 Peachtree Industrial Blvd, Suite 800, Peachtree Corners, GA 30071.

3. According to information and belief, RRC is a Florida limited liability company with its principal place of business at 525 South Flagler Drive, Suite 201, West Palm Beach, FL 33401.

4. This adversary proceeding arises under and relates to the above-captioned, jointly-administered chapter 11 proceeding pending before this Court.

5. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334. This Court has jurisdiction to grant the relief sought herein under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*

6. This adversary proceeding is a core proceeding under 28 U.S.C. § 157(b)(2).

7. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

8. The statutory predicates for relief are Rule 7001 of the Federal Rules of Bankruptcy Procedure, 28 U.S.C. § 2201, *et seq.*, and section 105 of 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code").

### FACTUAL ALLEGATIONS

9. On or about October 25, 2023 (the "Petition Date"), Premier Kings, Inc., PKGI, and Premier Kings of North Alabama, LLC (collectively, "Debtors") filed for bankruptcy protection (the "Bankruptcy") under Chapter 11 of the Bankruptcy Code. Debtors continued to operate its business and manage its property as debtors-in-possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.

10. Debtors were founded to operate Burger King restaurants throughout Alabama, Georgia, Tennessee, South Carolina, and Florida. With a few exceptions, Debtors did not own



the real property or the restaurants operated on said real property, but rather leased the same from related entities, one of which is PHGA.

11. By an Order entered on December 13, 2023 [Doc. No. 355] (the "Sale Order") the Court approved the sale of Debtors' assets, including certain leases between PHGA and PKGI, pursuant to the terms of the APA.

12. The APA was attached to the Sale Order. [See Doc. No. 355]. The APA states that PKGI's restaurants include those listed on Exhibit A to the APA. Exhibit A to the APA is entitled "List of Store Locations." Store 26868, located at 7306 Hwy 21, Port Wentworth, GA 31407 (the "Port Wentworth Store"), is listed as one such store location. The Port Wentworth Store is depicted on Exhibit A to the APA as follows:

26868	Premier Kings of Georgia, Inc.	7306 Hwy 21	Port Wentworth	GA	31407
-------	--------------------------------	-------------	----------------	----	-------

13. On the first page of the APA, following the cover page, the APA states that Exhibit B contains each leasing agreement affecting the restaurants, and defines each individual lease as an "Existing Lease." Exhibit B in the APA is entitled "Leased Properties" and depicts the Port Wentworth Store as being subject to the following Existing Leases:

26868	PHGA	7306 Hwy 21	Port Wentworth	GA	31407
-------	------	-------------	----------------	----	-------

14. As shown in the preceding paragraph, the Port Wentworth Store is subject to a ground lease dated May 8, 2018, between Port Wentworth Fee Owner, LLC and PKGI (the "Ground Lease") and the Development Agreement, wherein PHGA agreed to build a Burger King restaurant on the ground leased pursuant to the Ground Lease, and in return, PKGI agrees to pay a monthly development fee equal to: (a) the debt service payment of PHGA, plus (b) an administrative fee of \$100.00 (the "Development Fee"). A copy of the Development Agreement is attached hereto as **Exhibit 1**.

15. Because both the Ground Lease and the Development Agreement are listed on Exhibit B, they are each Existing Leases as defined by the APA.

16. Additionally, Section 1.1(a) of the APA states that PKGI "will sell, assign, transfer, convey and deliver" to RRG, and that RRG "agrees to purchase, accept, acquire, assume, and take assignment and delivery [of]" certain "Designated Leases".

17. Section 1.3(a) of the APA states that Schedule 1.3(a)-1 of the APA lists all "Assignable Leases" from which RRG may elect to assume. For the Port Wentworth Store, both the Ground Lease and the Development Agreement are listed as Assignable Leases. Both the Ground Lease and the Development Agreement are depicted in Schedule 1.3(a)-1 as follows:

Item	Item No.	Item Description	Item Status	Item Date
1	100	Port Wentworth Store Ground Lease	Assumed	12/11/2023
2	101	Port Wentworth Store Development Agreement	Assumed	12/11/2023

18. Also under Section 1.3(a) of the APA, RRG has the right to designate leases which it will assume. Under this provision, RRG is required to designate from the Assignable Leases which of those leases shall be "Designated Leases" and RRG was required to list the Designated Leases on Schedule 1.3(a)-2.

19. The First Amendment to Asset Purchase Agreement dated December 11, 2023 (the "APA Amendment") included Schedule 1.3(a)-2, which constitute those Assignable Leases that RRG would assume. This schedule includes the Port Wentworth Store, which is depicted as follows:

26868	7304 Hwy. 21, Port Wentworth, GA
-------	----------------------------------

20. The Assignment and Assumption of Lease Agreement (the "Assumption Agreement"), documented the assignment and assumption of the Port Wentworth Store to RRG. In the recitals portion of the Assumption Agreement, it is stated that the Port Wentworth Store is "subject to that certain Development Agreement between Premier Holdings of Georgia, LLC and



Assignor.” The Assumption Agreement expressly incorporated the recitals into the agreement portion of the Assumption Agreement. A copy of the Assumption Agreement is attached hereto as Exhibit 2.

21. Under Section 1.3(h) of the Lease, PKGI was required to pay “any amounts necessary to cure any default under such Designated Lease” as “Cure Costs” for such Designated Lease. Following the closing of the sale to RRG pursuant to the APA, PKGI paid to PHGA the Cure Costs due under the Development Agreement.

22. There is no indication in the APA or otherwise that RRG did not intend to assume both the Ground Lease and the Development Agreement. In actuality, there are facts supporting that RRG did intend to assume the Ground Lease because (a) the Assumption Agreement referenced the Development Agreement and (b) PKGI paid the Cure Costs due and owing under the Development Agreement.

23. Currently, RRG owes PHGA at least \$38,850.00 in past-due Development Fees.

#### **COUNT ONE** **DECLARATORY JUDGMENT**

24. A justiciable controversy has arisen involving RRG’s assumption of the Development Agreement, and PHGA seeks to obtain a declaration of the parties’ rights, status or other legal obligations related to the same.

25. The Development Agreement is executory, and therefore subject to assumption and assignment by RRG.<sup>1</sup>

---

<sup>1</sup> See *In re Walter Energy*, 2015 WL 9487718 at \*4 (Bankr. N.D. Ala. 2015) (holding that the Eleventh Circuit applies the functional approach to determine if a contract is executory, under which, “even if one of the parties to the contract has material performance obligations remaining, the contract may nevertheless be deemed executory . . . if its assumption or rejection would ultimately benefit the estate and its creditors.”).

26. The APA, the Assumption Agreement, and the Sale Order are unambiguous as to RRG's assumption of the Development Agreement.

27. PHGA seeks a declaration from this Court that, pursuant to the APA, RRG assumed the Development Agreement, RRG is liable to PHGA under the Development Agreement, and RRG is required to perform its obligations due under the Development Agreement.

**COUNT TWO**  
**BREACH OF CONTRACT**

28. The Development Agreement was a valid and binding contract between PHGA and PKGL.

29. The Development Agreement was validly assigned by PKGL to RRG pursuant to the APA, the Assumption Agreement, and the Sale Order.

30. RRG assumed the Development Agreement pursuant to the APA, the Assumption Agreement, and the Sale Order.

31. The Development Agreement is therefore a valid and binding contract between PHGA and RRG.

32. RRG is liable for the Development Fee pursuant to the Development Agreement.

33. RRG is in default under the Development Agreement for its failure to pay the Development Fee.

34. Due to RRG's failure to pay the Development Fee, as of the date herein, RRG owes PHGA \$38,850.00 for past due Development Fees, exclusive of attorney's fees and expenses, plus accruing charges due under the Development Agreement, and any other amounts due and owing to PHGA by RRG.



### **RELIEF REQUESTED**

**WHEREFORE**, PHGA respectfully requests that this Court:

(1) Enter a judgment against RRG for breach of contract damages in the amount of \$38,850.00 for past due Development Fees, exclusive of attorney's fees and expenses, plus accruing charges due under the Development Agreement, and any other amounts due and owing to PHGA by RRG;

(2) Issue a declaration determining and declaring that RRG assumed the Development Agreement, RRG is liable to PHGA under the Development Agreement, and RRG is required to perform its obligations due under the Development Agreement;

(3) Issue an order permitting PHGA to file a motion for award of attorney's fees and costs incurred in enforcing this Court's Sale Order against RRG, pursuant provided by Federal Rule of Civil Procedure 54, as made applicable by Federal Rule of Bankruptcy Procedure 7054) and

(4) Enter a judgment awarding all additional, other, and different relief to which PHGA may be entitled.

**DATED** this the 5th day of April, 2024.

/s/ Heather A. Jamison

Heather A. Jamison

Chloe E. Champion

*Counsel for Premier Holdings of Georgia, LLC*

**OF COUNSEL:**

BURR & FORMAN LLP

420 North 20th Street, Suite 3400

Birmingham, Alabama 35203

Telephone: (205) 251-3000

Facsimile: (205) 458-5100

Email: [hjamison@burr.com](mailto:hjamison@burr.com)

[cchampion@burr.com](mailto:cchampion@burr.com)

**ADDRESS FOR SERVICE**

RRG of Jacksonville, LLC  
c/o BCRA, LLC, Its Registered Agent  
1905 NW Corporate Boulevard, Suite 310  
Boca Raton, FL 33431



## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made and entered into by and between Premier Holdings of Georgia, LLC, a Georgia limited liability company hereinafter called the "Developer") and Premier Kings of Georgia Inc., a Georgia corporation (hereinafter called the "Owner/Operator") on or about March 17, 2019 2019.

## WITNESSETH:

WITTHAS Developer and Owner/Operator desire to establish in writing their agreement concerning their relationship, obligations and rights with respect to the development of a Burger King restaurant on certain property located Chatham County, Georgia which is described on Exhibit "A" and to be known as Burger King Store No. 26868, 7304 Highway 21, Port Wentworth, Georgia 31407 (the "Premises").

WHEREAS, Developer and Owner/Operator acknowledge that this Development Agreement is made subject to the provisions hereof, and the terms and conditions of any bank loan, the proceeds of which will be used to construct the improvements on the Premises (hereinafter called the "Bank Loan");

WHEREAS, Developer and Owner/Operator acknowledge that the development of the Premises is made subject to the provisions hereof, all matters of record, and the terms and conditions of that certain franchise agreement entered into between Owner/Operator and Burger King Corporation (hereinafter called the "Franchise Agreement");

NOW, THEREFORE, in consideration of the payments hereinafter agreed to be paid and the mutual covenants and agreements hereinafter set forth and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Developer and Owner/Operator agree as follows:

1. Development of the Premises. Developer, for and in consideration of the fees, covenants, agreements and stipulations hereinafter mentioned, reserved and contained, to be paid, kept and performed by Owner/Operator, by these presents does hereby agree to construct a Burger King restaurant on the Premises described on Exhibit "A" for the use and benefit of the Owner/Operator upon the terms and conditions hereinafter set forth and in compliance with the Project # 26868 including all plans and specifications (and appendices and addendums thereto) for the Project, as provided, updated, and supplemented by Hendon - Hueston Architects, PC (the "Plans and Specifications"), which are incorporated herein by reference (collectively the "Project").

2. Term. The term of the Development Agreement shall commence on the date hereof and shall terminate twenty (20) years from the date hereof (the "Termination Date").

3. Development Fee. Owner/Operator agrees to pay to Developer, without deduction, set off or abatement, and without previous notice or demand therefor, a monthly development fee on the first day of each month commencing on April 1, 2019 and continuing through the Termination Date, equal to (a) the Developer's debt service payment associated with the development of the Project, including without limitation under the Bank Loan, plus (b) an administrative overhead/profit fee of \$100.00.

4. Costs and Expenses. Each Party agrees to pay its own costs and expenses incurred in connection with the proposals, responses, and negotiation of the transactions contemplated herein, including all costs and expenses incurred in connection with the preparation of any studies or reports, surveys, or approvals for this Agreement or otherwise.

5. Assignment. This Agreement is not assignable, except that the Developer shall have the right at any time to assign all its rights and obligations in and to the Project and to transfer this Agreement or any part thereof to any affiliate of the Developer that agrees to assume assigned obligations of the Developer in and to the

Project; and if so assigned, the Developer shall continue to be responsible for the performance of the obligations of the Developer under this Agreement.

6. Section Titles and Headings. The section titles and headings are for convenience only and do not define, modify, or limit any of the terms and provisions hereof.

7. Survival of Representations and Warranties. The representations, warranties, and covenants made by each of the Parties hereto and contained herein shall survive the performance of any obligations to which such representations, warranties, and covenants relate.

8. Waivers. Waiver of any of the obligations of any Party under this Agreement shall be effective only when stated in writing and signed by the waiving Party. No delay or omission to exercise any right or power by any Party shall be construed to be a waiver. In the event any provision is waived by a Party, such waiver shall not be deemed to waive any other provision.

9. Time is of the Essence. The Parties acknowledge and agree that time is of the essence in performing their respective duties under this Agreement.

10. Notices. All notices required by, or arising out of, or related to this Agreement shall be sent by United States Mail, first class postage affixed, addressed to the receiving Party as described below:

PREMIER HOLDINGS OF GEORGIA, LLC  
3300 Eastern Blvd  
Montgomery AL 36116

PREMIER KINGS OF GEORGIA, INC.  
3300 Eastern Blvd  
Montgomery AL 36116

or to such other address as the receiving Party shall have most recently forwarded to the sending Party pursuant to the provisions of this Section.

11. Entire Agreement; Amendment. This Agreement is the entire agreement and supersedes all prior and collateral communications and agreements of the Parties relating to the subject matter. This Agreement may be amended only by a written modification executed by each of the Parties' duly authorized representatives. The terms and provisions of this Agreement shall run with the land for as long as this Agreement remains in effect and shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

12. Severability. In case any one or more of the provisions contained herein should be invalid, illegal or unenforceable in any respect and for any reason whatsoever, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, and in the event any such provision is held to be invalid, illegal or unenforceable, those Parties affected by such event shall exercise their best efforts to agree upon a provision in substitution for such invalid, illegal or unenforceable provision that is as near in economic benefit as possible to the provision found to be invalid, illegal or unenforceable.

13. No Third-Party Beneficiaries. Other than as set forth in this Agreement, this Agreement shall not confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assigns.

7242

6



14. Governing Law. The governing law of this Agreement shall be the law of the State of Alabama without regard to conflicts of law provisions.

15. Construction. In this Agreement, unless the context indicates otherwise, the singular includes the plural and the plural the singular, references to statutes, sections or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section or regulation referred to; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation" or "but not limited to" or words of similar import; references to exhibits, attachments or appendices are to those of this Agreement unless otherwise indicated and shall be deemed to include all subsequent modifications thereto; references to agreements and other contractual instruments shall be deemed to include all exhibits, attachments and appendices attached thereto and all subsequent amendments and other modifications to such instrument; and references to Parties include their respective successors and permitted assigns.

16. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

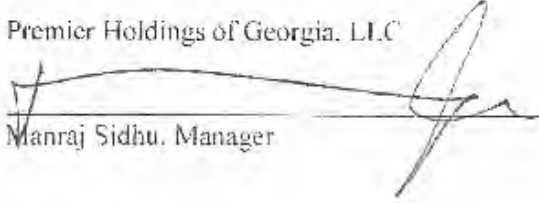
[Execution begins on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be executed in their respective names by their respective authorized representatives as of the day and year first above written.

DEVELOPER:

Premier Holdings of Georgia, LLC

Manraj Sidhu, Manager



OWNER/OPERATOR:

Premier Kings of Georgia Inc.

Manraj Sidhu, President

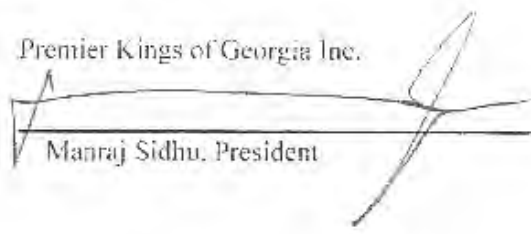




Exhibit "A"

LEGAL DESCRIPTION

7242

## ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT (this "Assignment") is made and entered into as of January 16, 2024, by and between Premier Kings of Georgia, Inc., a Georgia corporation ("Assignor"), and RRG of Jacksonville, LLC, a Florida limited liability company ("Assignee"). Assignor and Assignee are referred to collectively as "Parties" herein, and each individually, a "Party".

### RECITALS

WHEREAS, Assignor, as tenant, and Port Wentworth Fee Owner, LLC, as landlord, are parties to that certain Ground Lease, dated as of May 8, 2018, as amended by that certain Amendment to Ground Lease, dated August 3, 2018, and as subject to that certain Development Agreement between Premier Holdings of Georgia, LLC and Assignor, dated May 17, 2019 (collectively, the "Lease");

WHEREAS, Assignor and Assignee are parties to that certain Asset Purchase Agreement dated as of October 23, 2023 (as amended, the "Purchase Agreement"), pursuant to which to which Assignor agreed to assign, and Assignee agreed to assume, all of Assignor's right, title and interest in, to and under the Lease;

WHEREAS, in connection with the consummation of the transactions contemplated by the Purchase Agreement, Assignor agreed to assign, and Assignee agreed to assume, pay, perform, discharge or otherwise satisfy the Assumed Liabilities; and

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

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

### AGREEMENT

1. Assignment of Lease. Subject to the terms and conditions set forth in the Purchase Agreement, for valuable consideration received from Assignee, Assignor hereby assigns, transfers and conveys to Assignee all of Assignor's right, title and interest in, to and under the Lease and Assignee accepts such assignment.

2. Assumption of Assumed Liabilities. Subject to the terms and conditions set forth in the Purchase Agreement, Assignor hereby assigns to Assignee the Assumed Liabilities and Assignee hereby accepts such assignment and agrees to pay, perform, discharge or otherwise satisfy the Assumed Liabilities. Other than as specifically set forth herein, Assignee assumes no debt, liability, or obligation of Assignor, all of which shall remain the responsibility of Assignor and shall be Excluded Liabilities.

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



4. Instrument of Conveyance Only. This Assignment is being made by the Parties pursuant to the requirements of the Purchase Agreement, the terms and conditions of which are incorporated herein by this reference, and this Assignment shall be subject to such terms and conditions. Except for the actual conveyance of the Lease as set forth in Section 1 of this Assignment and the assumption of the Assumed Liabilities as set forth in Section 2 of this Assignment, nothing set forth in this Assignment is intended to or shall expand, enlarge, modify, restrict, limit, or abridge any of the terms, representations, warranties, covenants, conditions, agreements, provisions, rights, benefits, obligations or liabilities of Assignors or Assignee beyond that set forth in the Purchase Agreement. In the event of any conflict, ambiguity or discrepancy between the terms or conditions of the Purchase Agreement and this Assignment, the terms and conditions of the Purchase Agreement shall be controlling in all respects.

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

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

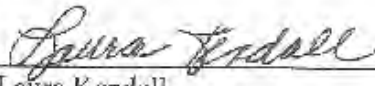
7. Counterparts. This Assignment may be executed in multiple counterparts, each of which will constitute an original and all of which, when taken together, will constitute one and the same agreement. The Parties may deliver executed signature pages to this Assignment by facsimile or email transmission.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

[Signature Page Follows]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment effective as of the date first set forth above.

**ASSIGNOR:**

**PREMIER KINGS OF GEORGIA, INC.,**  
a Georgia corporation

By:   
Name: Laura Kendall  
Title: Deputy Restructuring Officer

**ASSIGNEE:**

**RRG OF JACKSONVILLE, LLC,**  
a Florida limited liability company

By: \_\_\_\_\_  
Name: Randy Pianin  
Title: Manager

[SIGNATURE PAGE TO ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT]



IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment effective as of the date first set forth above.

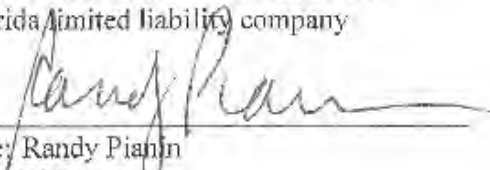
**ASSIGNOR:**

**PREMIER KINGS OF GEORGIA, INC.,**  
a Georgia corporation

By: \_\_\_\_\_  
Name: Laura Kendall  
Title: Deputy Restructuring Office

**ASSIGNEE:**

**RRG OF JACKSONVILLE, LLC,**  
a Florida limited liability company

By:  \_\_\_\_\_  
Name: Randy Pianin  
Title: Manager

[SIGNATURE PAGE TO ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT]

## **LANDLORD CONSENT TO ASSIGNMENT AND ASSUMPTION OF LEASE**

To the extent required under the Lease, effective as of the date (the "**Effective Date**") of the Assignment and Assumption of Lease Agreement enclosed herewith (the "**Assignment Agreement**"), the undersigned ("**Landlord**") hereby (a) consents to the assignment effected by the Assignment Agreement; (b) waives any right of refusal to repossess the space, any option to purchase, and any termination option which may arise as a result of Assignor's assignment of the Lease to Assignee pursuant to the Assignment Agreement; (c) agrees to recognize Assignee as the "Owner/Operator" under the Lease, and to thereby establish direct privity of estate and privity of contract with Assignee; (d) waives any right of Landlord to charge any fee or other amount in connection with Assignor's assignment of the Lease to Assignee pursuant to the Assignment Agreement; and (e) certifies and agrees that (i) Landlord has all requisite power and authority to execute and deliver this consent to the Assignment Agreement (this "**Consent**"), without the need to obtain the consent or approval of, or to deliver notice to, any other person or entity, and the Assignment Agreement and this Consent are binding upon and enforceable against Landlord, its successors and assigns, (ii) Landlord is the current, sole fee simple owner of record of all real and personal property, and all other equipment, fixtures, buildings, structures, and premises currently leased by Assignor under and pursuant to the Lease, (iii) the consummation of Assignor's assignment of the Lease to Assignee pursuant to the Assignment Agreement shall not be deemed a breach or violation of, or default or event of default under, any provision of the Lease, and (iv) except to the extent mutually amended, restated, supplemented, or otherwise modified by Assignee and Landlord in accordance with the terms and conditions of the Lease, the Lease shall remain in full force and effect from and after the Effective Date, in accordance with its terms and conditions. All capitalized terms used but not defined in this Consent shall have the respective meanings ascribed thereto in the Assignment Agreement.

### **LANDLORD:**

**PORT WENTWORTH FEE OWNER, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## **DEVELOPER CONSENT TO ASSIGNMENT AND ASSUMPTION OF LEASE**

To the extent required under the Development Agreement between Premier Kings of Georgia, Inc., a Georgia corporation; and the undersigned ("Counterparty"), dated May 17, 2019 (the "Development Agreement"), effective as of the date (the "Effective Date") of the Assignment and Assumption of Lease Agreement enclosed herewith (the "Assignment Agreement"), Counterparty hereby (a) consents to the assignment effected by the Assignment Agreement; (b) waives any right of refusal to repossess the space, any option to purchase, and any termination option which may arise as a result of Assignor's assignment of the Lease and/or the Development Agreement (as applicable) to Assignee pursuant to the Assignment Agreement; (c) agrees to recognize Assignee as the "Tenant" under the Lease and (as applicable) the "Owner/Operator" under the Development Agreement; and to thereby establish direct privity of estate and privity of contract with Assignee; (d) waives any right of Counterparty to charge any fee or other amount in connection with Assignor's assignment of the Lease and/or the Development Agreement (as applicable) to Assignee pursuant to the Assignment Agreement; and (e) certifies and agrees that (i) Counterparty has all requisite power and authority to execute and deliver this consent to the Assignment Agreement (this "Consent"), without the need to obtain the consent or approval of, or to deliver notice to, any other person or entity, and the Assignment Agreement and this Consent are binding upon and enforceable against Counterparty, its successors and assigns, (ii) the consummation of Assignor's assignment of the Lease and/or the Development Agreement (as applicable) to Assignee pursuant to the Assignment Agreement shall not be deemed a breach or violation of, or default or event of default under, any provision of the Lease or the Development Agreement, and (iv) except to the extent mutually amended, restated, supplemented, or otherwise modified by Assignee and Counterparty in accordance with the terms and conditions of the Lease and the Development Agreement, the Lease and the Development Agreement shall remain in full force and effect from and after the Effective Date, in accordance with their respective terms and conditions. All capitalized terms used but not defined in this Consent shall have the respective meanings ascribed thereto in the Assignment Agreement.

### **COUNTERPARTY:**

**PREMIER HOLDINGS OF GEORGIA, LLC,**  
a Georgia limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

# PLAINTIFF'S EXHIBIT 41

## 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

### MOTION OF RRG OF JACKSONVILLE, LLC FOR RELIEF FROM ORDER ASSUMING AND ASSIGNING CONTRACT

RRG of Jacksonville, LLC ("RRG"), a purchaser of certain of the Debtors' assets, moves the Court in accordance with Rule 9024 of the Federal Rules of Bankruptcy Procedure (Bankruptcy Rules) for relief from the provisions of the Sale Order assuming and assigning a contract to RRG. In support of its motion, RRG submits herewith the Affidavit of Randy Piamin in Support of Motion of RRG of Jacksonville, LLC for Relief from Order and states the following:

#### Procedural Background

1. Premier Holdings of Georgia, LLC ("PHG") has commenced an adversary proceeding against RRG [Adv. Proc. No. 23-02871] (the "Adversary Proceeding") seeking to compel RRG to assume a development agreement contract with PHG (the "Development Agreement") that it contends RRG inadvertently assumed as part of the Sale 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. The Court entered an order for joint administration on October 30, 2023 [Doc. No. 84].



2. RRG has answered the Adversary Proceeding and filed a motion for judgment on the pleadings. RRG did not assume the Development Agreement and did not intend to do so. In the event the Court finds that the Sale Order effected an assumption of the Development Agreement and assignment to RRG, RRG files this motion to seek relief from that portion of the Sale Order in accordance with Rule 60(b)(1) of the Federal Rules of Civil Procedure as made applicable by Bankruptcy Rule 9024.

#### Facts

3. By Order dated December 13, 2023 [Docket No. 355] (the "Sale Order"), the Court approved the sale of certain of the Debtor's assets to RRG. Under the terms of the asset purchase agreement, RRG had the right to assume certain leases and executory contracts. The Sale Order specifically incorporates by reference the terms of the Asset Purchase Agreement between the Debtor and RRG. [See Sale Order at p. 127].

4. The Asset Purchase Agreement is dated October 25, 2023 and was amended by the terms of the First Amendment to Asset Purchase Agreement dated December 11, 2023 [See Sale Order at p. 208]. The First Amendment designates leases for assumption at Schedule I-3(a)(2) "Designated Leases for Assumption." [See Sale Order at p. 215]. On Schedule I-3(a)(2), RRG listed:

<u>Store Number</u>	<u>Store Address</u>
26868	7304 Hwy. 21, Port Wentworth, GA

[Sale Order at p. 215].

5. The Asset Purchase Agreement also permitted the Defendant to accept or reject leases by sending written notice to the Debtors. The Defendant sent to the Debtors two (2) such notices of Designated Leases and Rejected Leases, one on December 4, 2023 and one on December

26, 2023 (the "Lease Notices"), both of which reference designation of leases and intentionally omit any reference to the Development Agreement (or any other type of contract). True and accurate copies of the notices are appended to the Affidavit of Randy Pianin submitted herewith. (Affidavit of Randy Pianin (hereinafter, "Aff. Pianin"), Exhibit A).

6. A true and accurate copy of the Ground Lease dated May 8, 2018, and the First Amendment to Ground Lease dated August 3, 2018, for this location is attached to the Affidavit of Randy Pianin (the "Lease"). (Aff. Pianin, Ex. B) There is no reference to the Development Agreement in the Lease.

7. The Sale Order also made provision for the assumption of certain Designated Contracts as identified by RRG. The Sale Order incorporated Schedule 1-2(a) -2 which provided that the contracts being assumed by RRG were:

None.

[Sale Order at p. 183]. The omission of the Development Agreement from Schedule 1-2(a) -2 makes it clear that the Defendant did not intend to assume the Development Agreement.

8. In accordance with the terms of the Asset Purchase Agreement the Debtor and RRG executed a written Assignment and Assumption Agreement of Lease Agreement. A true and accurate copy of the Assumption Agreement is attached to RRG's Motion for Judgment on the Pleadings [AP, Dkt No. \_\_\_] (the "Assumption Agreement").

9. Paragraph 5 of the Assumption Agreement provides that:

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



10. The Assumption Agreement provides that RRG is assuming “that certain Ground Lease, dated as of May 8, 2018, as amended by that certain Amendment to Ground Lease, dated August 3, 2018, and as subject to that certain Development Agreement between Premier Holdings of Georgia, LLC and Assignor, dated May 17, 2019.” The Assumption Agreement intentionally does not state that the Defendant is assuming the Development Agreement.

11. A true and accurate copy of the Development Agreement dated May 17, 2019 is attached to the Affidavit of Randy Pianin. (Aff. Pianin, Ex. C).

12. The Lease makes no reference to the Development Agreement and the Development Agreement makes no reference to the Lease.

#### Argument

13. Applicable Standard Rule 60(b)(1) permits a court to alter or amend a judgment for “mistake, inadvertence, surprise, or excusable neglect.” Fed. R. Civ. P. Rule 60(b)(1). The goal of Rule 60(b)(1) is to correct errors of law or misapprehensions of fact. The decision to alter or amend a judgment is in the sound discretion of the trial judge. Futures Trading Comm’n v. Am. Commodities Group, 753 F.2d 862, 866 (11th Cir.1984).

14. “Mistake” as used within Rule 60 encompasses a broad spectrum of errors consistent with the common dictionary definition of the word. Kemp v. United States, 596 U.S. 598, 142 S. Ct. 1856, 213 L.Ed. 2d 90 (2022).

15. The Debtor scheduled the Lease as an executory contract [See Schedules of Assets and Liabilities, Docket No. 257 (hereinafter “Schedules”) p. 108.]. The Debtor did not schedule the Development Agreement as an executory contract, instead stating that “Mr Sidhu and Premier Kings of Georgia guaranteed loan related [sic] to FFL and the real estate of store #27690 and 26868.” Schedules, p. 117.

16. Neither RRG nor the Debtor had anything to gain from the assumption of the Development Agreement. The Development Agreement represents a commitment of approximately \$2 million, or over 10% of the entire purchase price under the Asset Purchase Agreement.<sup>2</sup> It provides no value to RRG and there was no reason for RRG or any other party acting in a commercially reasonable manner to assume the Development Agreement. (Aff. Pianin, ¶¶ 12, 13) PHG does not argue or contend otherwise, it simply seeks to take advantage of what it chooses to construe as an inadvertent error in its favor in an agreement between the Debtor and RRG. The Development Agreement was not the subject of negotiations or discussion between the Debtor and RRG and indeed it was not downloaded to the data room, or otherwise made available to RRG, until after the execution of the Schedule of Leases to be assumed and in fact until after the closing of the transactions contemplated by the Asset Purchase Agreement. (Aff. Pianin, ¶ 10)

17. RRG had no reason to assume the Development Agreement. The aggregate payments under Lease and the Development Agreement fell far outside the maximum contract boundaries RRG had established to evaluate locations. The Development Agreement adds \$11,000.00 per month to the base rent of \$6,164.92 per month creating a lease obligation that would represent 17.05% of annual sale volume for this location. No operator would willingly assume such an obligation. (Aff. Pianin, ¶¶ 11, 12)

18. A bankruptcy court has the jurisdiction and discretion to relieve a party from the mistaken assumption of a contract:

*When an innocent mistake can be rectified without harm to anyone (loss of a windfall is not the kind of harm that a court should endeavor to avert), it should be. Especially in a case such as this, if the mistake is not corrected, the cost will be borne not by its maker-United-but by creditors no less innocent than the airplanes' owners. A refusal to correct would serve no deterrent or punitive purpose; it would merely redistribute wealth among creditors capriciously.*

---

<sup>2</sup> The Plaintiff has stated that the monthly payment under the Development Agreement is \$11,000. The Development Agreement terminates in 15 years. \$12,000 annually x 15 years = \$1,980,000.



In Re UAL Corp., 411 F. 3d 818, 824-825 (7<sup>th</sup> Cir. 2005) (emphasis added).

19. In UAL Corp., the Court was called upon to consider the actions of the debtor United Airlines in inadvertently assuming three aircraft leases which it wrongly believed no amounts were due upon. The Court noted in UAL that there was no detrimental reliance by the contract party arising out of the error and the same is true in the instant case, id.

20. Unlike the facts in UAL, the contract party charged with mistake is not the original contract party, but a purchaser who was not a party to the Insider Development Agreement and had no reason to be aware of its terms.

21. At no time prior to the deadline for assumption and rejection of leases, or prior to closing on this transaction on January 16, 2024, were RRG or its advisors provided a copy of, or access to, the Development Agreement dated May 17, 2019. On February 19, 2024, counsel for Premier Kings provided RRG with a copy of the Development Agreement in connection with this dispute. It appears that the Development Agreement was first uploaded to the transaction data room on January 31, 2024. RRG was not alerted to this addition to the transaction data room and the Development Agreement was not reviewed by RRG at that time as RRG did not continue to monitor the transaction data room after closing. Aff. Planin, ¶ 10.

22. The Development Agreement does not state the amount of any payment due but instead apparently makes reference to a future and unidentified “bank loan.” For this reason alone, RRG would have never assumed the agreement without knowing what payment obligations were entailed or having any ability to do so by reference to an unidentified “bank loan.” Aff. Planin, ¶ 11.

23. There is no harm to any party by, as necessary, amending the sale order, to relieve RRG of the burden of assumption. The only "harm" would be the loss of a windfall to PHG, as the Court in UAL noted "not the sort of harm the Court should endeavor to avert." *Id.* at 824-825.

#### Conclusion

24. To the extent the Court finds that the Development Agreement was assumed by the Debtor and assigned to RRG, the Court should relieve RRG of the inadvertent error by amending the Sale Order to provide for the rejection of the Development Agreement.

Wherefore, RRG prays that the Court enter an Order amending the Sale Order to provide for the rejection of the Development Agreement and that the Court grant such other and further relief as is just.

RRG of Jacksonville, LLC

by its attorneys,

/s/ Peter J. Haley

Peter J. Haley *pro hac vice*

peter.haley@nelsonmullins.com

Nelson Mullins Riley & Scarborough LLP

One Financial Center, 35th Floor

Boston, Massachusetts 02111

Phone: (617) 217-4714

Gregory M. Taube

AL Federal Court ASB-4499-A41G

Nelson Mullins Riley & Scarborough LLP

201 17th Street, NW, Suite 1700

Atlanta, Georgia 30363

(404) 322-6000 (Phone)

greg.taube@nelsonmullins.com

Dated: May 8, 2024



**Certificate of Service**

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

Dated: May 8, 2024

/s/ Peter J. Haley  
Peter J. Haley

## Exhibit A



**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

**AFFIDAVIT OF RANDY PIANIN IN SUPPORT OF MOTION OF  
RRG OF JACKSONVILLE, LLC. FOR RELIEF FROM ORDER**

I, Randy Pianin, being of legal age, on oath, do depose and state that:

1. I am the Chief Executive Officer of RRG of Jacksonville, LLC ("RRG") the purchaser of certain assets of the Debtor in this proceeding.

2. RRG entered into an Asset Purchase Agreement with the Debtors dated October 25, 2023, that was amended by the terms of the First Amendment to Asset Purchase Agreement dated December 11, 2023 [See Order dated December 13, 2023 [Docket No. 355] (the "Sale Order") at p. 208]. The First Amendment to Asset Purchase Agreement designates leases for assumption at Schedule I-3(a)(2) "Designated Leases for Assumption." [See Sale Order at p. 215]. A true and accurate copy of the Asset Purchase Agreement, including the First Amendment to Asset Purchase Agreement, is appended to the Sale Order at pp. 137-216.

3. RRG delivered two notices of Designated Leases and Rejected Leases to the Debtor, one on December 4, 2023 and one on December 26, 2023 (the "Lease Notices"). True and accurate copies of the Lease Notices are attached hereto as Exhibit A.

<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. The Court entered an order for joint administration on October 30, 2023 [Dop. No. 84].

4. The deadline for RRG to designate leases for assumption was December 26, 2023.

5. As part of the process of evaluating store locations for assumption or rejection, RRG was focused primarily on two elements; making a physical visit to each site to observe the condition of the premises and operation of the store and comparing the rent under each store lease with the projected income at each location. Given the wide dispersal of store locations and the holiday season this was an extremely compressed time frame to attempt to make a determination for approximately 45 locations.

6. In connection with these efforts, RRG was assisted by outside counsel, Nelson Mullins, and a real estate advisory firm, STNL Advisors LLC. RRG's experience in the market, suggested that it should aim for rent that was that was below or no greater than the range of 7.5% - 9.0% of projected sales for the location.

7. In instances where the existing rent obligations exceeded this standard, RRG attempted to negotiate a new rental rate or, in some instances, indicated that it would reject the lease.

8. The information provided to RRG and its advisors indicated that the rent at Store # 26868 located at 7304 Hwy. 21, Port Wentworth, GA as established by the monthly financial statements provided in the data room, showed the rent at \$6,146.92 from March 2023 through September 2023, the last date for which there were monthly financials. This is the rent that RRG is currently paying (\$73,979.04 annually). True and accurate copies of the Ground Lease and First Amendment to Ground Lease are attached hereto as Exhibit B.

9. Based on data made available to RRG during the due diligence process, the rent at Store 26868 as set forth on the Lease represents approximately 6.12% of sales at this location, derived from annual sales of \$1,208,184.00 and annual rent of \$73,979.04.



10. At no time prior to the deadline for assumption and rejection of leases, or prior to closing on this transaction on January 16, 2024, were RRG or its advisors provided a copy of, or access to, the Development Agreement dated May 17, 2019. On February 19, 2024, counsel for Premier Kings provided RRG with a copy of the Development Agreement in connection with this dispute. It appears that the Development Agreement was first uploaded to the transaction data room on January 31, 2024. RRG was not alerted to this addition to the transaction data room and the Development Agreement was not reviewed by RRG at that time as RRG did not continue to monitor the transaction data room after closing. A true and accurate copy of the Development Agreement is attached hereto as Exhibit C.

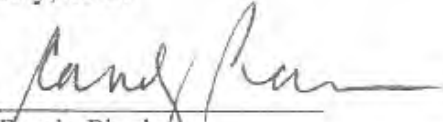
11. The Development Agreement does not state the amount of any payment due but instead apparently makes reference to a future and unidentified "bank loan." For this reason alone, RRG would have never assumed the agreement without knowing what payment obligations were entailed or having any ability to do so by reference to an unidentified "bank loan."

12. I am informed that Premier Holdings of Georgia is seeking a payment of approximately \$11,000.00 per month. With the application of this payment, the total monthly tenancy cost for this location would become 17.05% of sales. This is a threshold that far exceeds any reasonable rate for the property and falls well outside RRG's internal goals for evaluating assumption. If RRG had understood the monthly tenancy costs to be 17.05% of sales it would have exercised its right to reject the lease for this location.

13. RRG never had any intent to assume the Development Agreement or any need to do so.

14. The Development Agreement provides no value or benefit to RRG whatsoever.

Signed under the penalties of perjury this 8<sup>th</sup> day of May, 2024.

  
Randy Pianin



## Exhibit A

**RRG of Jacksonville, LLC**  
**525 South Flagler Drive, Suite 201**  
**West Palm Beach, FL 33401**

December 4, 2023

By E-Mail As Set Forth Below

Premier Kings of Georgia, Inc.  
Premier Kings Inc., et al.  
c/o Aurora Management Partners  
112 South Tyron Street, Suite 1770  
Charlotte, NC 28284  
Attn: David Baker  
dbaker@auroramp.com

Cole Schotz, P. C.  
1201 Willis Street, Suite 320  
Baltimore, MD 21231  
Attn: Gary Leibowitz and Irving E. Walker  
GLEibowitz@coleschotz.com  
IWalker@coleschotz.com

**Re: Asset Purchase Agreement by and between Premier Kings of Georgia, Inc. ("Seller") and RRG of Jacksonville, LLC, or its nominee(s) ("Buyer") dated as of October 25, 2023 (the "APA")**  
**Premier Kings, Inc., et al**  
**Chapter 11 Case No. 23-02871-TOM**  
**(United States Bankruptcy Court N.D. Ala.)**

Gentlemen:

Buyer is writing in accordance with Section 1.3 of the APA. In accordance with Section 1.3(a) of the APA, Buyer provides notice that:

- A. Buyer will assume those Leases set forth on Schedule A enclosed with this letter (the "**Designated Leases**"); provided, however, Buyer has negotiated and/or is in the process of negotiating amended terms and conditions of certain of the Designated Leases (the "**Conditionally Designated Leases**"). Pursuant to the terms and conditions of the APA, as amended from time to time, Buyer's assumption of each of the Conditionally Designated Leases will be subject to the execution of a lease amendment in a form and substance satisfactory to Buyer (and in the absence of such an amendment, Buyer does not intend to assume such Conditionally Designated Leases and such Conditionally Designated Leases shall be Rejected Leases, as herein defined).
- B. For purposes of clarity and to avoid confusion, Buyer has set forth on Schedule B enclosed with this letter those Leases which it does not intend to assume (the "**Rejected Leases**").

USDC-23-02871-TOM



In accordance with Section 1.3(a) of the APA, also enclosed with this letter is a proposed Schedule 1.3(a)-2 to the APA indicating the Designated Leases and the Conditionally Designated Leases.

Very Truly Yours,

RRG of Jacksonville, LLC

By: 

Name: **MICHAEL L. SCHMICKLE**

Title: **MANAGER**

Enclosures:

Schedule A – Designated Leases

Schedule B – Rejected Leases

Schedule 1.3(a)-2 to the APA (proposed)

cc:

Nelson Mullins Riley & Scarborough LLP

1905 NW Corporate Blvd., Suite 310

Boca Raton, FL 33431

Attn: Matthew M. Thompson

Email: [matthew.thompson@nelsonmullins.com](mailto:matthew.thompson@nelsonmullins.com)

### Schedule A - Designated Leases

The following Leases, identified by Store Number and Store Address, will be assumed by Buyer (subject to the reservation of rights set forth in the foregoing letter).

Store Number	Store Address
322	601 Martin Luther King Blvd., Savannah, GA
1197	250 Monument Road, Jacksonville, FL
1226	14 W. DeRenne Ave., Savannah, GA
1404	11711 Abercorn Street, Savannah, GA
1471	1295 Ribaut Road, Beaufort, GA
1551	4241 August Road, Garden City, GA
1691	5015 New Jesup Hwy, Brunswick, GA
1724	5922 Merrill Road, Jacksonville, FL
2124	1710 Memorial Drive, Waycross, GA
2397	998 Sunset Blvd., Loc 129, Jesup, GA
3048	8770 Whyte Hardee Blvd, Hardeeville, SC
5571	415 US-80 East, Pooler, GA
6986	11031 Old St. Augustine Rd, Jacksonville, FL
7068	13180 Atlantic Blvd., Jacksonville, FL
7121	10142 Phillip's Hwy, Jacksonville, FL
8907	1162 Boone Ave., Ext E, Kingsland, GA
9942	9090 Merrill Road, Jacksonville, FL
10241	13060 Hwy. 251, Darien, GA
10893	815 Elma G. Miles Parkway, Hinesville, GA
11309	462581 SR 200, Yulee, FL
12107	115 Golden Isles Plaza, Brunswick, GA
12792	3527 Hwy. 84 West, Blackshear, GA
12906	8257 E. Main Street, Ridgeland, SC
13106	13404 Sifton Park Drive, Jacksonville, FL
13243	154 S. Main Street, Baxley, GA
14209	201 Museum Street, Hilton Head Island, SC
14614	602 Fair Road, Statesboro, GA
15499	13049 N. Main Street, Jacksonville, FL
16751	184 S. Hwy. 17, East Palatka, FL
17831	11761 Beach Blvd Ste 15, Jacksonville, FL
19411	2455 SR 207, St. Augustine, FL
23049	496 Jimmy DeLoach Parkway, Savannah, GA
23155	3 Baylor Brook Drive, Okatie, SC
23806	2430 Osborn Rd., St. Mary's, GA
24560	5910 Ogeehee Road, Savannah, GA
25882	106 N. Duval Street, Claxton, GA
25937	4660 Hwy. 17, Richmond Hill, GA
26749	13708 East Oglethorpe Hwy., Midway, GA
26868	7304 Hwy. 21, Port Wentworth, GA
27690	13200 W. Cleveland Street, Nahutta, GA

4406-2550-5566-1-1



### Schedule B - Rejected Leases

The following Leases, identified by Store Number and Store Address, will not be assumed by Buyer:

Store Number	Store Address
521	7923 White Bluff Road, Savannah, GA
2873	1940 S. 8th Street, Fernandina Beach, FL
10422	542370 US Highway 1, Callahan, FL
15760	4268 Ogeechee Road, Savannah, GA

**Schedule 1.3(a)-2 to APA**

**Designated Leases:**

Store Number	Store Address
322	601 Martin Luther King Blvd., Savannah, GA
1197	250 Monument Road, Jacksonville, FL
1226	14 W. DeRenne Ave., Savannah, GA
1404	11711 Abercorn Street, Savannah, GA
1471	1295 Ribaut Road, Beaufort, GA
1551	4241 August Road, Garden City, GA
1691	5015 New Jesup Hwy, Brunswick, GA
1724	5922 Merrill Road, Jacksonville, FL
2124	1710 Memorial Drive, Waycross, GA
2397	998 Sunset Blvd., Loc 129, Jesup, GA
3048	8770 Whyte Hardee Blvd, Hardeeville, SC
5571	415 US-80 East, Pooler, GA
6986	11031 Old St. Augustine Rd, Jacksonville, FL
7068	13180 Atlantic Blvd., Jacksonville, FL
7121	10142 Phillip's Hwy, Jacksonville, FL
8907	1162 Boone Ave., Ext E, Kingsland, GA
9942	9090 Merrill Road, Jacksonville, FL
10241	13060 Hwy. 251, Darien, GA
10881	815 Elma G. Miles Parkway, Hinesville, GA
11309	462581 SR 200, Yulee, FL
12107	115 Golden Isles Plaza, Brunswick, GA
12792	3527 Hwy. 84 West, Blackshear, GA
12906	8257 E. Main Street, Ridgeland, SC
13106	13404 Sutton Park Drive, Jacksonville, FL
13243	154 S. Main Street, Buxley, GA
14209	201 Museum Street, Hilton Head Island, SC
14614	602 Fair Road, Statesboro, GA
15499	13049 N. Main Street, Jacksonville, FL
16751	184 S. Hwy. 17, East Palatka, FL
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24560	5910 Ogeehee Road, Savannah, GA
25882	106 N. Duval Street, Claxton, GA
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26749	13708 East Oglethorpe Hwy., Midway, GA
26868	7304 Hwy. 21, Port Wentworth, GA
27690	13200 W. Cleveland Street, Nahunta, GA

1025-2556-5109-14



**RRG of Jacksonville, LLC**  
**525 South Flagler Drive, Suite 201**  
**West Palm Beach, FL 33401**

December 26, 2023

By E-Mail As Set Forth Below

Premier Kings of Georgia, Inc.  
Premier Kings Inc., et al.  
c/o Aurora Management Partners  
112 South Tyron Street, Suite 1770  
Charlotte, NC 28284  
Attn: David Baker  
dbaker@auroramp.com

Cole Schotz, P. C.  
1201 Willis Street, Suite 320  
Baltimore, MD 21231  
Attn: Gary Leibowitz and Irving L. Walker  
GLEibowitz@coleschotz.com  
IWalker@coleschotz.com

**Re: Asset Purchase Agreement by and between Premier Kings of Georgia, Inc. ("Seller") and RRG of Jacksonville, LLC, or its nominee(s) ("Buyer") dated as of October 25, 2023, as amended by that certain First Amendment to Asset Purchase Agreement dated as of December 11, 2023 (collectively, the "APA")**  
**Premier Kings, Inc., et al**  
**Chapter 11 Case No. 23-02871-TOM**  
**(United States Bankruptcy Court N.D. Ala.)**

Gentlemen,

Buyer is writing in accordance with Section 1.3(c) of the APA. In accordance with Section 1.3(c) of the APA, Buyer provides notice that:

- A. Buyer hereby elects to remove the following Designated Leases from Schedule 1.3(a)-2 of the APA, such that the following Designated Leases are no longer Designated Leases and are now Rejected Leases:

Store Number	Store Address
6986	11031 Old St. Augustine Rd, Jacksonville, FL
7121	10142 Phillip's Hwy, Jacksonville, FL
17831	11761 Beach Blvd Ste 15, Jacksonville, FL
25882	106 N. Duval Street, Claxton, GA

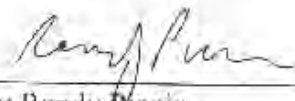
- B. Further, the Assignable Franchise Agreement that corresponds to each Rejected Lease shall not be assumed by Buyer and is designated as a Rejected Franchise Agreement.

1883-048/03975 v.1

- C. For purposes of clarity: (i) Schedule A enclosed with this letter contains the Designated Leases that Buyer will assume (subject to Buyer's continuing rights pursuant to Section 1.3(e) of the APA) and constitutes Schedule 1.3(a)-2 of the APA; and (ii) Schedule B enclosed with this letter contains the Rejected Leases that Buyer does not intend to assume.

Very Truly Yours,

RRG of Jacksonville, LLC

By:   
Name: Randy Planin  
Title: Manager

Enclosures:

Schedule A - Designated Leases / Schedule 1.3(a)-2 to the APA  
Schedule B - Rejected Leases

cc:

Nelson Mullins Riley & Scarborough LLP  
1905 NW Corporate Blvd., Suite 310  
Boca Raton, FL 33431  
Attn: Matthew M. Thompson  
Email: matthew.thompson@nelsonmullins.com  
and  
Attn: Peter Haley  
Email: peter.haley@nelsonmullins.com



**Schedule A - Designated Leases / Schedule 1.3(a)-2**

The following Leases, identified by Store Number and Store Address, will be assumed by Buyer (subject to the reservation of rights set forth in the foregoing letter):

Store Number	Store Address
322	601 Martin Luther King Blvd., Savannah, GA
1197	250 Monument Road, Jacksonville, FL
1226	14 W. DeRenne Ave., Savannah, GA
1404	11711 Abercorn Street, Savannah, GA
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2124	1710 Memorial Drive, Waycross, GA
2397	998 Sunset Blvd., Loc 129, Jesup, GA
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5571	415 US-80 East, Pooler, GA
7068	13180 Atlantic Blvd., Jacksonville, FL
8907	1162 Boone Ave., Ext E, Kingsland, GA
9942	9090 Merrill Road, Jacksonville, FL
10241	13060 Hwy. 251, Darien, GA
10893	815 Elma G. Miles Parkway, Hinesville, GA
11309	462581 SR 200, Yulee, FL
12107	115 Golden Isles Plaza, Brunswick, GA
12792	3527 Hwy. 84 West, Blackshear, GA
12906	8257 E. Main Street, Ridgeland, SC
13106	13404 Sutton Park Drive, Jacksonville, FL
13243	154 S. Main Street, Baxley, GA
14209	201 Museum Street, Hilton Head Island, SC
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15499	13049 N. Main Street, Jacksonville, FL
16751	184 S. Hwy. 17, East Palatka, FL
19411	2455 SR 207, St. Augustine, FL
23049	496 Jimmy DeLoach Parkway, Savannah, GA
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24560	5910 Ogechee Road, Savannah, GA
25937	4660 Hwy. 17, Richmond Hill, GA
26749	13708 East Oglethorpe Hwy., Midway, GA
26868	7304 Hwy. 21, Port Wentworth, GA
27690	13200 W. Cleveland Street, Nahunta, GA

### Schedule B - Rejected Leases

The following Leases, identified by Store Number and Store Address, will not be assumed by Buyer:

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2873	1940 S. 8th Street, Fernandina Beach, FL
6986	11031 Old St. Augustine Rd, Jacksonville, FL
7121	10142 Phillip's Hwy, Jacksonville, FL
10422	542370 US Highway 1, Callahan, FL
15760	4268 Ogeechee Road, Savannah, GA
17831	11761 Beach Blvd Ste 15, Jacksonville, FL
25882	106 N. Duval Street, Claxton, GA



## Exhibit B

## GROUND LEASE

THIS GROUND LEASE (the "Lease") is made and entered into this 8 day of May 2018 (the "Effective Date"), by and between PORT WENTWORTH FEE OWNER, LLC, a Delaware limited liability company ("Landlord"), and PREMIER KINGS OF GEORGIA, INC., a Georgia corporation ("Tenant").

### ARTICLE I. DEMISE OF PREMISES

Section 1.01. Demise. For and in consideration of the rents, terms, covenants and agreements hereinafter set forth on the part of Tenant and Landlord to be paid, kept, observed and performed, Landlord does hereby demise and lease to Tenant, and Tenant does hereby take and hire from Landlord, upon and subject to the terms and conditions contained herein, that certain tract of land, consisting of approximately 1.05 acres, lying and being within the shopping center commonly known as Waterford Commons located in Chatham County, Georgia (the "Shopping Center"), known as "Outparcel B" on the Site Plan attached hereto as Exhibit "A" and incorporated herein by reference (the "Site"), and as more particularly described in Exhibit "B" attached hereto and incorporated herein by this reference, together with all improvements now located thereon and all appurtenances thereunto belonging (said Site, improvements and appurtenances hereinafter collectively referred to as the "Premises"), subject to all encumbrances of record and as would be shown on a current, accurate ALTA survey.

Section 1.02. Appurtenant Rights and/or Easements. The Premises are leased by Landlord to Tenant together with, but subject to the terms and conditions of this Lease, the rights, privileges and easements appurtenant to the Site created and established by virtue of that certain Declaration of Easements, Covenants, Restrictions and Maintenance Responsibilities (Shopping Center and Outparcel Property) dated September 19, 2005, recorded in Deed Book 294Q, Page 361 in the Official Records of the Chatham County Clerk in Chatham County, Georgia, as affected by that certain Amended and Restated Declaration of Easements, Covenants, Restrictions and Maintenance Responsibilities (Shopping Center and Outparcel Property) dated March 19, 2007, recorded in Deed Book 322U, Page 457, aforesaid Records, as further affected by that certain First Amendment to Amended and Restated Declaration of Easements, Covenants, Restrictions and Maintenance Responsibilities (Shopping Center and Outparcel Property) dated February 21, 2008, recorded in Deed Book 337V, Page 103, aforesaid Records, and as further affected by that certain Assignment and Assumption of Declarant's Rights dated May 31, 2015, recorded in Deed Book 387Z, Page 942, aforesaid Records (collectively, the "Declaration"). In the event there is any conflict between the rights appurtenant to the Site in the Declaration and the terms of this Lease, the terms of this Lease shall prevail.

Section 1.03. Reservation of Easements. Landlord hereby reserves for the benefit of the property owned by Landlord in the Shopping Center all easements over and across the Site and other rights conferred upon "Declarant" (as defined in the Declaration) pursuant to the Declaration.



## ARTICLE II. TERM OF LEASE

Section 2.01. Term of Lease. The term of this Lease (the "Initial Term") shall commence on the Rental Commencement Date (as defined below) and unless sooner terminated or extended under the terms and conditions contained herein, shall continue until 11:59 p.m. (local time) on the day preceding the twentieth (20th) anniversary of the Rental Commencement Date (as hereinafter defined), plus the remainder of the month in which the twentieth anniversary of the Rental Commencement Date occurs if the Rental Commencement Date is not on the first day of a calendar month.

Section 2.02. Extended Term. Provided this Lease has not been terminated for any reason prior to the expiration of the Initial Term or current Extended Term (as defined below), as applicable, unless Tenant has issued a Non-Renewal Notice in accordance with the requirements of this Section 2.02, the Term of this Lease shall automatically be extended for four (4) successive additional periods of five (5) years each (each such additional period being herein referred to as an "Extended Term"). Each Extended Term shall be upon all of the same terms, covenants and conditions of this Lease then applicable except that the Rent (as defined below) during the Extended Terms shall be as set forth in Section 3.03 hereof. The term "Term" or the phrase "Term of this Lease" as used in this Lease shall mean the Initial Term and any Extended Term which may become effective. Tenant shall have the right to cause any or all Extended Terms which have not yet commenced to be terminated by written notice to Landlord (a "Non-Renewal Notice") given not less than one hundred eighty (180) days before the expiration of the Initial Term or the then current Extended Term, as the case may be. Unless Tenant shall send a Non-Renewal Notice to Landlord as provided hereinabove, then, subject to the conditions contained in this Section 2.02, this Lease shall automatically extend as provided herein. All Extended Terms shall be sequential, i.e., Tenant shall not have the right to issue a Non-Renewal Notice for less than all of the Extended Terms which have not yet commenced.

## ARTICLE III. RENT AND ADDITIONAL RENT

Section 3.01. Pre-Paid Rent. Within two (2) business days of the Effective Date, Tenant shall deposit Ten Thousand and No/100 Dollars (\$10,000.00) ("Pre-paid Rent") with Laura Keltz at Fidelity National Title Insurance Company, 5565 Glenridge Connector, Suite 300, Atlanta, Georgia 30342 ("Landlord's Agent") to be held in escrow, whereby such Pre-paid Rent shall be solely applied to (i) the first (1st) month of Rent (as hereinafter defined) commencing on the Rental Commencement Date, and (ii) the first (1st) month of Rent for the second Lease Year (as defined below).

Section 3.02. Rental Payments. Subject to Section 3.01, commencing on the Rental Commencement Date, Tenant covenants and agrees to pay Landlord, in lawful money of the United States of America, the base annual rent (hereinafter referred to as "Rent") specified in Section 3.03 hereunder, plus any and all additional sums and charges that come due under the terms and conditions of this Lease (any and all such sums and charges hereinafter referred to as "Additional Rent"). Rent shall be payable, in advance and without demand, in twelve (12) equal monthly installments for each Lease Year on the first day of each calendar month during the Term, commencing on the Rental Commencement Date, at the office of Landlord, or at such

other address as Landlord may from time to time designate in writing to Tenant. If the Rental Commencement Date is other than the first day of a calendar month, then Rent for such month shall be prorated on a daily basis and the installment so prorated shall be paid in advance on the Rental Commencement Date.

Section 3.03. Rent. Commencing on the Rental Commencement Date and thereafter during the Term, Tenant shall pay Rent as follows:

<u>Lease Year</u>	<u>Base Annual Rent</u>	<u>Base Monthly Rent</u>
1 - 5	\$60,000.00	\$5,000.00
6 - 10	\$60,000.00	\$5,000.00
11 - 15	\$60,000.00	\$5,000.00
16 - 20	\$60,000.00	\$5,000.00
21 - 25 (1 <sup>st</sup> Extension)	\$66,000.00	\$5,500.00
26 - 30 (2 <sup>nd</sup> Extension)	\$72,600.00	\$6,050.00
31 - 35 (3 <sup>rd</sup> Extension)	\$79,860.00	\$6,655.00
36 - 40 (4 <sup>th</sup> Extension)	\$87,846.00	\$7,320.50

For purposes of this Lease the term "Lease Year" shall mean each twelve (12) full calendar month period during the Term commencing on the Rental Commencement Date and on each anniversary thereof. In addition, for purposes of this Lease the "Rental Commencement Date" shall mean the date which is the earlier of: (i) the date when Tenant opens for business to the public in the Premises, or (ii) the expiration of the Construction Period (as defined below).

Section 3.04. Additional Rent. In addition to Rent, Tenant shall pay Additional Rent during the Term of any and all other sums and charges required to be paid by Tenant pursuant to this Lease, whether designated as additional rent or not, and such sums and charges shall be collectible when due as Additional Rent as provided herein and shall be subject to all provisions of this Lease as to default in the payment of rent.

#### ARTICLE IV. TAXES, ASSESSMENTS AND CHARGES

Section 4.01. Taxes and Assessments. Tenant covenants and agrees to discharge and pay before the same become delinquent and before any fine, penalty, or interest may be added for nonpayment, any and all taxes, assessments, license or permit fees, excises, imposts and charges of every nature and classification (all or any one of which are hereinafter referred to as "Taxes") that at any time during the Term are levied, assessed, charged or imposed upon the Premises, this Lease, the leasehold estate of Tenant created hereby, the Improvements, or any Rent or Additional Rent reserved or payable hereunder, including any gross receipts or other taxes levied upon, assessed against or measured by the Rent or Additional Rent. Unless the creation of separate assessments are not permitted under applicable law, Landlord may, but shall not be obligated to, cause the Improvements to be assessed separately for real estate tax purposes from all other buildings and structures within the Shopping Center and Landlord may, but shall not be obligated to, cause the land within the Shopping Center to be separately assessed for real estate tax purposes from the buildings and improvements within the Shopping Center. For all tax years during the Term for which the Improvements, the other buildings and structures within the



Shopping Center and the land within the Shopping Center are separately assessed for real estate tax purposes in the manner described above, Tenant shall pay to Landlord, in the manner otherwise provided under this Section 4.01, one hundred percent (100%) of the Taxes levied and assessed upon the Improvements.

Landlord shall notify Tenant of Tenant's share of the Taxes and will furnish Tenant with a copy of applicable tax bills and calculation of Tenant's share of Taxes within thirty (30) days after receipt by Landlord thereof. Tenant shall pay its share of the Taxes as set forth above to Landlord, not later than ten (10) days before the taxing authority's delinquency date or ten (10) days after receipt of a bill from Landlord, whichever is later.

Section 4.02. General. Tenant shall prepare and file all reports and returns required by law and governmental regulations with respect to any Taxes and shall furnish copies thereof to Landlord, if requested by Landlord. Tenant shall promptly forward to Landlord copies of any bill or assessment respecting any Taxes upon Tenant's receipt thereof from the taxing authority. Likewise, Landlord shall promptly furnish to Tenant copies of any bill or assessment respecting any Taxes upon Landlord's receipt thereof from the taxing authority. Upon request of Landlord, Tenant agrees to furnish and deliver to Landlord receipts evidencing the payment of any Taxes payable by Tenant as provided in Section 4.01 hereof. Any Taxes for the year in which the Term of this Lease commences and the year to which it terminates or expires shall be prorated on a daily basis between Landlord and Tenant. If Tenant fails to pay any Taxes when due, Landlord, without declaring a default hereunder and without relieving Tenant of any liability hereunder, may, but shall not be obligated to, pay any such Taxes and any amount so paid by Landlord, together with all costs and expenses incurred by Landlord in connection therewith, shall constitute Additional Rent hereunder and shall be paid immediately by Tenant to Landlord on demand with Default Interest thereon in the manner provided in Section 15.05 hereof. Tenant's obligation to pay Taxes which accrue during the Term shall survive any termination of this Lease.

Section 4.03. Impact Fees. Tenant covenants and agrees that it shall pay any charges in the nature of impact fees, environmental fees and other similar charges necessary to bring all utilities to the boundary line of the Site.

Section 4.04. Utility Charges. Tenant covenants and agrees that it shall pay when due all charges for all public or private utility services including, but not limited to, water, sewer, gas, light, heat and air conditioning, telephone, electricity, cable television, trash removal, power and other utility and communications services that at any time during the Term are rendered or become due and payable with respect to the Premises. Tenant shall, at its sole cost and expense, obtain all necessary permits and approvals and install all meters, wires, conduits, transformers, and other equipment required for supplying such utility services to the Premises, and Tenant shall pay all tap and connection fees pertaining to such utilities. Landlord shall have no responsibility and shall bear no cost with respect to the installation, maintenance, or repair of such lines.

Section 4.05 Reimbursement Obligations.

(a) Tenant shall be responsible for Landlord's pro-rata share of the Reimbursement Obligations (as defined in the Declaration) set forth in Section 5 of the Declaration.

(b) Tenant shall pay to Landlord its share of the Reimbursement Obligations in equal monthly installments in advance of the first day of each calendar month as Additional Rent. Within one hundred twenty (120) days after the end of each calendar year, Landlord shall furnish Tenant with a written statement providing reasonable detail of the actual costs of the Reimbursement Obligations paid or incurred during the preceding calendar year and showing the calculation of the pro rata share allocated to the Site. Any overpayments of Reimbursement Obligations as may be reflected in said statement shall be applied against Tenant's next due installments of Reimbursement Obligations. Any deficiency in the total monthly payments for the year in relation to its share of actual costs shall be paid by Tenant to Landlord within thirty (30) days after such Tenant's receipt of the annual statement.

ARTICLE V. NET LEASE; NON-TERMINATION

Section 5.01 Net Lease. Except as otherwise provided to the contrary herein, this Lease is a net lease and Rent and Additional Rent shall be paid without notice, demand (except as expressly provided herein in the case of certain Additional Rent), counterclaim, setoff, recoupment, deduction or defense and, without abatement, suspension, deferment, diminution or reduction. It is the purpose and intent of Landlord and Tenant that Rent and Additional Rent (where payable to Landlord) shall be absolutely net to Landlord, so that this Lease shall yield, net to Landlord, the Rent specified in Section 3.03 hereof throughout the Term, and that all costs, expenses and obligations of every kind and nature whatsoever relating to the Premises which may arise and become due as specified in Sections 4.01, 4.02, 4.03, 4.04 and 4.05, or elsewhere in this Lease during the Term shall be paid by Tenant, and that Landlord shall be indemnified and saved harmless by Tenant from and against the same.

Section 5.02 Non-Termination. Except as otherwise expressly provided in this Lease, this Lease shall not terminate nor shall Tenant have any right to terminate this Lease or be entitled to the abatement of any Rent or Additional Rent hereunder or any reduction thereof, nor shall the obligations of Tenant under this Lease be otherwise affected, by reason of (a) any damage to or destruction of all or any portion of the Premises from whatever cause, (b) the prohibition, limitation or restriction of or interference with Tenant's use of all or any portion of the Premises, or (c) for any other cause, whether similar or dissimilar to the foregoing.

ARTICLE VI. PERMIT/LIMITED DILIGENCE PERIOD; PREMISES;  
CONSTRUCTION OF IMPROVEMENTS

Section 6.01. Intentionally Omitted.



Section 6.02. Permit/Limited Diligence Period. Tenant shall have a period of seventy five (75) days following the Effective Date (the "Permit/Limited Diligence Period") to obtain any and all permits, licenses or governmental approvals (the "Permits") which are necessary, in Tenant's sole discretion, to construct and operate a Burger King restaurant on the Site, and also to obtain a geotechnical report reflecting soil conditions reasonably sufficient to support the contemplated Burger King development, a Phase I environmental report which reveals no evidence of material adverse environmental conditions (ie, a Phase II is not needed or recommended), an ALTA survey, and a leasehold title commitment evidencing good title to the Premises ("Basic Diligence Items"). Tenant agrees to use commercially diligent efforts to obtain such Permits and Basic Diligence Items in an expeditious manner and shall immediately notify Landlord of receipt thereof. In the event Tenant fails to obtain all Permits or is unable to in good faith obtain the Basic Diligence Items during the Permit/Limited Diligence Period, Landlord shall be entitled (without obligation) to a period of seventy five (75) days after the Permit/Limited Diligence Period ("Landlord Permit/Limited Diligence Period") in which to pursue the Permits or obtain the Basic Diligence Items on Tenant's behalf. If Landlord does not elect to exercise the Landlord Permit/Limited Diligence Period, or Landlord is unable to obtain all Permits and/or Basic Diligence Items on behalf of Tenant during the Landlord Permit/Limited Diligence Period, Tenant shall have the right to terminate this Lease and neither party shall have further obligations, rights, remedies or claims of liability to the other hereunder, except for such obligations that expressly survive termination of this Lease. If Tenant terminates this Lease during the Permit/Limited Diligence Period for any reason other than failure to secure the Permits or because of failure to obtain the Basic Diligence Items, and provided Landlord is not then in default under any provision of this Lease that provides Tenant the right to terminate, Tenant shall pay Landlord, within thirty (30) days of such termination, a termination fee of \$25,000.00, and neither party shall have further obligations, rights, remedies or claims of liability to the other hereunder, except for such obligations that expressly survive termination of this Lease.

Section 6.03. Condition and Suitability of the Premises. TENANT AGREES THAT TENANT IS LEASING THE PREMISES "AS IS," AND LANDLORD MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO FITNESS, MERCHANTABILITY, USE OR CONDITION OF THE PREMISES. Tenant leases the Premises without representation or warranty by Landlord, express or implied, in fact or by law, and without recourse, with respect to (a) the condition of the Premises, including, but not limited to the soil and subsurface conditions thereon, and (c) access to or from the Premises.

Section 6.04. Intentionally Omitted

Section 6.05. Use of the Premises. Tenant agrees that, subject to the limitations of this Lease, it will construct and open for business on the Site a Burger King restaurant with a drive-through service (the "Permitted Use"), and shall thereafter use and operate the Premises for the Permitted Use and for no other purpose whatsoever without the prior written consent of Landlord, not to be unreasonably withheld, provided any such use is not prohibited by any other existing uses within the Shopping Center at that time or as set forth in the Declaration.



Section 6.06. Tenant Exclusive. Landlord agrees that, commencing on the Effective Date and for a period of fifteen (15) years thereafter or until a Burger King restaurant ceases to operate on the Site for a period of more than seventy-five (75) days consecutively, whichever occurs first, Landlord, for itself and for its successors and assigns, shall not allow (i) any portion of that certain adjacent property located in the Shopping Center as depicted on Exhibit "D" attached hereto and incorporated herein (the "Adjacent Property") to be leased, used or occupied by or as a McDonald's, Hardee's or Wendy's; nor (ii) any portion of the Adjacent Property to be leased, used or occupied as "a business selling or serving hamburgers as a principal menu item". For purposes of this Lease, "a business selling or serving hamburgers as a principal menu item" means a quick serve restaurant deriving fifty (50%) or more of its food and beverage gross sales from the sale of hamburgers.

Section 6.07. Restricted Uses. Notwithstanding anything else to the contrary provided in this Lease, in no event shall Tenant use the Premises for any of the purposes set forth in Exhibit "C" attached hereto and by reference made a part hereof.

Section 6.08. Construction of Improvements. The layout of the Site and all buildings, signs, landscaping and related improvements (the "Improvements") constructed upon the Site by Tenant shall be initially constructed in substantial accordance with plans for such work approved by Landlord as provided herein. Within forty five (45) days following the Effective Date and prior to the commencement of the construction and installation of any Improvements whatsoever on the Site or any part thereof, Tenant shall deliver to Landlord a site plan, scaled elevations, exterior design concepts, material selection and color for the exterior surfaces of the proposed Improvements, including signage and landscaping plans. Landlord shall either approve, disapprove, or make recommendations for changes in such plans or any revisions thereto within fifteen (15) days of the receipt thereof. Failure to approve, disapprove, or make recommendations for changes within said fifteen (15) day period shall constitute an approval of such plans as submitted. Any disapproval or recommendation for change shall specify with particularity the reason therefor. Upon submission of any disapproval or recommendation for change, Landlord shall consult with Tenant and both parties shall use good faith efforts to establish approved plans for the proposed work. Landlord shall exercise its discretion with respect to approval or disapproval of any such plans in a reasonable and uniform manner for the mutual benefit of the Shopping Center and all of the occupants thereof, and consistent with the Declaration.

Tenant shall have the lesser of (i) one hundred twenty (120) days following receipt of the Permits, or (ii) one hundred twenty (120) days following the expiration of the Permit/Limited Diligence Period in order to construct and install the Improvements on the Site substantially in accordance with the mutually approved plans, except in the case of changes required to comply with applicable governmental laws, ordinances or regulations (the "Construction Period").

Upon the completion of the initial construction and installation of any such Improvements, except in the case of changes required to comply with applicable governmental laws, ordinances or regulations, the same shall not be thereafter changed or altered without the prior written consent of Landlord if such changes or alterations would materially and substantially modify the site layout, building and landscaping materials, elevations, or exterior



appearance of the Improvements, or add to the footprint of the building, which approval shall be sought pursuant to the terms set forth above and, subject to the requirements of the other provisions of this Lease, which approval shall not be unreasonably withheld in accordance with the criteria set forth above. The approval of any plans and specifications hereunder by Landlord shall not impose any liability or responsibility whatsoever upon Landlord with respect to the compliance or non-compliance of any such plans and specifications, or any improvements erected or installed in accordance therewith, with applicable zoning ordinances, building codes, or other applicable governmental laws, ordinances, or regulations.

All buffer strips and other undeveloped land areas on the Site, if any, shall be landscaped by the Tenant with trees, shrubs, or suitable ground cover (which may include grass) in a uniform manner consistent with standards of first class shopping center development and in accordance with governmental requirements.

Within forty five (45) days after Tenant's completion of the Improvements, Tenant shall deliver to Landlord, at Tenant's expense, copies of the following items: (a) an "as-built" survey of the Improvements, certified by a registered land surveyor licensed by the State of Georgia, showing the Improvements and utility easements in place in relation to the boundaries of the Site; (b) an A.L.A. form architect's certificate of completion, certifying that the Improvements have been constructed and completed in substantial compliance with the approved plans and specifying the particularities of any variation therefrom; (c) a final contractor's affidavit and waiver of liens with respect to the Premises executed by the general contractor(s) performing work or supplying labor or materials in connection with the Improvements; and (d) a certificate of occupancy for the Premises by the appropriate governmental authorities.

Section 6.09. Tenant's Signage. Tenant shall be entitled to install signage on the Premises, subject to compliance with all applicable signage ordinances and Tenant obtaining all applicable governmental approvals, and further subject to Landlord's approval of the dimensions, design and materials for such signage, which approval shall not be unreasonably withheld and may be conditioned upon the conformity of such signage with reasonable uniform signage criteria to be developed for the Shopping Center by Landlord. Tenant shall maintain all such signage in good condition and repair at all times. If any damage is done to Tenant's signage, Tenant shall repair (or commence to repair and proceed diligently to complete) same within ten (10) days or Landlord shall have the right to repair such sign and bill Tenant for the cost of the repairs. Tenant shall remove such signage at the expiration or sooner termination of this Lease and shall repair any damage caused by such removal.

Section 6.10. Recapture. Notwithstanding anything in this Lease to the contrary, in the event Tenant has not commenced construction of the Improvements within eight (8) months of the Effective Date in accordance with approved plans, Landlord shall have the right to terminate this Lease, and Tenant shall pay Landlord a termination fee of \$35,000.00 to compensate Landlord for Landlord's damages as a result of Tenant's failure to commence construction of the Improvements, the parties agreeing that Landlord's damages in the event Tenant fails to commence construction of the Improvements within eight (8) months of the Effective Date are difficult to ascertain at this time and the amount set forth herein is a reasonable estimate of those damages and represents full and liquidated damages.



## ARTICLE VII. COMPLIANCE WITH LAW, LIENS AND ENCUMBRANCES

Section 7.01. Compliance with Laws. Tenant, at its sole cost and expense, shall comply with and cause the Premises and any and all Improvements located thereon to comply with all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances or recommendations affecting the Premises or any part thereof, or the use thereof, whether foreseen or unforeseen, including those which require "Repairs", as that term is defined in Section 3.01 hereof, or any structural changes in the Improvements.

Section 7.02. Tenant's Agreement Relating to Hazardous Substances. Tenant hereby covenants that Tenant and its agents, employees and contractors will not generate, store, use, treat or dispose of any "Hazardous Substances" (as defined below) in, on or at the Premises or any part of the Improvements, except for Hazardous Substances as are commonly legally used or stored (and in such amounts as are commonly legally used or stored) as a consequence of using the Premises for the Permitted Use, but only so long as Tenant strictly complies or causes compliance with all laws, statutes, rules, orders, regulations, ordinances and decrees concerning the use or storage of such Hazardous Substances. Tenant further covenants that neither the Premises nor any part of the Improvements shall ever be used by Tenant or its agents, contractors or employees as a dump site or storage site (whether permanent or temporary) for any Hazardous Substances during the Term.

Tenant hereby agrees to indemnify Landlord and hold Landlord harmless from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, Landlord by any person or entity or governmental agency for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release if caused or permitted in whole or in part by Tenant, its agents, contractors, employees, representatives, licensees, subtenants or concessionaires on or from, the Premises, the Improvements or the Shopping Center of any Hazardous Substance, including, without limitation, any losses, liabilities, including without limitation strict liability, damages, injuries, expenses, including without limitation reasonable attorneys' fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, as same may be amended ("ERCLA"), any so called federal, state or local "Superfund" or "Superfien" laws, or any federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability, including strict liability, or standards of conduct concerning any Hazardous Substance.

Landlord shall indemnify and hold Tenant harmless from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment and claims of any kind whatsoever paid, incurred or suffered by, or asserted against, Tenant by any entity or governmental agency for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release if caused solely by Landlord or Landlord's agents, in the Shopping Center of any Hazardous Substance.



For purposes of this Lease "Hazardous Substances" shall mean and include those elements or compounds which are contained in the lists of hazardous substances or wastes now or hereafter adopted by the United States Environmental Protection Agency (the "EPA") or the lists of toxic pollutants designated now or hereafter by Congress or the EPA or which are defined as hazardous, toxic, pollutant, infectious or radioactive by CERCLA or any Superfund law or any Superfund law or any other Federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

Landlord shall have the right but not the obligation, and without limitation of Landlord's rights under this Lease, to enter onto the Premises or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Substance following receipt of any notice from any person or entity (including without limitation the EPA) asserting the existence of any Hazardous Substance in, on, or at the Premises or any part thereof which, if true, could result in an order, suit or other action against Tenant and/or Landlord; provided, however, Landlord agrees that, except in the case of an emergency, Landlord will take such action only after written notice to Tenant of the alleged existence of Hazardous Substances and, in the event Landlord is claiming indemnity by Tenant pursuant to the terms hereof, should Tenant fail within a reasonable period of time following receipt of such notice to commence, or fail to thereafter diligently pursue to completion, the appropriate action to clean-up, remove, resolve or minimize the impact of such Hazardous Substances. All reasonable costs and expenses incurred by Landlord in the exercise of any such rights, which costs and expenses result from the violation of the covenants and agreements of Tenant contained in the first paragraph of this Section 7.02, shall be deemed Additional Rent under this Lease and shall be payable by Tenant upon demand.

This Section 7.02 shall survive cancellation, termination or expiration of this Lease.

Section 7.03. Lien and Encumbrances. Tenant shall not create or permit to be created or to remain, and shall promptly discharge, at its sole cost and expense, any lien, encumbrance or charge (all or any one of which hereinafter referred to as "Lien") upon the Premises, or any part thereof or upon Tenant's leasehold estate hereunder, that arises from the use or occupancy of the Premises by Tenant or by reason of any labor, service or material furnished or claimed to have been furnished to or for the benefit of Tenant or by reason of any construction or repairs by or at the direction of Tenant of all or any part of the Improvements.

Notice is hereby given that Landlord shall not be liable for the cost and expense of any labor, services or materials furnished or to be furnished with respect to the Premises at or by the direction of Tenant or anyone holding the Premises or any part thereof by, through or under Tenant and that no laborer's, mechanic's or materialman's or other lien for any such labor, service or materials shall attach to or affect the interest of Landlord in and to the Premises. Nothing contained in this Lease shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any



materials for any improvements or Repairs to or of the Premises or any part thereof, nor as giving Tenant any right, power or authority on behalf of Landlord to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any Lien against the Premises or any part thereof.

If Tenant fails to discharge any Lien created or established in violation of Tenant's covenant herein, and if such failure continues for a period of thirty (30) days after receipt by Tenant of notice of the existence of the Lien, Landlord, without declaring a default hereunder and without relieving Tenant of any liability hereunder, may, but shall not be obligated to, discharge or pay such Lien (either by paying the amount claimed to be due or by procuring the discharge of such Lien by deposit or by bonding proceedings), and any amount so paid by Landlord and all costs and expenses incurred by Landlord in connection therewith shall constitute Additional Rent hereunder and shall be paid immediately by Tenant to Landlord upon demand by Landlord, with Default Interest thereon from the date of demand by Landlord.

#### ARTICLE VIII. REPAIRS AND ALTERATIONS.

Section 8.01. Maintenance and Repair. Tenant, at all times during the Term, at its expense, shall keep the Premises, including, without limitation, the Improvements, in good order, condition and repair, ordinary wear and tear excepted, and shall promptly make or cause to be made any and all necessary repairs, replacements, or renewals (all or any one of which herein referred to as "Repairs"). All Repairs shall be at least equal in quality and class to the original work or to a lesser standard approved in writing by Landlord. The term "Repairs" includes, without limitation, all necessary repairs and replacements of the Premises, structural or otherwise, ordinary or extraordinary, foreseen and unforeseen, including but not limited to the roofs, foundations, all interior and exterior walls, all structural and exterior portions of the buildings and other improvements, exterior and interior windows, doors and entrances, signs, floor coverings, columns and partitions, lighting, heating, plumbing and sewerage facilities, and air conditioning equipment. Landlord shall not be required to make any repairs of any kind or nature in, on or to the Premises during the Term.

Section 8.02. Alterations. Tenant shall have the right to make any modifications, alterations or additions to the Improvements subsequent to the initial construction of such Improvements as may be necessary for the proper conduct of its business and use of the Premises as permitted herein. Any such alterations shall be expeditiously completed by Tenant in a good and workmanlike manner in compliance with the Declaration and all applicable laws, rules, regulations, and ordinances, then in effect.

#### ARTICLE IX. DAMAGE AND DESTRUCTION.

Section 9.01. Notice. In the event of any material damage to or destruction of all or any part of the Premises, Tenant will promptly give written notice thereof to Landlord, which notice shall generally describe the nature and extent of such damage or destruction. There shall be no abatement of or adjustment to Rent or Additional Rent under this Lease as a result of any damage or destruction.



Section 9.02. Restoration. Subject to the following grammatical paragraph, in the event of any damage to or destruction of all or any part of the Improvements and whether or not the insurance proceeds on account of such damage or destruction shall be sufficient for the purpose, or in the event of any condemnation of the Premises of the character described in Section 16.02 hereof and whether or not the proceeds of any award received on account of such condemnation shall be sufficient for the purpose Tenant, at its sole cost and expense, shall promptly commence and shall thereafter diligently and continuously prosecute to completion the restoration, replacement or rebuilding of the Improvements and/or the Premises, as the case may be, as nearly as practicable to its value, architectural condition and character as existed immediately prior to such damage, destruction or condemnation (but with such changes in the design, type or character of the Improvements as Tenant may deem desirable, subject to the prior written approval of Landlord, of any such changes, which approval shall not be unreasonably withheld so long as the Improvements have an architectural style which is similar to, and a level of quality which is at least equal to, the Improvements originally constructed by Tenant and are not inconsistent with the terms of the Declaration) so as to permit resumption of the use of the Premises for the Permitted Use to as nearly the same degree as possible (pending completion of the work, such restoration, replacement or rebuilding, together with any temporary repairs and property protection, are herein collectively referred to as "Restoration").

In the event damage to or destruction of a substantial portion of the Improvements occurs within the last year of the Term, Tenant shall have the right, at its election and in lieu of fulfilling its obligations under this Section 9.02, to terminate this Lease upon thirty (30) days' prior written notice to Landlord by paying to Landlord, simultaneously with such notice, a sum equal to all Rent and Additional Rent due from Tenant to Landlord to such termination date and paying or assigning to Landlord all insurance proceeds due on account of any damage or destruction of the Premises or any part thereof less and excepting only the amount actually expended by Tenant in demolishing and removing all damaged Improvements and in clearing and cleaning the surface area of the Site, and by surrendering the Premises to Landlord, on or before the effective date of such termination, in a clean and slightly condition, free of any and all debris and free of damaged Improvements. Tenant's obligation to demolish and remove Improvements damaged prior to the termination of this Lease shall survive any termination of this Lease.

Section 9.03. Application of Proceeds. Except as otherwise provided in Section 9.02 hereof, insurance proceeds received on account of any damage to or destruction of the Premises or any part thereof shall be applied to pay for the cost of Restoration. To the extent any such proceeds shall be inadequate to pay such cost, it shall be Tenant's sole cost and obligation to pay all costs of Restoration.

## ARTICLE X. INSURANCE

Section 10.01. Tenant's Insurance. Commencing on the Effective Date of this Lease (with regard to the insurance required by subsection (b) below) and on the date Tenant shall commence construction of any Improvements on the Site (with regard to the insurance required by subsections (a) and (c) below), and at all times thereafter through and during the Term, Tenant shall keep the Premises insured against the risks and hazards and with coverage in amounts not less than those specified as follows:



(a) Insurance against the risks customarily included under "special form" policies with respect to improved properties similar to the Premises in an amount equal to the "full insurable value" (which as used herein shall mean the full replacement value, including the costs of debris removal, which amount shall be determined annually) of the Improvements, and which amount shall be sufficient to prevent either Landlord or Tenant from becoming a coinsurer of any loss; and

(b) Commercial general public liability insurance (including, but not limited to, coverage for any construction on or about the Premises) covering the legal liability of Tenant against all claims for any bodily injury or death of persons and for damage to or destruction of property occurring on, in or about the Premises and the adjoining streets, sidewalks and passageways and arising out of the use or occupation of the Premises by Tenant; such insurance to provide for a limit of not less than Three Million and No/100 Dollars (\$3,000,000.00) for personal injury or death to any one person, for a limit of not less than Five Million and No/100 Dollars (\$5,000,000.00) for personal injury or death to any number of persons arising out of any one occurrence, and for a limit of not less than One Million and No/100 Dollars (\$1,000,000.00) in respect of any instance of property damage. Commencing on the fifth (5th) anniversary of the Rental Commencement Date, and continuing thereafter on the fifth (5th) anniversary of the previous "Adjustment Date" (as defined below) during the Term (each of such dates being referred to in this Section 10.01 and in Section 10.02 below as an "Adjustment Date"), the aforesaid minimum amounts of insurance coverage shall be increased to such limits as are then prevailing within the restaurant industry.

(c) Business interruption insurance sufficient to cover Rent payable under this Lease for a period of not less than one (1) year.

**Section 10.02. Requirements.** All insurance required under Section 10.01 hereof shall be written by companies of recognized financial standing which are authorized to do insurance business in the State of Georgia and shall provide that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days after receipt by Landlord of written notice hereof. All liability policies shall name Landlord, any mortgagee of Landlord, and any other party designated by Landlord as additional insureds. Tenant's casualty policy shall expressly provide (a) an effective waiver by the insurer of all rights of subrogation against Landlord; and (b) that during construction of any Improvements on the Premises such policy shall be in "builder's risk" form. A copy of each policy required to be carried by Tenant hereunder or of an acceptable certificate of insurance in force, issued by the insurer as provided in Section 10.01 hereof, shall be delivered to Landlord on or before the date Tenant is required to obtain the applicable insurance, and with respect to renewal or replacement policies, not less than ten (10) days prior to expiration of the policy being renewed or replaced. Tenant may obtain the insurance required hereunder by endorsement to blanket insurance policies, provided that said policies fulfill the requirements of this Section 10.02, that said policies reference the Premises, and that Landlord receives satisfactory written proof of coverage. Tenant shall permit the Landlord to examine all policies evidencing the insurance required to be maintained under this Lease.



Section 10.03. Mutual Release and Waiver of Subrogation. Landlord and Tenant hereby release each other and anyone claiming through or under the other by way of subrogation or otherwise from any and all liability for any loss or damage to property, whether caused by the negligence or fault of the other party, to the extent of any recovery made by the parties herein for such loss or damage under any casualty insurance policy now or hereafter issued covering the property of such party. In addition, Landlord and Tenant shall cause each such insurance policy carried by them to be written to provide that the insurer waives all rights of recovery by way of subrogation.

#### ARTICLE XI. INDEMNIFICATION

Section 11.01. Indemnification by Tenant. Tenant covenants and agrees to pay, defend, indemnify and save harmless Landlord from and against any and all liability, loss, damage, cost, expense (including without limitation all attorneys' fees and expenses of Landlord), causes of action, suits, claims, demands or judgments of any nature whatsoever based upon, arising from or connected in any manner with (a) injury to or the death of any person or damage to any property occurring on the Premises, (b) the use, non-use, condition, possession, construction, operation, maintenance, management or occupation of the Premises or any part thereof, or (c) any negligence or intentional misconduct on the part of Tenant or its agents, contractors, servants or employees or the negligence or intentional misconduct on the part of Tenant's licensees or invitees while they are located at the Premises. If any action or proceeding should be brought against Landlord based upon any such claim, Tenant, upon notice from Landlord, shall cause such action or proceeding to be defended at Tenant's expense by counsel selected by Tenant and reasonably satisfactory to Landlord. The agreement of indemnification set forth in this Section 11.01 shall not extend to claims for loss or damage to property caused by or resulting from the negligence of Landlord, its agents or employees, unless such claims are covered by the casualty insurance required to be maintained by Tenant under Section 10.01(a) above. The obligations of Tenant under this Section 11.01 shall commence to accrue on the Effective Date of this Lease and shall survive any termination of this Lease and any permitted transfer or assignment by Landlord or Tenant of this Lease or any interest hereunder.

Section 11.02. Release of Landlord. Landlord shall not in any event whatsoever be liable for any injury or damage to the Premises or the Tenant or to any concessionaires, subtenants or other persons claiming through or under Tenant, or their respective agents, employees, licensees, invitees, guests or other such persons or to any property of any such persons as a result of Tenant's use, occupancy, or possession of the Premises, unless caused by Landlord's negligence, in which case Landlord's liability shall be limited to damages not covered by insurance carried by Tenant or insurance which Tenant is required to carry by this Lease and applicable law. Tenant shall not make any claim or demand upon or institute any action against the Landlord as a result of such injury or damage.

#### ARTICLE XII. OWNERSHIP OF IMPROVEMENTS

Section 12.01. Title to Improvements. Title to the Improvements during the Term shall be in Tenant, and Tenant alone shall be entitled to deduct all depreciation on Tenant's income



tax returns for such improvements during the Term. Notwithstanding such title, the terms and conditions of this Lease shall govern the construction, use, and operation of the improvements and the exercise of Tenant's rights with respect thereto; and Tenant's right, title, interest, and estate in and to the improvements shall not be separable from the leasehold estate granted Tenant hereunder. Upon the termination or expiration of this Lease, title to the improvements shall vest in and become the full and absolute property of Landlord without need of any further action being taken by Tenant or Landlord, and Tenant shall immediately surrender possession of the improvements upon such termination or expiration as provided in Section 12.02 hereof. The value or cost of the improvements constructed by Tenant shall not in any way constitute a substitute for or a credit against any obligation of Tenant under this Lease to pay Rent or Additional Rent.

Section 12.02, Surrender. Upon the termination or expiration of this Lease, Tenant shall peaceably quit and surrender the Premises, and any and all fixtures, machinery and equipment constructed, installed or placed by Tenant thereon which is necessary to the operation of the improvements, to Landlord in good order and condition, ordinary wear and tear excepted. In the event Tenant is not then in default under this Lease, Tenant shall have the right upon the termination or expiration of this Lease to remove from the Premises all personal property and trade fixtures used in Tenant's business, and placed, installed or used by Tenant thereon, such as installed food service equipment, as distinguished from fixtures, machinery and equipment used in and necessary to the operation of the improvements or Premises such as HVAC systems; provided, however, that Tenant shall repair, at its sole cost and expense, any damage to the Premises or to the improvements caused by such removal. In no event shall any machinery and equipment used in and necessary to the operation of the improvements or Premises be removed by Tenant unless same is promptly replaced with comparable or better such machinery or equipment or unless same is damaged and is required to be removed by Tenant pursuant to Section 9.02 hereof.

### ARTICLE XIII. ASSIGNMENT AND SUBLETING

Section 13.01, No Assignment or Subletting. Except as expressly herein provided, neither this Lease nor the interest of Tenant in this Lease or in the Premises, or any part thereof, shall be sold, assigned or otherwise transferred by Tenant, whether by operation of law or otherwise, and the Premises shall not be sublet in whole or in part, without the express prior written consent of Landlord, such consent not to be unreasonably withheld. For purposes hereof, the transfer of any voting capital stock of Tenant or the voting capital stock of any corporate entity which directly or indirectly controls Tenant or any interest in any non-corporate entity which directly or indirectly controls Tenant, which transfer results in a change in the direct or indirect voting control of Tenant (whether such transfer occurs at one time or at intervals so that, in the aggregate, such a transfer shall have occurred) shall be deemed to be an assignment governed by the provisions of this Section 13.01. The preceding sentence shall not apply to, and Tenant shall not be in default under this Section 13.01 as a result of, an offering of voting stock to the public pursuant to a registered securities offering, the transfer of voting stock which is listed on a national securities exchange or on the NASDAQ national market system both before and after the transfer (regardless of whether such transfer is made on a national securities exchange or through the NASDAQ national marketing system), the transfer of voting stock to



employees of the applicable corporate entity pursuant to a bona fide employee stock ownership plan or other bona fide arrangement with one or more employees, or any transfer of voting stock by gift, bequest or inheritance.

Section 13.02. Tenant's Notice. Should Tenant desire to assign this Lease or any right or interest herein or sublet the Premises or any part thereof and such assignment or sublease requires Landlord's prior consent hereunder, Tenant shall give Landlord written notice of such desire, which notice shall contain (i) the name and address of the proposed subtenant or assignee and its form of organization, (ii) the material terms and conditions of the proposed sublease or assignment (including, without limitation, the financial terms of such proposed subletting or assignment and the proposed commencement date of the proposed sublease or assignment), (iii) in the case of a proposed assignment, financial statements for the three (3) most recently completed fiscal years of the proposed assignee and such other financial information as Landlord shall reasonably request (or if the proposed assignee has not been existent for at least three (3) years, such financial statements as are available), and (iv) a description of any proposed remodeling or renovation to the exterior of the Improvements to be conducted by the proposed assignee or subtenant, together with the request that Landlord approve such assignment or sublease. Landlord shall have a period of thirty (30) days following receipt of such written notice within which to notify Tenant in writing that Landlord elects either (a) to permit Tenant to assign this Lease or sublet the Premises, or (b) to withhold consent to Tenant's assigning or subleasing such space and to continue this Lease in full force and effect as to the entire Premises. The failure of Landlord to notify Tenant in writing of such election within the thirty (30) day period described above shall be deemed an election to withhold consent to such proposed assignment or sublease.

Section 13.03. Terms of Landlord Consent. Any consent given by Landlord to any assignment or subletting shall apply only to the specific transaction thereby authorized and shall not relieve Tenant or any approved successor of Tenant from the requirement of obtaining the prior written consent of Landlord to any further transfer or subletting. No consent by Landlord to any assignment of this Lease or of Tenant's interest under this Lease or in the Premises, or any part thereof, or to any sublease shall be effective unless and until there shall have been delivered to Landlord a written agreement, in a form reasonably acceptable to Landlord, executed by Tenant and the proposed assignee or subtenant, as the case may be, wherein and whereby any assignee legally binds itself to pay the Rent and Additional Rent due under this Lease and to observe and perform all of the other terms, conditions and provisions of this Lease on the part of Tenant to be observed or performed, and any subtenant acknowledges the right of Landlord to continue or terminate any sublease, in Landlord's sole discretion, upon termination of this Lease, and such subtenant agrees to recognize and attem to Landlord in the event that Landlord elects to continue such sublease.

Section 13.04. No Release. Any person or entity who shall, by operation of law or otherwise, become an assignee of this Lease or become vested with a leasehold interest hereunder shall be bound by and be liable upon all the terms, covenants, provisions and conditions contained in this Lease during the Term, whether or not of the nature of covenants ordinarily running with the land, but neither Tenant nor any subsequent Tenant whose interest is



assigned or divested shall be relieved of liability hereunder other than by an express release from liability executed in writing by Landlord.

Section 13.05. Permitted Assignment. Notwithstanding the provisions above to the contrary, Tenant shall have the right, without Landlord's prior consent, to assign this Lease to an entity controlled by or under the direct control of the majority owners of Tenant. No such permitted assignment shall be deemed to release Tenant from its obligation to observe and perform all of the terms, covenants and provision on the Tenant's part to be observed and performed under this Lease. Any permitted assignee or successor in interest must execute and deliver to Landlord a written assumption agreement for the benefit of Landlord, in a form reasonably acceptable to Landlord, whereby such assignee legally binds itself to pay the Rent and Additional Rent due under this Lease and to observe and perform all of the other terms, conditions and provisions of this Lease on the part of Tenant to be observed or performed.

#### ARTICLE XIV. BROKERAGE PROVISIONS.

Section 14.01. Brokers. Landlord and Tenant represent and warrant that no broker, commission agent, real estate agent or salesman has participated in the negotiation of this Lease, its procurement or in the procurement of Landlord or Tenant except for Colliers International and Mopper-Stapen, Inc. d/b/a NAI Mopper Benton (individually and collectively, "Broker"), which have acted as Landlord's and Tenant's brokers, respectively, with regard to this Lease. Broker's fee, if any, shall be paid pursuant to a separate agreement between Landlord and Broker. No other person, firm, corporation or other entity is or shall be entitled to the payment of any fee, commission, compensation or other form of remuneration in connection herewith in any manner. Landlord shall and does hereby indemnify and agree to hold Tenant harmless from and against any claims, demands, actions and judgments of any and all brokers, agents and other intermediaries (other than Broker) alleging a commission, fee or other payment to be owing by reason of Landlord's dealings, negotiations or communications in connection with this Lease or the demise of the Premises. Likewise, Tenant shall and does hereby indemnify and agree to hold Landlord harmless from and against any claims, demands, actions and judgments of any and all brokers, agents and other intermediaries (other than Broker) alleging a commission, fee or other payment to be owing by reason of Tenant's dealings, negotiations or communications in connection with this Lease or the demise of the Premises. The terms of this Section 14.01 shall survive any termination of this Lease.

#### ARTICLE XV. DEFAULT

Section 15.01. Events of Default. The occurrence of any of the following acts, events or conditions, notwithstanding the pendency of any proceeding which has or might have the effect of preventing Tenant from complying with the terms, conditions or covenants of this Lease, shall constitute an "Event of Default" under this Lease:

(a) The Rent, Additional Rent or any other sum of money payable under this Lease is not paid when due and such failure shall continue for ten (10) days after the due date;



(b) The failure or refusal of Tenant, at any time during the Term, to fulfill or perform any other covenant, agreement or obligation of Tenant hereunder if such failure or refusal shall continue without correction for a period of thirty (30) consecutive calendar days from and after notice thereof to Tenant by Landlord, provided that if such covenant, agreement or obligation shall be of such nature that it can be fulfilled or performed and if Tenant in good faith commences to fulfill or perform same within said thirty (30) day period, but due to the nature of same it could not be reasonably fulfilled or performed within said thirty (30) day period exercising due diligence, an Event of Default shall not be deemed to have occurred if Tenant is then diligently pursuing the fulfillment or performance of the covenant, agreement or obligation and shall thereafter continuously and diligently proceed therewith until completion;

(c) The initiation of any proceeding whereupon the estate or interest of Tenant in the Premises, or any portion thereof, or in this Lease is levied upon or attached if such proceeding is not vacated, discharged or bonded within thirty (30) days after the date of notice to Tenant of such levy or attachment;

(d) The entry of any decree or order for relief by a court having jurisdiction in the Premises in respect of Tenant in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Tenant or for any substantial part of the assets of Tenant, or the entry of any decree or order with respect to winding-up or liquidation of the affairs of Tenant, if any such decree or order continues unrayed and in effect for a period of thirty (30) consecutive days;

(e) The commencement by Tenant of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by Tenant to the appointment of or possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of Tenant or for any substantial part of the assets of Tenant, or any assignment made by Tenant for the benefit of creditors;

(f) Any sale, assignment, mortgage, pledge, hypothecation or other transfer of this Lease or any interest of Tenant hereunder or in the Premises or any sublease of the Premises without full compliance with any and all requirements therefor set forth in Section 13.01 or 13.02, as the case may be, of this Lease; or

(g) Tenant's failure to open for business in the Premises as required by this Lease, or Tenant's failure to operate at the Premises, except as expressly permitted herein, for a period of thirty (30) consecutive days following Landlord's written notice to Tenant of such default, unless Tenant's failure is the result of casualty or condemnation or remodeling.

Section 15.02 Remedies. Upon the occurrence of an Event of Default, Landlord shall have the option to do and perform any one or more of the following in addition to, and not in limitation of, any other remedy or right permitted it by law or in equity or by this Lease:

(a) Landlord, with or without terminating this Lease, may reenter the Premises and perform, correct or repair any condition which shall constitute a failure on Tenant's part to keep, observe, perform, satisfy, or abide by any term, condition, covenant, agreement, or obligation of this Lease, and Tenant shall fully reimburse and compensate Landlord on demand for all costs and expenses incurred by Landlord in such performance, correction or repair, including, without limitation, accrued interest as provided in the next sentence. All sums so expended to cure Tenant's default shall accrue Default Interest from the date of demand until date of payment at the rate specified in Section 15.05 hereof.

(b) Landlord, with or without terminating this Lease, may immediately or at any time thereafter demand in writing that Tenant vacate the Premises and thereupon Tenant shall vacate the Premises and remove therefrom all property thereon belonging to or placed on the Premises by, at the direction of, or with consent of Tenant within five (5) business days of receipt by Tenant of such notice from Landlord, whereupon Landlord shall have the right to reenter and take possession of the Premises. Any such demand, reentry and taking possession of the Premises by Landlord shall not of itself constitute an acceptance by Landlord of a surrender of this Lease or of the Premises by Tenant and shall not of itself constitute a termination of this Lease by Landlord.

(c) Landlord, with or without terminating this Lease, may immediately or at any time thereafter reenter the Premises and remove therefrom Tenant and all property belonging to or placed on the Premises by, at the direction of, or with consent of Tenant. Any such reentry and removal by Landlord shall not of itself constitute an acceptance by Landlord of a surrender of this Lease or of the Premises by Tenant and shall not of itself constitute a termination of this Lease by Landlord.

(d) Landlord, with or without terminating this Lease, may terminate Tenant's right of possession and immediately or at any time thereafter relet the Premises or any part thereof for such term or terms (which may be for a term extending beyond the Term), at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable, and Landlord may make any alterations, redecorations or repairs to the Premises which it may deem reasonably necessary or proper to facilitate such reletting; and Tenant shall pay all reasonable costs of such reletting including but not limited to the reasonable cost of any such alterations, redecorations and repairs made to the Premises, reasonable attorneys' fees, reasonable brokerage commissions and lease assumptions; and if this Lease shall not have been terminated, Tenant shall continue to pay all Rent, Additional Rent and all other charges due under this Lease up to and including, without limitation, the date of beginning of payment of rent by any subsequent tenant of part or all of the Premises, and thereafter Tenant shall pay monthly during the remainder of the Term the difference, if any, between the rent and other charges collected from any such subsequent tenant or tenants.



and the Rent, Additional Rent and other charges reserved in this Lease, but Tenant shall not be entitled to receive any excess of any such rents collected over the Rent and Additional Rent reserved herein.

(e) Landlord shall be entitled to bring suit against Tenant for the performance of any non-monetary covenant or obligation of Tenant or to seek injunctive or other equitable relief with respect to any such default. In addition, Landlord shall be entitled to sue for and recover any actual damages incurred by Landlord as a result of any non-monetary default, and pursuit of any of the other remedies provided for in this Section 15.02 shall not preclude pursuit of any such claim for actual damages.

(f) Landlord may immediately or at any time thereafter terminate this Lease, and this Lease shall be deemed to have been terminated upon receipt by Tenant of written notice of such termination. Upon such termination, Landlord shall have and retain full right to sue for and recover from Tenant all damages Landlord may suffer by reason of such termination, all arrearages in Rent, costs, charges, Additional Rent, and reimbursements, the cost (including, without limitation, court costs and attorneys' fees) of recovering possession of the Premises, and the cost of any alteration or redecoration of or repair to the Premises and improvements which is reasonably necessary or proper to prepare the same for reletting. Tenant shall immediately surrender and deliver up the Premises to Landlord upon any such termination by Landlord, and upon any failure by Tenant in so doing, Landlord shall have the right to recover possession by summary proceedings or otherwise.

Section 15.03. Reentry by Landlord. No reentry or taking possession of the Premises by Landlord or any other action taken by or on behalf of Landlord shall be construed to be an acceptance of a surrender of this Lease or an election by Landlord to terminate this Lease.

Section 15.04. General. No course of dealing between Landlord and Tenant or any failure or delay on the part of Landlord in exercising any rights of Landlord under Section 15.02 hereof or under any other provisions of this Lease shall operate as a waiver of any rights of Landlord hereunder, at law or in equity or under any other provisions of this Lease, nor shall any waiver of an Event of Default on one occasion operate as a waiver of any subsequent Event of Default or of any other Event of Default. No express waiver shall affect any condition, covenant, rule, or regulation other than the one specified in such waiver and that one only for the time and in the manner specifically stated. The exercise by Landlord of any one or more of the rights and remedies provided in this Lease shall not prevent the subsequent exercise by Landlord of any one or more of the other rights and remedies herein provided. All remedies provided for in this Lease are cumulative and may, at the election of Landlord, be exercised alternatively, successively, or in any other manner and are in addition to any other rights provided for or allowed by law or in equity.

Section 15.05. Default Interest and Late Charges. Any Rent or Additional Rent not paid within ten (10) days after the due date thereof shall bear interest at a rate of interest equal to the rate of interest announced by Wells Fargo in Atlanta, Georgia as its base rate or reference rate (which rate shall change automatically and simultaneously from time to time with each change in

the announced base rate or reference rate) plus four percent (4%) per annum ("Default Interest"), but in no event in excess of the maximum lawful rate, from the original due date until paid-in-full. In addition, Tenant acknowledges that late payments by Tenant to Landlord of amounts due from Tenant under this Lease will cause Landlord to incur costs not otherwise contemplated by this Lease, the exact amount of which is extremely difficult or impracticable to determine. Such costs include, but are not limited to, processing and accounting charges and, late charges that may be imposed on Landlord by the terms of any encumbrance or notes secured by any encumbrance covering the Premises. Therefore, if an installment of Rent or Additional Rent due from Tenant is not received by Landlord within ten (10) days after the applicable due date a late charge will be assessed pursuant to this Section 15.05 equal to Five Hundred Dollars (\$500.00) for each such occurrence. The parties acknowledge that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. Acceptance of any late charge shall not constitute a waiver by Landlord of Tenant's default with respect to the overdue amount, and shall not prevent Landlord from exercising any of the other rights and remedies available to Landlord for any other event of Default under this Lease.

Section 15.06. Attorneys' Fees. In the event of any action or dispute between the parties arising out of this Lease which results in litigation or dispute resolution or on account of any default of a party's obligations hereunder, the losing or defaulting party, as the case may be, shall pay the prevailing or non-defaulting party as the case may be, the reasonable cost (including reasonable attorney's fees) incurred in bringing or defending such action, enforcing any judgment granted therein and/or enforcing its remedies hereunder.

#### ARTICLE XVI. CONDEMNATION

Section 16.01. Material Condemnation. If, during the Term, all or such portion of the Premises is condemned or taken by the United States or any other legal entity having the power of eminent domain with respect thereto:

- (a) which part so taken includes the building (or any part thereof) to be located on the Premises; or
- (b) which results in a reduction of twenty-five percent (25%) or more of the parking area within the permitted parking area; or
- (c) which eliminates or materially adversely affects access to public streets securing the Premises;

then Tenant may, at its election, terminate this Lease by giving Landlord notice of the exercise of Tenant's election within thirty (30) days after Tenant shall receive notice of such taking, which notice shall include the condemning authority's official notice or a reasonably detailed account thereof. In the event of termination by Tenant under the provisions of this Section 16.01, this Lease and the Term hereof shall terminate as of the date that title to the Premises or portion thereof vests in such condemning authority; provided, however, that such termination shall not benefit such condemning authority and shall be without prejudice to the rights of either Landlord or Tenant to recover just and adequate compensation from the condemning authority.



Section 16.02. Partial Condemnation. If, during the Term, any portion of the Premises is condemned or taken by the United States or any other legal entity having the power of eminent domain with respect thereto in respect of which Tenant shall not have the right to terminate this Lease, or having such right shall not elect to terminate this Lease, then Tenant shall (subject to the last sentence of this Section) forthwith cause the Premises to be restored by effecting Restoration as provided in Section 9.02 hereof. From and after the date of such taking, Rent shall be equitably reduced taking into account all of the relevant factors and circumstances; provided, however, there shall be no reduction whatsoever in Rent in the event of a taking without compensation to Landlord of any portion of the Site for the widening of roads or rights-of-way adjoining the Site or for the purpose of construction of acceleration or deceleration lanes adjoining the Site, unless such taking shall reduce the area of the Site used for parking. In the event such partial condemnation occurs within the last year of the Term, Tenant shall have the right, at its election and in lieu of fulfilling its obligations under this Section 16.02, to terminate this Lease upon thirty (30) days prior written notice to Landlord and satisfaction of the following conditions: (a) by paying to Landlord on the effective date of such termination, a sum equal to all Rent and Additional Rent due from Tenant to Landlord to such date; (b) by releasing to Landlord all of the right and interest of Tenant in and to any condemnation award made in connection with such condemnation proceeding; and (c) by surrendering the Premises to Landlord on the effective date of such termination in a clean and sightly condition, free of any and all debris.

Section 16.03. Awards. Landlord and Tenant hereby agree to petition the court in any condemnation proceeding to make separate awards to Landlord and Tenant if said separate awards are not prohibited by law. In the event such court is prohibited by law from making separate awards to Landlord and Tenant or declines to do so and if all of the Premises or such portion is condemned as to render the remaining portion thereof to be of substantially no commercial value for the Permitted Use, the award shall be divided between Landlord and Tenant so that each party shall receive that portion of the award which bears the same proportion of the total award as the value of such party's interests in the Premises bears to the total value of all interests in the Premises. The value of Landlord's interests shall include the value of the land; the value of Landlord's interest in this Lease had the Premises not been condemned, including the right to receive payment of all sums required to be paid by Tenant to Landlord hereunder for the remainder of the Term; and the value of Landlord's residual right to the improvements upon termination of this Lease. The value of the Tenant's interests shall include: the value of the improvements reduced by the value of Landlord's reversionary interest therein; and the value of Tenant's leasehold estate hereunder had the Premises not been condemned, including the right to use and occupy the Premises for the remainder of the Term subject to the obligation of Tenant to pay Rent and Additional Rent hereunder.

In the event such court is prohibited by law from making separate awards to Landlord and Tenant or declines to do so and the remaining portion of the Premises after such condemnation is of some commercial value for the Permitted Use, the award shall be divided between Landlord and Tenant as follows: Landlord shall receive such portion of the award as shall represent the value of the part of the land so taken; Tenant shall receive such portion of the award as shall represent the value of the Improvements so taken and shall apply such portion of the award to the costs of Restoration as provided in Section 16.02 hereof; and if there shall



remain any balance of the award after Restoration as aforesaid, said balance shall belong to Landlord.

Section 16.04. Taking for Temporary Use. If there is a temporary taking of all or any portion of the Premises, Tenant shall give prompt notice thereof to Landlord, and the Term of this Lease shall not be reduced or affected in any way. In such case, Tenant shall continue to pay the full Rent and Additional Rent and other sums and charges provided to be paid by Tenant hereunder. Tenant shall be entitled to the entire award for such taking (whether paid by way of damages, rent or otherwise) unless the period of occupation and use by the condemning authority shall extend beyond the date of expiration of the Term of this Lease, in which case the award made for such taking shall be apportioned between Landlord and Tenant as of the date of such expiration. In any proceeding for such temporary taking, Landlord shall have the right to intervene and participate, but no award or settlement shall be made without Tenant's written approval; provided that if such intervention shall not be permitted, Tenant shall, at Tenant's expense, consult with Landlord, its attorneys and experts, and shall cooperate with Landlord in the prosecution or defense of such proceeding. At the termination of any such use or occupation of the Premises, Tenant will, at its sole cost, repair and restore the Improvements then upon the Premises to the condition, as nearly as may be reasonably possible, in which such Improvements were at the time of such taking. Tenant shall not be required to make such repairs and restoration if the Term of this Lease shall expire prior to the date of termination of the temporary taking, and in any such event, Landlord shall be entitled to recover all damages and awards arising out of the failure of the condemning authority to repair and restore the Improvements at the expiration of such temporary taking. Any recovery or sum received by Tenant as an award or compensation for physical damage to the Premises caused by and during the temporary taking shall be used to the extent necessary for the purpose of repairing or restoring such damage as required hereinabove.

#### ARTICLE XVII. MISCELLANEOUS.

Section 17.01. No Waiver. Failure of Landlord to insist upon the strict performance by Tenant of any term, condition or covenant on Tenant's part to be performed pursuant to the terms of this Lease or to exercise any option, right, power, or remedy contained in this Lease shall not be or be deemed to be a waiver of such performance or relinquishment of such right now or at any time subsequent hereto. The receipt by Landlord of any Rent or Additional Rent required to be paid by Tenant hereunder with knowledge of any Event of Default by Tenant shall not be or be deemed to be a waiver of such Event of Default. No waiver by Landlord of any provision of this Lease shall be or be deemed to have been made unless expressed in writing and signed by Landlord.

Section 17.02. Waiver of Redemption. Tenant hereby waives and surrenders any right or privilege under any present or future constitution, statute or law to redeem the Premises or to continue this Lease after the termination of this Lease for any reason, and the benefits of any present or future constitution, statute or rule of law which exempts property from liability for debt or for distress for rent.



Section 17.03. Estoppel Certificates. Within ten (10) days of Tenant's receipt of a written request from Landlord, Tenant shall from time to time execute, acknowledge and deliver to Landlord and to any mortgagee of or prospective purchaser from Landlord, a written certificate certifying (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications), (b) the dates to which Rent and Additional Rent payable by Tenant hereunder have been paid, and (c) that no notice has been received by Tenant of any default or Event of Default by Tenant hereunder which has not been cured, except as to any default or Event of Default specified in said certificate.

Upon written request of Tenant, Landlord shall from time to time execute, acknowledge and deliver to Tenant a written certificate certifying (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications), (b) the dates to which Rent and Additional Rent payable by Tenant hereunder have been paid, and (c) whether or not, to the knowledge of Landlord, a default or Event of Default by Tenant has occurred under this Lease which has not been cured (and if so, specifying the same).

Section 17.04. Quiet Enjoyment. If and so long as Tenant shall pay, when due, the Rent and Additional Rent reserved or payable under this Lease and shall observe all terms, conditions and covenants and other obligations required to be observed by Tenant under this Lease, Landlord shall not interfere with the peaceful and quiet occupation and enjoyment of the Premises by Tenant, which occupation and enjoyment shall be without hindrance or ejection by Landlord; provided, however, that this Section 17.04 shall not abrogate or diminish, in any way, the approval and inspection rights granted Landlord under this Lease.

Section 17.05. Transfer by Landlord. In the event Landlord shall transfer or assign or otherwise dispose of its interest in the Premises or in this Lease, Landlord shall thereupon be released and discharged from any and all liabilities and obligations under this Lease (except those accruing prior to such transfer, assignment or other disposition) and such liabilities and obligations thereafter accruing shall be binding upon the assignee of Landlord's interest under this Lease.

Section 17.06. Landlord's Liability. Landlord shall have no personal liability with respect to any of the provisions of this Lease. If Landlord is in default with respect to its obligations under this Lease, Tenant shall look solely to the equity of Landlord in and to the Shopping Center for satisfaction of Tenant's remedies, if any. It is expressly understood and agreed that Landlord's liability under the terms of this Lease shall in no event exceed the amount of its interest in and to said Shopping Center. In no event shall any partner of Landlord nor any joint venturer in Landlord, nor any officer, director or shareholder of Landlord or any such partner or joint venturer of Landlord be personally liable with respect to any of the provisions of this Lease.

Section 17.07. Mortgaging Landlord's Interest. This Lease is and shall be subordinate and subject to any mortgage, pledge, deed to secure debt, deed of trust, or any other hypothecation for security which has been or which hereafter may be placed upon the Premises.



Any provision, term or condition of this Lease which is or which may appear to be to the contrary notwithstanding, Landlord shall, at all times and from time to time after the Effective Date of this Lease, have the express right, power and privilege of pledging, conveying, assigning or mortgaging Landlord's interest in and to the Premises and/or Landlord's reversionary right to the improvements, for the purpose of obtaining financing, credit, or as security for any financing or extension of credit. Tenant hereby agrees that upon request from Landlord, or from the holder or proposed holder of any mortgage, pledge, deed to secure debt or deed of trust which encumbers or will encumber Landlord's interest in the Premises, including the current holder of the mortgage encumbering the Premises, which Landlord shall use reasonable efforts to procure within thirty (30) days of the Effective Date, Tenant shall execute a subordination, non-disturbance and attornment agreement in a commercially reasonable form subordinating this Lease to the interest of such holder and its heirs, successors and assigns. The holder or proposed holder of any such mortgage, pledge, deed to secure debt or deed of trust shall agree in such subordination, non-disturbance and attornment agreement that, so long as Tenant complies with all of the terms and conditions of this Lease and is not in default hereunder beyond the period for cure of such default as provided herein, such holder or any person or entity acquiring the interest of Landlord under this Lease as a result of the enforcement of such mortgage, pledge, deed to secure debt or deed of trust shall not take any action to disturb Tenant's possession of the Premises during the remainder of the Term and shall recognize all of Tenant's rights under this Lease despite any foreclosure or other action by such holder. Alternatively, the person or entity accepting such pledge, conveyance, assignment or mortgage as security may elect to take subject to the rights of Tenant and its successors and permitted assigns under this Lease. In any event, Tenant, in the event of any foreclosure or deed in lieu of foreclosure or other final conveyance and transfer of Landlord's interest as aforesaid, shall recognize and attorn to the grantee thereof as "landlord" under this Lease. Likewise, and to similar effect, Landlord, at all times and from time to time after the date of this Lease, shall have the express right, power and privilege of assigning Landlord's interest in this Lease or in the Rent and Additional Rent to be paid hereunder.

Section 17.08. Mortgaging Tenant's Interest. Landlord hereby grants to Tenant and its successors and assigns approved by Landlord in accordance with this Lease, the right, without Landlord's prior written consent, to mortgage his interests in, to or under this Lease, or any part or parts thereof, and otherwise to assign and/or convey all or any part of Tenant's interest in or rights under this Lease to any institutional lender(s) solely as collateral for loans, and, in such event, the mortgagee or assignee shall have all the rights of Tenant hereunder. Notwithstanding anything contained herein to the contrary, Landlord's fee interest in the Premises will not become, in any respect whatsoever subject to, considered a part of, or become subordinate to any mortgage of the Tenant, its successors and/or assigns. Nor will the Landlord's fee interest become subordinate to any subtenant of Tenant. If Tenant mortgages Tenant's leasehold estate to an institutional lender and the mortgagee or holders of the indebtedness secured by the leasehold mortgage or trust deed notify Landlord, in accordance with the notice provisions of this Lease, of the execution of such mortgage or trust deed and name the place for service of notice upon such institutional mortgagee or holder of indebtedness, then, in such event, Landlord agrees that for the benefit of such mortgagees or holders of indebtedness from time to time:

(a) Landlord will give to any such mortgagee or holder of indebtedness simultaneously



with service on Tenant, a duplicate of any and all notices or demands given by Landlord to Tenant. Landlord will deliver such notices in the manner and subject to the terms of the notice provisions of this Lease.

- (b) Such mortgagee or holder of indebtedness will have the privilege of performing any of Tenant's covenants under this Lease, curing any Tenant default or exercising any election, option or privilege conferred upon Tenant by the terms of this Lease.
- (c) Landlord will not terminate this Lease or Tenant's right of possession for any Tenant default if, within a period of ten (10) days after the expiration of any applicable period of time within which Tenant might cure such default under the provisions of this Lease, such mortgagee or holder of indebtedness commences in good faith to eliminate the cause of such default and proceeds diligently and with reasonable dispatch to complete such cure and actually cures such default within an additional ten (10) days.
- (d) Except for the termination rights contained in this Lease, no negotiated termination of this Lease will be effective unless joined in by any such mortgagee or holder of the indebtedness.
- (e) No liability for the payment of rent or the performance of any of Tenant's covenants and agreements will attach to or be imposed upon any mortgagee, trustee under any trust deed or holder of any indebtedness secured by any mortgage or trust deed upon the leasehold estate, unless such mortgagee, trustee or holder of indebtedness forecloses its interest and becomes the Tenant under this Lease or otherwise enters into possession of the Premises, in which instance such mortgagee, trustee or holder of indebtedness shall bring rent current hereunder within fifteen (15) days.

Section 17.09: Separability. Each and every covenant and agreement contained in this Lease shall be for any and all purposes hereof construed as separate and independent, and the breach of any covenant by either party shall not discharge or relieve the other party from its obligation to perform each and every covenant and agreement to be performed under this Lease. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate applicable law and shall be limited to the extent necessary to render this Lease valid and enforceable. If any term, provision or covenant of this Lease or the application thereof to any person or circumstance shall be held to be invalid, illegal or unenforceable, by a court of last resort having jurisdiction in the Premises, the validity of the remainder of this Lease shall not be affected, this Lease shall not terminate, and there shall be substituted for such illegal, invalid or unenforceable provision a like provision which is legal, valid and enforceable within the limits established by such court's final opinion and which most nearly accomplishes and reflects the original intention of the parties.

Section 17.10: Notices, Demands and Other Instruments. All notices, demands, requests, consents, and approvals desired, necessary, required or permitted to be given pursuant to the terms of this Lease shall be in writing and shall be deemed to have been properly given if delivered personally or by courier with a signed receipt, delivered by a recognized national

overnight delivery service, or sent, postage prepaid, by first class registered or certified United States mail, return receipt requested, addressed to each party hereto at the following address:

Landlord: Port Wentworth Fee Owner, LLC  
c/o JDI Capital, LLC  
3735-B Beam Road  
Charlotte, North Carolina 28217  
Attention: Gary J. Davies

Tenant: Premier Kings of Georgia, Inc.  
3300 Eastern Boulevard  
Montgomery, Alabama 36116  
Attention: Legal Dept.

or at such other address in the United States as Landlord or Tenant may from time to time designate by like notice. Additionally, Tenant agrees to send copies of all notices required or permitted to be given to Landlord to each holder of a mortgage, deed to secure debt, deed of trust or similar financing instrument encumbering Landlord's interest in the Premises that notifies Tenant in writing of its interest and the address to which notices are to be sent. Any such notice, demand, request or other communication shall be considered given or delivered, as the case may be, on the date of personal or courier delivery or within three (3) days of the date of deposit in the United States mail as provided above. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand, request or other communication.

Section 17.11. Successors and Assigns. Each and every covenant, term, condition and obligation contained in this Lease shall apply to and be binding upon and inure to the benefit or detriment of the respective legal representatives, heirs, successors and permitted assigns of Landlord and Tenant. Whenever reference to the parties hereto is made in this Lease, such reference shall be deemed to include the legal representatives, successors, heirs and permitted assigns of said party the same as if in each case expressed. The term "person" when used in this Lease shall mean any individual, corporation, partnership, firm, trust, joint venture, business association, syndicate, government or governmental organization or any other entity.

Section 17.12. Headings. The headings to the various Articles and Sections of this Lease have been inserted for purposes of reference only and shall not limit or define or otherwise affect the express terms and provisions of this Lease.

Section 17.13. Counterparts. This Lease may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all of which may be annexed to one another and shall constitute one instrument.

Section 17.14. Applicable Law. This Lease shall be construed under and enforced in accordance with the laws of the State of Georgia.



Section 17.15. Entire Agreement; Amendments. This Lease sets forth the entire understanding and agreement of Landlord and Tenant with respect to the Premises; all courses of dealing, usage of trade and all prior representations, promises, understandings and agreements, whether oral or written, are superseded by and merged into this Lease. No modification or amendment of this Lease shall be binding upon Landlord and Tenant, or either, unless in writing and fully executed.

Section 17.16. Relationship of the Parties. Nothing contained hereto shall be deemed or construed by the parties hereto, or any third party, as creating the relationship of principal and agent or a partnership or joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rent nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

Section 17.17. Time is of Essence. Time is of the essence of this Lease. Whenever a day certain is provided for the payment of any sum of money or the performance of any act or thing, the same enters into and becomes a part of the consideration for this Lease.

Section 17.18. Memorandum of Lease. Landlord and Tenant hereby agree that this Lease shall not be recorded in the public records of Chatham County, Georgia. Landlord and Tenant shall, upon request of either party, execute a Memorandum of Lease, wherein a legal description of the Premises, the Term and certain other terms and provisions hereof, excepting, however, the provisions hereof relating to the amount of Rent, Additional Rent or any other sum payable hereunder, may be set forth. The Memorandum of Lease may be filed for record with the Official Records of Chatham County, Georgia promptly after (and not before) expiration of the Permit/Limited Diligence Period. Any and all recording costs and taxes, if any, required in connection with the recording of the Memorandum of Lease shall be at the sole cost and expense of the requesting party.

Section 17.19. Approval and Inspection Rights. Tenant expressly acknowledges and agrees that Landlord has the right, but not the duty, at all times and from time to time upon reasonable notice to Tenant and during normal business hours, to enter upon the Premises and any portion thereof to determine to Landlord's satisfaction whether the terms, covenants and conditions of this Lease, including Tenant's performance obligations, are being kept and observed. Tenant agrees that other than as provided herein to the contrary, any failure of Landlord to approve or disapprove anything or undertaking where Landlord's approval or disapproval is required shall not be a waiver or abatement of Landlord's right to give or withhold such approval as to the specific thing or undertaking involved, nor as to any future or other instance where Landlord has such right. Tenant agrees that any failure of Landlord to exercise any right of inspection shall not be or be deemed to be a waiver of the right of inspection, which is and shall be continuing, nor shall Landlord ever be accountable or liable to Tenant or to any other person for exercising or not exercising its right of inspection.

Section 17.20. Holding Over, No Extension, Month-to-Month Tenancy and Holdover Rent. In the event Tenant shall hold the Premises after the expiration of the Term, without the express written consent of the Landlord, such holding shall be deemed to have created a tenancy

from month to month which shall be terminable upon thirty (30) days' written notice by either party to the other, and which shall be on a monthly rental basis and otherwise subject to all terms and provisions of this Lease, except as contemplated to the contrary in this Section 17.20. Monthly rental during the period of Tenant's occupancy shall be one-twelfth (1/12) of the amount equal to the product of the total rental payable by Tenant to Landlord during the last twelve (12) month period of the Term, including but not limited to, Rent, Additional Rent and all other additional charges provided by this Lease, multiplied by 1.50.

If the Tenant fails to surrender the Premises upon the expiration of the Term, then Tenant shall, in addition to any other liabilities to Landlord accruing therefrom, indemnify and hold Landlord harmless from any loss or liability resulting from such failure, including, without limitation, any claims made by any succeeding tenant founded on such failure.


(SIGNATURES APPEAR ON THE FOLLOWING PAGE)



IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease, have affixed their seals hereunto and have delivered same, in duplicate originals, as of the day, month and year first above written.

"LANDLORD":

PORT WENTWORTH FEE OWNER, LLC,  
a Delaware limited liability company

By:   
Name: GARY S. DAVIES  
Its: Manager

"TENANT":

PREMIER KINGS OF GEORGIA, INC.,  
a Georgia corporation

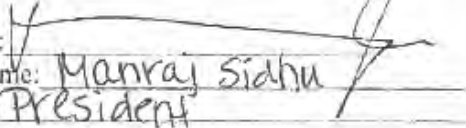
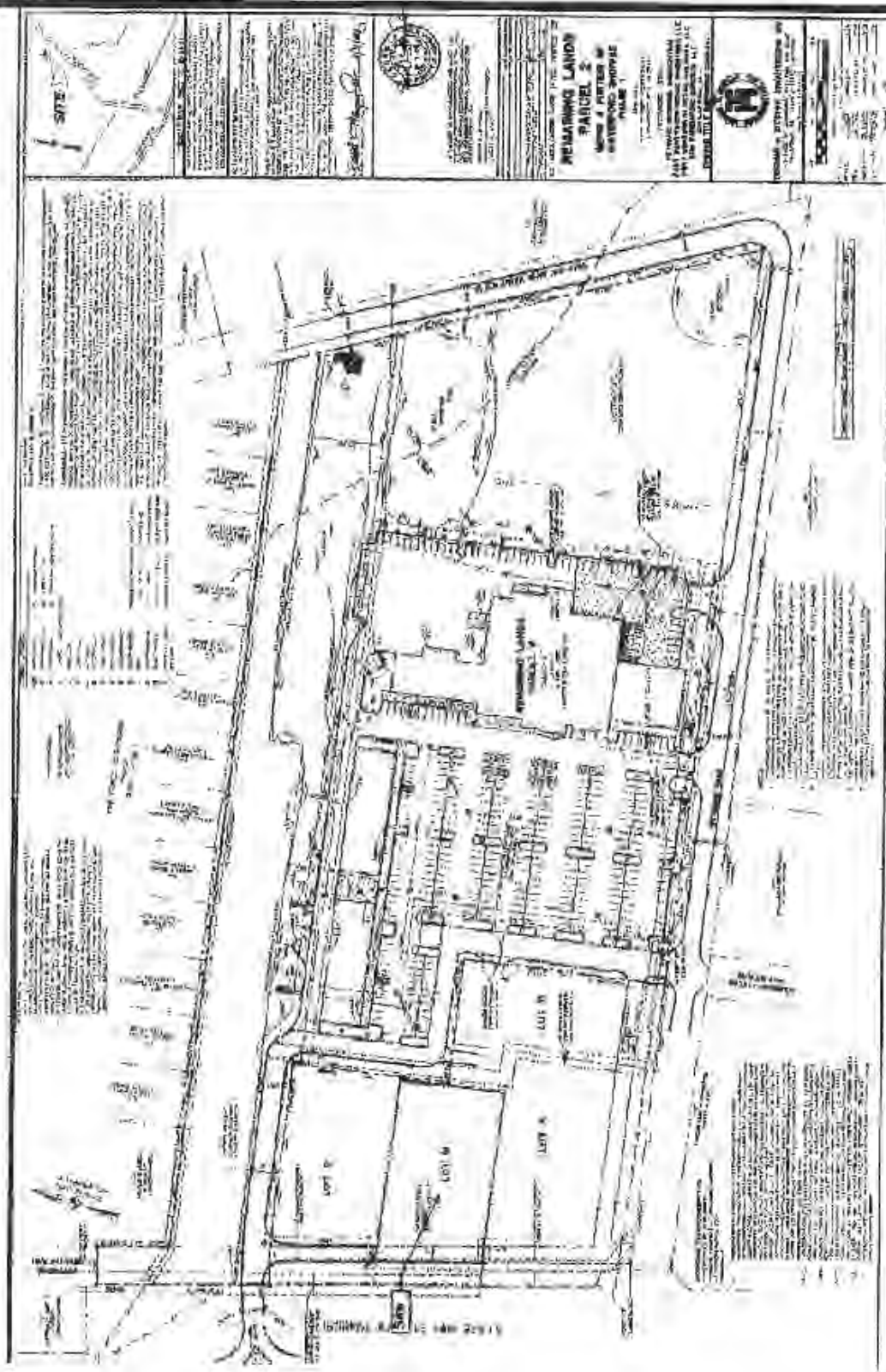
By:   
Name: Manraj Sidhu  
Its: President

EXHIBIT "A"

SITE PLAN

[See Attached]





## EXHIBIT "B"

### LEGAL DESCRIPTION

#### Outparcel B:

BEING all of that certain piece or parcel of real property located in Port Wentworth, Georgia, containing approximately 1.052 acres, and being more particularly described as follows:

To And the Beginning Point commence at calculated point located in the easterly margin of the right-of-way of State Highway 21 (variable width right-of-way) and marking the northwesterly corner of the property now or formerly owned by Coldbrook Station, LLC (PIN 7-0037-01-036) (the "Coldbrook Property") (said point being 0.39 feet northerly and 0.20 feet westerly of an iron rod), and proceed with the easterly margin of the right-of-way of Highway 21 the following three (3) courses and distances: (1) North 17-16-49 West 69.18 feet to a calculated point, (2) North 83-48-14 West 30.12 feet to a calculated point, and (3) North 17-31-45 West 164.16 feet to a calculated point, said point being the Beginning Point; thence from said point and place of BEGINNING continuing with the easterly margin of the right-of-way of Highway 21 North 17-31-45 West 156.10 feet to a calculated point; thence leaving the easterly margin of the right-of-way of Highway 21 the following three (3) courses and distances: (1) North 79-16-35 East 304.85 feet to a calculated point, (2) North 10-43-25 East 155.00 feet to a calculated point, and (3) South 79-16-35 West 286.35 feet to the point and place of BEGINNING.



## EXHIBIT "C"

### USE RESTRICTIONS

1. During the term of this Lease, no portion of the Premises shall be used for any of the following purposes:

(a) Any use which is illegal or dangerous, which constitutes a public or private nuisance, or which creates vibrations or offensive odors, fumes, dust or vapors, other than normal cooking odors, which are noticeable outside of any building on the Site, or any noise or sound which can be heard outside of any building in the Shopping Center and which is offensive due to intermittency, beat, frequency, shrillness or loudness;

(b) Any operation primarily used as a warehouse operation (which shall not include storage incidental to a retail operation constructed on the same premises), any drilling for and/or removal of subsurface conditions, any manufacturing or industrial operation, any processing or rendering plant, or any lumber yard;

(c) The storage of explosives or other unusually hazardous materials (other than materials sold or used in the normal course of business, provided that the same are handled in accordance with all governmental rules, regulations, and requirements applicable thereto);

(d) Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);

(e) Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage dumpsters or compactors which are screened from public view);

(f) Any automobile, truck, boat, trailer, RV or other motorized vehicle sales, rental, leasing, display or repair facility, including any quick lube change service, or tire, battery and accessory facility;

(g) Any funeral parlor or mortuary;

(h) Any adult book store or establishment selling or exhibiting pornographic materials;

(i) Any massage parlor (provided that nothing herein shall restrict massage services in connection with operation of a physical therapy clinic or health care facility) or any establishment selling or exhibiting paraphernalia for use with illicit drugs, or any so-called "head shop"; or

(j) Any off-track betting parlor or other gambling establishment; provided lottery sales departments incidental to the operation of a permitted use shall be permitted to the extent operated, or authorized by, the appropriate governmental authority.

2. In addition to the restrictions set forth in Paragraph 1 above, the Premises shall be subject to the following restrictions:

(a) The Premises shall not be used for the operation of automobile or trailer sales and services related to such businesses (including, but not limited to, gas stations and auto repair, sales or storage; or

(b) The Premises shall not be used for the operation of an extended-stay hotel.

Nothing contained in this Exhibit "C" shall be deemed to grant Tenant any right or privilege to operate within the Premises in any manner inconsistent with Tenant's Permitted Use as described in Section 6.05 of the Lease.



## FIRST AMENDMENT TO GROUND LEASE

THIS FIRST AMENDMENT TO GROUND LEASE (this "Amendment") is made as of the 3 day of AUGUST 2018, between FORT WENTWORTH FEE OWNER, LLC, a Delaware limited liability company ("Landlord"), and PREMIER KINGS OF GEORGIA, INC., a Georgia corporation ("Tenant").

### WITNESSETH:

WHEREAS, Landlord and Tenant are parties to that certain Ground Lease dated May 8, 2018 (the "Lease"), pursuant to which Tenant agreed to lease a certain tract of land consisting of approximately 1.08 acres located in Chatham County, Georgia, as more particularly described in the Lease (the "Premises"); and

WHEREAS, Landlord and Tenant have agreed to modify and amend certain terms and conditions of the Lease:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant, intending to be legally bound, hereby agree as follows:

1. Recitals. The recitals set forth above are incorporated herein.
2. Capitalized Terms. All terms used in this Amendment with an initial capital letter which are not otherwise defined herein shall have the meanings given to such terms in the Lease.
3. Permit/Limited Diligence Period. The definition of "Permit/Limited Diligence Period" set forth in Section 6.02 of the Lease is hereby amended to delete "seventy five (75) days" therefrom and to insert the following in lieu thereof: "one hundred twenty (120) days".
4. Construction of Improvements. The second paragraph of Section 6.08 is hereby deleted in its entirety and replaced with the following:  
  
"Tenant shall have the lesser of (i) one hundred eighty (180) days following receipt of the Permits, or (ii) one hundred eighty (180) days following the expiration of the Permit/Limited Diligence Period in order to construct and install the improvements on the Site substantially in accordance with the mutually approved plans, except in the case of changes required to comply with applicable governmental laws, ordinances or regulations (the "Construction Period")."
5. Governing Law. This Amendment shall be governed, construed and interpreted in accordance with the laws of the State of Georgia.
6. Successors and Assigns. This Amendment shall inure to the benefit of and shall be binding upon Landlord, Tenant, and their respective successors and assigns.
7. Execution Counterparts. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original and together which shall constitute one and the same instrument.

10/25/24

IN WITNESS WHEREOF, Landlord and Tenant have caused this Amendment to be executed in their names and their seals to be hereunto affixed and attested by their officers thereunto duly authorized the day and year first above written.

LANDLORD

PORT WENTWORTH FEE OWNER, LLC,  
a Delaware limited liability company

BY: \_\_\_\_\_

Name: Gary J. Davies

Title: Vice President

TENANT

PREMIER KINGS OF GEORGIA, INC.,  
a Georgia corporation

BY: \_\_\_\_\_

Name: John Howard

Title: Vice President

General  
Counsel



## Exhibit C

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made and entered into by and between Premier Holdings of Georgia, LLC, a Georgia limited liability company hereinafter called the "Developer") and Premier Kings of Georgia Inc., a Georgia corporation (hereinafter called the "Owner/Operator") on or about May 17, 2019 - 2019.

### WITNESSETH:

WHEREAS, Developer and Owner/Operator desire to establish in writing their agreement concerning their relationship, obligations and rights with respect to the development of a Burger King restaurant on certain property located Chatham County, Georgia which is described on Exhibit "A" and to be known as Burger King Store No. 26868, 7304 Highway 21, Port Wentworth, Georgia 31407 (the "Premises").

WHEREAS, Developer and Owner/Operator acknowledge that this Development Agreement is made subject to the provisions hereof, and the terms and conditions of any bank loan, the proceeds of which will be used to construct the improvements on the Premises (hereinafter called the "Bank Loan").

WHEREAS, Developer and Owner/Operator acknowledge that the development of the Premises is made subject to the provisions hereof, all matters of record, and the terms and conditions of that certain franchise agreement entered into between Owner/Operator and Burger King Corporation (hereinafter called the "Franchise Agreement").

NOW, THEREFORE, in consideration of the payments hereinafter agreed to be paid and the mutual covenants and agreements hereinafter set forth and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Developer and Owner/Operator agree as follows:

1. Development of the Premises. Developer, for and in consideration of the fees, covenants, agreements and stipulations hereinafter mentioned, reserved and contained, to be paid, kept and performed by Owner/Operator, by these presents does hereby agree to construct a Burger King restaurant on the Premises described on Exhibit "A" for the use and benefit of the Owner/Operator upon the terms and conditions hereinafter set forth and in compliance with the Project # ██████████ including all plans and specifications (and appendices and addendums thereto) for the Project, as provided, updated, and supplemented by Hendon + Hucklestein Architects, PC (the "Plans and Specifications"), which are incorporated herein by reference (collectively, the "Project").

2. Term. The term of the Development Agreement shall commence on the date hereof and shall terminate twenty (20) years from the date hereof (the "Termination Date").

3. Development Fee. Owner/Operator agrees to pay to Developer, without deduction, set off or abatement, and without previous notice or demand therefor, a monthly development fee on the first day of each month commencing on June 1, 2019, and continuing through the Termination Date, equal to (a) the Developer's debt service payment associated with the development of the Project, including without limitation under the Bank Loan, plus (b) an administrative/overhead/profit fee of \$100.00.

4. Costs and Expenses. Each Party agrees to pay its own costs and expenses incurred in connection with the proposals, responses, and negotiation of the transactions contemplated herein, including all costs and expenses incurred in connection with the preparation of any studies or reports, surveys, or approvals for this Agreement or otherwise.

5. Assignment. This Agreement is not assignable, except that the Developer shall have the right at any time to assign all its rights and obligations in and to the Project and to transfer this Agreement or any part thereof to any affiliate of the Developer that agrees to assume assigned obligations of the Developer in and to the



Project; and if so assigned, the Developer shall continue to be responsible for the performance of the obligations of the Developer under this Agreement.

6. Section Titles and Headings. The section titles and headings are for convenience only and do not define, modify, or limit any of the terms and provisions hereof.

7. Survival of Representations and Warranties. The representations, warranties, and covenants made by each of the Parties hereto and contained herein shall survive the performance of any obligations to which such representations, warranties, and covenants relate.

8. Waivers. Waiver of any of the obligations of any Party under this Agreement shall be effective only when stated in writing and signed by the waiving Party. No delay or omission to exercise any right or power by any Party shall be construed to be a waiver. In the event any provision is waived by a Party, such waiver shall not be deemed to waive any other provision.

9. Time is of the Essence. The Parties acknowledge and agree that time is of the essence in performing their respective duties under this Agreement.

10. Notices. All notices required by, or arising out of, or related to this Agreement shall be sent by United States Mail, first class postage affixed, addressed to the receiving Party as described below:

PREMIER HOLDINGS OF GEORGIA, LLC  
3300 Eastern Blvd  
Montgomery AL 36116

PREMIER KINGS OF GEORGIA, INC.  
3300 Eastern Blvd  
Montgomery AL 36116

or to such other address as the receiving Party shall have most recently forwarded to the sending Party pursuant to the provisions of this Section

11. Entire Agreement; Amendment. This Agreement is the entire agreement and supersedes all prior and collateral communications and agreements of the Parties relating to the subject matter. This Agreement may be amended only by a written modification executed by each of the Parties' duly authorized representatives. The terms and provisions of this Agreement shall run with the land for as long as this Agreement remains in effect and shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

12. Severability. In case any one or more of the provisions contained herein should be invalid, illegal or unenforceable in any respect and for any reason whatsoever, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, and in the event any such provision is held to be invalid, illegal or unenforceable, those Parties affected by such event shall exercise their best efforts to agree upon a provision in substitution for such invalid, illegal or unenforceable provision that is as near in economic benefit as possible to the provision found to be invalid, illegal or unenforceable.

13. No Third-Party Beneficiaries. Other than as set forth in this Agreement, this Agreement shall not confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assigns.

14. Governing Law. The governing law of this Agreement shall be the law of the State of Alabama without regard to conflicts of law provisions.

15. Construction. In this Agreement, unless the context indicates otherwise, the singular includes the plural and the plural the singular, references to statutes, sections or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section or regulation referred to; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation" or "but not limited to" or words of similar import; references to exhibits, attachments or appendices are to those of this Agreement unless otherwise indicated and shall be deemed to include all subsequent modifications thereto; references to agreements and other contractual instruments shall be deemed to include all exhibits, attachments and appendices attached thereto and all subsequent amendments and other modifications to such instrument; and references to Parties include their respective successors and permitted assigns.

16. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

[Execution begins on following page]

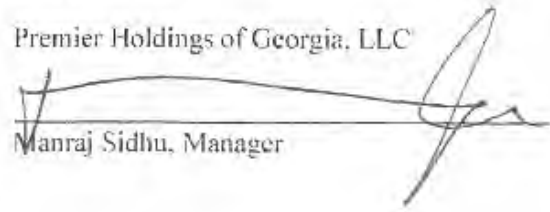


IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be executed in their respective names by their respective authorized representatives as of the day and year first above written.

DEVELOPER:

Premier Holdings of Georgia, LLC

Manraj Sidhu, Manager



OWNER/OPERATOR:

Premier Kings of Georgia Inc.

Manraj Sidhu, President

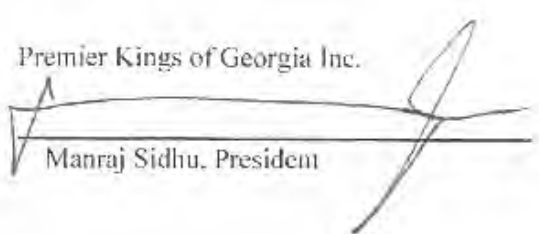


Exhibit "A"

LEGAL DESCRIPTION

00787242

6



# EXHIBIT 3

## SALE AGREEMENT

[Assignment of Development Agreement -  
7304 Georgia Highway 21, Port Wentworth, GA 31407]

This Sale Agreement (the "Agreement") is made and entered into by and between **PREMIER HOLDINGS OF GEORGIA, LLC**, a Georgia limited liability company ("Seller"), and **JG COASTAL PROPERTIES, INC.**, a Georgia corporation ("Purchaser") effective as of April 5, 2024 (the "Effective Date"). Seller and Purchaser shall sometimes be individually referred to as a "Party" or collectively as "Parties".

## RECITALS

A. Seller is a party to that certain Development Agreement dated May 17, 2019, by and between Seller, as Developer, and Premier Kings of Georgia, Inc. ("PKGA"), as Owner/Operator, a copy of which, as amended, is attached hereto as **EXHIBIT "A"** and incorporated herein by reference ("Development Agreement"), whereby Seller, as Developer, agreed to construct a Burger King restaurant, referenced as Burger King Store No. 26868, Project # [REDACTED] 26-04 (the "Project") for PKGA on the real property located at 7304 Highway 21, Port Wentworth, Calhoun County Georgia 31407, which real property is more particularly described in the Development Agreement.

B. The Development Agreement has heretofore been assigned to RRG of Jacksonville, LLC ("RRG") pursuant to that certain Asset Purchase Agreement dated as of October 25, 2023, by and between PKGA, RRG and others, as amended.

C. Jaipal Gill ("Gill") is an affiliate of Seller based on Gill owning a fifty percent (50%) membership interest in Seller, and likewise owning 100% of the capital stock of Purchaser.

D. The Development Agreement permits Seller the right at any time to assign all its rights and obligations in and to the Project and to assign and transfer the Development Agreement or any part thereof to any affiliate of Seller that agrees to assume assigned obligations of Seller under the Development Agreement.

E. Purchaser and Seller desire to enter into this Agreement to set forth the terms whereby Seller will assign to Purchaser all its rights and obligations in and to the Project and transfer the Development Agreement to Purchaser, and Purchaser will assume the assigned obligations of Seller under the Development Agreement.

NOW, THEREFORE, in consideration of the premises, payment by Purchaser to Seller of the Purchase Price listed herein, the mutual promises and other good and valuable consideration set forth in this Agreement, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller, intending to be legally bound, do hereby agree as follows:

## AGREEMENT

1. Seller hereby agrees to assign, grant, convey, transfer and set over to Purchaser all of Seller's right, title and interest in, to and under the Development Agreement, including without limitation all Seller's rights in and to the Project and under the Development Agreement (the "Development Rights"), together with all of Seller's obligations under the Development Agreement accruing on and after the Effective Date. Purchaser hereby agrees to accept assignment of Seller's right, title and interest in, to and under the Development Agreement, including all Development Rights, and further agrees to

assume and perform as of the Effective Date, any and all obligations of Seller accruing or to be performed under the Development Agreement.

2. The closing of the assignment and assumption of the Development Agreement pursuant to this Agreement (the "Closing") will occur on **April 5, 2024** (the "Closing Date"). The Closing will be conducted by Seller's attorney, Gilpin Givhan PC ("GG"), in Montgomery, Alabama (the "Closing Attorney"). The Parties agree that the Closing will occur simultaneously with the closing of that certain Purchase and Sale Agreement between Purchaser and Seller providing for the sale and purchase by Seller to Purchaser of the land, building and real property that together comprise the Burger King restaurant located at 13200 W. Cleveland St; Nahunta, Georgia (the "Nahunta Sale Transaction").

3. The purchase price payable by Purchaser to Seller for assignment of the Development Agreement will be **\$854,635.36** (the "Purchase Price"). Purchaser will pay the Purchase Price at Closing, in a single lump sum, by wire transfer, or by certified or other immediately available funds, per payment instructions provided by Seller, as further provided herein.

4. Seller will deliver to Purchaser at the Closing the Development Agreement subject to the existing mortgages and other liens and encumbrances filed of record against Seller by First Horizon Bank relating to that certain real estate loan in the original principal amount of \$1,030,000 and an equipment loan in the original principal amount of \$517,500, each advanced by Iberia Bank and later acquired and assumed by First Horizon Bank (the "First Horizon Bank Loans").

5. At or prior to the Closing:

(a) Seller and Purchaser will execute and deliver an Assignment and Assumption Agreement in the form attached hereto as **EXHIBIT "B"** and incorporated herein by reference (the "Assignment Agreement"); and

(b) Seller will pay or cause to be paid (i) all monies and costs required in connection with the release or termination of any liens or encumbrances created or permitted by Seller pursuant to Section 4 herein; and (ii) all fees and charges for services furnished as Closing Attorney; and

(c) Purchaser will pay the Purchase Price in accordance with this Agreement; and

(d) Purchaser and Seller agree to prorate the monthly development fee due and payable under the Development Agreement for the month of April 2024 when paid by RRG. Purchaser will promptly remit and deliver to Seller the accrued but unpaid monthly development fees due and payable to Seller by RRG, as successor Owner/Operator, for the first calendar quarter ending March 31, 2024, recovered in any judgment or other resolution of the legal action filed by Seller against RRG in that certain Complaint / adversarial proceeding heretofore filed by Seller in the United States Bankruptcy Court for the Northern District of Alabama, Northern Division, a copy of which has been delivered to Purchaser.

(e) A Closing Statement will be executed by Purchaser and Seller at Closing directing payment of the Purchase Price by wire transfer directly to First Horizon Bank, pursuant to wire transfer instructions provided by First Horizon Bank in payment of First Horizon Bank Loans. It is acknowledged



and agreed by the Parties that the Purchase Price payment, coupled with proceeds from the Closing of the Nahunta Sale Transaction, will be applied to pay the First Horizon Bank Loans.

6. Purchaser may assign this Agreement to a limited liability company, corporation or other legal entity wholly owned or controlled by Purchaser; provided, however, that Purchaser shall notify Seller in writing regarding such assignment and such assignment shall not relieve Purchaser of any obligation under this Agreement.

7. This Agreement and the obligations of the parties hereunder shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns, shall be governed and construed in accordance with the laws of the State of Georgia and may not be modified or amended other than by a written agreement signed by the Party to be charged therewith.

8. Seller and Purchaser hereby covenant and agree that, at or after the Effective Date, each shall, at the request of other Party, promptly execute and deliver, or cause to be executed and delivered, to the other Party such further instruments and to take such further actions as may be necessary to carry out the purposes and intent of this Agreement.

9. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It will not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts will collectively constitute a single instrument. It will not be necessary in making proof of this Agreement or any required consent to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties thereto. Any signature to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages. Delivery of an executed counterpart of this Agreement or any required consent by tele facsimile or any other form of electronic transmission will be equally as effective as delivery of an original executed counterpart thereof. Any party delivering an executed counterpart of this Agreement or any required consent by tele facsimile or other electronic means also will deliver an original executed counterpart of such instrument, but the failure to deliver an original executed counterpart will not affect the validity, enforceability, and binding effect thereof.

10. Purchaser hereby acknowledges and agrees that (i) this Agreement has been prepared by GG, in its capacity as Seller's attorney; (ii) GG represents and will represent Seller at all times and in all respects in connection with the purchase and sale of the Property, and GG has not represented and will not represent Purchaser at any time or in any respect in connection with the purchase and sale of the Property, including without limitation in connection with the Closing as contemplated in Section 2 herein; and Purchaser hereby consents to such representation and waives in all respects any and all conflicts of interest whatsoever arising in connection therewith; and (iii) Purchaser has retained or has had adequate opportunity to retain separate legal counsel in regard to the purchase and sale of the Property.

**[SIGNATURE PAGES FOLLOW]**

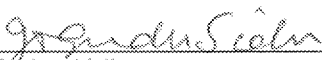
**SELLER SIGNATURE PAGE TO SALE AGREEMENT**

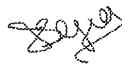
[Assignment of Development Agreement -  
7304 Georgia Highway 21, Port Wentworth, GA 31407]

**IN WITNESS WHEREOF**, Seller and Purchaser have duly executed this Agreement as  
of the Effective Date.

**SELLER:**

**PREMIER HOLDINGS OF GEORGIA, LLC,**  
a Georgia limited liability company

By:   
Name: Joginder Sidhu  
Title: Manager

By:   
Name: Jaipal Gill  
Title: Manager

**[PURCHASER SIGNATURE PAGE FOLLOWS]**



**PURCHASER SIGNATURE PAGE TO SALE AGREEMENT**

[Assignment of Development Agreement -  
7304 Georgia Highway 21, Port Wentworth, GA 31407]

**PURCHASER:**

**JG COASTAL PROPERTIES, INC.,**  
a Georgia corporation

By: 

Name: Jaipal (Jay) Gill

Its: President

# EXHIBIT 4

## Promissory Note

Principal Amount \$ 500,000.00

Dated: 3/27/24

### State Of Georgia

For Value Received, the undersigned **Jaipal (Jay) Gill** (Borrower) with ss# [REDACTED] hereby promises to pay **Sal Akturk** (holder) to the order of the principal sum of **Five Hundred Thousand Dollars (\$ 500000.00)**. The interest on this note will be 12 % per annum on the unpaid balance. The initial term is 3 years and after that the note will be renewed every year if needed if all the interest is paid and made current.

All payments shall be first applied to interest and balance to principal. This note may be prepaid, at any time, in whole in part, without penalty. All prepayments shall be applied in reverse order of maturity.

In the event this note shall be in default, and placed with an attorney for collection, then the undersigned agrees to pay as reasonable attorney fees and costs of collection. Payments not made within five (5) days of separation shall be subject to a late charge of **20.0%** of said payments hereunder shall be to such address as may from time be designated by holder hereof.

The undersigned and all other parties to this note, whether as endorsers, guarantors or sureties, agree to remain fully hereunder until this note shall be fully paid and waived demand. Presentment and protest and all notices thereto and further agree to remain bound.

No modification or indulgence by the holder hereof shall be binding unless in writing; and indulgence on any one occasion shall be an indulgence for any or other future occasion. Any modification or change of terms, hereunder granted by the holder hereof, shall be valid binding upon each of the undersigned. Notwithstanding the acknowledgment of any of the undersigned, and each of the undersigned does hereby irrevocably grant, to each of the others a power of attorney to enter any such modification on their behalf. The rights of the holder hereof shall be cumulative and not necessarily successive. This shall take effect as a sealed instrument and shall be construed, governed and enforced in accordance with the laws of State first appearing at the head of this note. The undersigned hereby execute this note as principals and as sureties.

Signed in the presence of:

Witness: [Signature]

Holder: [Signature]  
Sal Akturk

Date 3/27/24

Witness: [Signature]

Borrower: [Signature]  
Jay Gill

Date 3/27/24

### GUARANTY

We undersigned jointly and severally guarantee the prompt and punctual payment of all moneys due under the aforesaid note and agree to remain bound until fully paid.

In presence of  
Witness: [Signature]

Guarantor: [Signature]  
Jay Gill

Date: 3/27/24



# EXHIBIT 5

## 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

PREMIER HOLDINGS OF GEORGIA, LLC

Plaintiff,

v.

RRG OF JACKSONVILLE, LLC

Defendant.

Adversary Proceeding  
No. 23-02871-TOM

### DEFENDANT RRG OF JACKSONVILLE'S FIRST AMENDED ANSWERS TO FIRST SET OF INTERROGATORIES

The Defendant RRG of Jacksonville, LLC ("Defendant"), by and through their counsel and pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure as made applicable by the Federal Rules of Bankruptcy Procedure, submit the following First Amended Responses to Plaintiffs' First Set Of Interrogatories propounded upon Defendant.

### INTRODUCTION AND GENERAL OBJECTIONS

1. In responding to Plaintiffs' interrogatories, Defendant has sought information and from those persons who are most likely to know of information or documents or other things

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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. The Court entered an order for joint administration on October 30, 2023 [Doc. No. 84].

responsive to Plaintiffs' discovery. Defendant has conducted a reasonable search for its records kept in the ordinary course of business where such information, documents, or other things responsive to discovery are most likely to be found. To the extent Plaintiffs' interrogatories call for more, Defendant objects on the grounds that such interrogatory is overly broad and unduly burdensome. Consistent with the Federal Rules of Civil Procedure, Defendant has limited its search to information in its possession, custody, or control. To the extent that Plaintiffs' interrogatories can be construed to require Defendant to obtain information not in its possession, custody, or control, Defendant objects on the grounds that such interrogatories require Defendant to undertake obligations beyond those set forth in the Rules.

2. Defendant objects to interrogatories seeking information that Plaintiffs already have or that are more easily accessible to them on the grounds that any such interrogatories are overly broad and unduly burdensome.
3. Defendant further objects on the grounds that some information sought in Plaintiffs' interrogatories (a) was prepared in anticipation of litigation; (b) is protected by the attorney-client privilege; (c) is protected by the work product doctrine; and/or (d) is otherwise privileged or protected from disclosure. Defendant hereby asserts all such applicable privileges and protections and excludes such privileged information from its answers.
4. This Introduction and General Objections are incorporated by reference to the extent applicable into the specific answers set forth below and are neither waived nor limited by the specific responses and objections. Defendant's General Objections shall be continuing as to each interrogatory and are not waived, or in any way limited, by the specific objections. Defendant's objections set forth herein are based upon information presently known to Defendant. Defendant reserves the right to (a) rely on facts, documents, or other



evidence that may develop or subsequently come to its attention; (b) to assert objections or supplemental responses should Defendant discover additional information or grounds for objection; and/or (c) to supplement or amend these answers at any time.

The Defendant responds to each interrogatory as follows:

**INTERROGATORY NO. 1:**

Please state the name, address, and representative capacity, if any, of the Person(s) answering these discovery requests, and provide the same information for any and all Persons who participated in any manner in providing information to You or with whom You consulted in responding to these discovery requests.

**ANSWER:**

Randy Pianin  
c/o Counsel to the Defendant  
Chief Executive Officer

**INTERROGATORY NO. 2:**

Identify each and every Person(s) of whom You are aware who has knowledge of any facts relating to any allegations or defenses set forth by Plaintiff in the Complaint or RRG in the Answer or Motion for Judgment.

**ANSWER:**

The Defendant responds to Interrogatory No. 2 by stating that in addition to the parties to this action, it believes that representatives of the Debtors Premier Kings, Inc. et al, Raymond James, Aurora Management Partners, Burger King Company, LLC, the landlord Port Wentworth Fee Owner, LLC, Laura Kendall, Stephen Olefson (STNL), Matthew Anuszkiewicz (STNL), Patrick Finn (STNL), Randy Pianin (RRG), Mike Schmickle (RRG), Todd Donaghue (RRG) and Dylan Nugent (RRG) each have knowledge of facts relating to this matter. The Defendant answers

further by stating that discovery is ongoing in this matter and it anticipates identifying additional parties.

**INTERROGATORY NO. 3:**

State whether You have any notes or other documents currently in Your possession which relate in any way to this Adversary Proceeding or the subject matter thereof, and identify such notes or documents consistent with the instructions and definitions set forth in these interrogatories.

**ANSWER:**

The Defendant responds to Interrogatory No. 3 by stating that it will produce copies of any relevant documents.

**INTERROGATORY NO. 4:**

Identify each Person whom You expect to call as a witness at trial or may utilize as a witness in this case, and for each such Person, provide the subject matter on which such witness is expected to testify.

**ANSWER:**

The Defendant has not yet determined what witnesses it will call at any trial of this matter and states that it will supplement this response at the time required by any pre-trial order.

**INTERROGATORY NO. 5:**

Identify each Person whom You expect to call as an expert witness at trial or may utilize as an expert witness in this case and for each such Person provide the following information:

- (a) The subject matter on which such expert is expected to testify.
- (b) The substance of the facts and opinions as to which each such expert is expected to testify;



- (c) Summarize the grounds for each such opinion on which the expert is expected to testify; and
- (d) Identify all documents provided to such expert(s) to assist him or her in formulating any opinion in this case.

**ANSWER:**

The Defendant has not yet determined what expert witnesses, if any, it will call at any trial of this matter and states that it will supplement this response at the time required by any pre-trial order.

**INTERROGATORY NO. 6:**

Identify each Person(s), of whom You are aware, who accessed the Data Room on behalf of RRG and the date of said access.

**ANSWER:**

The Defendant does not have or maintain records of data room access. It believes the following persons at RRG accessed the site:

Randy Pianin

Dylan Nugent

Todd Donaghue

Additionally, the Defendant believes that its counsel at Nelson Mullins and outside advisors at STNL Advisors accessed the site on its behalf.

**INTERROGATORY NO. 7:**

Identify each Person(s), of whom You are aware, who have knowledge related to the Data Room and the documents in the Data Room.

**ANSWER:**

The Defendant responds to Interrogatory No. 7, by incorporating by reference its response to Interrogatory No. 6.

**INTERROGATORY NO. 8:**

Identify each Person(s) of whom You are aware, who drafted the Asset Purchase Agreement and APA Amendment, or who was involved in the negotiations of the Asset Purchase Agreement and the APA Amendment.

**ANSWER:**

Randy Pianin  
Dylan Nugent  
Todd Donaghue  
Mike Schmickle  
Robert Negrón  
Counsel at Nelson Mullins.

**INTERROGATORY NO. 9:**

Identify each Person(s) of whom You are aware, who drafted the Assumption Agreement, or who was involved in the negotiations of the Assumption Agreement.

**ANSWER:**

Randy Pianin  
Dylan Nugent  
Mike Schmickle.  
Counsel at Nelson Mullins.

**INTERROGATORY NO. 10:**

Identify each Person(s), of whom You are aware, who have knowledge related to the Development Agreement, the Ground Lease, and/or the Port Wentworth Store.



**ANSWER:**

The following individuals had general knowledge of the Ground Lease and Port Wentworth store, no person was aware of or ever saw the Development Agreement prior to the commencement of this action.

Randy Pianin  
Dylan Nugent  
Mike Schmickle  
Todd Donaghue  
Counsel at Nelson Mullins and STNL Advisors.

**INTERROGATORY NO. 11:**

Identify each Person(s), of whom You are aware, who have been involved with the Bankruptcy on behalf of RRG.

**ANSWER:**

Randy Pianin  
Dylan Nugent  
Mike Schmickle  
Todd Donaghue  
Counsel at Nelson Mullins and STNL Advisors.

**INTERROGATORY NO. 12:**

Identify each Person(s), of whom You are aware, who were involved in developing a list of leases to reject, pursuant to the *Second Omnibus Motion of the Debtors and Debtors-in-Possession for Entry of an Order (I) Authorizing Rejection of Unexpired Leases, and (II) Setting a Deadline for the Filing of Rejection Claims* [Doc. No. 418] (the "Rejection Notice") filed in the Bankruptcy, and for each such Person provide the following information:

- (a) State the reasons why the Development Agreement was not included in the Rejection Notice.

**ANSWER:**

The Defendant objects to Interrogatory No. 12 as argumentative, inconsistent and unanswerable, without waiving its objection the Defendant identifies the following persons who were involved

in determining what leases to assume or reject and answers further by stating that the Development Agreement was not a lease or referenced in any lease, that the Asset Purchase Agreement specifically stated that no contracts were being assumed, and that the Defendant by written notice, as provided for in the Asset Purchase Agreement, identified leases to be assumed by store number and location and otherwise rejected any and all other leases or contracts, including the Development Agreement. The Defendant answers further by stating that the Development Agreement was not included in the data room or provided to the Defendant prior to January 5, 2024. The Defendant incorporates by reference the facts as asserted in its Motion for Judgment on the Pleadings and Motion for Relief from Order Assuming Contract.

Randy Pianin  
Dylan Nugent  
Mike Schmickle  
Todd Donaghue  
Robert Negron  
Counsel at Nelson Mullins and STNL Advisors.

**INTERROGATORY NO. 13:**

State whether You have any documents in Your possession which relate to the drafting and negotiating of the Asset Purchase Agreement, the APA Amendment, and the Assumption Agreement and identify such documents.

**ANSWER:**

The Defendant responds to Interrogatory No. 13 by stating that it will produce copies of any relevant documents.

**INTERROGATORY NO. 14:**

State whether You have any documents in Your possession which relate to the Data Room, and identify such documents.



**ANSWER:**

The Defendant responds to Interrogatory No. 14 by stating that it will produce copies of any relevant documents.

**INTERROGATORY NO. 15:**

State whether You have any documents in Your possession which relate to the Ground Lease, the Development Agreement, and/or the Port Wentworth Store, and identify such documents.

**ANSWER:**

The Defendant responds to Interrogatory No. 15 by stating that it will produce copies of any relevant documents and answers further by stating that it was never in possession of the Development Agreement or any documents related to the Development Agreement.

**INTERROGATORY NO. 16:**

State why the APA listed the Development Agreement as an "Assignable Lease," as that term is defined in the APA.

**ANSWER:**

The Asset Purchase Agreement incorporated a list of documents provided by the Debtors. The Defendant did not prepare the list and does not have any knowledge as to why the Debtor included a reference to the Development Agreement, not a lease, in the list..

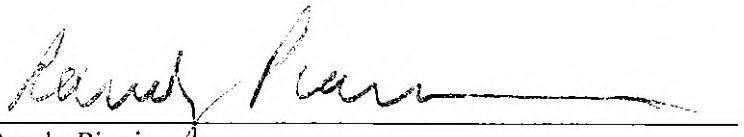
**INTERROGATORY NO. 17:**

Describe why the Development Agreement was not included in the Rejection Notice as an agreement to be rejected.

**ANSWER:**

The Development Agreement was not a lease or referenced in any lease, the Asset Purchase Agreement specifically stated that no contracts were being assumed, and the Defendant by written notice, as provided for in the Asset Purchase Agreement, identified leases to be assumed by store number and location and otherwise rejected any and all other leases or contracts, including the Development Agreement. The Defendant answers further by stating that it was never in possession of the Development Agreement prior to January 5, 2024 or any documents related to the Development Agreement and that if the Development Agreement constituted a required cost of the store location, it would have rejected Ground Lease and the store location . The Defendant incorporates by reference the facts as asserted in its Motion for Judgment on the Pleadings and Motion for Relief from Order Assuming Contract

I, Randy Pianin , in my capacity as the Chief Executive Officer of the Defendant state under the penalties of perjury that based on my review of the applicable records of the Defendant the foregoing responses are true and accurate, to the best of my knowledge, information and belief.

  
Randy Pianin



For the Objections,

RRG of Jacksonville, LLC

By its attorneys,

/s/ Peter J. Haley

Peter J. Haley, BBO #543858

[peter.haley@nelsonmullins.com](mailto:peter.haley@nelsonmullins.com)

Nelson Mullins Riley & Scarborough LLP

One Financial Center, Suite 3500

Boston, MA 02111

(617) 217-4700

Dated: September 20, 2024