

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

In re:

PREMIER CAJUN KINGS, LLC,<sup>1</sup>  
  
Debtor.

Chapter 11

Case No. 23-00656 (DSC)

**MOTION OF THE DEBTOR AND DEBTOR-IN-POSSESSION FOR  
ORDERS (I)(A) APPROVING BIDDING PROCEDURES FOR SALE OF  
SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS AND BID PROTECTIONS FOR  
STALKING HORSE BIDDER, (B) APPROVING ASSUMPTION AND ASSIGNMENT  
PROCEDURES FOR EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND  
(C) SCHEDULING AN AUCTION FOR, AND HEARING TO APPROVE, SALE OF  
SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS AS A GOING CONCERN, AND  
(II) APPROVING SALE OF DEBTOR’S ASSETS FREE AND CLEAR OF ALL LIENS,  
CLAIMS, ENCUMBRANCES, AND INTERESTS, AND AUTHORIZING ASSUMPTION  
AND ASSIGNMENT OF EXECUTORY CONTRACTS AND LEASES, AND (III)  
GRANTING RELATED RELIEF**

Premier Cajun Kings, LLC, the debtor and debtor-in-possession in the above-captioned chapter 11 case (the “Debtor”), by its undersigned proposed counsel, pursuant to sections 363 and 365 of Title 11 of the United States Code (11 U.S.C. §§ 101 *et seq.*) (the “Bankruptcy Code”) and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), hereby moves (the “Motion”) for the entry of orders as follows:

- (1) An order, substantially in the form attached hereto as Exhibit A (the “Bidding Procedures Order”):

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<sup>1</sup> The Debtor in this Chapter 11 case and the last four digits of its federal tax identification are Premier Cajun Kings, LLC (3157). The Debtor’s corporate headquarters is located at 7078 Peachtree Industrial Blvd. Suite #800, Peachtree Corners, GA 30071.

- a. Authorizing and approving the Bidding Procedures, substantially in the form of the proposed Bidding Procedures Order attached as **Exhibit A**, in connection with the sale of substantially all of the Debtor's assets (the "Purchased Assets");
  - b. Approving the bid protections for AIM Associates Capital Group, LLC (the "Stalking Horse Bidder") in accordance with the terms of the Asset Purchase Agreement between the parties, a copy of which is attached hereto as **Exhibit B** (the "Stalking Horse Agreement") and the proposed Bidding Procedures;
  - c. Scheduling an auction for the sale of the Purchased Assets (the "Auction");
  - d. Scheduling a hearing (the "Sale Hearing") to consider approval of the proposed sale to the Stalking Horse Bidder or, in the event of an Auction, the winning bidder;
  - e. Approving the procedures for the assumption and assignment of the executory contracts and leases set forth in the Stalking Horse Agreement, as it may be amended (the "Proposed Assumed Contracts"), and determination of amounts necessary to cure any defaults thereunder (the "Cure Costs"), substantially in the form of the assumption and assignment procedures set forth in the Bidding Procedures Order; and
  - f. Granting related relief; and
- (2) An Order (the "Sale Order"), a proposed form of which will be submitted prior to the hearing on the proposed sale, authorizing and approving the following:
- a. The sale of the Purchased Assets free and clear of all liens, claims, encumbrances, and interests;

- b. The assumption and assignment of the Proposed Assumed Contracts in connection with the proposed Sale; and
- c. Granting related relief.

In support of this Motion, the Debtor relies upon and hereby incorporates by reference the *Declaration of David Baker in Support of First-Day Motions* (the “Baker Declaration”)(*Dkt. No. 11*) filed contemporaneously herewith. In further support of this Motion, the Debtor respectfully states as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157(b) and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409, and Local Rule 1073-1(a).
3. The statutory predicates for the relief sought herein are Sections 105(a), 363, and 365 of the Bankruptcy Code.

#### **I. Background**

4. On March 14, 2023 (the “Petition Date”), the Debtor filed a voluntary petition in this Court for relief under chapter 11 of the Bankruptcy Code.
5. The Debtor continues to manage and operate its business as a debtor-in- possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
6. No official committee of unsecured creditors has been appointed.
7. No request for a trustee or examiner has been made in this chapter 11 case.

8. Information regarding the Debtor's business, capital structure, and the circumstances leading to the commencement of this chapter 11 case is set forth in the Baker Declaration. Those facts are incorporated herein by reference.

9. The Debtor was founded in 2018 by Manraj "Patrick" Sidhu, who initially purchased 6 Popeyes Louisiana Kitchen restaurants in the Birmingham, Alabama area in the first quarter of 2018. During the remainder of 2018 and in 2019, Mr. Sidhu purchased 24 additional Popeyes restaurants throughout Alabama, Georgia, and Tennessee. With 30 restaurants, the Debtor achieved sales of more than \$30 million in calendar years 2020 and 2021 and employed up to approximately 500 employees.

10. On May 24, 2022, the Debtor's founder died suddenly and unexpectedly. This terrible event, coupled with economic factors including an increase in borrowing rates and challenging circumstances for retention and hiring of a qualified labor force, caused significant disruption in the Debtor's business.

11. Due to low performance in these circumstances and increasing losses, the Debtor closed 10 of its Popeyes locations in Alabama and Tennessee during the 4<sup>th</sup> quarter of 2022. In 2023 to date, the Debtor closed one additional store.

12. As of the Petition Date, the Debtor has 19 Popeyes stores still operating and 11 closed locations with continuing lease obligations.

#### **Pre-Petition Marketing Efforts**

13. Beginning in January 2022, the Debtor commenced an investment banking process to solicit interest in the purchase of the Debtor's then 30 Popeyes Louisiana Kitchen fast-food restaurants. Notifications of the sale were emailed to 3,320 prospects which resulted in 100 signed nondisclosure agreements. Further due diligence resulted in 7 non-binding offers in a price range

of \$13.75 million to \$26 million. After continued due diligence by interested parties, and noting the Debtor's declining revenue and earnings trends, only one bidder remained with an adjusted offer of \$16 million. Recognizing that the sale process was not developing in the normal course, 15 separate investor groups initially interested in the transaction, were contacted to resubmit bids. In June 2022, it was disclosed to potential bidders that the Debtor's financial statements for prior periods had been misstated. After this disclosure, 4 interested bidders continued due diligence. In August 2022, bids were received in the range of \$4.876 million to \$6 million with various contingencies related to each offer. In September 2022, during the sale process, two low-performing Debtor restaurant locations were closed due to the high level of cash losses incurred. The Debtor continued with the sale process and selected the highest and best bidder at \$6 million and attempted to proceed with a transaction closing process. However, Popeyes Louisiana Kitchen, Inc., the franchisor, rejected the selected bidder and would not allow the transaction to proceed under their franchise brand name, indicating that the low bidder was the preferred potential buyer of the Debtor's operating locations. In November 2022, the Debtor closed an additional 8 locations due to continuing cash losses. The Debtor's negotiations to finalize an acceptable agreement with the bidder preferred by the franchisor continued until immediately before the filing of the Debtor's petition, when a final asset purchase agreement was signed.

#### **PNC's Senior Secured Claim**

14. As of March 10, 2023, the Debtor owed PNC Bank, N.A. ("PNC") the aggregate unpaid principal amount of not less than \$8,217,991.27, consisting of the unpaid principal amount of \$7,410,517.97 for Term Loans, and an additional unpaid principal amount of \$807,473.30 for "DDTL Loans", plus interest and other charges due and payable under the loan agreements between

the parties. PNC's claim is secured by a duly perfected first-priority security interest on substantially all of the Debtor's assets.

**The Stalking Horse Agreement**

15. The Stalking Horse Agreement represents a binding bid to purchase the Purchased Assets for a purchase price of \$4,575,000 subject to adjustments as set forth in the Agreement and further subject to higher and better bids. By this Motion, the Debtor requests authority to provide the Stalking Horse Bidder with typical stalking horse bid protection, in the form of a break-up fee in the amount of \$150,000.00 (the "Breakup Fee").and overbid requirement for Qualified Bidders..

**Proposed Bidding Procedures and Procedures for Assumption and Assignment of Contracts and Leases**

16. The Debtor proposes the following bidding procedures for submission of higher and better bids:

<b>MATERIAL TERMS OF THE BIDDING PROCEDURES</b>
<p><b>A. Indications of Interest.</b> Unless otherwise ordered by the Bankruptcy Court, in order to participate in the bidding process, prior to the Bid Deadline (defined below), each person, other than the Stalking Horse Bidder, who wishes to participate in the bidding process (a "<u>Potential Bidder</u>") must deliver to the Notice Parties (as defined below) to the extent not previously delivered, an executed confidentiality agreement containing standard non-solicitation provisions (to be delivered prior to the distribution of any confidential information by the Debtors to a Potential Bidder) in form and substance satisfactory to the Debtors.</p>
<p><b>B. Due Diligence.</b> Upon execution of a valid confidentiality agreement in form and substance reasonably acceptable to the Debtor, the Debtor will afford any Potential Bidder such due diligence access or additional information as the Debtor, in consultation with its advisors, deem appropriate, in the Debtor's reasonable discretion. The Debtor will limit access to due diligence to those parties it believes, in the exercise of its reasonable judgment, are pursuing the transaction in good faith and are capable of submitting a Qualified Bid (as defined below).</p>
<p><b>C. Bid Deadline</b> – _____ at 5:00 p.m. (prevailing Central time).</p>
<p><b>D. Qualified Bid Requirements.</b></p>

To constitute a Qualified Bid, a bid must:

- a) fully disclose the identity of the Potential Bidder and include contact information for the specific person (s) the Debtor should contact if they have any questions about the Potential Bidder's bid;
- a) state that the Potential Bidder offers to purchase the Purchased Assets or some substantial portion thereof;
- b) include a signed writing that the Potential Bidder's offer is formal, binding, unconditional, and irrevocable until (i) the closing of the transaction with the Successful Bidder (as defined below) and (ii) for two (2) business days after the earlier of the closing of the sale transaction with the Successful Bidder or the termination of the Successful Bid, if such bidder is designated the Back-Up Bidder (as defined below) at the conclusion of the Auction;
- c) confirm that there are no conditions precedent to the Potential Bidder's ability to enter into a definitive agreement and that all necessary internal and shareholder approvals have been obtained prior to the bid;
- d) include a duly authorized and executed copy of a Stalking Horse Agreement (a "Bidder Purchase Agreement"), including the purchase price for the Purchased Assets (the "Purchase Price"), together with all exhibits and schedules thereto, together with copies marked to show any amendments and modifications to the Stalking Horse Agreement and the proposed order to approve the sale; provided, however, that such Bidder Purchase Agreement shall not include any financing or diligence conditions;
- e) include written evidence of sufficient cash on hand to fund the purchase price or sources of immediately available funds that are not conditioned on further third party approvals or commitments, that will allow the Debtor to make a reasonable determination as to the Potential Bidder's financial and other capabilities to consummate the transaction contemplated by the Bidder Purchase Agreement, and such other financial information as may be acceptable to the Debtor in its reasonable discretion (collectively, the "Financials") of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purpose of acquiring the Purchased Assets, the Financials of the Potential Bidder's equity holder(s) or other financial backer(s);
- f) provide for a cash purchase price of at least the Purchase Price *plus* a cash overbid of \$150,000 (collectively, the "Minimum Overbid"), and otherwise has a value to the Debtor, in the Debtor's reasonable business judgment, that is greater or otherwise better than the value offered under the Stalking Horse Agreement, including impact of the liabilities assumed in the Stalking Horse Agreement;

- g) provide a commitment to close the transactions contemplated by the Bidder Purchase Agreement by no later than \_\_\_\_\_, 2023;
- h) identify with particularity which executory contracts and unexpired leases the Potential Bidder wishes to assume and provides for the Potential Bidder to pay related Cure Amount;
- i) contain sufficient information concerning the Potential Bidder's ability to provide adequate assurance of future performance with respect to executory contracts and unexpired leases to be assumed and assigned, as well as other information that the Potential Bidder reasonably expects Popeyes, the Debtor's franchisor, to approve the Potential Bidder as a franchisee.
- j) include an acknowledgement and representation that the bidder: (A) has had an opportunity to conduct any and all required due diligence regarding the Purchased Assets prior to making its offer; (B) has relied solely on its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets in making its bid; (C) did not rely on any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Purchased Assets or the completeness of any information provided in connection therewith or with the Auction (defined below), except as expressly stated in the Stalking Horse Agreement; and (D) is not entitled to any expense reimbursement, breakup fee, or similar type of payment in connection with its bid;
- k) be accompanied by a good faith deposit in the form of a wire transfer, certified check or such other form acceptable to the Debtors, payable to the order of the Debtor (or such other party as the Debtor may determine, including an escrow agent) in an amount equal to no less than five percent (5%) of the proposed Purchase Price.
- l) state that the Potential Bidder agrees to serve as a Back-Up Bidder (as defined below) if such bidder's Qualified Bid is selected as the next highest or otherwise next best bid after the Successful Bidder (as defined below) with respect to the Purchased Assets;
- m) state that the Potential Bidder consents to the jurisdiction of the Bankruptcy Court; and
- n) contain such other information reasonably requested by the Debtor.

17. The Debtor proposes to serve the Bidding Procedures Order by no later than three (3) days after its entry, the Bidding Procedures and the notice of the Sale upon (a) all entities

known to have expressed an interest in a transaction with respect to some or all of the Purchased Assets, (b) all entities known to have asserted any lien, claim, interest or encumbrance in or upon any of the Purchased Assets; (c) the Internal Revenue Service and all state and local taxing authorities in the states in which the Debtors have or may have any tax liability; (d) counsel for PNC; (e) the Bankruptcy Administrator; (f) each counterparty to the Debtor's executory contracts and unexpired leases; and (g) those parties who have filed the appropriate notice requesting notice of all pleadings filed in the Debtor's chapter 11 case. The Debtor also will serve the notice of the Sale by first-class mail, postage prepaid or by email where available, upon all known creditors of the Debtor not included above.

18. The Debtor shall serve by first-class mail, postage prepaid on each non-Debtor counterparty to an executory contract and unexpired lease, including without limitation, an Assumed Contract a cure notice ("Cure Notice") that shall (i) state the cure amounts that the Debtor believes are necessary to assume such executory contract or unexpired lease, including, without limitation, the Assumed Contracts pursuant to section 365 of the Bankruptcy Code (the "Cure Amount"); (ii) notify the non-Debtor party that such party's contract or lease, including any amendments and subordination, non-disturbance, and attornment agreements related to the leases, may be assumed and assigned to a purchaser of the Purchased Assets at the conclusion of the Auction; (iii) state the applicable deadline by which the non-Debtor party shall file an objection to the Cure Amount (a "Cure Amount Objection"), to the assumption and assignment of an Assumed Contract (an "Assumption Objection"), and that the deadline to file a Sale Objection is the Sale Objection Deadline; and (iv) state the date of the Sale Hearing and that Cure Amount Objections, Assumption Objection, and Sale Objections will be heard at the Sale Hearing, or at a later hearing if so determined by the Debtor; provided, however, that the inclusion of a contract, lease or agreement on the Cure Notice shall not constitute an admission that such contract, lease or agreement is an executory contract or unexpired lease. The Debtor reserves all of its rights, claims and causes of action with respect to the contracts, leases and agreements listed on the Cure Notice.

19. Unless a non-Debtor party to any executory contract or unexpired lease files a Cure Amount Objection by the Cure Amount Objection Deadline, then the Cure Amount set forth in the Cure Notice shall be binding upon the non-Debtor counterparty to such agreement for all purposes and will constitute a final determination of the Cure Amount required to be paid in connection with the assumption and assignment of such agreement. In addition, all counterparties to the Proposed Assumed Contracts who fail to file an objection shall be (i) forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts with respect to such Assumed Contract, and the Debtor, the Stalking Horse Bidder or the Successful Bidder, as the case may be, shall be entitled to rely solely upon the Cure Amount set forth in the Cure Notice, and (b) be forever barred and estopped from asserting or claiming against the Debtor, the Stalking Horse Bidder or the Successful Bidder, as the case may be, or any other assignee of the Assumed Contract that any additional amounts are due or defaults exist, or conditions to assumption and assignment must be satisfied with respect to such Assumed Contract. Assumed Contract. Any objection to the proposed assumption and assignment of an Assumed Contract on any grounds may be determined at the Sale Hearing.

20. The Debtor submits that the notice to be provided through the Sale Notice and the method of service and publication proposed herein constitutes good and adequate notice of the sale of the Purchased Assets and the proceedings to be followed with respect thereto.

### **Sale Hearing**

21. At the Sale Hearing, the Debtor will seek approval of (i) the sale of the Purchased Assets to the Successful Bidder free and clear of all liens, claims, interests and encumbrances pursuant to section 363 of the Bankruptcy Code (except as otherwise provided in the Stalking Horse Agreement or Bidder Purchase Agreement, as applicable), with all liens, claims, interests and encumbrances to attach to the net sale proceeds with the same validity and in the same order of priority as they attached to the Purchased Assets prior to the Sale; and (ii) the assumption by the Debtor and assignment to the Successful Bidder of the Purchased Contracts pursuant to section 365 of the Bankruptcy Code. The Debtor will submit and

present additional evidence, as necessary, at the Sale Hearing demonstrating that the Sale is fair, reasonable, in the best interest of the Debtor's creditors and the Debtor's bankruptcy estate.

### **BASIS FOR RELIEF REQUESTED**

22. The Debtor submits that the proposed Bidding Procedures are appropriate under the circumstances of this case, to provide an opportunity for Potential Bidders to submit higher and better offers for the Purchased Assets, while also recognizing that an expeditious sale process is essential to maximize the value of the Debtor's assets. The Debtor currently is operating at a loss and has limited funds to continue operations prior to the targeted closing date. The proposed bid procedures reflect the fact that the best interest of creditors will be served by structuring the sale process to be based on a Sale Order being entered by no later than 60 days after the Petition Date, as required by the terms of the Stalking Horse Agreement (Section 10.3(f)).

23. The proposed bid protections for the Stalking Horse Bidder is well within the range of reasonable similar protections routinely approved to bidders who establish a floor for the sale of substantial assets by chapter 11 debtors. *See, e.g., In re Carraway Methodist Health Systems*, No. 06-03501-TOM-11 (Bankr. N.D. Ala. Oct. 6, 2006); *In re Bill Heard Enterprises, Inc.*, No. 08-83029-JAC-11 (Bankr. N.D. Ala. Oct. 15, 2008).

24. Similar bidding procedures have been approved in this and other courts. *See, e.g., In re Walter Energy, Inc.*, Case No. 15-02741-TOM-11 (Bankr. N.D. Ala. November, 25 2015); *In re Moore-Handley, Inc.*, Case No. 09-04198-TBB-11 (Bankr. N.D. Ala. Sept. 4, 2009); *In re Great Atlantic & Pacific Tea Company, Inc.*, Case No. 15-23007 (SCC) (Bankr. S.D.N.Y. Aug. 11, 2015); *In re Synagro Technologies, Inc.*, Case No. 13-11041 (BLS) Bankr. D. Del. May 13, 2013).

25. Ample authority exists for approval of the Sale contemplated by this Motion. Section 363 of the Bankruptcy Code provides, in relevant part, that “[t]he trustee, after notice and a hearing, may use,

sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of a debtor’s estate, courts have approved the authorization of a sale of a debtor’s assets if such sale is based upon the sound business judgment of the debtor. *See, e.g., Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (citing *In re Schipper*, 933 F.2d 513 (7th Cir. 1991)); *In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992); *Stephen Indus., Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986); *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983).

26. Courts typically consider the following factors in determining whether a proposed sale satisfies this standard: (a) whether a sound business justification exists for the sale; (b) whether adequate and reasonable notice of the sale was provided to interested parties; (c) whether the sale will produce a fair and reasonable price for the property; and (d) whether the parties have acted in good faith. *See In re Decora Indus., Inc.*, 2002 WL 32332749, at \*2 (D. Del. May 20, 2002) (citing *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991)). Where a debtor demonstrates a valid business justification for a decision, it is presumed that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *In re Integrated Res., Inc.*, 147 B.R. at 656 (quoting *Van Gorkum*, 488 A.2d 858, 872 (Del. 1985)).

27. A sound business purpose for the sale of a debtor’s assets outside the ordinary course of business exists where such sale is necessary to preserve the value of the estate for the benefit of creditors and interest holders. *See, e.g., In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143 (3d Cir. 1986); *In re Lionel Corp.*, 722 F.2d at 1063; *In re Food Barn Stores, Inc.*, 107 F.3d at 564-65 (recognizing the paramount goal of any proposed sale of property of estate is to maximize value).

28. In the present case, there are compelling and strong business justifications for the sale of the Purchased Assets as described herein. An orderly but expeditious sale of the Purchased Assets is critical to maximizing the value of the Debtor’s assets. First, the Debtor engaged in a robust investment banking process prior to the Petition Date, and the Stalking Horse Bidder was the only bidder given approval by

Popeyes, the franchisor, to purchase the Debtor's assets and operate Popeyes restaurants as a franchisee. Second, the Debtor, with a number of its stores now closed, is operating at a loss, and does not have sufficient funds to maintain operations and sustain the Debtor as a going concern for much longer.

29. The Noticing Procedures described above are reasonably calculated to provide all of the Debtor's known creditors and all other parties in interest with adequate, timely notice of the proposed Sale, Bidding Procedures, Auction and Sale Hearing.

30. Section 363(m) of the Bankruptcy Code protects a good faith purchaser's interest in property purchased from a debtor notwithstanding that the sale conducted under section 363(b) is later reversed or modified on appeal. Specifically, section 363(m) of the Bankruptcy Code provides that:

The reversal or modification on appeal of an authorization under [section 363(b) of the Bankruptcy Code]...does not affect the validity of a sale...to an entity that purchased...such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale...were stayed pending appeal.

11 U.S.C. § 363(m).

31. Section 363(m) of the Bankruptcy Code fosters the “policy of not only affording finality to the judgment of the [B]ankruptcy [C]ourt, but particularly to give finality to those orders and judgments upon which third parties rely.” *Reloeb Co. v. LTV Corp (In re Chateaugay Corp.*, No. 92 Civ. 7054 (PKL), 1993 U.S. Dist. Lexis 6130, at \*9 (S.D.N.Y. May 10, 1993) (quoting *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d at 147). *See also Allstate Ins. Co. v. Hughes*, 174 B.R. 884, 888 (S.D.N.Y. 1994) (“Section 363(m) . . . provides that good faith transfers of property will not be affected by the reversal or modification on appeal of an unstayed order, whether or not the transferee knew of the pendency of the appeal”).

32. The Debtor submits that the Stalking Horse Bidder, or any other Successful Bidder, is or would be a “good faith purchaser” within the meaning of section 363(m) of the Bankruptcy Code. The Debtor and the Stalking Horse Bidder have entered into the Stalking Horse Agreement without collusion,

in good faith and through extensive arm's length negotiations. Indeed, the Stalking Horse Bidder and the Debtor have engaged separate counsel and other professional advisors to represent their respective interests in the negotiation of the Stalking Horse Agreement and in the sale process generally. To the best of the Debtor's knowledge, information and belief, no party has engaged in any conduct that would cause or permit the Stalking Horse Agreement to be set aside under section 363(m) of the Bankruptcy Code.

33. Further, as set forth above, the Bidding Procedures are designed to produce a fair and transparent competitive bidding process. Any asset purchase agreement with a Successful Bidder executed by the Debtors will be negotiated at arm's length and in good faith. Accordingly, the Debtors seek a finding that any Successful Bidder (including the Stalking Horse Bidder) is a good faith purchaser and is entitled to the full protections afforded by section 363(m) of the Bankruptcy Code.

34. Based on the foregoing, the Debtor submits that that the proposed Sale is a sound exercise of the Debtor's business judgment and should be approved as a good faith transaction.

35. The only way to attract a reasonable offer, and the best offers, is for the Purchased Assets to be sold free and clear of any and all liens, claims, interests and other encumbrances, in accordance with section 363(f) of the Bankruptcy Code, with any such liens, claims, interests and encumbrances attaching to the net proceeds of the Sale. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests and encumbrances if any one of the following conditions is satisfied:

- a) applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- b) such entity consents;
- c) such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property;
- d) such interest is in bona fide dispute; or

- e) such entity could be compelled, in legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f); *see also In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002)

(“Section 363(f) is written in the disjunctive, not the conjunctive, and if any of the five conditions are met, the debtor has the authority to conduct the sale free and clear of all liens.”); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (same).

36. The Debtor submits that the sale of the Purchased Assets free and clear of liens, claims, interests and encumbrances will satisfy one or more of the requirements under section 363(f) of the Bankruptcy Code. To the extent that a party objects to the Sale on the basis that it holds a prepetition lien or encumbrance on the Purchased Assets, the Debtors believe that any such party could be compelled to accept a monetary satisfaction of such claims, under section 363(f)(4) of the Bankruptcy Code.

37. Section 365(a) of the Bankruptcy Code provides that a debtor in possession “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). Courts employ the business judgment standard in determining whether to approve a debtor’s decision to assume or reject an executory contract or unexpired lease. *See, e.g., In re Market Square Inn, Inc.*, 978 F.2d 116, 121 (3d Cir. 1992) (assumption or rejection of lease “will be a matter of business judgment by the bankruptcy court”); *In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (finding that a debtor’s decision to assume or reject executory contract is governed by business judgment standard and may only be overturned if decision is product of bad faith, whim, or caprice). The “business judgment” test in this context only requires that a debtor demonstrate that assumption or rejection of an executory contract or unexpired lease benefits the estate. *See Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989).

38. Any assumption of the Proposed Assumed Contracts is an exercise of the Debtor’s sound business judgment because the transfer of such Contracts is necessary to the Debtor’s ability to obtain the best value for the Purchased Assets. The assumption and assignment of the Proposed Assumed

Contracts is a critical component of the Stalking Horse Agreement. Given that consummation of the Sale is critical to the Debtors' efforts to maximize value for their estates and creditors, the Debtor's assumption of the Proposed Assumed Contracts is an exercise of sound business judgment and, therefore, should be approved.

39. The consummation of the Sale, which involves the assignment of the Proposed Assumed Contracts will be contingent upon the Debtors' compliance with the applicable requirements of section 365 of the Bankruptcy Code. Section 365(b)(1) of the Bankruptcy Code requires any outstanding defaults under the Purchased Contracts to be assumed be cured or that the Debtors provide adequate assurance that such defaults will be promptly cured. The Debtors' assumption and assignment of the Purchased Contracts will be contingent upon payment of the Cure Amount and effective only upon the closing of the Sale. As set forth above, the Debtors propose to file with the Court and serve on each Counterparty a Cure Notice, which will set forth the Debtors' good faith calculations of Cure Amount with respect to each Contract and Lease listed on such Cure Notice. Counterparties will have a meaningful opportunity to raise any objections to the proposed assumption of their respective Contracts in advance of the Sale Hearing.

40. Pursuant to section 365(f)(2) of the Bankruptcy Code, a debtor may assign an executory contract if "adequate assurance of future performance by the assignee of such contract or lease is provided." The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." See *Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988) (citation omitted); see also *In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean an absolute assurance that debtor will thrive and pay rent); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) (finding that, "[a]lthough no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance."). Among other things, adequate assurance may be provided by evidencing the assignee's financial health and experience in managing the type of enterprise or property assigned. See *In re Bygaph, Inc.*, 56 B.R. 596,

605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when the prospective assignee of a lease has financial resources and has expressed willingness to devote sufficient funding to the business to give it a strong likelihood of succeeding).

41. As set forth above and in the Bidding Procedures, for a bid to qualify as a Qualified Bid, a Potential Bidder must include with its bid information regarding its ability (and the ability of its designated assignee, if applicable) to perform under applicable Proposed Assumed Contracts. Each affected Counterparty will have an opportunity to object to the ability of the Successful Bidder to provide adequate assurance as provided in the Bidding Procedures Order. To the extent necessary, the Debtor will present evidence at the Sale Hearing to show the financial wherewithal, willingness and ability of the Successful Bidder to perform under the Proposed Assumed Contracts.

**WAIVER OF BANKRUPTCY RULES 6004(a), 6004(h) AND 6006(d)**

42. The Debtor requests that the Court (a) find that the notice of the Motion is adequate under Bankruptcy Rule 6004(a) under the circumstances and (b) waive the fourteen-day stay requirements under Bankruptcy Rules 6004(h) and 6006(d). As described above, the Debtor needs the flexibility to close the Sale promptly after all closing conditions have been satisfied or waived. To require the Debtor to effectively be liable under the Assumed Contracts for an extra 14 days and to delay the closing and resulting pay down of the Debtor's secured obligations will burden the estate and require unnecessary expenditure of the Debtor's resources. Accordingly, given the lack of prejudice to any party, the Debtor respectfully requests that the Bidding Procedures Order, the Sale Order, and any order authorizing the assumption and assignment of a Proposed Assumed Contract in connection with the Sale be effective immediately upon entry and that the fourteen day stay imposed by Bankruptcy Rules 6004(h) and 6006(d) be waived.

**WHEREFORE**, the Debtor respectfully requests that the Court (i) enter the Bidding Procedures Order and, after the Sale Hearing, the Sale Order, substantially in the forms accompanying this Motion, granting the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: March 15, 2023

**HOLLAND & KNIGHT, LLP**

/s/ Jesse S. Vogtle, Jr.

Jesse S. Vogtle, Jr.

Eric T. Ray

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Birmingham, Alabama 35203

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-and-

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*Proposed Counsel for Debtor and Debtor-in-Possession*

**EXHIBIT A**

**Bidding Procedures Order**

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

In re:

PREMIER CAJUN KINGS, LLC,<sup>1</sup>

Debtor.

Chapter 11

Case No. 23-00656 (DSC)

**ORDER APPROVING BIDDING PROCEDURES FOR THE SALE  
OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS AND  
BID PROTECTIONS FOR STALKING HORSE BIDDER, AND  
SCHEDULING AUCTION AND HEARING ON APPROVAL OF SALE**

Upon consideration of the motion (the "Motion")<sup>2</sup> of the Debtor for entry of an order approving bidding procedures for the sale of the Debtor's Purchased Assets and approval of certain bid protections for the Stalking Horse Bidder, scheduling an Auction for the sale and a hearing on approval of the sale and related transactions, and approving the procedures proposed for the assumption and assignment of executory contracts and unexpired leases in connection with the sale, and upon consideration of all pleadings related thereto, including the Baker Declaration; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (N), and (O); and it appearing that venue of this proceeding and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief

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<sup>1</sup> The Debtor in this Chapter 11 case and the last four digits of its federal tax identification are Premier Cajun Kings, LLC (3157). The Debtor's corporate headquarters is located at 7078 Peachtree Industrial Blvd. Suite #800, Peachtree Corners, GA 30071.

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

requested in the Motion is in the best interest of the Debtor, its estate, and its creditors; and after due deliberation and good and sufficient cause appearing therefor;

**IT IS FURTHER FOUND AND DETERMINED THAT:**

- A. The Debtor has articulated good and sufficient business reasons for the Court to (i) approve the Bidding Procedures and the proposed bid protections for the Stalking Horse Bidder, and the proposed assumption and assignment procedures, in the form and manner of the proposed notice of the Sale, the Cure Notice, and other notices of the Motion, the Auction, and the Sale Hearing, (ii) set the date for the Auction, the Sale Hearing, and the other dates set forth herein.
- B. In light of the circumstances and the nature of the relief requested, sufficient and adequate notice of the Bidding Procedures has been given, and no further notice thereof is required. The notice provided by the Debtor is reasonably calculated to provide interested parties with timely and proper notice thereof and no further notice is necessary or required.
- C. The Bidding Procedures attached hereto as **Exhibit 1** and the bid protections are fair, reasonable and appropriate and represent the best method for maximizing the value of the Debtor's estate, taking into account the size and nature of the transactions, the efforts expended by the Stalking Horse Purchaser, and the marketing efforts previously made by the Debtor.

**IT IS HEREBY ORDERED THAT, ADJUDGED, AND DECREED THAT:**

- 1. The Motion is granted with respect to the matters set forth herein, including approval of the Bidding Procedures.

### **The Bid Deadline**

2. A Potential Bidder who wishes to make a Bid for the Purchased Assets, or any portion thereof shall deliver its Bid in a form and as required by the Bidding Procedures, to: (a) the Debtor, c/o Aurora Management Partners, 112 South Tryon Street, Suite 1770, Charlotte, NC 28284, Attention David Baker, CRO; [dbaker@auroramp.com](mailto:dbaker@auroramp.com); (b) counsel for the Debtor, Gary H. Leibowitz, Esquire, Cole Schotz P.C., 300 E. Lombard Street, Suite 1111, Baltimore, MD 21202, [gleibowitz@coleschotz.com](mailto:gleibowitz@coleschotz.com), and Jesse S. Vogtle, Jr., Esquire, Holland & Knight LLP, LLP, Harbert Tower, 1901 6<sup>th</sup> Avenue North, Suite 1400, Birmingham, Alabama 35203, [Jesse.Vogtle@hkllaw.com](mailto:Jesse.Vogtle@hkllaw.com); and (c) counsel for PNC Bank, N.A. (“PNC”), John E. Lucian, Esquire, BlankRome, One Logan Square, 130 North 18th Street, Philadelphia, PA 19103, [john.lucian@blankrome.com](mailto:john.lucian@blankrome.com) (collectively, the “Bid Notice Parties”).

### **Notice of the Sale and the Sale Hearing**

3. By no later than three (3) calendar days after entry of this Order, the Debtor shall serve or cause to be served this Order, the Bidding Procedures, the Sale Notice attached hereto as **Exhibit 2** by first-class mail, postage prepaid or by email where available, upon (a) all entities known to have expressed an interest in a transaction with respect to some or all of the Purchased Assets during the past six (6) months; (b) all entities known to have asserted any lien, claim, interest or encumbrance in or upon any of the Purchased Assets; (c) the Internal Revenue Service; (d) all state and local taxing authorities in the states in which the Debtor has or may have any tax liability; (e) counsel to the PNC; (f) the Bankruptcy Administrator; (g) those parties who have filed the appropriate notice requesting notice of all pleadings filed in the Chapter 11 Cases; and (h) and upon all other known creditors and holders of equity interests in the Debtor.

4. The Sale Hearing to approve the sale of the Purchased Assets shall be held on \_\_\_\_\_ (Prevailing Central Time).

5. Objections, if any, to the sale of the Purchased Assets (“Sale Objection”) must be filed with the Clerk of this Court, 1800 Fifth Avenue North, Birmingham, AL 35203 or electronically via the Court’s CM/ECF system, on or before \_\_\_\_\_, 2023 at 4:00 p.m. (Prevailing Central Time) (the “Sale Objection Deadline”) and served on the Bid Notice Parties at their respective addresses set forth above and the Office of the Bankruptcy Administrator, c/o Jon Dudeck, Esq., ([jon\\_dudeck@alnba.uscourts.gov](mailto:jon_dudeck@alnba.uscourts.gov)) Rachel Webber, Esq. ([rachel\\_webber@alnba.uscourts.gov](mailto:rachel_webber@alnba.uscourts.gov)) 1800 Fifth Avenue North, Birmingham, AL 35203. Failure to file a Sale Objection on or before the Sale Objection Deadline shall be deemed to be consent for purposes of section 363(f) of the Bankruptcy Code.

#### **The Auction**

6. If the Debtor determines that it received one or more Qualified Bids by the Bid Deadline, the Debtor shall conduct an auction (the “Auction”) with respect to the Purchased Assets, which shall take place on \_\_\_\_\_ at 10:00 a.m. (Prevailing Central Time), at the offices of Holland & Knight, LLP, Harbert Tower, 1901 6<sup>th</sup> Avenue North, Suite 1400, Birmingham, Alabama 35203, or such other time or place as the Debtor may designate by a notice filed with this Court at least 24 hours before the Auction and served on all Qualified Bidders, the Stalking Horse Purchaser and its counsel, PNC’s counsel, and the Bankruptcy Administrator. The Notice shall include copies of all Qualified Bids and designate which Qualified Bid will be the opening bid at the Auction.

7. Only the Debtor, PNC, the Stalking Horse Purchaser and any other Qualified Bidder, and the Bankruptcy Administrator, along with their representatives and counsel, and such other parties as the Debtor shall determine, may attend the Auction.

8. The Stalking Horse Purchaser and such other Qualified Bidders will be entitled to make any bids at the Auction. The Debtor and its professionals shall direct and preside over the Auction and the Auction shall be transcribed. The Stalking Horse Purchaser (in its capacity as a Qualified Bidder), and each Qualified Bidder participating in the Auction must confirm that it (a) has not engaged in any collusion with respect to the bidding or sale of any of the assets described herein and (b) has reviewed, understands and accepts the Bidding Procedures.

9. The Debtor may (I) select, in its business judgment, pursuant to the Bidding Procedures, the highest or otherwise best offer(s) and the Successful Bidder or Bidders, and (II) reject any bid that, in the Debtor's business judgment, is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules or the Bidding Procedures or (c) contrary to the best interests of the Debtor and its estate.

10. The Debtor shall file notice of the identity of the Successful Bidder and Back-up Bidder, and the amount of their bids, with the Court by no later than \_\_\_\_\_ (prevailing Central Time). The same day, the Debtor shall serve such notice by fax or email to all contract and lease counterparties and to all creditors who have requested the same in writing and provided their fax number or email address, as applicable, to Debtor's counsel on or before that date and time. The Debtor may not designate the Stalking Horse Bidder as a Back-up Bidder unless Stalking Horse Bidder consents to serving as Back-up Bidder.

11. Notwithstanding the possible applicability of Bankruptcy Rules 6003, 6004, 7062 or 9014, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

**Assumption and Assignment Procedures**

12. The Assumption and Assignment Procedures are APPROVED as set forth herein.

13. The Debtor shall serve by first-class mail, postage prepaid on each non-Debtor counterparty to an executory contract and unexpired lease, including without limitation, an Assumed Contract, a cure notice substantially in the form attached hereto as **Exhibit 3** (the “Cure Notice”) that shall (i) state the cure amount that the Debtors believe is necessary to assume each executory contract or unexpired lease, including, without limitation, the Assumed Contracts, pursuant to section 365 of the Bankruptcy Code (the “Cure Amount”); (ii) notify the non-Debtor party that such party’s contract or lease, including any amendments and subordination, non-disturbance and attornment agreements related to the leases, may be assumed and assigned to a purchaser of the Purchased Assets at the conclusion of the Auction; (iii) state the applicable deadline by which the non-Debtor party must file an objection to the Cure Amount (a “Cure Amount Objection”), to the assumption and assignment of an Assumed Contract to the Purchaser (an “Assumption Objection”), and notifying the non-Debtor party that the deadline to file a Sale Objection is the Sale Objection Deadline; and (iv) state the date of the Sale Hearing and that Cure Amount Objections, Assumption Objection, and Sale Objections will be heard at the Sale Hearing, or at a later hearing if so determined by the Debtors in consultation with the Purchaser or the Successful Bidder (as applicable); provided, however, that the inclusion of a contract, lease or agreement on the Cure Notice shall not constitute an admission that such contract, lease or agreement is an executory contract or unexpired lease or that such contract,

lease or agreement will be assumed and assigned to the Purchaser or the Successful Bidder (as applicable). The Debtor reserves all of its rights, claims and causes of action with respect to the contracts, leases and agreements listed on the Counterparties Cure Notice.

14. Any objection to the Cure Amount must be filed with the Court and served so as to be received on or before \_\_\_\_\_ at 4:00 p.m. (Prevailing Central Time) (the “Cure Amount Objection Deadline”) by the Bid Notice Parties and all creditors and other parties who have filed the appropriate notice requesting notice of all pleadings filed in this chapter 11 case.

15. Unless a non-Debtor party to any executory contract or unexpired lease, including an unexpired real property lease, files a Cure Amount Objection by the Cure Amount Objection Deadline, then the Cure Amount set forth in the Counterparties Cure Notice shall be binding upon the non-Debtor counterparty to such agreement for all purposes and will constitute a final determination of the Cure Amount required to be paid in connection with the assumption and assignment of such agreement. In addition, all counterparties to the Assumed Contracts who fail to file an objection shall be (i) forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts with respect to such Assumed Contract, and the Debtor, the Stalking Horse Purchaser or the Successful Bidder, as the case may be, shall be entitled to rely solely upon the Cure Amount set forth in the Cure Notice, and (b) be forever barred and estopped from asserting or claiming against the Debtor, the Stalking Horse Purchaser or the Successful Bidder, as the case may be, or any other assignee of the Assumed Contract that any additional amounts in excess of the amounts set forth in the Cure Notice, are due or defaults exist, or conditions to assumption and assignment must be satisfied with respect to such Assumed Contract.

16. In the event that the Debtor and the non-Debtor party cannot resolve the Cure Amount, the Debtor shall segregate any disputed Cure Amounts (“Disputed Cure Amounts”) pending the resolution of any such disputes by the Court or mutual agreement of the parties.

17. The Debtor shall (a) within 48 hours of receipt of a Qualified Bid from a Bidder (other than the Stalking Horse Purchaser) and (b) with respect to the Stalking Horse Purchaser, by no later than \_\_\_\_\_ (the later of (a) and (b), the “Adequate Assurance Deadline”), provide the necessary financial information to demonstrate that the Qualified Bidder or Stalking Horse Purchaser, as applicable, can provide adequate assurance of future performance under Section 365 of the Bankruptcy Code (the “Adequate Assurance Information”) to those counterparties to the Assumed Contracts (or their counsel) who have (x) submitted a written request (by e-mail to Debtor’s counsel is acceptable) for Adequate Assurance Information and (y) confirmed in writing to the Debtor’s counsel (by e-mail is acceptable) their agreement to keep such Adequate Assurance Information strictly confidential and use it solely for the purpose of evaluating whether a Qualified Bidder or the Stalking Horse Purchaser has provided adequate assurance of future performance under the applicable Assumed Contract; provided, however, that the Stalking Horse Purchaser or Qualified Bidder, as applicable, may require the counterparties to the applicable Assumed Contract to execute confidentiality agreements prior to the remittance of any confidential, non-public information to such counterparty.

18. Any objection (an “Assumption Objection”) to the provision of adequate assurance of future performance or the assumption and assignment to the Stalking Horse Purchaser of an executory contract and unexpired lease, including, without limitation, an Assumed Contract must be filed with the Court and served on the Cure Amount Notice Parties so as to be received on or before \_\_\_\_\_ (Prevailing Central Time) (the “Assumption

Objection Deadline”). Any such objection must also state the basis therefor. If a non-Debtor party to any executory contract or unexpired lease fails to object to the assumption or assignment and provision of adequate assurance of future performance by the Assumption Objection Deadline or at the Sale Hearing, as the case may be, such counterparty shall be forever barred from raising any such objection. Assumption Objections may be resolved by the Court at the Sale Hearing, or at a separate hearing either before the Sale Hearing or after the Sale Hearing. Any counterparty to an executory contract or unexpired lease, including, without limitation, an Assumed Contract, that fails to timely file and serve an Assumption Objection shall be forever barred from disputing the assumption and assignment of such Assumed Contract to the Stalking Horse Purchaser or to the Successful Bidder or seeking adequate assurance of future performance. If the Debtor elects to exclude an Assumed Contract pursuant to Section 4.2(a) of the Stalking Horse Agreement, the Debtor shall provide the Stalking Horse Bidder and Qualified Bidders with notice of the excluded Assumed Contract three business days before the Auction.

19. Notwithstanding anything to the contrary herein, at any time before the Auction, the Stalking Horse Purchaser or any Qualified Bidder who becomes the Successful Bidder, as the case may be, shall have the right to exclude any of the Assumed Contracts from the Purchased Assets (an “Excluded Contract”) to the extent permitted in the Stalking Horse Agreement, and any such Excluded Contract shall constitute an Excluded Asset (as defined in the Asset Purchase Agreement) and shall not constitute, for any purpose whatsoever, a Purchased Asset and the Purchase Price reduced to the extent permitted in the Stalking Horse Agreement; provided, however, that any Excluded Contract nevertheless may be assumed and assigned, at the Successful Bidder’s (including Purchaser’s) written request to Debtor’s counsel made no later than the Closing (as defined in the Asset Purchase Agreement) (the “Subsequently Added

Contract”) unless alternative mutual arrangements are made between the Debtor and the Successful Bidder (including Purchaser); and provided that any Excluded Contract that does not become a Subsequently Added Contract shall be deemed rejected pursuant to section 365(a) of the Bankruptcy Code effective as of the start of the Auction. Neither the Stalking Horse Purchaser nor the Successful Bidder, as applicable, shall incur any liability, obligation, or debt in connection with or related to any such Excluded Contract that constitutes an Excluded Asset.

20. The Breakup Fee in the amount of \$150,000 is hereby approved. The Debtor shall be required to pay the Breakup Fee to the Stalking Horse Purchaser to the extent due and payable under the Stalking Horse Agreement in the event the Debtor completes a sale of the Purchased Assets to a Successful Bidder other than the Stalking Horse Purchaser. The Debtor shall pay the Breakup Fee to the Stalking Horse Bidder three business days after the closing the sale of the Purchased Assets to the Successful Bidder to the extent due and payable.

21. This Court shall retain exclusive jurisdiction over any and all matters arising from the interpretation or implementation of this Order.

Dated: \_\_\_\_\_, 2023  
Birmingham, Alabama

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D. SIMS CRAWFORD  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT I**

**Bidding Procedures**

**MATERIAL TERMS OF THE BIDDING PROCEDURES**

- A. Indications of Interest.** Unless otherwise ordered by the Bankruptcy Court, in order to participate in the bidding process, prior to the Bid Deadline (defined below), each person, other than the Stalking Horse Bidder, who wishes to participate in the bidding process (a “Potential Bidder”) must deliver to the Notice Parties (as defined below) to the extent not previously delivered, an executed confidentiality agreement containing standard non-solicitation provisions (to be delivered prior to the distribution of any confidential information by the Debtors to a Potential Bidder) in form and substance satisfactory to the Debtors.
- B. Due Diligence.** Upon execution of a valid confidentiality agreement in form and substance reasonably acceptable to the Debtor, the Debtor will afford any Potential Bidder such due diligence access or additional information as the Debtor, in consultation with its advisors, deem appropriate, in the Debtor’s reasonable discretion. The Debtor will limit access to due diligence to those parties it believes, in the exercise of its reasonable judgment, are pursuing the transaction in good faith and are capable of submitting a Qualified Bid (as defined below).
- C. Bid Deadline** – \_\_\_\_\_ at 5:00 p.m. (prevailing Central time).
- D. Qualified Bid Requirements.**
- To constitute a Qualified Bid, a bid must:
- (1) fully disclose the identity of the Potential Bidder and include contact information for the specific person (s) the Debtor should contact if they have any questions about the Potential Bidder’s bid;
  - (2) state that the Potential Bidder offers to purchase the Purchased Assets or some substantial portion thereof;
  - (3) include a signed writing that the Potential Bidder’s offer is formal, binding, unconditional, and irrevocable until (i) the closing of the transaction with the Successful Bidder (as defined below) and (ii) for two (2) business days after the earlier of the closing of the sale transaction with the Successful Bidder or the termination of the Successful Bid, if such bidder is designated the Back-Up Bidder (as defined below) at the conclusion of the Auction;

(4) confirm that there are no conditions precedent to the Potential Bidder's ability to enter into a definitive agreement and that all necessary internal and shareholder approvals have been obtained prior to the bid;

(5) include a duly authorized and executed copy of a Stalking Horse Agreement (a "Bidder Purchase Agreement"), including the purchase price for the Purchased Assets (the "Purchase Price"), together with all exhibits and schedules thereto, together with copies marked to show any amendments and modifications to the Stalking Horse Agreement and the proposed order to approve the sale; provided, however, that such Bidder Purchase Agreement shall not include any financing or diligence conditions;

(6) include written evidence of sufficient cash on hand to fund the purchase price or sources of immediately available funds that are not conditioned on further third party approvals or commitments, that will allow the Debtor to make a reasonable determination as to the Potential Bidder's financial and other capabilities to consummate the transaction contemplated by the Bidder Purchase Agreement, and such other financial information as may be acceptable to the Debtor in its reasonable discretion (collectively, the "Financials") of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purpose of acquiring the Purchased Assets, the Financials of the Potential Bidder's equity holder(s) or other financial backer(s);

(7) provide for a cash purchase price of at least the Purchase Price *plus* a cash overbid of \$150,000 (collectively, the "Minimum Overbid"), and otherwise has a value to the Debtor, in the Debtor's reasonable business judgment, that is greater or otherwise better than the value offered under the Stalking Horse Agreement, including impact of the liabilities assumed in the Stalking Horse Agreement;

(8) provide a commitment to close the transactions contemplated by the Bidder Purchase Agreement by no later than \_\_\_\_\_, 2023;

(9) identify with particularity which executory contracts and unexpired leases the Potential Bidder wishes to assume and provides for the Potential Bidder to pay related Cure Amount;

(10) contain sufficient information concerning the Potential Bidder's ability to provide adequate assurance of future performance with respect to executory contracts and unexpired leases to be assumed and assigned, as well as other information that the Potential Bidder reasonably expects Popeyes, the Debtor's franchisor, to approve the Potential Bidder as a franchisee.

(11) include an acknowledgement and representation that the bidder: (A) has had an opportunity to conduct any and all required due diligence regarding the Purchased Assets prior to making its offer; (B) has relied solely on its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets in making its bid; (C) did not rely on any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Purchased Assets or the completeness of any information provided in connection therewith or with the Auction (defined below), except as expressly stated in the Stalking Horse Agreement; and (D) is not

entitled to any expense reimbursement, breakup fee, or similar type of payment in connection with its bid;

(12) be accompanied by a good faith deposit in the form of a wire transfer, certified check or such other form acceptable to the Debtors, payable to the order of the Debtor (or such other party as the Debtor may determine, including an escrow agent) in an amount equal to no less than five percent (5%) of the Purchase Price;

(13) state that the Potential Bidder agrees to serve as a Back-Up Bidder (as defined below) if such bidder's Qualified Bid is selected as the next highest or otherwise next best bid after the Successful Bidder (as defined below) with respect to the Purchased Assets;

(14) state that the Potential Bidder consents to the jurisdiction of the Bankruptcy Court; and

(15) contain such other information reasonably requested by the Debtor.

**EXHIBIT 2**

**Notice of Sale**

**[to be added]**

**EXHIBIT 3**

**Cure Notice**

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

In re:

PREMIER CAJUN KINGS, LLC,<sup>3</sup>

Debtor.

Chapter 11

Case No. 23-00656 (DSC)

**NOTICE TO COUNTERPARTIES TO EXECUTORY CONTRACTS AND UNEXPIRED  
LEASES OF THE DEBTOR THAT MAY BE ASSUMED AND ASSIGNED**

**You are receiving this notice because you may be a counterparty to a contract or lease with Premier Cajun Kings, LLC, the debtor and debtor in possession in this bankruptcy case (the “Debtor”). Please read this notice carefully as your rights may be affected by the transactions described herein.**

**PLEASE TAKE NOTICE** that on March \_\_, 2023, the Debtor filed the *Motion of the Debtor and Debtor in Possession for Orders (I)(A) Approving Bidding Procedures for Sale of Substantially All of the Debtors’ Assets and Bid Protections for Stalking Horse Bidder, (B) Approving Assumption and Assignment Procedures for Executory Contracts and Unexpired Leases, and (C) Scheduling an Auction for, and Hearing to Approve,, Sale of Substantially All of the Debtors’ Asset as a Going Concern, and (II) Approving Sale of Debtor’s Assets Free and Clear of Liens, Claims, Encumbrances and Interests, and Authorizing Assumption and Assignment of Executory Contracts and Leases, and (III) Granting Related Relief* (the “Motion”).<sup>4</sup>

<sup>3</sup> The Debtor in this Chapter 11 case and the last four digits of its federal tax identification are Premier Cajun Kings, LLC (3157). The Debtor’s corporate headquarters is located at 7078 Peachtree Industrial Blvd. Suite #800, Peachtree Corners, GA 30071.

<sup>4</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion or the Bidding Procedures, as applicable.

**PLEASE TAKE FURTHER NOTICE** that, on March \_\_\_\_\_, 2023, the Court entered an Order (the “Bidding Procedures Order”) approving, among other things, the Bidding Procedures requested in the Motion and attached to the Bidding Procedures Order, which governs (i) the bidding process for the sale of all or substantially all of the assets (the “Purchased Assets”) of the Debtor and (ii) procedures for the assumption and assignment of certain of the Debtor’s executory contracts and unexpired leases.

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**PLEASE TAKE FURTHER NOTICE** that the Motion also seeks Court approval of the sale (the “Sale”) of the Purchased Assets to a Successful Bidder, as may be applicable, free and clear of all liens, claims, interests and encumbrances pursuant to sections 105(a) and 363 of the Bankruptcy Code, including the assumption by the Debtors and assignment to such applicable purchaser of certain executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code (the “Assumed Contracts”).

**PLEASE TAKE FURTHER NOTICE** that, by 5:00 p.m. on \_\_\_\_\_, 2023, the Debtor shall file notice of the identity of the Successful Bidder and Back-up Bidder, and the amount of their bids, with the Court. At the same time, the Debtor shall serve such notice by fax or email to all counterparties whose contracts or leases are to be, may be, or may not be, assumed and assigned, and who have requested to receive such notice. If you wish to receive notice by fax or email, you must provide your fax or email address (as applicable) prior to \_\_\_\_\_, 2023, to Debtor’s counsel, Cole Schotz P.C., 300 E. Lombard Street, Suite 1111, Baltimore, Maryland 21202, Attn: Irving E. Walker, Esq. ([iwalker@coleschotz.com](mailto:iwalker@coleschotz.com)).

**PLEASE TAKE FURTHER NOTICE** that an evidentiary hearing (the “Sale Hearing”) to approve the Sale and authorize the assumption and assignment of the Assumed Contracts will be held on \_\_\_\_\_, 2023 at \_\_\_\_\_.m. (prevailing Central Time), before the Honorable \_\_\_\_\_ United States Bankruptcy Judge, United States Bankruptcy Court for the Northern District of Alabama, Southern Division. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing.

**PLEASE TAKE FURTHER NOTICE** that, consistent with the Bidding Procedures Order, the Debtor may potentially assume and assign one or more executory contracts or unexpired leases, including any amendments and subordination, non-disturbance and attornment agreements related to the leases, described on **Exhibit A** attached to this Notice to Purchaser or the Successful Bidder, as may be applicable, pursuant to section 365 of the Bankruptcy Code. The Purchaser or Qualified Bidder who becomes a Successful Bidder, as may be applicable, reserves the right to remove a contract or lease from the list of Assumed Contracts at any time before the Auction and reserves the right to supplement the list of Assumed Contracts, solely to the extent permitted in the applicable Asset Purchase Agreement. The amount shown on **Exhibit A** hereto as the “Cure Amount” is the amount, if any, based upon the Debtor’s books and records, which the Debtor asserts is owed to cure any prepetition defaults and pay amounts accrued under the Assumed Contract.

**PLEASE TAKE FURTHER NOTICE** that if you have any other objection to the Debtor's assumption and assignment of the Assumed Contract to which you may be a party, you also must file that objection (an "Assumption Objection") in writing no later than 4:00 p.m. (prevailing Central Time) on \_\_\_\_\_; **provided, however**, if any bidder other than the Purchaser is the Successful Bidder, then any counterparty to an Assumed Contract may file and serve an objection to the assumption and assignment of the Assumed Contract solely with respect to the Successful Bidder's ability to provide adequate assurance of future performance under the Assumed Contract up to the time of the Sale Hearing, or raise it at the Sale Hearing. . Any non-Debtor party to an executory contract or unexpired lease that fails to timely object to the assumption or assignment and provision of adequate assurance of future performance shall be forever barred from raising any such objection, absent order of the Court to the contrary. Assumption Objections may be resolved by the Court at the Sale Hearing, or at a separate hearing either before or after the Sale Hearing.

**PLEASE TAKE FURTHER NOTICE** that the Debtor shall (a) within 48 hours of receipt of a Qualified Bid from a Bidder (other than the Purchaser) and (b) with respect to the Purchaser, by no later than \_\_\_\_\_, 2023, provide the necessary financial information to determine that the Qualified Bidder or Purchaser, as applicable, can provide adequate assurance of future performance under Section 365 of the Bankruptcy Code (the "Adequate Assurance Information") to those counterparties to the Assumed Contracts (or their counsel) who have (x) submitted a written request (e-mail to Debtor's counsel is acceptable) for Adequate Assurance Information and (y) confirmed in writing to the Debtor's counsel (e-mail is acceptable) their agreement to keep such Adequate Assurance Information strictly confidential and use it solely for purposes of evaluating whether a Qualified Bidder or the Purchaser has provided adequate assurance of future performance under the Assumed Contract.

**PLEASE TAKE FURTHER NOTICE** that any Cure Amount Objection or Assumption Objection you may file must be served so as to be received by the following parties by the applicable objection deadline date and time: (1) the Debtor, Premier Cajun Kings, LLC, c/o Aurora Management Partners, 112 South Tryon Street, Suite 1770, Charlotte, NC 28284, Attn: David M. Baker; (2) counsel for the Debtors, Cole Schotz P.C., 300 E. Lombard Street, Suite 1111, Baltimore, MD 21202, Attn: Irving E. Walker, Esq. ([iwalker@coleschotz.com](mailto:iwalker@coleschotz.com)); (3) counsel to the Purchaser, AIM Associates Capital Group, LLC, Christopher Mendez, [chrism@aimcg.com](mailto:chrism@aimcg.com), and Thomas Lehman, Esq., \_\_\_\_\_; and (4) the Office of the Bankruptcy Administrator, c/o Jon Dudeck, Esq., ([jon\\_dudeck@alnb.uscourts.gov](mailto:jon_dudeck@alnb.uscourts.gov)) and Rachel Webber, Esq. ([rachel\\_webber@alnb.uscourts.gov](mailto:rachel_webber@alnb.uscourts.gov)), 1800 Fifth Avenue North, Birmingham, AL 35203

**PLEASE TAKE FURTHER NOTICE** that if you have an objection to the Sale **other than** a Cure Amount Objection, and **other than** an Assumption Objection, such objection (a "Sale Objection") shall be filed with the Clerk of the Bankruptcy Court, 1800 Fifth Avenue North, Birmingham, AL 35203 or electronically via the Court's CM/ECF system and served **so as to be received no later than 4:00 p.m. (prevailing Central Time) on \_\_\_\_\_, 2023**, be served upon: (1) the Debtor, counsel to the Purchaser, and the Bankruptcy Administrator, at the respective addresses for each stated in the prior paragraph.

**PLEASE TAKE FURTHER NOTICE** that the Purchaser or Successful Bidder, as may be applicable, shall be responsible for satisfying any requirements regarding adequate assurance

of future performance that may be imposed under 11 U.S.C. §§ 365(b) and (f) in connection with the proposed assignment of any Assumed Contract. The Court shall make its determinations concerning adequate assurance of future performance under the Assumed Contracts pursuant to 11 U.S.C. §§ 365(b) and (f) at the Sale Hearing.

**PLEASE TAKE FURTHER NOTICE** that, in the event that the Debtor and the non-Debtor parties cannot resolve the Cure Amount, the Debtor shall segregate any disputed Cure Amounts pending the resolution of any such disputes by the Court or mutual agreement of the parties with the express written consent of the Purchaser, unless the contract or lease in dispute is excluded from the sale.

**PLEASE TAKE FURTHER NOTICE** that, except to the extent otherwise provided in the Purchase Agreement with the Successful Bidder, or any order approving the sale entered by the Bankruptcy Court, pursuant to section 365(k) of the Bankruptcy Code, the Debtor and the Debtor's estate shall be relieved of all liability accruing or arising after the effective date of assumption and assignment of the Assumed Contracts.

**PLEASE TAKE FURTHER NOTICE** that nothing contained herein shall obligate the Debtor to assume any Assumed Contracts or to pay any Cure Amount.<sup>5</sup>

**PLEASE TAKE FURTHER NOTICE THAT IF YOU DO NOT TIMELY FILE AND SERVE AN OBJECTION AS STATED ABOVE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITH NO FURTHER NOTICE.**

ANY NON-DEBTOR PARTY TO ANY ASSUMED CONTRACT WHO DOES NOT FILE A TIMELY OBJECTION TO THE CURE AMOUNT FOR SUCH ASSUMED CONTRACT IS DEEMED TO HAVE CONSENTED TO SUCH CURE AMOUNT.

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<sup>5</sup> Assumed Contracts” are those Contracts and Leases that the Debtors believe may be assumed and assigned as part of the orderly transfer of the Purchased Assets; however, the Purchaser or the Successful Bidder, as may be applicable, may choose to exclude certain of the Debtors’ contracts or leases from the list of Assumed Contracts as part of their Qualifying Bid, causing such contracts and leases not to be assumed by the Debtor.

**EXHIBIT A**

**List of Potential Executory Contracts to Be Assumed and Assigned with Cure Amounts**

[to be added]

**EXHIBIT B**

**Stalking Horse Agreement**

**ASSET PURCHASE AGREEMENT**

**by and between**

**AIM ASSOCIATES CAPITAL GROUP, LLC**

**and**

**PREMIER CAJUN KINGS, LLC**

**March 13, 2023**

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “**Agreement**”) dated as of March 9, 2023 (the “**Effective Date**”) is by and between PREMIER CAJUN KINGS, LLC, an Alabama limited liability company (“**Seller**”), and AIM ASSOCIATES CAPITAL GROUP, LLC a Florida limited liability company (“**Buyer**”). Buyer and Seller are each referred to herein individually as a “**Party**” and collectively as the “**Parties**”. Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in Article 14.

### RECITALS

**WHEREAS**, the manager of Seller and its sole member, Manraj Sidhu (“**Mr. Sidhu**”), is deceased.

**WHEREAS**, the estate of Mr. Sidhu (the “**Sidhu Estate**”) is currently being administered by the Montgomery County Probate Court in Alabama in Case No. 22-00416 (the “**Probate Court**”), by Joginder Sidhu as Administrator Ad Litem (the “**Administrator**”) pursuant to order of the Probate Court and the Administrator is authorized to approve Seller’s execution of this Agreement;

**WHEREAS**, Seller operates a retail fast food restaurant at each Property (each individual restaurant being a “**Store**” and collectively, the “**Stores**”), under the name “Popeyes Louisiana Chicken” pursuant to the “**Franchise Agreement**”, and the businesses operated pursuant to the Franchise Agreement are collectively referred to herein as the “**Business**;”

**WHEREAS**, Seller leases certain real property and improvements listed in Exhibit A attached hereto (the “**Leased Property**”) pursuant to lease agreements with unaffiliated third parties governing the Leased Property listed in attached Exhibit B (the “**Existing Leases**”);

**WHEREAS**, an Affiliate of Seller owns certain real property and improvements which are leased to Seller as listed in Exhibit C attached hereto (the “**Affiliate Owned Property**,” and together with the Leased Property, the “**Property**”);

**WHEREAS**, pursuant to this Agreement and the Sale Order, Seller desires to (i) assign to Buyer and Buyer desires to assume from Seller, the Existing Leases and the Assumed Contracts, in each case subject to the terms and conditions thereof unless otherwise provided herein or as agreed to by Buyer and parties to the Existing Leases and Assumed Contracts, (ii) arrange for its Affiliates to lease the Affiliate Owned Property to Buyer pursuant to new leases for the Stores listed on Exhibit C. (the “**New Leases**”), . in each case subject to the terms and conditions thereof unless otherwise agreed to by Buyer and Affiliates, and (iii) sell and transfer to Buyer, and Buyer desires to purchase and assume from Seller, Seller’s right, title, and interest in the Assets (as defined below);

**WHEREAS**, Seller desires to (i) sell and transfer to Buyer, and Buyer desires to purchase and assume from Seller, all of Seller’s right, title, and interest in the Assets (as defined below), (ii) assign to Buyer and Buyer also desires to assume from Seller, the Existing Leases and the Assumed Contracts (defined below), in each case subject to the terms and conditions hereof and to those of the applicable Existing Leases or Assumed Contracts, and (iii) arrange for the applicable Affiliates of Seller to enter into the New Leases with Buyer with respect to the Affiliate Owned Real Property.

**WHEREAS**, the Parties are entering into this Agreement with the understanding that Seller will file a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §101 et seq. (the “**Bankruptcy Code**”) in the United States Bankruptcy Court

for the Northern District of Alabama (the “**Bankruptcy Court**”), and will ask the Bankruptcy Court to approve this Agreement pursuant to a Sale Order of the Bankruptcy Court under Section 363 of the Bankruptcy Code, subject to higher and better purchase offers.

## AGREEMENT

**NOW, THEREFORE**, for and in consideration of the recitals and of the promises and mutual covenants, agreements, representations and warranties contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree as follows:

### ARTICLE 1 PURCHASE AND SALE OF ASSETS; EXCLUDED ASSETS

Section 1.1 Assets to be Sold. At the Effective Time (as defined in Section 5.5 below), on the terms and subject to the conditions set forth in this Agreement, Seller will sell, assign, transfer, convey and deliver to Buyer, and Buyer agrees to purchase, accept, acquire, assume, and take assignment and delivery from Seller, the following assets (collectively, the “**Assets**”):

(a) Leased Property. All of Seller’s right, title and interest in, or the assumption and assignment to Buyer where applicable, the Leased Property pursuant to the Existing Leases free and clear of all liens, claims, pledges, options, charges, security interests, deeds of trust, mortgages, conditional sales agreements, interests, encumbrances, redemption rights, successor liabilities, or other rights of third parties (collectively, the “**Liens**”) other than Permitted Encumbrances, along with all of Seller’s right, title and interest in and to all buildings, improvements, easements, appurtenances, rights and privileges belonging or appertaining to the Property;

(b) Equipment. “**Equipment**” shall mean all of Seller’s rights, title, and interest in and to, or to the extent leased by Seller, the assignment and assumption of the Equipment located at the Stores on the Closing Date, including both Stores subject to Existing Leases and Stores located in Affiliate Owned Property, free and clear of Liens. “**Equipment**” means Seller’s rights, title, and interest in and to all furniture, furnishings, fixtures, signage, security systems, point-of-sale systems, computer equipment, alarm systems, cameras, kitchen equipment, equipment, and machinery within the four walls of each Store.

(c) Inventory. All unexpired and non-obsolete inventory (including without limitation, food, supplies, paper, cleaning and marketing supplies) of Seller held for use or sale by Seller in connection with the operation of the Business at the Effective Time (the “**Inventory**”). Following the close of business on the day which is five (5) days prior to the Closing Date, Buyer and Seller together shall audit the saleable Inventory at the Stores as set forth in Section 3.4(c) below;

(d) Leases and Contracts. To the extent assignable and to the extent relating solely to the Property or the Business, all of Seller’s right, title, and interest in those certain contracts, service agreements, disposal agreements, leases (specifically including the Leases), license agreements, commitments, purchase orders, business arrangements, governmental contracts, and all amendments, modifications and assignments thereof, which directly and exclusively relate to the operation of the Property or the Business and which (and only to the extent that) Buyer expressly agrees to assume in writing (the “**Assumed Contracts**”), except to the extent third parties require (or Buyer and Seller

agree to) termination of existing contracts and execution of new or replacement agreements by Buyer in connection with the transactions contemplated herein;

(e) Permits. To the extent assignable, all of the permits, approvals, authorizations, registrations, licenses, certificates of occupancy, variances, orders, rulings, and decrees or permissions from any Governmental Entity or any entity or Person which directly and exclusively relate to the operation of the Property or the Business or the ownership of the Assets (the “**Permits**”);

(f) Franchise Agreement. All of Seller’s right, title and interest in and to the Franchise Agreement to the extent Franchisor requires that Seller’s existing Franchise Agreement be assigned to Buyer (rather than issuing a new Franchise Agreement to Buyer); and

(g) Other Assets. To the extent assignable, all telephone and fax numbers for the Stores, warranties, and guarantees, and any other assets within the four walls of each Store existing therein prior to the Effective Time or necessary for the ongoing operation of the Business, to the extent owned by Seller, other than Excluded Assets as described in Section 1.2.

Section 1.2 Excluded Assets. Notwithstanding anything in this Agreement to the contrary, Buyer will not acquire from Seller any of Seller’s assets listed on Schedule 1.2 (the “**Excluded Assets**”). The Parties, upon mutual agreement, may amend the Schedules and Exhibits included herewith at any time on or before the Closing Date in order to include or exclude any additional Assets or Excluded Assets.

## ARTICLE 2 ASSUMPTION OF LIABILITIES

Section 2.1 Liabilities Assumed. Except as expressly provided herein, Buyer shall not assume any liabilities of Seller, including any liabilities stemming from a bank, bank holding company, debt fund, private creditor, or any other lending institution. Buyer shall not assume any liabilities of Seller under any contract which first accrued and was to be performed prior to the Closing Date or which otherwise relate to any period prior to the Closing Date or any liability of Seller arising out of or resulting from its compliance or noncompliance with any law, rules, or regulations of any Governmental Entity, except as Buyer may agree as a condition for assignment of any such contract to Buyer. Upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time, Buyer shall assume and thereafter shall perform and discharge, (i) Seller’s obligations arising on and after the Effective Time under the Assumed Contracts, the Existing Leases, and the Franchise Agreement (each if assigned as contemplated by this Agreement; and (ii) those obligations and liabilities arising out Buyer’s ownership or operation of the Assets and Business from and after the Effective Time (the “**Assumed Liabilities**”).

## ARTICLE 3 PURCHASE PRICE AND ADJUSTMENT

Section 3.1 Purchase Price. On the Closing Date, Buyer shall transfer the amount of the \$4,575,000 plus the adjustments as set forth in Section 3.4 (all such amounts collectively, the “**Purchase Price**”), minus the amount of the Good Faith Deposit (as defined below), to Seller in immediately available funds by wire transfer to an account designated by Seller.

Section 3.2 Good Faith Deposit. Within five (5) Business Days following the Effective Date, Buyer will deposit a cash payment equal to five percent (5%) of the Purchase

Price (the “**Good Faith Deposit**”) which shall be placed in a non-interest-bearing account with an escrow agent to be identified by the Seller, subject to Buyer’s approval which shall not be unreasonably withheld (the “**Escrow Agent**”). If Buyer fails to make the Good Faith Deposit in a timely manner, then Seller shall have the right to terminate this Agreement. The Good Faith Deposit and Escrow Agent’s duties hereunder shall be further subject to the provisions set forth on Schedule 3.2 attached hereto. If the sale of the Assets is consummated under this Agreement, then the Good Faith Deposit shall be paid to Seller and applied to the Purchase Price at Closing.

Section 3.3 Tax Allocations. Seller and Buyer agree that (i) the Purchase Price will be allocated for state and federal income tax purposes as agreed in good faith by Buyer and Seller and shall be based on appraisals or agreed values of the Assets, and (ii) after the Closing, neither party will take any position or action in connection with complying with the Internal Revenue Code (the “**Code**”) and the regulations promulgated thereunder, inconsistent with such allocations. If required by the Code, both Buyer and Seller agree to execute the appropriate tax forms to acknowledge such allocations.

Section 3.4 Adjustment of the Purchase Price. The Purchase Price will be adjusted at the Closing as follows:

(a) Tax Prorations between Buyer and Seller. All ad valorem property and personal taxes payable upon the Assets will be prorated between Seller and Buyer for the tax year in which the Closing is held on the basis of the tax statements for such year; provided, however, that if tax statements for the current year are not available as of the Closing Date, the tax proration between Seller and Buyer will be made on the basis of the taxes for the immediately prior tax year. Notwithstanding anything to the contrary, the tax proration made at Closing will be a final proration between Buyer and Seller.

(b) Store Bank Accounts and Deposits in Transit. In addition to the Purchase Price and payment for Inventory provided below, Buyer shall pay at Closing a good faith estimate of cash amounts held as “store banks” as daily operating cash for amounts generated prior to the Effective Time but held in the cash registers or other repositories at the Stores or on behalf of the Stores at the Effective Time with a true up post-Closing at an amount determined in accordance with this Section 3.4(b), and Seller shall be entitled to retain all cash generated prior to the Effective Time but held in transit for deposit, whether at the Stores or otherwise. Following the close of business, the day prior to the Closing Date, Buyer and Seller together shall audit the cash registers and other repositories at the Stores or on behalf of the Stores to determine the amount of cash held as “store banks” at the Effective Time. Buyer shall pay to Seller, or Seller shall pay to Buyer, as appropriate, without offset for any reason, the difference between the actual cash amount in the store banks and the estimate paid at Closing within thirty (30) days following the Closing.

(c) Inventory Audit and Payment. In addition to the Purchase Price and the payment for “store banks” as provided above, at Closing, the Purchase Price shall be adjusted for Inventory in accordance with this Section 3.4(c). No earlier than three (3) days prior to the Closing Date, Buyer and Seller together shall audit the Inventory and from said audit determine the amount and value (based on Seller’s actual cost without mark-up) of all Inventory on hand (the “**Inventory Audit Value**”). At the Closing, the Purchase Price shall be increased or decreased, as applicable, by an amount equal to the difference between (i) the Inventory Audit Value *plus* any additional deliveries of Inventory to the Stores between the time of the Inventory audit and the Effective Time and (ii) the estimated value of Inventory to be consumed at the Stores between the time of the Inventory audit and the Effective Time (as determined using Seller’s historical operational data for the Stores).

(d) Expenses. Operational expenses directly related to the Assets and the Business, including, without limitation, Assumed Contract expenses, utilities and rent (including sales tax on rent), will be prorated with Seller being responsible for those expenses accruing prior to the Effective Time and Buyer being responsible for those expenses accruing at or after the Effective Time. Utilities shall be paid by Seller to the Closing Date and the accounts closed or assigned to Buyer effective as of Closing. If the closing or assigning of Seller's operating accounts with utility and other providers, and opening of Buyer's operating accounts with same, is impractical or would cause an interruption in service (the Parties shall work in good faith to ensure a smooth transition and avoid any interruption in service), utilities, deposits and similar expenses shall be adjusted as of Closing and settled within thirty (30) days after Closing.

(e) Security Deposits. Seller shall retain all rights to any security deposits paid by Seller and held by landlords, Franchisor, or utilities under any Existing Leases, the Franchise Agreement, or other agreements.

(f) Excluded Store Purchase Price Adjustments. In the event (a) Seller is unable to obtain Bankruptcy Court approval of the assumption and assignment of any or all the Existing Leases as contemplated in this Agreement, including because of Seller exercising its option to exclude an Existing Lease under Section 4(a); (b) Buyer is unable to agree with Premier Holdings, LLC on the terms of a new lease for the Store currently leased by Premier Holdings, LLC to Seller; (c) Seller is unable to deliver to Buyer free and clear title to the Equipment at an individual Store, (d) Seller is unable to deliver to Buyer for an individual Store a nondisturbance or subordination agreement from mortgage lenders with liens on Affiliate Owned Property that subordinate their liens to Buyer's leases of Affiliate Owned Property, in form and substance reasonably acceptable to Buyer, or (e) an individual Store has been temporarily closed by Buyer prior to the Closing Date, then unless Buyer agrees in writing otherwise in its sole discretion, the Purchase Price shall be reduced by an amount equal to the valuation for such Store as set forth on Schedule 3.4, and such Store and the assets located at such Store shall be excluded from the transactions contemplated by this Agreement. For purposes of this Section 3.4(f), a temporary closure shall be any Store closure which is inconsistent with the ordinary course of the operation of Business at such Store.

## ARTICLE 4 BANKRUPTCY COURT MATTERS

### Section 4.1 Competing Bids.

(a) This Agreement is subject to approval by the Bankruptcy Court and the consideration by Seller of higher or better competing bids (each a "**Competing Bid**"). Buyer shall have the right to bid against any Competing Bids.

(b) In the event that Buyer is not the winning bidder at any Auction held in the bankruptcy case, as set forth below, and the Seller completes closing of a sale of the Assets with another bidder, Seller shall pay Buyer, as consideration for Buyer's entry into this Agreement and reimbursement of expenses incurred in connection herewith, a "break-up fee" equal to One Hundred Fifty Thousand Dollars (\$150,000) (the "**Break-Up Fee**"). The Break-Up Fee shall be paid by Seller to Buyer from the proceeds of and

at the closing on the sale of the Assets approved by the Bankruptcy Court. This provision shall survive termination of this Agreement.

#### Section 4.2 Bankruptcy Court Filings

(a) The Sale Motion. Within three (3) Business Days following commencement of Seller's bankruptcy case, Seller shall file with the Bankruptcy Court a motion for approval of this Agreement ("**Sale Motion**"), subject to higher and better bids, as well as entry of an Order of the Bankruptcy Court approving the procedures for submission and consideration of Competing Bids ("**Bid Procedures Order**"). The Sale Motion shall include procedures for the assumption of and assignment to Buyer of the Assumed Contracts. The Bid Procedures Order will include provisions for approval of the Break-Up Fee as well as provisions governing the submission of Competing Bids. The form of the Sale Motion and Bid Procedures Order are subject to review and comment (but not approval) by the Buyer. The Seller shall serve all counterparties to leases and contracts that are being assumed by the Seller and assigned to Buyer under this Agreement a notice of proposed assumption and assignment of unexpired leases and executory contract and cure which shall include a deadline for counterparty objections and a procedure for resolution of objections. Cure amounts, whether agreed to by counterparties or set by the Court shall be paid from the Purchase Price; provided, however, to the extent total Cure amounts in the aggregate exceed \$700,000, Seller shall have the option, in its sole discretion, of excluding one or more leases or contracts from the leases and contracts to be assumed and assigned to Buyer and the Purchase Price adjusted accordingly pursuant to Section 3.4(f). Bankruptcy Court approval of the Seller's assumption and assignment of executory contracts and unexpired leases to Buyer shall be incorporated in the Sale Order. The form of the foregoing notice to lease and contract counterparties shall be subject to review and comment (but not approval) by Buyer. The Bid Procedures Order will include provisions for approval of the Break-Up Fee as well as provisions governing the submission of Competing Bids which shall include a minimum overbid price of no less than the sum of the Buyer's purchase price plus the amount of the Break-Up Fee ("**Overbid Price**").

(b) Auction. In the event that Seller receives one or more Competing Bids Seller determines, in its sole discretion, that is a qualified bid higher or better than the Purchase Price provided under this Agreement, then Seller shall schedule and conduct an auction to be conducted in the manner set forth in the Bid Procedures Order, during which Buyer and any qualified bidder will be permitted to submit higher and better bids (the "**Auction**"). At minimum, to become a qualified bidder a competing bidder must make a good faith deposit equal to or greater than the good faith deposit of the Buyer, provide evidence that, in the Seller's judgment and sole discretion, the competing bidder is reasonably likely to be qualified as an assignee of the Franchise Agreement by the Franchisor, Restaurant Brands International, Inc., and offer an Overbid Price with an Asset Purchase Agreement in a form similar to this Agreement with a mark-up showing the changes made to this Agreement. At the conclusion of the Auction, Seller shall select the winning bid based on the Seller's determination, in its sole discretion, of which bid is the highest or best bid. The Seller also may select, in the Seller's sole discretion, the second best bid, which shall be designated as the "**Back-up Bidder**", with the

understanding that if for any reason the winning bidder fails to close as required by the applicable purchase agreement approved by the Bankruptcy Court, the Back-up Bidder shall be authorized and obligated to close on its bid for the purchase of the Assets approved by the Bankruptcy Court. Notwithstanding the foregoing sentence, Seller may not designate the Buyer as a Back-up Bidder without Buyer's consent. If the Buyer is not the Successful Bidder or a Back-up Bidder, the Seller shall return the Buyer's good faith deposit to the Buyer within three business days after the date of the conclusion of the Auction.

(c) Sale Order. Subject to Buyer being designated as the Successful Bidder, Seller shall use commercially reasonable efforts to obtain entry of an Order approving the sale to Buyer under this Agreement (the "**Sale Order**"), shall not be subject to the stay in Bankr. R. Civ. P. 6004(h) and 6006(d) and is enforceable and effective immediately and shall include a finding that the Buyer is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code. The Sale Order shall also include findings and conclusions that (i) notice of the Sale Motion and Sale Procedures Order have been provided to all entities who claim an interest or lien in the Assets, all governmental entities who may have claims against the Seller, all utilities serving the Seller and the Assets, all persons entitled to notice under Bankr. R. Civ. P. 9010 and 2002 and all entities that expressed an interest in purchasing the Assets, (ii) the Buyer is not assuming any debts, liabilities or obligations of the Seller accrued as of the Closing Date except as otherwise set forth in this Agreement, (iii) the Buyer is not a mere continuation of the Seller or the Seller's bankruptcy estate and there is no continuity of enterprise between the Seller and Buyer and Buyer is not a successor of the Seller, (iv) the transactions effecting the sale of the Assets by the Seller to the Buyer do not constitute a consolidation, merger or de facto merger of the Buyer and the Seller or the Seller's bankruptcy estate, (v) the Sale Order shall be binding upon the Seller and its respective successors and assigns, including any successor Chapter 7 or 11 Trustee and (vi) the Assets are being sold and transferred to the Buyer free and clear of all liens, claims, encumbrances, lis pendens, rights of possession, contracts, covenants, options or other rights to acquire an interest in the Assets. The form of the Sale Order is subject to Buyer's review and approval, which shall include a finding that the Buyer is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code.

(d) Back-up Bidder. In the event Buyer is not determined to be the Successful Bidder under the Bid Procedures Order process and the Successful Bidder fails to close, and Buyer has consented to be a Back-up Bidder, Buyer agrees, after receiving notice of such failure, to consummate the transactions in accordance with the terms of this Agreement, as modified pursuant to any increase in the Purchase Price made by Buyer during the bidding process, as the Back-Up Bidder.

## ARTICLE 5 CLOSING

### Section 5.1 Closing; Risk of Loss.

(a) Consummation of the transactions contemplated by this Agreement (the "**Closing**") will be held at a location, time, manner, and date (the "**Closing Date**") to be

agreed upon by the Parties, provided that in all events Closing shall be completed by no later than ten (10) Business Days after entry of the Bankruptcy Court order approving the sale to Buyer.

(b) The risk of loss for the Assets will be borne by Seller until the Closing and by Buyer after the Closing.

Section 5.2 Buyer's Closing Expenses. Except as otherwise provided in this Agreement, Buyer will pay the following Closing expenses:

(a) Fees for any type of inspection or audit that may be required by Buyer to determine whether the Assets are suitable for the purposes for which Buyer, or its assigns may intend;

(b) Fees of Buyer's attorneys, accountants, consultants and other advisors;

(c) All commissions which arise from the inaccuracy of Buyer's representations in Section 7.5 below;

(d) All costs, fees and expenses attributable to Buyer's financing;

(e) One half of all fees and costs, if any, charged by the landlords of the Existing Leases in order to assign or extend the Existing Leases and/or issue the required estoppels and other agreements;

(f) All transfer fees, extension fees, and other fees, charges or requirements of Franchisor, including but not limited to all scopes of work (or similar property improvements required by the Franchisor) and all franchise related fees and charges arising out of the transactions contemplated in this Agreement, excluding any such fees outstanding or otherwise in arrears and any associated penalties, late fees, or reinstatement fees of the Franchisor as provided under the Franchise Agreement as of the Effective Date, with such fees outstanding as of the Effective Date the responsibility of the Seller and shall be either i) paid by Seller directly to Franchisor at closing or ii) paid by Buyer and reimbursed by Seller at Closing out of the Purchase Price;

(g) Any and all sales, use, transfer, mortgage, documentary and like taxes and/or stamps required to be paid in connection with the transactions contemplated hereby; and

(h) Costs for all other items for which Buyer is responsible under this Agreement.

(i) For the avoidance of doubt, Buyer shall not be responsible for any investment banking or broker fees, commissions, or payments of any kind claimed by any professional previously engaged by Seller.

Section 5.3 Seller's Closing Expenses. Except as otherwise provided in this Agreement, Seller will pay the following Closing expenses:

(a) Fees of Seller's attorneys, accountants, consultants and other professionals and advisors;

(b) One half of all fees and costs, if any, charged by the landlords of the Existing Leases in order to assign or extend the Existing Leases and/or issue the required estoppels and other agreements;

(c) Costs for all other items for which Seller is expressly responsible under this Agreement.

Section 5.4 Waiver of all other Warranties. EXCEPT AS EXPRESSLY PROVIDED IN ARTICLE 5 AND ANY EXPRESS WARRANTIES OF TITLE CONTAINED IN THE CLOSING DOCUMENTS CONTEMPLATED IN SECTION 5.6, THE ASSETS WILL BE CONVEYED "AS IS, WHERE IS", WITH ALL FAULTS, AND WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, CONDITION, FITNESS FOR A PARTICULAR PURPOSE OR HABITABILITY. BUYER ACKNOWLEDGES THAT OTHER THAN AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, SELLER HAS MADE NO REPRESENTATION, WARRANTY OR GUARANTY, EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, OR INCLUDING: (A) THE CONDITION OR STATE OF REPAIR OF THE ASSETS, INCLUDING, WITHOUT LIMITATION, ANY CONDITION ARISING IN SUBSTANCES (WHICH INCLUDES ALL SUBSTANCES LISTED AS SUCH BY APPLICABLE LAW, ALL POLLUTANTS OR ASBESTOS AND NATURALLY-OCCURRING BUT HARMFUL SUBSTANCES SUCH AS METHANE OR RADON) ON, IN, UNDER, ABOVE, UPON OR IN THE VICINITY OF THE ASSETS; (B) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF THE ASSETS, INCLUDING BUT NOT LIMITED TO, THE STRUCTURAL ELEMENTS, ENVIRONMENTAL ISSUES, APPURTENANCES, AND ACCESS; (C) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF SOILS AND GEOLOGY AND THE EXISTENCE OF GROUND WATER; (D) THE EXISTENCE, QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITIONS OF UTILITIES SERVING THE PROPERTY OR ASSETS; (E) THE DEVELOPMENT POTENTIAL OF THE PROPERTY, ITS HABITABILITY, MERCHANTABILITY, OR THE FITNESS, SUITABILITY OR ADEQUACY OF THE ASSETS FOR ANY PARTICULAR PURPOSE; (F) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY; (G) THE PROPERTY OR ITS OPERATIONS' (INCLUDING THE BUSINESS) COMPLIANCE WITH ANY APPLICABLE CODES, LAWS, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, CONDITIONS, AND RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY. SELLER AND BUYER AGREE THAT THIS PROVISION SHALL SURVIVE THE EXECUTION OF THIS AGREEMENT AND THE CLOSING OF THE SALE OF THE ASSETS. OTHER THAN THE EXPRESS REPRESENTATIONS AND WARRANTIES SPECIFICALLY PROVIDED IN ARTICLE 5 OF THIS AGREEMENT, BUYER HEREBY ACKNOWLEDGES AND DECLARES RELIANCE SOLELY ON ITS OWN EXAMINATION, INSPECTION AND EVALUATION OF THE ASSETS, AND NOT ON ANY WARRANTIES OR REPRESENTATION, WHETHER EXPRESS OR IMPLIED OR WRITTEN OR ORAL, FROM SELLER. EXCEPT FOR ANY CLAIMS ARISING OUT OF A BREACH OF THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN ARTICLE 5 (SUBJECT TO THE LIMITATIONS SET FORTH IN ARTICLE 11), BUYER SHALL HAVE ABSOLUTELY NO RIGHT OR CAUSE OF ACTION AGAINST SELLER, WHETHER IN TORT, CONTRACT, QUASI CONTRACT OR OTHERWISE, TO ASSERT IN ANY CONTROVERSY OR LITIGATION ANY CLAIM OR DEMAND ARISING FROM THE SALE OR PURCHASE OF, OR IN AN WAY RELATED TO OR IN CONNECTION WITH, THE ASSETS. BUYER HEREBY EXPRESSLY WAIVES AND RENOUNCES ITS ABILITY TO RESCIND THE SALE OF THE ASSETS OR SEEK A REDUCTION IN THE PURCHASE PRICE FOR ANY REASON WHATSOEVER UNDER ANY APPLICABLE LAW. ALL IMPLIED WARRANTIES WITH RESPECT TO THE ASSETS, INCLUDING THOSE

RELATED TO TITLE AND FITNESS FOR A PARTICULAR PURPOSE, WILL BE, AND ARE HEREBY DISCLAIMED BY SELLER IN ANY CONTROVERSY, CLAIM, DEMAND, OR LITIGATION ARISING FROM OR IN CONNECTION WITH THE ASSETS, EXCEPT WITH RESPECT TO A DEFAULT UNDER THIS AGREEMENT, OR BREACH OF ANY WARRANTY OR REPRESENTATION MADE BY SELLER HEREIN. SELLER HEREBY RESERVES THE RIGHT TO INCLUDE, IN SELLER'S SOLE DISCRETION, LANGUAGE TO THE EFFECT OF THE FOREGOING WAIVER OF WARRANTIES IN ANY DOCUMENTS CONVEYING THE ASSETS TO BUYER AS CONTEMPLATED IN THIS AGREEMENT.

Section 5.5 Effective Time. Notwithstanding the actual time of the Closing, the transfer of the Assets will be effective as of 12:01 a.m. Eastern Time on the Closing Date (the "**Effective Time**"). Prorations and similar adjustments, however, shall be made as of 11:59 p.m. on the date preceding the Closing Date.

Section 5.6 Execution and Delivery of Documents. At or prior to the Closing and subject to the conditions to Closing set forth in Article 10, Seller and Buyer will execute and deliver to the other all documents, instruments, certificates and schedules required under this Agreement, including, but not limited to, the following:

(a) Seller will deliver to Buyer in a form reasonably acceptable to Buyer:

(i) Assignment and Assumption of Existing Leases from Seller to Buyer, for each applicable Existing Lease, acknowledged and approved by the respective landlords if required, conveying all of Seller's rights, title and interest in each such Existing Lease, including any attornment, nondisturbance and subordination agreements for any of the Existing Leases.

(ii) A Bill of Sale to convey all Assets not otherwise conveyed, free and clear of all Liens, in the form attached hereto as Exhibit D subject to additional bankruptcy terms consistent with the Sale Order;

(iii) A certified copy of an order of the Bankruptcy Court approving this Agreement and the transactions contemplated by this Agreement and the sale of the Assets to Buyer free and clear of all liens, claims and encumbrances under Section 363;

(iv) A certificate of active status or good standing of Seller issued by the Secretary of State of the State of Alabama; and

(v) A certificate dated as of the Effective Date of Seller's non-foreign status as set forth in Treasury Regulation Section 1.1445-2(b).

(b) Buyer will deliver to Seller:

(i) Signed counterparts, as applicable, of the documents required in Section 5.5(a)(i) and (ii);

(ii) The Purchase Price, as adjusted pursuant to Article 3 or other provisions of this Agreement, by cash or wire transfer;

(iii) A certified copy of resolutions of Buyer's directors and/or shareholders authorizing this Agreement and the transactions contemplated by this Agreement; and

(iv) A certificate of active status or good standing of Buyer issued by the Secretary of State of Florida.

(c) Buyer and Seller will execute and deliver to one another:

(i) An Assignment and Assumption Agreement in the form attached hereto as Exhibit E, subject to additional bankruptcy terms consistent with the Sale Order;

(ii) A closing statement setting forth the calculation of the adjustments to the Purchase Price described in Article 3;

(iii) An assignment of the Franchise Agreement (or new franchise agreements and termination of the existing Franchise Agreement) and any other documents requested or required by the Franchisor, or reasonably requested by Buyer or Seller, the form of which, if not provided by Franchisor, shall be negotiated in good faith prior to the Closing Date by Buyer and Seller and shall include a complete release of Seller for all liabilities to Franchisor arising or accruing on or after the Closing Date;

(iv) Internal Revenue Service Form 8594, Asset Acquisition Statement, or similar required form attesting to the Asset allocations; and

(v) Any documents reasonably requested by Seller or Buyer to effectuate the transactions and waivers contemplated by this Agreement.

Section 5.7 Simultaneous Delivery. All payments, documents and instruments to be delivered on the Closing Date will be regarded as having been delivered simultaneously, and no document or instrument will be regarded as having been delivered until all documents and instruments being delivered on the Closing Date have been delivered.

Section 5.8 Further Acts. Seller and Buyer agree to (a) furnish such further information, (b) execute and deliver to the other such other documents and instruments, and (c) do such other acts and things, all as the other party reasonably requests, for the purpose of carrying out the intent of this Agreement and transfer and assignment of the Assets.

## ARTICLE 6 REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer as of the Effective Date of this Agreement and as of immediately prior to the Closing as follows:

Section 6.1 Organization and Qualification. Seller (a) is an Alabama limited liability company, duly formed, validly existing and in good standing under the laws of the State of Alabama; (b) has all necessary limited liability company powers to own its properties and to carry on the Business as owned and operated as of the date of this Agreement; and (c) is duly qualified and is in good standing in all jurisdictions in which the nature of the Business make such qualification necessary, in each case, except where the failure to have such power or authority would not have a Material Adverse Effect on the Assets, Property, results or operations or conditions (financial or otherwise) of the Business, taken as a whole.

Section 6.2 Due Authorization; Enforceability.

(a) The execution, delivery and performance of this Agreement by Seller and the consummation of the transactions contemplated by this Agreement have been duly and effectively authorized by the governing authority of Seller, as well as by all other requisite limited liability company action.

(b) This Agreement and the agreements contemplated by this Agreement have been, and when executed will be, duly executed, delivered and performed by Seller; and, assuming the due authorization, execution and delivery of this Agreement and the agreements contemplated by this Agreement by Buyer, this Agreement constitutes, and when executed will constitute, a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms; provided, however, this Agreement shall be subject to approval of the Bankruptcy Court.

Section 6.3 No Violation. The execution of this Agreement and the agreements contemplated by this Agreement by Seller will not: (a) cause Seller to violate any (i) law, (ii) rule or regulation of any Governmental Entity or (iii) order, writ, judgment, injunction, decree, determination or award; (b) violate or be in conflict with, or result in a breach of or constitute (with or without notice or lapse of time or both) a default under, Seller's organizational documents; or (c) result in the creation or imposition of any Lien upon any of the Assets, in each case, except for violations, breaches, accelerations or defaults which would not, individually or in the aggregate, have a Material Adverse Effect.

Section 6.4 Compliance with Laws. Except as disclosed on Schedule 5.4, to Seller's Knowledge, Seller is not in violation or default, and in carrying out the transactions described in this Agreement will not come into material violation or default, under any present laws, ordinances, regulations, orders or decrees applicable to the Business, Seller or the Assets that could reasonably be expected to have a Material Adverse Effect.

Section 6.5 Foreign Person. Seller is not a foreign person under Sections 1445 and 7703 of the Internal Revenue Code of 1986, as amended and regulations promulgated thereunder.

Section 6.6 Existing Leases. Seller has made available to Buyer, to the extent they are in Seller's possession, true and correct copies of all Existing Leases. Except as disclosed on Exhibit B or Schedule 6.6 attached hereto, Seller has not received notice of any default or breach on the part of Seller of any of the Existing Leases.

Section 6.7 Contracts. Seller has made available to Buyer copies of the Assumed Contracts. Except as disclosed on Schedule 5.7 attached hereto, Seller has not received notice of any default or breach on the part of Seller under any Assumed Contract.

Section 6.8 Permits. Seller has made available to Buyer copies of Permits in its possession. To the Knowledge of Seller, the Permits are in full force and effect except where Seller is in the process of renewing or reinstating periodic or lapsed Permits, and there is no outstanding material violation of any Permit that could reasonably be expected to have a Material Adverse Effect.

Section 6.9 Legal Proceedings. Except as listed in Schedule 6.9, there is not pending or, to the Knowledge of Seller, threatened, any legal, administrative, arbitration or other proceeding or investigation related to the Business or the Assets, and Seller has no Knowledge of any circumstances that could be expected to give rise to any action, suit or proceeding against Seller or Buyer that could reasonably be expected to have a Material Adverse Effect.

Section 6.10 No Knowledge of Misrepresentations or Omissions. Seller has no knowledge that any of the representations and warranties of Buyer in this Agreement and any disclosures made herein are untrue or incorrect, and Seller has no knowledge of any material errors in, or material omissions from, the exhibits or schedules hereto.

Section 6.11 Intentionally deleted.

Section 6.12 Equipment. As of the Effective Time, the Equipment included in the Assets will be present at each Store and no Equipment shall have been removed from a Store since the Effective Date.

Section 6.13 Exclusivity of Representations and Warranties; As-Is Sale. EXCEPT AS EXPRESSLY SET FORTH IN ARTICLE 5 OF THIS AGREEMENT OR ANY EXPRESS WARRANTIES OF TITLE IN THE CLOSING DOCUMENTS CONTEMPLATED BY SECTION 4.6, THE REPRESENTATIONS AND WARRANTIES MADE BY SELLER IN THIS AGREEMENT ARE IN LIEU OF AND ARE EXCLUSIVE OF ALL OTHER REPRESENTATIONS AND WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS EXPRESSLY SET FORTH IN ARTICLE 5 OF THIS AGREEMENT OR ANY WARRANTIES OF TITLE IN THE CLOSING DOCUMENTS CONTEMPLATED BY SECTION 4.6, SELLER HEREBY DISCLAIMS ANY SUCH OTHER OR IMPLIED REPRESENTATIONS OR WARRANTIES, NOTWITHSTANDING THE DELIVERY OR DISCLOSURE TO BUYER OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES OF ANY DOCUMENTATION OR OTHER INFORMATION (INCLUDING ANY FINANCIAL PROJECTIONS OR OTHER SUPPLEMENTAL DATA). BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER HAS NOT MADE, AND HEREBY SPECIFICALLY NEGATES AND DISCLAIMS, ANY REPRESENTATIONS, WARRANTIES, COVENANTS OR AGREEMENTS OF ANY KIND OR CHARACTER REGARDING ANY ASPECT OF THE ASSETS. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY LAW THE SALE PROVIDED FOR HEREIN IS MADE ON AN "AS-IS, WHERE-IS" BASIS AS TO CONDITION WITH ALL FAULTS.

## **ARTICLE 7** **REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller that as of the Effective Date of this Agreement and as of immediately prior to the Closing as follows:

Section 7.1 Organization and Qualification. Buyer (a) is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Florida; (b) has all necessary limited liability company powers to own its properties and to carry on its business as owned and operated as of the date of this Agreement; and (c) is duly qualified and is in good standing in all jurisdictions in which the nature of its business makes such qualification necessary, in each case, except where the failure to have such power or authority would not have a Material Adverse Effect.

Section 7.2 Due Authorization.

(a) The execution, delivery and performance of this Agreement by Buyer and the consummation of the transactions contemplated by this Agreement have been duly

and effectively authorized by the managers and members of Buyer, as well as by all other requisite company action.

(b) This Agreement and the agreements contemplated by this Agreement have been, and when executed will be, duly executed and delivered by Buyer; and, assuming the due authorization, execution and delivery of this Agreement and the agreements contemplated by this Agreement by Seller, this Agreement constitutes, and when executed will constitute, a valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except (a) to the extent enforceability may be limited by applicable bankruptcy, insolvency, reorganization or other laws affecting the enforceability of creditor's rights generally and (b) that the availability of equitable remedies, including specific performance, is subject to the discretion of the court before which any proceeding thereof may be brought.

Section 7.3 No Violation. Buyer's execution, delivery and performance of this Agreement and the agreements contemplated by this Agreement will not: (a) cause Buyer to violate any (i) law, (ii) rule or regulation of any Governmental Entity, or (iii) order, writ, judgment, injunction, decree, determination or award; or (b) violate or be in conflict with, or result in a breach of or constitute (with or without notice or lapse of time or both) a default under, Buyer's organizational documents, in each case, except for violations, breaches, accelerations or defaults which would not individually or in the aggregate, have a Material Adverse Effect.

Section 7.4 Consents and Approvals of Governmental Bodies and Other Persons. No consent, approval or authorization of, or declaration, filing or registration with, any Governmental Entity or any other Person applicable to Buyer is required in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement.

Section 7.5 Commissions. Buyer has not incurred or become liable for any broker's commission or finder's fees related to the transactions contemplated by this Agreement.

Section 7.6 No Knowledge of Misrepresentations or Omissions. Buyer has no knowledge that any of the representations and warranties of Seller in this Agreement and any disclosures made herein or in the schedules hereto are untrue or incorrect, and Buyer has no knowledge of any material errors in, or material omissions from, the schedules hereto.

Section 7.7 Buyer's Inspection. Prior to the Closing, Buyer and/or Buyer's agent will be given the opportunity to inspect the Stores and is familiar with the Equipment located in each such Store.

## ARTICLE 8 COVENANTS AND ACTIONS PENDING CLOSING

Section 8.1 Conduct of Business. Between the date of this Agreement and the Closing Date, Seller will:

- (a) maintain the operation of the Business and conduct the Business only in the ordinary course and in accordance with past business practices;
- (b) maintain and repair all the tangible Assets in accordance with past business practices;

(c) comply with all applicable laws, rules and regulations applicable to the Business or the Assets;

(d) maintain insurance in the ordinary course of business with respect to the Assets until the Effective Time on the Closing Date;

(e) advertise and market the Stores and Business consistent with historical business practices;

(f) not sell or dispose of any of the Assets other than in the ordinary course of the operation of the Business; and

(g) not incur, assume, guarantee, create or otherwise become liable with respect to any indebtedness, borrowed money, or similar obligation, except in the ordinary course of business consistent with past practices, with respect to the Property, Equipment (regardless of who owns such equipment and how that equipment is owned), Stores, Business, or the Assets.

Section 8.2 Consents; Additional Agreements. Buyer and Seller agree to cooperate and promptly take, or cause to be taken, all action, and to cooperate and promptly do, or cause to be done, all things reasonably necessary, proper or advisable to consummate and make effective as promptly as practicable the transactions contemplated by this Agreement, including: (i) the removal of any legal impediment to the consummation or effectiveness of such transactions; and (ii) the obtaining of all necessary waivers, releases, consents, assignments, and approvals of all third parties and Governmental Bodies, and the making of all necessary filings.

Section 8.3 Confidentiality. Buyer will hold, and will cause its respective officers, agents and employees to hold, in confidence, and not disclose to others, the terms of this Agreement, the transactions contemplated by this Agreement, and all plans, documents, contracts, records, data analysis, compilations, forecasts, and studies and other informational material received or prepared by either of them with respect to the Assets and the Business (collectively the “**Information**”) except: (a) to the extent that such Information (i) is otherwise available from third persons without restrictions on its further use or disclosure or (ii) is required by order of any Governmental Entity, any law, regulation or any reporting obligation of Buyer or Seller; (b) to the extent such information is or becomes publicly known other than through a violation of this paragraph by the party in question; or (c) to the extent such information is provided to persons who are assisting in the consummation of the transactions contemplated hereby, or is required to be given to such third party in order to obtain any consents, approval, authorizations or disclosures contemplated by this Agreement (including, without limitation, the disclosure to representatives or employees of the Franchisor, landlord or any Governmental Entity). Notwithstanding the foregoing, the Parties understand that Information will need to be disclosed by both Seller and Buyer as part of the process of offering the Assets for sale to higher or better bidders and pursuing Bankruptcy Court approval of the sale of the Assets.

Section 8.4 Right of First Refusal. Seller, with Buyer’s cooperation, will provide all required information and notice to Franchisor in order that Franchisor may timely elect or waive its right of first refusal.

Section 8.5 Contact with Employees, Customers and Suppliers. Prior to the Closing, except as otherwise mutually agreed, Buyer and its representatives shall not contact or communicate with any of the employees, customers, landlords, developers and suppliers of Seller in connection with the transaction contemplated by this Agreement, except with the prior consent of Seller, provided, however, (i) Buyer may contact or communicate with the Franchisor in connection with this transaction, and (ii) Seller shall allow Buyer reasonable access to the key

employees of Seller (as mutually agreed upon by the Parties), provided that Seller shall be allowed to have its representative(s) present at any such meeting. Nothing herein shall be deemed to prevent Buyer's representatives currently involved in the business operations of Seller from continuing their business activities consistent with past practices.

Section 8.6 Evidence of Buyer's Ability to Perform. Prior to the execution of this Agreement, Buyer shall have provided Seller with written evidence, in form and substance reasonably acceptable to Seller, of Buyer's financial ability to: (i) close the contemplated transaction under this Agreement; (ii) perform Buyer's obligations under the New Leases; and (iii) maintain the Assets and fund the operation of the Business after the Closing.

Section 8.7 Access to Seller Information. Prior to Closing, Seller shall provide Buyer and its representatives access to the Property and Business, subject to reasonable prior notice, and any and all reasonably requested books and records and any other such information reasonably requested by Buyer.

## ARTICLE 9 PROVISIONS RESPECTING EMPLOYEES

Section 9.1 Seller's Employees. Immediately after the Closing, Seller will notify all of its employees who are engaged in connection with the operation of the Business (the "**Employees**") that the Assets have been sold to Buyer. Buyer will have no obligation to employ any of the Employees. Buyer and Seller agree that Buyer may, but is not obligated to, offer to the Employees employment with Buyer. This Section 9.1 does not establish, as to any Employee, a contract of employment for a definite term or any term or any contractual right that his or her employment can only be terminated for just cause, and no Employee has any rights under this Agreement as a third -party beneficiary or otherwise.

Section 9.2 WARN Act; Employee Compensation. Buyer will retain a sufficient number of employees of Seller such that Buyer's actions and the transactions contemplated herein will not trigger application of the requirements of the Workers Adjustment Retaining and Notification Act ("**WARN**") with respect to pre-Closing notifications to employees of Seller and to avoid any liability on the part of Seller or its member to employees who may be terminated in connection with Buyer's acquisition of the Assets. Buyer shall indemnify, defend and hold harmless Seller and its equity holders for any claims, liabilities, or other damages arising out of or related to application of the WARN act or the violation or breach of the above obligations of Buyer. Seller shall be responsible for all employees' wages, accrued bonuses, pension benefits, vacation time, F.I.C.A. unemployment and other taxes and benefits due as the employer of the employees at the Stores which have accrued and have been earned prior to the Closing Date, and Buyer shall be responsible for such compensation and benefits for those employees (in accordance with Buyer's policies and plans) Buyer rehires or retains to the extent accrued or earned from and after the Closing Date. This provision is not intended to require Buyer to retain or hire any employees of Seller, but only to warrant that Buyer's actions and the transactions contemplated herein will not trigger application of WARN and to provide for Buyer's indemnity of Seller and its equity holders for any violation or breach of this Section.

## ARTICLE 10 CONDITIONS TO CLOSING

Section 10.1 Conditions Applicable to Buyer and Seller. The respective obligations of each Party to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver on or prior to the Closing Date of the following conditions:

(a) No Governmental Entity shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, executive order, decree, injunction or other order (whether temporary, preliminary or permanent) which permanently prohibits consummation of the transactions contemplated by this Agreement.

(b) Any landlords under Existing Leases whose consent is required for the transactions contemplated herein, if any, and if not obtained would have a Material Adverse Effect on the Business, shall have been obtained.

(c) Franchisor shall have timely waived its right of first refusal and consented to the contemplated transaction.

(d) The Bankruptcy Court shall have entered the Sale Order and the Sale Order shall not be subject to any stay.

Section 10.2 Conditions to Seller's Obligations. Each and every obligation of Seller under this Agreement to be performed at or before the Closing (other than pursuant to Section 7.3 hereof) will be subject to the satisfaction, at or prior to the Closing, of the following conditions, unless waived in writing by Seller:

(a) (i) The representations and warranties of Buyer contained in this Agreement that are qualified as to Material Adverse Effect shall be true and correct as of the date of this Agreement and as of immediately prior to the Closing (other than representations and warranties which address matters only as of a particular date, in which case such representations and warranties shall be true and correct, on and as of such particular date), with the same force and effect as if then made; and (ii) the representations and warranties of Buyer contained in this Agreement that are not qualified as to Material Adverse Effect shall be true and correct as of the date of this Agreement and as of immediately prior to the Closing (other than representations and warranties which address matters only as of a particular date, in which case such representations and warranties shall be true and correct, on and as of such particular date), with the same force and effect as if then made, except where the failure of such representations and warranties to be true and correct would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on Buyer and Seller shall have received a certificate to that effect from Buyer.

(b) Buyer shall have performed or complied in all material respects with all material agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

(c) Buyer shall not have filed for or sought relief as a debtor under any state or federal receivership or bankruptcy laws.

(d) (i) Franchisor shall have waived any right(s) to purchase the Assets; (ii) Franchisor shall have approved Buyer as a transferee of the Assets and Seller's interest under the Franchise Agreement without imposing any conditions on the grant of such approval which results in any financial or other obligation on the part of Seller prior to the Closing, or otherwise with respect to which Seller is responsible, other than any financial or other obligations which Buyer agrees to assume or perform at or after the Closing at no cost or expense to Seller; and (iii) Franchisor and Seller shall have executed satisfactory mutual releases.

(e) Buyer shall have been approved by each third party landlord to assume each Existing Lease in which landlord consent to assignment is required, if any such consent is required.

(f) All third parties on all Assumed Contracts related exclusively to the Assets or Business shall have consented in writing to an assignment of such contracts to Buyer with Buyer's assumption thereof (or such contracts shall have been terminated prior to Closing), if any such consent is required.

Section 10.3 Conditions to Buyer's Obligations. Each and every obligation of Buyer under this Agreement to be performed at or before the Closing) will be subject to the satisfaction, at or before the Closing, of the following conditions, unless waived in writing by Buyer:

(a) (i) the representations and warranties of Seller contained in this Agreement that are qualified as to Material Adverse Effect shall be true and correct as of the date of this Agreement and as of immediately prior to the Closing (other than representations and warranties which address matters only as of a particular date, in which case such representations and warranties shall be true and correct, on and as of such particular date), with the same force and effect as if then made; and (ii) the representations and warranties of Seller contained in this Agreement that are not qualified as to Material Adverse Effect shall be true and correct as of the date of this Agreement and as of immediately prior to the Closing (other than representations and warranties which address matters only as of a particular date, in which case such representations and warranties shall be true and correct, on and as of such particular date), with the same force and effect as if then made, except where the failure of such representations and warranties to be true and correct would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and Buyer shall have received a certificate to such effect from Seller.

(b) Seller shall have performed or complied in all material respects with all material agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

(c) Seller will have given, within five (5) Business Days of the Effective Date of this Agreement, written authorization to the Franchisor to share any available information about Seller and Seller's operations with Buyer.

(d) The Bid Procedures Order shall have been entered by no later than 30 days after the Petition Date.

(e) The Auction, if any, shall be held by no later than 45 days after entry of the Bid Procedures Order.

(f) The Sale Order shall be entered by no later than 60 days after the Petition Date.

## ARTICLE 11 TERMINATION

Section 11.1 Termination. This Agreement may be terminated at any time as follows:

(a) By mutual written consent of Seller and Buyer;

(b) By Buyer if (i) Seller has breached any of its respective representations, warranties, covenants or agreements and has not cured such breach prior to the earlier of (A) 10 days following written notice of the breach and (B) the Closing Date; (ii) any order, decree, ruling or other order has been issued by a court or other competent Governmental Entity permanently restraining, enjoining, or otherwise prohibiting the transactions contemplated by this Agreement and each such decree, ruling or other order has become final and non-appealable; or (iii) so long as Buyer is not in default of its obligations hereunder, if any of the conditions to closing set forth in Article 10 benefiting Buyer are not satisfied on or prior to the Closing Date, in which case Buyer shall receive a return of the Good Faith Deposit; or

(c) by Seller if (i) Buyer has breached any of its representations, warranties, covenants or agreements and has not cured such breach prior to the earlier of (A) 10 days following written notice of the breach and (B) the Closing Date; or (ii) any order, decree, ruling or other order has been issued by a court or other competent Governmental Entity permanently restraining, enjoining, or otherwise prohibiting the transactions contemplated by this Agreement and each such decree, ruling or other order has become final and non-appealable; (iii) if any of the conditions to closing set forth in Article 10 benefiting Seller are not satisfied on or prior to the Closing Date; or (iv) if the Closing has not occurred, for any reason whatsoever, on or before the date set forth in Section 5.1(a).

In the event of the termination of this Agreement pursuant to the provisions of this Article 11, no Party will have any liability of any nature whatsoever to the other under this Agreement, including liability for damages, unless such Party is in default of its obligations under this Agreement, in which event the Party in default will be liable to the other Party for such default as set forth below. Notwithstanding the foregoing, each party shall be obligated to indemnify the other for those items for which it has agreed to indemnify the other under this Agreement, subject to the limitations of such indemnity. In addition, if termination occurs pursuant to Section 11.1(a) or (b), Seller shall return to Buyer the Good Faith Deposit within five (5) Business Days following such termination.

Section 11.2 Default. In the event the sale contracted for herein is not consummated due to (a) breach or default on the part of Buyer of its obligations under this Agreement, and without fault on the part of Seller or (b) breach or default on the part of Seller of its obligations under this Agreement, and without fault on the part of Buyer, then, as the Parties' sole and exclusive remedies hereunder, the non-defaulting party shall have the right to terminate this Agreement upon written notice to the defaulting party, in which event the Good Faith Deposit shall be paid to the non-defaulting party.

## ARTICLE 12 SURVIVAL OF AGREEMENTS; POST-CLOSING OBLIGATIONS

Section 12.1 Survival of Representations, Warranties and Covenants. The representations and warranties contained in this Agreement, and any indemnity obligation of Seller related thereto, shall survive until the Closing (the "**Survival Period**"); provided, however, that the representations and warranties of Seller contained in Sections 6.1, 6.2 and 6.10 and of Buyer contained in Sections 7.1, 7.2, 7.5 and 7.6 shall survive the Closing until the expiration of the applicable statute of limitations specified pursuant to applicable law. No claim for indemnification hereunder for breach of any representations or warranties may be made after the expiration of the Survival Period applicable to such claims.

Section 12.2 Indemnification by Buyer. Subject to the provisions of this Article 12, Buyer hereby agrees to indemnify and hold harmless Seller and each officer, director, partner

(whether limited or general), employee, agent or Affiliate of Seller (each, a “**Seller Indemnified Party**”) from and against, and agrees promptly to defend each Seller Indemnified Party for any and all Damages arising directly from (a) the material inaccuracy or breach by Buyer of any of Buyer’s representations or warranties set forth in this Agreement or in any document or agreement delivered hereunder; (b) any failure by Buyer to carry out, perform, satisfy or discharge any covenants, agreements, undertakings, liabilities or obligations to be performed by Buyer pursuant to the terms of this Agreement or any of the documents or agreements delivered by Buyer pursuant to this Agreement; or (c) any liabilities arising or accruing in the conduct of the Business after the Closing Date, each only upon Seller having suffered or incurred actual damages Seller shall take and cause its Affiliates to take all commercially reasonable steps to mitigate any Damages upon becoming aware of any event which would reasonably be expected to, or does, give rise thereto, including incurring costs only to the minimum extent necessary to remedy the breach which gives rise to the Damages.

Section 12.3 Limitations on Indemnification. Notwithstanding anything else contained herein to the contrary, no indemnification payable by Buyer in this Article 12 shall be required until the aggregate amount of Damages incurred by Seller exceeds \$50,000 (the “**Deductible**”).

Section 12.4 Certain Rebates, Excluded Assets. For rebates included in the Excluded Assets on Schedule 1.2, which are not expected to be received until after the Closing, Buyer shall remit to Seller, at Closing, the sum equal to the total such rebates received by Seller for 2022 (the “**Total 2022 Rebates**”), pro rated based on the percentage of the 2023 calendar year occurring prior to Closing multiplied by the Total 2022 Rebates for rebates paid for periods prior to Closing.. Any rebate pre-payments or mutually agreed rebates received by Seller prior to or after the Closing for any period following the Closing Date shall be remitted to Buyer or the Purchase Price shall be adjusted accordingly.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

Section 13.1 Further Assurance and Assistance. Each Party agrees that after the Closing Date it will, from time to time, upon the reasonable request of the other, execute, acknowledge and deliver in proper form any instrument of conveyance or further assurance reasonably necessary or desirable to transfer to Buyer the interest in the Assets being transferred to Buyer in accordance with the terms of this Agreement, or otherwise carry out the terms of this Agreement.

Section 13.2 Amendment and Modification. This Agreement may be amended, modified or supplemented only by mutual written consent of the Parties to this Agreement.

Section 13.3 Waiver of Compliance. The failure by any Party at any time to require performance of any provision of this Agreement will not affect its right later to require such performance. No waiver in any one or more instances will (except as stated therein) be deemed to be a further or continuing waiver of any such condition or breach in other instances or a waiver of any condition or breach of any other term, covenant, representation or warranty.

Section 13.4 Expenses. All costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby will be paid by the Party incurring such expenses, except as provided elsewhere in this Agreement.

Section 13.5 Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed given if delivered personally, telecopied

(with confirmation), mailed by certified mail (postage prepaid, return receipt requested), or delivered by national courier service to the Parties at the following addresses (or at such other address for a party as shall be specified by like notice) and shall be effective upon receipt (or upon the next succeeding Business Day if received after 5:00 p.m. local time on a Business Day or if received on a Saturday, Sunday or United States holiday). All notices and other communications required may be made by email, where there is reasonable certainty that such email may be relied upon as valid and as follows:

If to Buyer: AIM Associates Capital Group, LLC  
c/o Fernando Amaro  
3162 Commodore Plaza, Suite 3E  
Coconut Grove, FL 33133  
E-mail: [fernandoa@aimacg.com](mailto:fernandoa@aimacg.com)

With a copies to: Alexis Gonzalez  
[alexis@aglawpa.com](mailto:alexis@aglawpa.com)

Christopher Mendez  
[chrism@aimacg.com](mailto:chrism@aimacg.com)

If to Seller: Aurora Management Partners  
112 South Tryon Street, Suite 1770  
Charlotte, NC 28284  
Attention: David M. Baker  
Email: [dbaker@auroramp.com](mailto:dbaker@auroramp.com)

With a copy to: Cole Schotz P.C.  
300 E. Lombard Street, Suite 1111  
Baltimore, MD 21202  
Attention: Gary Leibowitz, Esquire  
Email: [gleibowitz@coleschotz.com](mailto:gleibowitz@coleschotz.com)

or to such other addresses as may be specified pursuant to notice given by either Party in accordance with the provisions of this Section 12.5.

Section 13.6 Time. Time is of the essence of this Agreement, provided that if any date upon which some action, notice or response is required of any party hereunder occurs on a weekend or national holiday, such action, notice or response shall not be required until the next succeeding Business Day.

Section 13.7 Assignability of Agreement. This Agreement and the rights and obligations of the parties hereunder may not be transferred, assigned, pledged or hypothecated by any party without the prior written consent of the other party hereto. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. It being understood and agreed by the Parties that Buyer intends to establish affiliated controlled entities for structuring, tax, and liability purposes, each of which may enter into the various agreements as contemplated in this Agreement, provided that Buyer shall remain liable to Seller under this Agreement in any event.

Section 13.8 Governing Law; Consent to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Alabama, regardless of the laws that might otherwise govern under applicable principles of conflicts of law. The Parties each hereby irrevocably submit to the exclusive jurisdiction of the Bankruptcy Court for any claims or matters arising under or relating to this Agreement. Each Party also agrees not to bring any action or proceeding arising out of or relating to this Agreement in any court other than the Bankruptcy Court. Any Party may make service on any other Party by sending or delivering a copy of the process to the Party to be served at the address and in the manner provided for the giving of notices in Section 12.5 above. Nothing in this Section, however, shall affect the right of any Party to serve legal process in any other manner permitted by law or at equity.

**(b) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BUYER AND SELLER HEREBY IRREVOCABLY AND EXPRESSLY WAIVE ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER DOCUMENTS AND AGREEMENTS DELIVERED IN CONNECTION HERewith, THE TRANSACTION OR THE ACTIONS OF BUYER OR SELLER IN THE NEGOTIATION, ADMINISTRATION, OR ENFORCEMENT HEREOF OR THEREOF.**

Section 13.9 Attorneys' Fees. In the event of any dispute, litigation or other proceeding between the Parties to enforce any of the provisions of this Agreement or any right of either Party hereunder, the unsuccessful party to such dispute, litigation or other proceeding shall pay to the successful party all costs and expenses, including reasonable attorneys' fees, incurred at trial, on appeal, and in any arbitration, administrative or other proceedings, all of which may be included in and as a part of the judgment rendered in such litigation. Any indemnity provisions herein shall include indemnification for such costs and fees. This section shall survive the Closing or a prior termination hereof.

Section 13.10 Counterparts, Electronic Signatures. This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. This Agreement and any other documents to be delivered in connection herewith may be electronically signed, and any electronic signatures or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility. All Schedules and Exhibits attached hereto and referred to herein are hereby incorporated herein by reference and made a part of this Agreement for all purposes as if fully set forth herein.

Section 13.11 Headings. The headings of the Sections and Articles of this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

Section 13.12 No Reliance. No third party is entitled to rely on any of the representations, warranties and agreements contained in this Agreement. Buyer and Seller assume no liability to any third party because of any reliance on the representations, warranties and agreements of Buyer or Seller contained in this Agreement.

Section 13.13 Severability. If any term or other provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. Upon such a determination, the parties hereto shall negotiate in good faith to modify this Agreement so as to affect the original intent of the parties as closely as

possible in a reasonably acceptable manner in order that the transactions contemplated hereby may be consummated as originally contemplated to the fullest extent possible.

Section 13.14 Interpretation. Unless the context requires otherwise, all words used in this Agreement in the singular number shall extend to and include the plural, all words in the plural number shall extend to and include the singular, and all words in either gender shall extend to and include both genders.

Section 13.15 Force Majeure. In no event shall Buyer be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, failure of suppliers of materials, accidents, war, invasion, epidemic, pandemic, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software or hardware) services. Reasonable diligence shall be used to remove the condition that prevents performance and shall not be entitled to suspend performance of its obligations in any greater scope or for any longer duration than is required by the event.

#### ARTICLE 14 DEFINITIONS

Section 14.1 Definitions. For purposes of this Agreement, the following terms have the meanings specified below:

“**Affiliate**” of a Person (as defined herein) means any Person that directly or indirectly controls, is controlled by or is under common control with such Person and each of such Person’s executive officers, directors and partners. For the purpose of this definition, “control” of a Person means the power to direct, or to cause the direction of, the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise, and the terms and phrases “controlling,” “controlled by” and “under common control with” have correlative meanings.

“**Assets**” shall have the meaning ascribed to it in Paragraph 1.1 of this Agreement.

“**Auction**” shall have the meaning ascribed to it in Paragraph 4.2(b) of the Agreement.

“**Back-Up Bidder**” shall have the meaning ascribed to it in Paragraph 4.2(b) of the Agreement.

“**Bankruptcy Court**” means the United States Bankruptcy Court for the Northern District of Georgia.

“**Bid Procedures Order**” means the Order entered by the Bankruptcy Court establishing the procedures for submission of Competing Bids.

“**Business Day**” means any day on which national banks located in Montgomery, Alabama, are generally open to the conduct of banking business and excluding Saturdays and Sundays.

“**Competing Bid**” shall have the meaning ascribed in Paragraph 4.1(a) of the Agreement.

“**Damages**” means any and all actions, suits, proceedings (including any investigation or inquiries), losses, damages, costs, expenses, liabilities, obligations, and claims of any kind or

nature whatsoever, including, without limitation, reasonable attorneys' fees and other legal costs and expenses.

**“Environment”** means soil, land surface or subsurface strata, surface waters (including navigable waters, ocean waters, streams, ponds, drainage basins, and wetlands), groundwaters, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life, and any other environmental medium or natural resource.

**“Environmental Law”** means any and all applicable federal, state or local statutes, regulations, ordinances, guidelines, codes, decrees, or other legally enforceable requirement (including common law) of any foreign government, the United States, or any state, local, municipal or other Governmental Entity, regulating, relating to or imposing liability or standards of conduct concerning protection of the environment (including indoor air, ambient air, surface water, groundwater, land surface, subsurface strata, or plant or animal species) or human health as affected by the environment or Hazardous Substances (including employee health and safety).

**“Franchise Agreement”** means the certain Limited License Agreement dated March \_\_, 2023, by and between Franchisor and Seller for each of the locations listed in **Schedule 3.4**.

**“Franchisor”** means Popeyes Louisiana Kitchen, Inc., a Minnesota corporation.

**“Governmental Entity”** means any federal, state or local government or any court, administrative or regulatory agency or commission or other governmental authority or agency having jurisdiction.

**“Hazardous Substance”** means any substance: (a) the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law; or (b) which is or becomes defined as a “hazardous waste”, “hazardous substance”, pollutant or contaminant under any federal, state or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. section 9601 et seq.) and/or the Resource Conservation and Recovery Act (42 U.S.C. section 6901 et seq.); or (c) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of Florida or any political subdivision thereof.

**“Knowledge of Seller”** or **“Seller’s Knowledge”** means the current actual knowledge of Joginder Sidhu, and any current managing member, corporate director, or authorized signatory of Premier Cajun Kings, LLC<sup>1</sup> (**“Seller’s Knowledge Persons”**) on the date hereof and on the Closing Date, which does not include constructive knowledge or inquiry knowledge. Seller’s Knowledge Person shall have no duty of investigation or inquiry beyond the books and records of Seller, nor shall Seller’s Knowledge Person have any personal liability for any misrepresentation or inaccuracy of any representation or warranty contained in this Agreement or related documents.

**“Material Adverse Effect”** means a material and adverse effect on the Assets, or financial condition, properties, business or results of operations of Seller, taken as a whole, or on the ability of Seller to perform its obligations under this Agreement or to consummate the transactions contemplated herein; provided, however, that effects relating to (a) any adverse change, effect, event, occurrence, state of facts or development attributable to conditions

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<sup>1</sup> Knowledge parties to be discussed.

affecting the industry in which Seller participates, the U.S. economy as a whole or the capital markets in general or the markets in which Seller and its parent company operate which does not materially and disproportionately affect Seller and its parent company, taken as a whole; (b) any adverse change, effect, event, occurrence, state of facts or development attributable to the reaction of employees, customers or suppliers of Seller to the public announcement of the Transaction; (c) any adverse change, effect, event, occurrence, state of facts or development arising from or relating to any change required by generally accepted accounting principles, in accounting requirements or principles or any change in applicable laws, rules or regulations or the interpretation thereof which does not materially and disproportionately affect Seller and its parent company, taken as a whole; (d) the failure of Seller and its parent company to meet any projected financial or other results; or (e) the Seller's filing of a bankruptcy petition for relief under Chapter 11 of the Bankruptcy Code, in each case, shall not be deemed to constitute a "Material Adverse Effect" and shall not be considered in determining whether a "Material Adverse Effect" has occurred.

**"Person"** means an individual, a partnership, a limited liability company, a joint venture, a corporation, a trust, an unincorporated organization, a division or operating group of any of the foregoing, a government or any department or agency thereof, or any other entity.

**"Sale Motion"** means the motion to be filed by Seller in the Bankruptcy Court requesting approval of the sale of the Assets under this Agreement, subject to Competing Bids, and the assumption and assignment of leases and contracts to be assumed by Buyer under the terms of this Agreement.

**"Sale Order"** means the order of the Bankruptcy Court approving this Agreement and the sale of the Assets to Buyer free and clear of liens, claims and encumbrances other than liabilities to be assumed by Buyer under this Agreement.

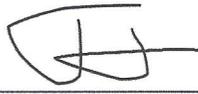
Section 14.2 Entire Agreement. This Agreement, including the agreements referred to in this Agreement, the Schedules and Exhibits attached to this Agreement and other documents referred to in this Agreement which form a part of this Agreement, contains the entire understanding of the parties to this Agreement in respect of the subject matter contained in this Agreement. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to in this Agreement. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

[Signatures on Following Pages]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in multiple original counterparts as of the date first above written.

BUYER:

**AIM ASSOCIATES CAPITAL GROUP, LLC,**  
a Florida limited liability company

By:   
Name: Fernando Amaro  
Title: Managing Partner

SELLER:

**PREMIER CAJUN KINGS, LLC,**  
an Alabama limited liability company

By:   
Name: DAVID M. BAKER  
Title: CHIEF RESTRUCTURING OFFICER

[Signature Page to Asset Purchase Agreement]

## **List of Exhibits and Schedules**

Exhibit A	Leased Property
Exhibit B	Existing Leases
Exhibit C	Affiliate Owned Property
Exhibit D	Form of Bill of Sale
Exhibit E	Form of Assignment and Assumption Agreement
Schedule 1.2	Excluded Assets
Schedule 3.2	Escrow Provisions
Schedule 3.4	Individual Store Values
Schedule 5.4	Compliance with Laws
Schedule 5.6	Lease Default
Schedule 5.7	Contract Defaults
Schedule 5.9	Litigation and Proceedings

**Exhibit A**  
**Leased Property**

Store #	Description	Address	City	State
2502	Bessemer Rd	2239 Bessemer Road	Birmingham	AL
4150	Florence	1703 Florence Blvd	Florence	AL
4815	Finley Blvd	1717 Finley Blvd	Birmingham	AL
7036	Cummings	985 Market Place Blvd	Cumming	GA
7037	Alpharetta	3343 Old Milton Parkway	Alpharetta	GA
8849	Roswell	10777 Alpharetta Highway	Roswell	GA
12864	North Blvd	876 North East Blvd	Montgomery	AL
12866	Gurley	5946 Hwy 72 East	Gurley	AL
13252	Clanton	1416 7th Street South	Clanton	AL

**Exhibit B**  
**Existing Leases**

Store #	Description	Address	City	State	Landlord
2502	Bessemer Rd	2239 Bessemer Road	Birmingham	AL	Domit Investment Group
4150	Florence	1703 Florence Blvd	Florence	AL	Santa Cruz Land and Cattle Company
4815	Finley Blvd	1717 Finley Blvd	Birmingham	AL	Hugo Slevin and Micheal O'Reilly
7036	Cummings	985 Market Place Blvd	Cumming	GA	Popeyes Louisiana Kitchen
7037	Alpharetta	3343 Old Milton Parkway	Alpharetta	GA	Popeyes Louisiana Kitchen
8849	Roswell	10777 Alpharetta Highway	Roswell	GA	Popeyes Louisiana Kitchen
12864	North Blvd	876 North East Blvd	Montgomery	AL	Markou Revocable Trust
12866	Gurley	5946 Hwy 72 East	Gurley	AL	Trimax Properties
13201	Tuskegee	33 Red Tail Lane	Tuskegee	AL	Tuskegee Co-Op District
13252	Clanton	1416 7th Street South	Clanton	AL	James W. Wadsworth

## Exhibit C

### Affiliate Owned Property

Store #	Description	Address	City	State
11069	Decatur	1827 East Beltline Road	Decatur	AL
12865	Wetumpka	4900 US Hwy 231	Wetumpka	AL
12930	Capital Plaza	2248 East South Blvd	Montgomery	AL
13164	Harpersville	5478 Highway 280	Harpersville	AL
13254	Millbrook	1271 Hwy 14	Millbrook	AL
13255	Andalusia	461 West Bypass	Andalusia	AL
13568	Eastchase	9036 Eastchase Parkway	Montgomery	AL
13579	Fort Payne	1502 Glenn Blvd SW	Fort Payne	AL
13116	Shorter	375 Main Street	Shorter	AL
13201	Tuskegee	33 Red Tail Lane	Tuskegee	AL

## Exhibit D

### BILL OF SALE

THIS BILL OF SALE (this “**Bill of Sale**”) is made and entered into as of March [●], 2023, by Premier Cajun Kings, LLC, an Alabama limited liability company (“**Seller**”) in favor of AIM Associates Capital Group, a Florida limited liability company, (“**Buyer**”). Seller and Buyer are referred to collectively as “**Parties**” herein, and each individually, a “**Party**”.

### RECITALS

WHEREAS, Buyer and Seller are parties to that certain Asset Purchase Agreement dated as of [●], 2022 (the “**Purchase Agreement**”), pursuant to which Seller agreed to sell, convey, assign, transfer and deliver to Buyer, all of its respective right, title and interest in and to the Assets (as defined therein), and Buyer agreed to acquire the same; and

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

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

### AGREEMENT

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

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

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

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

5. Governing Law; Disputes. The Parties agree that this Bill of Sale shall be governed by and construed in accordance with the laws of the State of Alabama without regard to such state's conflicts of laws rules. Any dispute arising from this Bill of Sale shall be subject to the terms and conditions of Section 13.8 of the Purchase Agreement.

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

*[Remainder of Page Left Blank]*

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

**SELLER**

**Premier Cajun Kings, LLC,**  
an Alabama limited liability company

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

## Exhibit E

### ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this “Assignment”) is made and entered into as of [●], 2023, by and among Premier Cajun Kings, LLC, an Alabama limited liability company (“**Assignor**”), and AIM Associates Capital Group, a Florida limited liability company (“**Assignee**”). Assignor and Assignee are referred to collectively as “**Parties**” herein, and each individually, a “**Party**”.

### RECITALS

WHEREAS, Assignor and Assignee are parties to that certain Asset Purchase Agreement dated as of [●], 2022 (the “**Purchase Agreement**”), pursuant to which to which Assignor agreed to assign, and Assignee agreed to assume, all of Assignor’s right, title and interest in and to the Assumed Contracts;

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

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

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

### AGREEMENT

1. Assignment of Assumed Contracts. Subject to the terms and conditions set forth in the Purchase Agreement, for valuable consideration received from Assignee, Assignor hereby assigns, transfers and conveys to Assignee all of Assignor’s right, title and interest in, to and under the Assumed Contracts and Assignee accepts such assignment.
2. Assumption of Assumed Liabilities. Subject to the terms and conditions set forth in the Purchase Agreement, Assignor hereby assigns to Assignee the Assumed Liabilities and Assignee hereby accepts such assignment and agrees to pay, perform, discharge or otherwise satisfy the Assumed Liabilities. Other than as specifically set forth herein, Assignee assumes no debt, liability, or obligation of Assignor.
3. Further Assurances. In case at any time after the date hereof any further actions are necessary or desirable to carry out the purposes of this Assignment, the Parties shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof.
4. Instrument of Conveyance Only. This Assignment is being made by the Parties pursuant to the requirements of the Purchase Agreement, the terms and conditions of which are incorporated herein by this reference, and this Assignment shall be subject to such terms and conditions. Except for the actual conveyance of the Assumed Contracts as set forth in Section 1 of this Assignment and the assumption of the Assumed Liabilities as set forth in Section 2 of this Assignment, nothing set forth in this Assignment is intended to or shall expand, enlarge, modify, restrict, limit, or abridge any of the terms, representations, warranties, covenants, conditions, agreements, provisions, rights, benefits, obligations or liabilities of Assignors or Assignee beyond that set forth in the Purchase Agreement. In the event of any conflict, ambiguity or

discrepancy between the terms or conditions of the Purchase Agreement and this Assignment, the terms and conditions of the Purchase Agreement shall be controlling in all respects.

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

6. Governing Law; Disputes. The Parties agree that this Assignment shall be governed by and construed in accordance with the laws of the State of Alabama without regard to such state's conflicts of laws rules. Any dispute arising from this Assignment shall be subject to the terms and conditions of Section 13.8 of the Purchase Agreement.

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

*[Signature Page Follows]*

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

**ASSIGNOR**

**Premier Cajun Kings, LLC,**  
an Alabama limited liability company

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

**ASSIGNEE**

**AIM ASSOCIATES CAPITAL GROUP, LLC,**  
a Florida limited liability company

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

## **Schedule 1.2**

### **Excluded Assets**

1. Coca-Cola Rebate for 2022 and the portion of the rebate for the period January 1, 2023 to the Closing Date (the “2023 Rebate”).
2. Dr. Pepper Rebate for 2022 and the 2023 Rebate.
3. 7-Up Rebate for 2022 and the 2023 Rebate.
4. Any and all claims and causes of action of Seller, including, but not limited to, the imposition of constructive trusts, disgorgement of profits, asset turnover, avoidance of fraudulent transfers, rescission and restitution, and the collection of debts.
5. Any and all cash, cash equivalents, bank accounts, deposit accounts, credits, prepaid expenses, deposits, deferred charges, advance payments, security deposits, prepaid items, funds, securities, investment accounts, accounts receivable, notes, notes receivable, mortgages, security interests, income, revenues derived from Seller before the Closing Date.
6. Funds received under the CARES Act for or on account of any period of time or calculation of revenue or expense before the Closing Date, including without limitation funds received on account of applications or requests submitted prior to the Closing Date and any refundable tax credit (Employee Retention Credit) under the CARES Act.
7. Any and all avoidance actions Seller may have under Sections 547-551 of the Bankruptcy Code.
8. Any real or tangible personal property not located in the Stores to be sold to Buyer.

## **Schedule 1.2**

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## Schedule 3.2

### Escrow Provisions<sup>2</sup>

[ ] will serve as the Escrow Agent. Buyer and Seller agree that the Good Faith Deposit shall be made to, and shall be held by, Escrow Agent for the accommodation of Buyer and Seller, in a non-interest bearing account. In the event any litigation should arise between the parties to this Agreement concerning the Good Faith Deposit, Buyer and Seller jointly and severally agree to hold Escrow Agent harmless from, and indemnify and defend Escrow Agent for, the payment of any cost or other expenses that may be involved in said litigation (including reasonable legal fees and expenses of attorneys chosen by Escrow Agent, which may include Escrow Agent's own costs using its usual billing rates for attorneys employed by Escrow Agent), and from and for any and all loss, damage, tax, liability and expense that may be incurred by Escrow Agent arising out of or in connection with its acceptance or appointment as Escrow Agent, including without limitation to such liability arising from the negligence of Escrow Agent, except for gross negligence, willful misconduct or bad faith of the Escrow Agent. In the event of a dispute, Escrow Agent's only obligation shall be to retain the Good Faith Deposit until a final determination has been issued or to pay the Good Faith Deposit into a court of competent jurisdiction.

Escrow Agent shall deliver the Good Faith Deposit in accordance with the following:

- (a) To the person responsible for closing the sale, at the Closing, in the event the Closing timely occurs under the Agreement;
- (b) To Seller upon receipt of demand therefor signed by Seller stating that Buyer has defaulted in the performance of Buyer's obligation to timely close the sale contracted for in this Agreement under this Agreement; provided, however, that Escrow Agent shall not honor such demand until at least five (5) calendar days after the date on which Escrow Agent shall have mailed a copy of such demand to Buyer; nor thereafter if Escrow Agent shall have been given a written notice of objection from Buyer; or
- (c) To Buyer upon receipt of demand therefor signed by Buyer stating that Seller has defaulted in the performance of Seller's obligations under the Agreement or that the Agreement has been terminated by Seller or Buyer and Buyer is entitled to the refund of the Good Faith Deposit pursuant to the terms of this Agreement; provided, however, that Escrow Agent shall not honor such demand until at least five (5) calendar days after the date on which Escrow Agent shall have mailed a copy of such demand to Seller, nor thereafter if Escrow Agent shall have been given a written notice of objection from Seller.

If Escrow Agent shall have been given a written notice of objection within the time prescribed, then and in any such event, Escrow Agent shall refuse to comply with any claims or demands on it, and shall continue to hold the Good Faith Deposit until Escrow Agent receives either a written notice signed by both Buyer and Seller directing the disbursement of the Good Faith Deposit, or a final non-appealable order by a court of competent jurisdiction, entered in a proceeding in which Buyer, Seller and Escrow Agent are named as parties, directing the disbursement of the Good Faith Deposit, in either of which events Escrow Agent shall then disburse the Good Faith Deposit in accordance with such direction. Escrow Agent shall not be or become liable in any way or to any person for its refusal to comply with any such claims and demands unless it has

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<sup>2</sup> This Schedule 3.2 may be replaced by the escrow terms required by the Escrow Agent.

### Schedule 3.2

received such direction. Upon compliance with such direction, Escrow Agent shall be released of and from all liability under the Agreement, unless caused by its gross negligence, willful misconduct or bad faith.

The foregoing notwithstanding, Escrow Agent may, on notice to Buyer and Seller, take such affirmative steps as Escrow Agent may, at its option, elect in order to terminate its duties as Escrow Agent, including, without limitation, the deposit of the Good Faith Deposit with a court of competent jurisdiction and the commencement of an action for interpleader, the attorneys' fees and costs of which shall be borne by whichever of the parties is the losing party. Buyer and Seller each hereby irrevocably consent to the jurisdiction and venue of the United States Bankruptcy Court for the Northern District of Georgia, which is presiding over Seller's Chapter 11 bankruptcy case. The Escrow Agent shall be reimbursed for all costs and expenses of such proceeding, including without limitation reasonable attorneys' fees and costs, by the party determined not to be entitled to the Good Faith Deposit. Upon the taking by Escrow Agent of the action described above, Escrow Agent shall be released of and from all liability under the Agreement, unless caused by its gross negligence, willful misconduct or bad faith.

Escrow Agent shall not have any duties or responsibilities, except those specifically set forth in this Schedule, and, absent gross negligence, willful misconduct or bad faith, shall not incur any liability in acting upon any signature, notice, demand, request, waiver, consent, receipt, or other writing, instrument or document reasonably believed by Escrow Agent to be genuine. Escrow Agent shall be obligated only for the performance of such duties as are specifically set forth in this Agreement, being purely ministerial in nature. Nothing contained herein shall be deemed to obligate Escrow Agent to pay or transfer any monies hereunder unless and until such funds are received by Escrow Agent. Escrow Agent shall have no liability for loss arising from any cause beyond its control, including without limitation the following: (i) the act, failure, neglect or insolvency of any financial institution selected by Escrow Agent; (ii) any delay, error, omission or default connected with the remittance of funds; (iii) any delay, error, omission or default of any mail, telephone or e-mail service or operator; or (iv) the acts of any government or governmental agency or other entity exercising governmental powers. To the extent that Buyer or Seller allege that Escrow Agent breached its duties or responsibilities, including any allegation of gross negligence, willful misconduct or bad faith, Buyer and Seller hereby agree that any such allegation, dispute or claim against Escrow Agent shall be submitted to binding arbitration before the American Arbitration Association in Birmingham, Alabama, in accordance with the prevailing Commercial Rules of the American Arbitration Association. The arbitration panel shall consist of three (3) members, one of whom shall have five (5) years' experience in the sale of commercial property, and one of whom shall be a retired federal or state district court judge.

Notwithstanding Escrow Agent's obligations under this Agreement, Escrow Agent may refrain from doing anything which could or might in its reasonable opinion: (i) be contrary to the state laws of Alabama or the federal laws of the United States of America or the laws of any other relevant jurisdiction; (ii) be contrary to any requirement of any court of competent jurisdiction or any supervisory or regulatory authority; or (iii) otherwise render Escrow Agent reliable to any other person.

Buyer acknowledges that Escrow Agent represents and is acting in a separate capacity as counsel for Seller in connection with the transaction described in the Agreement. Buyer acknowledges that its/his/her individual interests may differ from the interests of Seller, that Buyer has the right, and had the opportunity, to consult with independent counsel in connection with the transaction described herein. Buyer acknowledges that Escrow Agent will not undertake any obligation to protect Buyer's interest in connection with the transaction. In the event that a dispute arises in connection with the transaction or any other relationship among Seller and Buyer, Buyer acknowledges that Waller Lansden Dortch & Davis LLP has the right to continue to represent Seller and hereby waives any conflicts of interest that may arise. Buyer specifically

### Schedule 3.2

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agrees that Escrow Agent may continue to represent Seller in connection with any dispute over entitlement to the Good Faith Deposit. Buyer represents and warrants that it has sought its own and separate legal counsel with respect to its review, execution and delivery of this Agreement. Buyer agrees that neither the services of Escrow Agent under this Agreement nor any provision hereof, either expressed or implied, shall restrict or inhibit Escrow Agent in any way from representing Seller in any action, dispute, controversy, arbitration, suit or negotiation arising under this Agreement, the Agreement or under other related agreement, whether or not involving all of the parties hereto.

**Schedule 3.2**

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**Schedule 3.4**

**Individual Store Values**

Store #	Description	Address	City	State	Valuation
2502	Bessemer Rd	2239 Bessemer Road	Birmingham	AL	\$410,000
7036	Cummings	985 Market Place Blvd	Cumming	GA	\$197,425
8849	Roswell	10777 Alpharetta Highway	Roswell	GA	\$262,762
11069	Decatur	1827 East Beltline Road	Decatur	AL	\$617,077
12864	North Blvd	876 North East Blvd	Montgomery	AL	\$224,623
12865	Wetumpka	4900 US Hwy 231	Wetumpka	AL	\$223,966
12930	Capital Plaza	2248 East South Blvd	Montgomery	AL	\$204,857
13254	Millbrook	1271 Hwy 14	Millbrook	AL	\$264,236
13568	Eastchase	9036 Eastchase Parkway	Montgomery	AL	\$620,000
4815	Finley Blvd	1717 Finley Blvd	Birmingham	AL	\$213,710
7037	Alpharetta	3343 Old Milton Parkway	Alpharetta	GA	\$159,203
12866	Gurley	5946 Hwy 72 East	Gurley	AL	\$220,655
4150	Florence	1703 Florence Blvd	Florence	AL	\$158,723
13252	Clanton	1416 7th Street South	Clanton	AL	\$146,735

**Schedule 3.4**

13255	Andalusia	461 West Bypass	Andalusia	AL	\$143,156
13579	Fort Payne	1502 Glenn Blvd SW	Fort Payne	AL	\$150,000
13116	Shorter	375 Main Street	Shorter	AL	\$120,000
13201	Tuskegee	33 Red Tail Lane	Tuskegee	AL	\$100,000
13164	Harpersville	5478 Highway 280	Harpersville	AL	\$137,871

**Schedule 3.4**

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**Schedule 5.4**  
**Compliance with Laws**

**Schedule 5.4**

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## **Schedule 6.6**

### **Lease Defaults under Existing Leases Only**

Store 4150 Florence - Received demand letter October 20, 2022 requesting payment of overdue rents. Landlord is forbearing in expectation of sale.

Store 4815 Finley - Received demand letter December 13, 2022 requesting payment of overdue rents. Landlord is forbearing in expectation of sale.

Store 12866 Gurley - Received demand letter October 12, 2022 requesting payment of overdue rents. Landlord is forbearing in expectation of sale.

Store 13252 Clanton - Received demand letter November 3, 2022 requesting payment of overdue rents. Landlord is forbearing in expectation of sale.

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## **Schedule 5.7**

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**Schedule 5.7**  
**Contract Defaults**

[TBD]

**Schedule 5.7**

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## Schedule 6.9

### Litigation and Proceedings

1. Seller's anticipated filing of a Chapter 11 petition in the Bankruptcy Court.
2. The Estate pending in the Probate Court.

#### General Litigation

H&K International (Plaintiff) has filed for summary judgement in the amount of \$74,170.15 in connection with a collection lawsuit for the balance due on equipment purchased for the roll out of chicken nuggets at several stores. Plaintiff secured a lien in the amount of \$306,727.36 on Popeyes location #13568, after which Premier Cajun Kings, LLC paid most, but not all, of the obligation to H&K. The company has paid for the equipment at #13568, and there may be other defects in the lien, but the company has not paid H&K for all the equipment delivered to Premier Cajun Kings, LLC.

E.S.S., Inc. v. Premier Kings of North Alabama, LLC, Premier Kings of Georgia, Inc., Premier Cajun Kings, LLC, Premier Kings, Inc., and Joginder Sidhu, personal representative of Manraj (Patrick) Sidhu, in the Eighth Circuit Court for Davidson County, Tennessee, Case No. 21C738

Plaintiff asserts damages around \$85k in connection with unpaid invoices for drive through headsets and music equipment. Premier Cajun Kings, LLC liability is approximately \$25k.

There were 3 liens filed in connection with this suit, one filed against Popeyes #13164. Defendants believe enforcement period has expired.

- Verified notice and copy of lien sent on Harpersville BK location for \$9,222.48 on or about March 18,2020. Filing status uncertain. However, the enforcement period is believed to have expired.
- Verified notice and copy of lien sent on Nahunta BK location for \$9,222.48 on or about March 12, 2020. Filing status uncertain. However, the enforcement period is believed to have expired.
- Verified notice and copy of lien sent on Harpersville Popeyes location for \$6,177.60 on or about March 18, 2020. Filing status uncertain. However, the enforcement period is believed to have expired.

All Premier entities, including Premier Cajun Kings, LLC are participants in a class action suit against Blue Cross Blue Shield Association. More information can be found at [bcbssettlement.com](http://bcbssettlement.com). Premier Cajun Kings, LLC does not have further updates on this class action claim.

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## Schedule 5.9

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## Lease Defaults

J.I.L. Enterprises, Inc. v. Premier Cajun Kings, LLC, Premier Holdings, LLC and Premier Holdings of Georgia, in the Circuit Court of Jefferson County, Alabama

Plaintiff has initiated three lawsuits related to Popeyes stores #2456, 2131, and 2273 asserting breach of lease and seeking past due rents in the amount of approximately \$105k, \$107k, and \$11k, respectively. Return of service has not been filed for the 2273 suit. Defendants have filed answers to the complaints on February 16, 2023 asserting general denials. All stores have been closed.

Fallbrook MHP, LLC V. Premier Cajun Kings, LLC in Circuit Court of St. Clair County, Alabama (75-CV-2023-900040) and District Court of St. Clair County, Alabama (75-CV-2023-900014)

Plaintiff has filed a contract suit in Circuit court seeking approximately \$89k in damages related to past due rents, and an eviction action in the District court for Store 13223. Store is closed.

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## General Liability Litigation/Insurance Company Defending

Store 4815 Finley Blvd Popeyes. Coretta Toles New liability claim. Incident alleged to have occurred on Aug. 25, 2020. Claims are for assault/battery, intentional infliction of emotional distress.

Store 2502 Bessemer Rd Popeyes. Cleveland Smith v PCK. Slip/fall alleged to have occurred on or about Nov. 7, 2020.

Store 4815 Finley Blvd Popeyes. Janice Holiday incident alleged to have occurred on July 28, 2022. She claims she got food poisoning.

Store 13201. Tuskegee, AL Popeyes. Christy Slack slip and fall alleged to have occurred on November 7, 2022.

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## Americans with Disability Act Claims.

Store 12864. Popeyes at 876 North East Blvd, Birmingham, AL. Possible claim by Roosevelt Bradley. Company retained architect to review the claims.

3.

## Schedule 5.9

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