

**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>DEW1014 Investments 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> DEW1014 Investments LLC Attn. David E. Otero, Esq. Akerman LLP 50 North Laura Street, Suite 3100 Jacksonville, FL 32202  Contact phone <u>904-798-3700</u> Contact email <u>david.otero@akerman.com</u>	<b>Where should payments to the creditor be sent? (if different)</b> DEW1014 Investments LLC 2980 NE 207th Street Suite 321 Aventura, FL 33180  Contact phone <u>818-886-3200</u> Contact email <u>shawn@mazalent.com</u>
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	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 _____ MM / DD / YYYY	
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**

<b>6. Do you have any number you use to identify the debtor?</b>	<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:   __ __ __ __
<b>7. How much is the claim?</b>	\$ <u>301,313.71</u> <b>Does this amount include interest or other charges?</b> <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).
<b>8. What is the basis of the claim?</b>	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>lease rejection damages - see attached Addendum</u>
<b>9. Is all or part of the claim secured?</b>	<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
<b>10. Is this claim based on a lease?</b>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. <b>Amount necessary to cure any default as of the date of the petition.</b> \$ <u>0</u>
<b>11. Is this claim subject to a right of setoff?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____



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 12/29/2023  
MM / DD / YYYY

/s/David E. Otero  
Signature

Print the name of the person who is completing and signing this claim:

Name David E. Otero  
First name Middle name Last name

Title Attorney-in-fact for DEW1014 Investments LLC

Company Akerman LLP  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone \_\_\_\_\_ Email \_\_\_\_\_



# 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> DEW1014 Investments LLC Attn. David E. Otero, Esq. Akerman LLP 50 North Laura Street Suite 3100 Jacksonville, FL, 32202  <b>Phone:</b> 904-798-3700 <b>Phone 2:</b>  <b>Fax:</b> 904-798-3730 <b>Email:</b> david.otero@akerman.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> DEW1014 Investments LLC 2980 NE 207th Street Suite 321 Aventura, FL, 33180  <b>Phone:</b> 818-886-3200 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> shawn@mazalent.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> lease rejection damages - see attached Addendum	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> 301,313.71	<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, 0 <b>Subject to Right of Setoff:</b> No	<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>	
<b>Submitted By:</b> David E. Otero on 29-Dec-2023 3:21:10 p.m. Eastern Time <b>Title:</b> Attorney-in-fact for DEW1014 Investments LLC <b>Company:</b> Akerman LLP		

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

In re:

PREMIER KINGS OF GEORGIA, INC.,

Debtor.

Chapter 11

Case No. 23-02874 (TOM)

**ADDENDUM TO PROOF OF CLAIM OF DEW1014 INVESTMENTS LLC**

1. Shawn Oded, whose mailing and business address is Mazal Group, 20255 Corisco Street, Chatsworth, CA 91311, is a representative for DEW1014 Investments LLC (“DEW1014”), and is authorized to make this claim (the “Proof of Claim”) under the unexpired lease (the “Lease”) with Premier Kings of Georgia Inc. (the “Debtor”), including:

- a. that certain Lease/Sublease Agreement dated January 31, 2018, by and between South Coast Enterprises, LLC, as landlord, and the Debtor, as tenant for the lease of certain premises located at 542370 US Highway 1, Callahan, Florida 32011 (the “Premises”); and
- b. that certain Assignment of Lease dated April 2022, by and between South Coast Enterprises, LLC, as assignor, and DEW1014, as assignee, for the lease of the Premises.

2. On October 25, 2023 (the “Filing Date”), the Debtor and two of its affiliates filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”).

3. On December 6, 2023, the Debtors filed a Notice of Potential Excluded Contracts Under Asset Purchase Agreement By and Between Debtor and RRG of Jacksonville, LLC (Doc. 301) wherein the Debtors received notice on December 4, 2023, from RRG of Jacksonville, LLC (“RRG”) that RRG has determined not to assume the Lease.

4. DEW1014 holds an unsecured claim against the Debtor in an amount not less than **\$301,313.71**, representing DEW1014’s Lease Rejection Damages Claim:

<b>PERIOD</b>	<b>RENT</b>
November 1, 2023 – November 30, 2023	\$10,500
December 1, 2023 – December 31, 2023	\$10,500
January 1, 2024 – January 31, 2024	\$10,500
February 1, 2024 – January 31, 2025	\$126,000
February 1, 2025 – January 31, 2026	\$126,000
February 1, 2026 – January 31, 2027	\$126,000

<b>PERIOD</b>	<b>RENT</b>
February 1, 2027 – January 31, 2028	\$126,000
February 1, 2028 – January 31, 2029	\$132,300
February 1, 2029 – January 31, 2030	\$132,300
February 1, 2030 – January 31, 2031	\$132,300
February 1, 2031 – January 31, 2032	\$132,300
February 1, 2032 – January 31, 2033	\$132,300
February 1, 2033 – January 31, 2034	\$138,915
February 1, 2034 – January 31, 2035	\$138,915
February 1, 2035 – January 31, 2036	\$138,915
February 1, 2036 – January 31, 2037	\$138,915
February 1, 2037 – January 31, 2038	\$138,915
Subtotal	\$1,891,575.00
Sales Tax	6.195%
<b>Total</b>	<b>\$2,008,758.07</b>

**Total Lease Payments Capped at 15%:**

**\$2,008,758.07 x 15% = \$301,313.71**

5. This Proof of Claim may not include all amounts relating to all pre- and post-Filing Date interest, fees, costs, expenses, charges, and attorney and other professional fees and expenses as to which the Debtor is liable, including without limitation all costs and expenses incurred in enforcing and preserving DEW1014's rights under the Lease. DEW1014 reserves all rights to (i) amend, clarify, modify, update or supplement this Proof of Claim at any time and in any respect, including without limitation to assert additional claims and requests for payment or additional grounds for DEW1014's claims, and/or to specify the amount of DEW1014's contingent, unmatured and/or unliquidated claims, if any, as they become non-contingent, matured and/or liquidated; (ii) file additional proofs of claim at any time and in any respect; (iii) file separate proofs of claim as: (a) permitted by any order entered in this case establishing a deadline to file proofs of claim; (b) required or permitted by law; or (c) otherwise ordered by the Bankruptcy Court; and/or (iv) file a request for payment of an administrative expense or priority claim in accordance with 11 U.S.C. §§ 503(b) and 507(a). By virtue of the filing of this Proof of Claim, DEW1014 does not waive, and hereby expressly reserves, DEW1014's rights to pursue any and all claims and requests for payment, including but not limited to, the claims and requests for payment described herein against the Debtor based on the facts and circumstances giving rise to the claims asserted in this Proof of Claim or any other alternative legal theories. In addition, certain of DEW1014's claims cannot, at this time, be reasonably calculated or estimated. DEW1014 does not waive any of its rights to any and all such claims by not ascribing a specific dollar amount thereto at this time.

6. All reservations of rights and benefits set forth in this Proof of Claim apply to the indebtedness and claims set forth herein.

7. DEW1014 reserves its rights, including but not limited to, its rights of netting, recoupment, and setoff. DEW1014 also reserves its rights regarding all other claims and/or defenses that DEW1014 may possess and/or assert against the Debtor.

8. DEW1014 reserves the right to amend or supplement this Proof of Claim from time to time and at any time.

9. No judgment has been rendered on this Proof of Claim.

10. The execution and filing of this Proof of Claim is not and shall not be deemed or construed as: (a) a waiver or release of DEW1014's rights against any person, entity, or property, which may be liable for all or any part of the claims asserted herein, including but not limited to guarantors or co-debtors; (b) a consent by DEW1014 to the jurisdiction or venue of the Bankruptcy Court with respect to proceedings, if any, commenced in the Debtor's Chapter 11 case against or otherwise involving DEW1014; (c) a waiver or release of DEW1014's right to trial by jury in any proceeding as to any and all matters so triable herein, whether or not the same be designated legal or private rights or in any case, controversy or proceeding related hereto, notwithstanding the designation or not of such matters as "core proceedings" pursuant to 28 U.S.C. § 157(b)(2), and whether such jury trial right is pursuant to statute or the United States Constitution; (d) a waiver or release of DEW1014's right to have any and all final orders in any and all non-core matters or proceedings entered only after *de novo* review by a United States District Court Judge; (e) a waiver of the right to move or to withdraw the reference with respect to the subject matter of this Proof of Claim, any objection thereto or other proceeding which may be commenced in the Debtor's Chapter 11 case against or otherwise involving DEW1014; (f) an election of remedies; or (g) a waiver or limitation of any procedural or substantive rights or defenses to any claim that may be asserted against DEW1014 by the Debtor, any official committee of unsecured creditors, trustee or examiner appointed in this case or any subsequent case, or any other party.

11. All notices concerning this Proof of Claim should be sent to DEW1014 Investments LLC, Attn.: Shawn Oded, 20255 Corisco Street, Chatsworth, CA 91311, with a copy to counsel for DEW1014 Investments LLC, c/o Akerman LLP, 50 North Laura Street, Suite 3100, Jacksonville, Florida 32202, Attn.: David E. Otero, Esq.

12. All payments related to this Proof of Claim should be sent to DEW1014 Investments LLC, 2980 NE 207th Street, Suite 321, Aventura, FL 33180.

LEASE/SUBLEASE AGREEMENT

THIS AGREEMENT (the "Lease"), is made this 31 day of January, 2018 (the "Lease Date"), by and between **SOUTH COAST ENTERPRISES, LLC**, a Florida limited liability company, ("Lessor"), and **PREMIER KINGS OF GEORGIA INC.**, a Georgia corporation ("Lessee"), whose address is 3300 Eastern Boulevard, Montgomery Alabama 36116. (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 following property (the "Land") along with the BURGER KING® restaurant (the "Building") and other improvements to be constructed on it (collectively called the "Premises").

Legal Description: See Exhibit "A" attached hereto and made a part hereof.

Commonly described as: **BURGER KING Restaurant #18422 10422**  
**542370 US Highway 1, Callahan, FL 32011**

Subject to any and all reservations, restrictions, easements, rights of way, limitations and conditions of record, if any.

**§1.2 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 on Feb. 1, 2018, the date the lease is fully executed (the "Commencement Date"). The Term of this lease shall expire at midnight on Jan. 31, 2038, 20 years after the execution date (the "Original Term Expiration 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 150% 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 15.14(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 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 for issues which are related to Lessee's removal of its personalty. 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 a guaranteed minimum annual rental as indicated in the "Base Rent Data Schedule" below, 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.

### **BASE RENT DATA SCHEDULE**

<b>Lease Year*</b>	<b>Guaranteed Minimum Annual Rental</b>	<b>Monthly Installment</b>
1/31/2018 – 1/31/2023	\$120,000.00	\$10,000.00
2/1/2023 – 1/31/2028	\$126,000.00	\$10,500.00
2/1/2028 – 1/31/2033	\$132,300.00	\$11,025.00
2/1/2033 – 1/31/2038	\$138,915.00	\$11,576.00

\*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.

**Option to Extend.** Provided Tenant is not in default (beyond the expiration of any applicable notice and cure period) under this Lease on the date of exercise, Tenant shall have the option (each, an "Extension Option"), by giving a written notice to Lessor at least one hundred eighty (180) days prior to lease expiration, to extend the term of this Lease for four additional five-year periods (each, an "Extension Term"), as follows:

- Option 1: February 1, 2038 – January 31, 2043
- Option 2: February 1, 2043 – January 31, 2048
- Option 3: February 1, 2048 – January 31, 2053
- Option 4: February 1, 2053 – January 31, 2058

If Tenant exercises an Extension Option, the Minimum Rent during each Extension Term shall increase on the first day of each such Extension Term by Five Percent (5%) over the Base Rent payable in the previous Lease Year as further set forth on below as "Extension Term Minimum Rent". The lease of the Premises during the Extension Terms shall be on the same terms and conditions set forth in this Lease, except that Tenant shall have no further renewal rights after the expiration of the fourth Extension Term. All references in this Lease to the "Lease Term" shall be deemed to include the properly-exercised Extension Terms, unless the context clearly indicates a different meaning.

#### **EXTENSION TERM MINIMUM RENT SCHEDULE**

<b>Lease Year*</b>	<b>Guaranteed Minimum Annual Rental</b>	<b>Monthly Installment</b>
2/1/2038 – 1/31/2043	\$145,861.00	\$12,155.00
2/1/2043 – 1/31/2048	\$153,154.00	\$12,763.00
2/1/2048 – 1/31/2053	\$160,812.00	\$13,401.00
2/1/2053 – 1/31/2058	\$168,853.00	\$14,071.00

The Guaranteed Minimum Annual Rental shall sometimes hereinafter be referred to 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, and upon request by Lessor sales reports showing the total annual gross sales for the Premises for the previous twelve (12) months;

- (ii) Within thirty (30) 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 the chief financial officer of Lessee or 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. Except as set forth above, such financial and operational information relating to Lessee will be kept confidential by Lessor and Lessors representatives.
- (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.

**§3.4 ADDITIONAL CHARGES.** Lessee and Lessor agree that the Rent accruing under this Lease shall be net to lessor and that all 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 6.3 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 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 RESERVED.**

**§3.6 LATE CHARGES.** All Rent, 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 the law where the Premises is located. 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.

**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 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.
- (b) Provide and keep in force comprehensive or 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 limits of not less than \$2,000,000 per occurrence for bodily injury, not less than \$500,000 per occurrence for property damage, or in such other amounts as Lessor may reasonably request. The policy shall name Lessor as an additional insured.
- (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.** 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. Subject to the rights of and approval by any secured party of Lessee with a leasehold mortgage, 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 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 which have a rating by Bests Rating Guide of at least "A" as to financial strength and "X(10)" as to financial size. 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 prior written notice (if possible such notice shall be 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 and 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 \$50,000, or
- (b) by Lessor and Lessee, in the case of any particular casualty resulting in damage or destruction exceeding \$50,000 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 \$50,000 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 \$50,000 in the aggregate, the proceeds shall be paid to lessor and shall be applied to pay 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 its 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 due to an act or omission by Lessee, and if Lessee fails to remedy the condition giving rise to cancellation, threatened cancellation, or reduction of coverage within three (3) business days after notice thereof by Lessor, Lessor may 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 Premises, nor for the loss of or damage to any of the personalty or other property of Lessee or of others by theft or otherwise, from any cause whatsoever, except for its own gross negligence or intentional misconduct. 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, or temporarily as reasonably necessary to meet the remodel requirements of Burger King Corporation. 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 XIII 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 commercially reasonable good 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 an 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 actions shall be repaid by the 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 thirty (30) days notice before taking any such action.

**§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 required by Burger King Corporation 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 except as required to maintain a current image Burger King restaurant without the prior written consent of Lessor (such consent shall not be unreasonably withheld, delayed, or conditioned). 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 \$100,000.00, 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 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 Alteration, an architect shall inspect the Alteration and complete the Burger King® 2004 ADAGG 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 Standard 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.

**§5.4 LIENS.** Should Lessee cause and Alteration of 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 Alteration 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 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 it by paying the amount claimed to be due into court or directly to any claimant and the amount so paid by Lessor and all costs and expenses including attorney's 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 except as approved or required by Burger King Corporation without the prior written approval of Lessor.

**§5.6 INSPECTION.** Fee owner, Lessor, or their representatives shall have the right to enter the Premises during business hours on any business day after first providing twenty four (24) hours prior notice (except in the event of an emergency notice shall not be required) 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 the 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 (and utilizing all available insurance proceeds), shall cause the prompt repair, replacement and rebuilding of same ("restoration"), subject to Section 4.3, 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 the 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 its justly due to contractors, subcontractors, materialman, 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, supplied, 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 matter.

**§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 an assist Lessee in asserting claims against contractors or others providing work and/or services to the Premises.

**§5.10** 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 that would become binding on Lessor (either during this Lease or in the event that this Lease is terminated or expires).

## VI. TAXES AND OTHER CHARGES

### **§6.1 PAYMENT.**

- (a) In the event Lessor elects, at its sole option, to pay the taxes, assessments, charges for public utilities, excises, levies, licenses, permit fees or other governmental impositions and charges of any kind and nature whatsoever ("Charges") which are payable in connection with the ownership, occupancy or possession of the Premises, Lessee shall reimburse Lessor within thirty (30) days after Lessee receives and 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 with 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 period in which the Term of this Lease commences and terminates shall be apportioned.

- (c) Lessee shall pay to Lessor an amount equal to any and all sales, excise, privilege, transaction and other taxes (excluding income taxes) levied or assessed by any federal, state or local authority upon the leasing of the Leased Premises or upon the payment or receipt of rent therefor, and any business tax imposed upon Lessor by any governmental authority which is based or measured in whole or in part by amounts charged or received by Lessor from Lessee under this Lease, provided Lessee shall pay only the amount of such business tax that would be payable by Lessor if the leased premises were the only property of Lessor. This paragraph shall not be deemed or construed to require Lessee to pay or discharge any income tax of Lessor or any inheritance or estate taxes or taxes upon inheritance or right to succession which may be levied against any estate or interest of Lessor, even though such taxes shall become a lien against the Premises.

**§6.2 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 furnished 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 Processing 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.

**§6.3 LIMITATION: SUBSTITUTION.** Nothing contained in this Lease shall be constructed 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 of 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.

**§6.4 ESCROW FUNDS.** If, during the Term of this Lease, any mortgagee of Lessor requires it, Lessee shall 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's mortgagee, the provisions of this Section 6.4 shall be applicable to any Additional Charges due under this Lease.

## VII. INDEMNIFICATION

Lessee shall Indemnify, defense 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 of 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 except from Lessor's gross negligence or intentional misconduct, (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.

## VIII. ENFORCEMENT

**§8.1 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 indicated 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 or Additional Charges when it becomes due

and payable and fails to make such payment within ten (10) days of the date the same is due, Lessor shall have the right to terminate this Lease and the Lessee shall be liable to Lessor for the amount of the unpaid rent and the cost of collection thereof; and

- (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 by the provision of this Lease or, if no such period is provided for a period of notice thereof by Lessor to Lessee; or, if such performance cannot be reasonably ascertained within a thirty day period, Lessee has not in good faith commenced such performance within the period and has not diligently proceeded therewith to completion;
- (g) If the Lessee or any agent of Lessee falsifies any report required to be submitted pursuant to the terms of this Lease and fails to notify Lessor of such falsification within ten (10) days of the submission of such report;
- (h) Repeated breaches of provisions of this Lease. If Lessor intends to exercise its right to terminate this Lease pursuant to Section 8.1(h), Lessor shall provide notice to Lessee that Lessor has determined that Lessee has repeatedly breached this Lease, and that Lessor intends to terminate this Lease at any time after said notice. If Lessee after receiving such notice fails to cure such breach of this Lease in any manner, Lessor shall have the right to terminate this Lease with no further opportunity to cure.
- (i) If Burger Corporation has formally declared in writing that Lessee is in breach of the Franchise Agreement relating to the Premises.

In the event of a default under this Section 8.1, Lessor shall have such remedies as may be available under this Lease and/or under applicable law.

**§8.2 CURE BY LESSOR.** After expiration of the applicable period of notice, in the event of any emergency, Lessor at its option may, but shall not be obligated to make any repairs or perform any obligation of Lessee, and the amount Lessor pays, or the cost of such repairs or interest thereon at the highest legal rate permitted, shall be deemed to be payable by Lessee on demand. After expiration of the applicable period of notice, or in the event of any emergency Lessor shall have the right to enter the Premises for the purpose of repairing any default, but neither any expenditure nor any such performance by Lessor shall constitute an admission of Lessee's default or the right of Lessor to take such action as may be otherwise provided in this Lease. The Lessor shall have no liability to the Lessee for any loss or damage of any kind caused by the Lessor, and entry by the Lessor under the provisions of Article V of this Lease shall not constitute a breach of the covenant for quiet enjoyment or an eviction.

**§8.3 LESSOR'S REMEDIES.** If Lessee is in default under this Lease, Lessor shall have the right to exercise such other remedies as may be available under applicable law:

- (a) Terminate this Lease and Lessee's right of possession, and retake possession of the Premises. In such event, Lessor may repair and alter the Premises in any manner reasonably necessary or advisable. All expenses of every nature which Lessor incurs in connection with such action (by way of illustration and not limitation) those for attorneys' fees, brokerage, and other costs incurred in connection with the Premises, shall become immediately due and payable by Lessee to Lessor.
- (b) Terminate Lessee's right of possession, but not this Lease, retake possession of the Premises for Lessee's account, repair, and alter the Premises in any manner reasonably necessary or advisable, and relet the Premises or any part of it, as to the whole or any part of the remainder of the Term or for a longer period, and the Lessor shall be entitled to the net proceeds of such reletting.



reasonable 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 the way of illustration and not limitation) those for attorneys' fees, brokerage, advertising, and refurbishing the Premises in good order or preparing them for reletting, 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 8.3, collect rent which, after deductions is insufficient 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 of deficiency shall be paid by Lessee on the first of each month.

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 8.3(a) or Section 8.3(c), then it shall be deemed that Lessor is pursuing the remedy set forth in Section 8.3(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 proceeding or otherwise, as well as the legal representative(s) of Lessee and/or other occupant(s) of the Premises, and remove their effects.

**§8.4 ACCELERATION OF PRESENT VALUE.** If Lessor exercises the remedies in Section 8.3(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 charges 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 8.3(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 8.3(b) of this Lease.

**§8.5 SUITS.** Suits 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.

**§8.6 LEASEHOLD MORTGAGE.** Lessor hereby grants to Lessee and every successor and assign of Lessee approved by Lessor the right, without Lessor'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 Lessee's interest in or rights under this Lease to any institutional lenders as collateral for loans, and, in such event, the mortgagee or assignee shall have all the rights of Lessee hereunder. Notwithstanding anything contained herein to the contrary, the Lessor's fee interest in the Premises will not become, in any respect subject to, considered a part of, or become subordinate to any mortgage of the Lessee, its successors and/or assigns. Nor will the Lessor's fee interest become subordinate to any sublessee of Lessee. If Lessee mortgages Lessee's leasehold estate to an institutional lender and the mortgagee or holders of the indebtedness secured by the leasehold mortgage or trust deed notify Lessor, in the manner provided for the giving of notice, 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, Lessor agrees that for the benefit of such mortgagees or holders of indebtedness from time to time:

A. Lessor will give to any such mortgagee or holder of indebtedness simultaneously with service on Lessee, a duplicate of any and all notices or demands given by Lessor to Lessee. Lessor 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 Lessee's covenants under this Lease, curing any Lessee default or exercising any election, option or privilege conferred upon Lessee by the terms of this Lease.

C. Lessor will not terminate this Lease or Lessee's right of possession for any Lessee default if, within a period of 20 days after the expiration of the period of time within which Lessee might cure such default under the provisions of this Lease, such mortgagee or holder of indebtedness commences 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 20 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 Lessee'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 Lessee 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 30 days.

**§8.7 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 on 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.** 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..

**§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 if Burger Corporation formally declares in writing that Lessee is in default under any Franchise Agreement, such default in the terms

of the Franchise Agreement shall constitute a default under this Lease.

**IX.  
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.

**X.  
CONDEMNATION**

**§10.1 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 other than as is applicable to Lessee's leasehold estate, subject also to the rights of any mortgage 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 proceeding or arrangement except for the purposes described in Section 10.5.

**§10.2 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 commercially reasonable 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 Additions Charges payable by Lessee, and after performance by the Lessee of all its obligations under this Lease.

**§10.3 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 10.2, 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 of 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.

**§10.4 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 10.3 above.

**§10.5 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 proceeding, but only for the purpose of securing an independent award for loss of business or damage to personalty.

## **XI. 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. 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 apart of its interest in the Premises to 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. Notwithstanding anything herein to the contrary, in the event the mortgagee or any other person acquires title to the Premises pursuant to the exercise of any remedy provided for in the mortgage, or by conveyance in lieu of foreclosure, the Lease shall not be terminated or affected by the foreclosure, conveyance or sale in any such proceeding. The mortgagee covenants that any sale of the Premises as a result of the exercise of any rights and remedies under the mortgage, or otherwise, shall be made subject to the Lease and the rights of the Lessee under the Lease, and the Lessee covenants and agrees to attorn the mortgagee, or such person, as its new landlord, and the Lease shall continue in full force and effect as a direct Lease between the Lessee and the mortgagee, or such other person, upon all of the terms, covenants, conditions and agreements set forth in the Lease. However, in no event shall the mortgagee or such person be: (i) liable for any act or omission of the Lessor, or (ii) subject to any offsets or deficiencies, which the Tenant might be entitled to assert against the Landlord.

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 assignments 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.

## **XII. ASSIGNMENT**

**§12.1 BY LESSOR.** This Lease shall be fully assignable by the Lessor or its assigns.

**§12.2 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 the 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 unless released by Lessor in its sole discretion, Lessor shall consent to an assignment of this Lease to an individual, partnership, or corporation to which the Franchise Agreement has been assigned.

Notwithstanding anything herein to the contrary, Lessor's consent to an assignment executed in connection with sale of Lessee's business at the Leased Space to an entity or person that satisfies the Approved Assumption Conditions (as hereinafter defined) shall not be unreasonably withheld. A person or entity that satisfies the Approved Assumption Conditions shall be (i) an approved Burger King franchisee and (ii) have a net worth equal or greater to that of Lessee as of the date of this Lease or the date of the proposed assignment (whichever is greater) and "liquid assets" equal or greater to those of Lessee as of the date of this Lease or the date of the proposed assignment (whichever is greater), with "liquid assets" being defined as cash, publicly traded stocks, bonds, or certificates of deposit ("**Approved Assumption Conditions**"). The proposed assignee or sublessee shall submit financial statements to Lessor verifying such net worth and liquid assets as a condition to the assignment or sublease. If such entity or person meeting the Approved Assumption Conditions executes an assignment and assumption agreement with Lessor and the then current Lessee in form and substance satisfactory to Lessor then same shall operate to release the current Lessee of any liability under this Lease that first arises one (1) year after the Approved Assumption Conditions are met; provided, however, (i) if there is an uncured default under this Lease prior to the end of the one (1) year period after the Approved Assumption Conditions are met, then the current Lessee shall not be released from any liability under this Lease, or (ii) if there is a default that arises during the one (1) year period after the Approved Assumption Conditions are met and such default is cured during such one (1) year period, then the period of time during which Lessee shall remain liable shall be extended so that their liability expires one (1) year from and after the date such default is cured.

**§12.3 ASSUMPTION BY ASSIGNEE.** As 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.

### XIII. ESTOPPEL CERTIFICATE

Lessor and Lessee shall from time to time, within ten (10) days after being requested to do so by the other party, execute, sign, acknowledge and deliver to each other (or, at Lessor's or Lessee's request, to any existing or prospective purchaser, transferee, assignor or mortgagee of any or all of the Premises, any interest therein or any of Lessor's or Lessee'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 effort as so modified, stating therein the nature of such

modification); (b) as to the dates to which the Rent 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.

#### XIV. HAZARDOUS SUBSTANCES

**§14.1 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 not 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 results from acts or omissions by Lessee and as may be required under Hazardous Substance Laws, court order or by any governmental or regulatory agency.

#### **§14.2 NOTICES TO LESSOR.**

- (a) Except with respect to any substance described in Section 14.2(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 14.2 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 XV 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 or which are not caused (directly or indirectly) by the acts or omissions of Lessee.

**§14.3 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.

**§14.4 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 provision of this Article XV. 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 forty eight (48) 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.

**§14.5 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 if such matters are the result of the acts or omissions of Lessee.
- (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 promptly commence (at Lessee's sole cost and expense) such Remediation if such matters are the result of the acts or omissions of Lessee.

Notwithstanding any other provision of the Lease to the contrary, if any Environmental Audit reveals a situation which, in Lessor's sole option, 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 or Lessee's intention to do so and affording Lessor the opportunity to participate in any such proceedings.

#### **§14.6 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 14.2 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 14.4(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 14.6.

**§14.7 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.

**§14.8 INDEMNIFICATION BY LESSEE.** Lessee shall indemnify, defend with counsel reasonable 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, proceedings, resulting from or attribute to (i) the presence, disposal, migration, release 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.

## **XV. MISCELLANEOUS**

**§15.1 ARBITRATION.** In the event of arbitration under Section 10.3 of this Lease, the arbitration shall be held in the Nassau County, Florida, in accordance with the rules of the American Arbitration Association requiring the appointment of three (3) arbitrators.

**§15.2 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 addresses directly to Lessor at its offices at 14125 Robert Paris Court, Chantilly, VA 20151, and to Lessee at 3300 Eastern Blvd., Montgomery, AL 36116, 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.

**§15.3 ADDRESS FOR PAYMENTS.** Payments are to be made by check or via ACH or Wire Transfer unless otherwise notified in writing by Lessor. If ACH or Wire Transfer are unavailable at any time a payment is due, then such payment shall be sent by Regular or Overnight Mail: 14125 Robert Paris Court, Chantilly, VA 20151.

**§15.4 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.

**§15.5 SUCCESSORS.** This Lease shall bind Lessor and Lessee and their successors, heirs, assigns, administrators, and legal representatives, as the case may be.

**§15.6 RECORDING.** Either party shall upon request by the other party execute a short form of this Lease on a written document witnesses 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 consent of Lessor.

**§15.7 COUNTERPARTS.** This lease is being executed simultaneously in counterparts, any one of which shall be deemed an original.

**§15.8 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 venture 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, not represent that it has any right to do so.

**§15.9 TIME OF THE ESSENCE.** Time shall be of the essence in every part of this Lease.

**§15.10 BINDING EFFECT.** This Lease shall become immediately binding on the parties to this Lease on the date the party signs it, notwithstanding that the Term of this Lease shall commence upon a future date.

**§15.11 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, not limit, define or describe the scope or intent of this Lease.

**§15.12 JOINT AND SEVERAL LIABILITY.** If Lessee consists of more than one person, each individual's liability under this Lease shall be joint and several.

**§15.13 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.

**§15.14 DEFINITIONS**

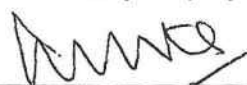
- (a) The term "Lessor" as used in this Lease shall mean the owner in fee of the Premises for the time being, or the owner of the leasehold estate created by an underlying lease, or the mortgage of the fee or of such underlying lease in possession for the time being, so that in the event of any sale 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 names in this Lease, and from 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.

**§15.14 RADON.** NOTICE TO LESSEE: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Level of radon that exceed Federal and State guidelines have been found in buildings in Florida.

IN WITNESS THEREOF, the Lessor and Lessee have caused this Lease to be signed, in duplicate, as of the day and year first above written.

LANDLORD:

**SOUTH COAST ENTERPRISES, LLC,**  
A Florida limited liability company

By:   
ASHOK MEHTA, Manager

TENANT:

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

By: \_\_\_\_\_  
\_\_\_\_\_, Manager

IN WITNESS THEREOF, the Lessor and Lessee have caused this Lease to be signed, in duplicate, as of the day and year first above written.

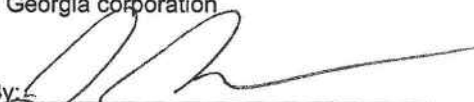
LANDLORD:

**SOUTH COAST ENTERPRISES, LLC,**  
A Florida limited liability company

By: \_\_\_\_\_,  
\_\_\_\_\_, Manager

TENANT:

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

By:   
John A. Hubert Jr., Manager  
Vice President / General  
Counsel



## **ASSIGNMENT OF LEASE**

This Assignment of Lease is made and entered into this \_\_\_\_ day of April, 2022, by and between **SOUTH COAST ENTERPRISES, LLC**, a Florida limited liability company, with a post office address at **14125 Robert Paris Court, Chantilly, Virginia 20151** ("Assignor") to **DEW1014 INVESTMENTS LLC**, a Florida limited liability company, with a post office address at **1920 E. Hallandale Beach Boulevard, Suite 900, Hallandale Beach, Florida 33009** ("Assignee").

Witnesseth:

WHEREAS, Assignor is the landlord under that certain Lease Agreement dated January 31, 2018 (the "Lease") by and between Assignor, as landlord, and Premier Kings of Georgia, Inc., a Georgia corporation, as tenant (the "Tenant"), executed with respect to that certain real property located at **542370 US Highway 1, Callahan, FL 32011** (the "Property"); and

WHEREAS, Assignor desires to assign its interest as landlord in the Lease to Assignee, and Assignee desires to accept the assignment therefore and to assume Assignor's rights and obligations thereunder;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other valuable consideration received, and with the intent to be legally bound, the parties hereby agree as follows:

1. Effective as of the Closing Date (as defined below), Assignor hereby assigns the Lease and all of its right, title and interest thereunder to Assignee.
2. Assignor hereby agrees to indemnify Assignee against and hold Assignee harmless from any and all cost, liability, loss, damage or expense, including, without limitation, reasonable attorneys' fees, to the extent resulting from the landlord's obligations under the Lease that relate to the period on or prior to the Closing Date.
3. Effective as of the Closing Date, Assignee hereby assumes and agrees to perform all of the landlord's obligations under the Lease and agrees to indemnify Assignor against and hold Assignor harmless from any and all cost, liability, loss, damage or expense, including, without limitation, reasonable attorneys' fees, to the extent resulting from the landlord's obligations under the Lease that relate to the period after the Closing Date.
4. Assignor also assigns to Assignee (i) all rents to become due under the Lease following the Closing Date, and (ii) all rents that have been received and are allocable to periods following the Closing Date.
5. If either party hereto fails to perform any of its obligations under this Assignment or if a dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Assignment, and an action is filed, the prevailing party in any such action shall be entitled to recover from the other party, in addition to any other relief that may be granted, its court costs and reasonable attorneys' fees and disbursements, including such incurred in connection with any appeal.
6. This Assignment may be signed in counterparts and all counterparts so executed shall constitute one contract, binding on all parties hereto, even though all parties are not signatory to the same counterpart. The parties agree that a facsimile, Portable Document Format (PDF) or other electronic transmission of the parties' signatures on this Assignment will constitute an original acceptance of this Assignment.

7. This Assignment shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors in interest and assigns.

8. This Assignment shall be governed by and construed in accordance with the laws of the State of Florida.

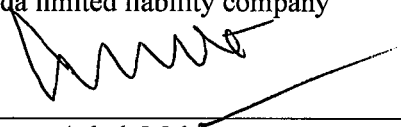
9. For the purposes of this Assignment, the "Closing Date" shall be the date of the Closing as defined in the Purchase and Sale Agreement by and between Assignor, as seller, and Assignee, as buyer, dated as of February 28, 2022.

**[Signature page to immediately follow]**

IN WITNESS WHEREOF, the parties have duly executed this Assignment of Lease as of this \_\_\_\_ day of April, 2022.

**ASSIGNOR:**

SOUTH COAST ENTERPRISES, LLC,  
a Florida limited liability company

By:   
Name: Ashok Mehta  
Title: Manager

**ASSIGNEE:**

DEW1014 INVESTMENTS LLC,  
a Florida limited liability company

By: \_\_\_\_\_  
Name: Eli Weingarten  
Title: Authorized Member